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**FINAL NOTICE**

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To: **UBS AG**

Of: **1 Finsbury Avenue  
London  
EC2M 2PP**

Date: 17 November 2005

**TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives you final notice about a requirement to pay a financial penalty.**

**THE PENALTY**

The FSA gave UBS AG ("UBS") a Decision Notice on 9 November 2005 which notified UBS that pursuant to section 206 of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to impose a financial penalty of £100,000 on UBS in respect of breaches of Rule 5.49 of the Securities and Futures Association Rules (the "SFA Rules") and SUP 17.4R and SUP 15.61R of the FSA Rules, namely the obligations to make transaction reports to the SFA and later the FSA and to take reasonable steps to ensure that the transaction reports that it did provide to the FSA were accurate.

UBS confirmed on 4 November 2005 that it will not be referring the matter to the Financial Services and Markets Tribunal.

Accordingly, for the reasons set out below and having agreed with UBS the facts and matters relied on, the FSA imposes a financial penalty on UBS in the amount of £100,000 ("the Penalty").

**REASONS FOR THE ACTION**

**Background to transaction reporting**

1. Two of the FSA's four regulatory objectives set out in the Act relate to maintaining confidence in the financial system and the reduction of financial crime. In order to assist it in satisfying these objectives, the FSA maintains a database of market

transactions (referred to as SABRE) to monitor for market misconduct and related rule breaches.

2. The FSA's Handbook module SUP 17.4 requires authorised firms to make transaction reports in respect of all reportable transactions that it makes, either on its own account or on behalf of another. SUP 17 Annex 2R sets out the mandatory reporting fields that include whether the firm dealt as Principal or Agent. The FSA Rules apply as from 1 December 2001 ("N2").
3. The equivalent provision to SUP 17.4R is found in the SFA Rules at Rule 5.49 ("R5.49"). The SFA Rules applied for the period 1999 to midnight on 30 November 2001 (pre N2).
4. The FSA's Handbook module SUP 15.6.1R requires authorised firms to take reasonable steps to ensure that all information it gives to the FSA in accordance with a rule in any part of the handbook is factually accurate and complete. The guidance provided at SUP 15.6.2G demonstrates that this rule is relevant to the FSA's transaction reporting requirements.
5. The FSA relies on authorised firms to make transaction reports and to ensure that they are accurate and complete. A failure to report transactions or providing inaccurate or incomplete transaction reports by a firm may seriously hinder the FSA's ability to monitor the market effectively and therefore impact on the FSA's ability to maintain confidence in the financial system and reduce financial crime.

### **UBS's transaction reporting failures**

6. UBS has a Wealth Management division ("UBS WM") that carries out transactions on behalf of its clients that require to be reported in accordance with SUP 17.4R. UBS WM sought to meet its transaction reporting obligations either (i) directly via the use of its independent DRS link or (ii) indirectly by relying on another division of UBS to carry out reporting on its behalf
7. In July 2005 UBS WM made a suspicious transaction report to the FSA. A review of the transaction report on SABRE and subsequent discussions with UBS WM revealed that the transaction - a client purchase - had been incorrectly reported as a client sale. This led UBS WM to review its transaction reporting more generally.
8. UBS WM has reported equity transactions executed by it with brokers outside the UBS group in London on its independent DRS link since approximately October 1999. UBS WM's review disclosed that, since inception, all such trades undertaken by UBS WM have been incorrectly hard coded as Principal when they should have been reported as Agent as UBS WM does not take proprietary positions. As the Principal flag was hard coded from the outset, the daily operational procedures which UBS WM carried out to check the accuracy and completeness of the report pre-transmission to the FSA were not designed to check this aspect of the report. In all cases where the transactions were incorrectly reported by UBS WM on its independent system, it had reported the transactions as Principal rather than as Agent.

9. For those transactions where UBS WM had relied on another division to report on its behalf, UBS's review identified that transactions were either not reported or had been incorrectly reported. The failure to report transactions and the submission of inaccurate transaction reports has occurred since May 1999.

## **RELEVANT STATUTORY PROVISIONS**

10. Section 206 of the Act authorises the FSA to impose a financial penalty if it considers that an authorised person has contravened a requirement imposed on him by or under the Act.
11. UBS is an authorised person under the Act. UBS was a member of the Securities and Futures Association pre N2.
12. Between 1999 and 30 November 2001, R5.49 governed transaction reporting. Breach of R5.49 constitutes an act of misconduct within the meaning of Rule 7.23A(3) of the SFA Rules.
13. From 1999 to 30 November 2001, UBS contravened the requirement imposed on it to make transaction reports in respect of transactions entered on its own account or on the account of others by failing to make transaction reports at all or by failing to ensure that the transaction reports were accurate in accordance with R5.49.
14. From 1 December 2001 to 6 October 2005, UBS contravened the requirement imposed on it to make transaction reports in respect of transactions entered into by it either on its own account or on the account of others by failing to make transaction reports at all in contravention of the requirement in SUP17.4R, and UBS failed to take reasonable steps to ensure that the transaction reports that it did provide to the FSA were accurate in accordance with SUP 15.6.1R.
15. Pursuant to Article 8(2) of the Financial Services and Markets Act 2000 (Transitional Provisions and Savings) (Civil Remedies, Discipline, Criminal Offences etc) (No 2) Order 2001 ("the Order") the FSA may exercise the power conferred under Section 206 of the Act as if the authorised person had contravened a requirement imposed by or under the Act, where the FSA considers that an authorised person who, immediately before commencement of the Order, was a member of a recognised self regulating organisation, has committed an act of misconduct within the meaning of rule 7.23A(3) of the SFA Rules.

## **RELEVANT GUIDANCE ON SANCTION**

16. In deciding to take the action, the FSA has had regard to guidance published in the Enforcement ("ENF") module of the FSA Handbook, and in particular:
  - 18.1. ENF 11, the FSA's general approach to discipline, and in ENF 11.4, the criteria for determining whether to take disciplinary action; and
  - 18.2. ENF 13, the FSA's approach to imposing a financial penalty.

19. The FSA has considered all the relevant circumstances of the breaches when deciding whether to impose a sanction.

## **SANCTION**

20. In all the circumstances, and having had particular regard to the factors set out in paragraphs 21 and 22 below, the FSA has concluded that the imposition on UBS of a financial penalty of £100,000 is appropriate and proportionate.
21. In deciding to impose a financial penalty of £100,000 the FSA has taken into account the following factors:
  - 21.1. The period of time in which UBS failed to make transaction reports at all and/or made inaccurate transaction reports and the number of transactions reports it failed to make or made inaccurately in that period;
  - 21.2. UBS's failure to make transaction reports at all and its failure to ensure the accuracy of the transaction reports it did make, could have impacted on the ability of the FSA to investigate irregular or unusual transactions which may have involved market misconduct;
  - 21.3. Previous disciplinary action taken by Enforcement in relation to transaction reporting failures by other authorised entities.
22. The FSA has also taken into account the following mitigating factors in favour of UBS:
  - 22.1. The FSA is satisfied that UBS's failure was not deliberate or reckless. Where UBS WM was itself making reports to the FSA, it had procedures in place since 1999 to check all aspects of the accuracy of those reports except for a check on the Principal/Agency flag;
  - 22.2. UBS is taking full remedial steps to improve its systems and controls to ensure that going forward transaction reports are made and that they are accurate; and
  - 22.3. UBS has co-operated with the FSA's investigation fully in this matter and is co-operating with FSA to remedy its past transaction reporting failures.

## **DECISION MAKERS**

23. The decision which gave rise to the obligation to give this Final Notice was made by the Executive Settlement Decision Makers on behalf of the FSA.

## **IMPORTANT**

24. This Final Notice is given to UBS in accordance with section 390 of the Act.

### **Manner of and time for Payment**

25. The financial penalty must be paid in full by UBS to the FSA by no later than 1 December 2005.

### **If the financial penalty is not paid**

26. If all or any of the financial penalty is outstanding on 2 December 2005, the FSA may recover the outstanding amount as a debt owed by UBS and due to the FSA.

### **Publicity**

27. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the FSA must publish such information about the matter to which this notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to you or prejudicial to the interests of consumers.
28. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

### **FSA contacts**

For more information concerning this matter generally, you should contact Vanessa Mead (Tel: 020 7066 1392) of the Enforcement Division of the FSA.

**Carlos Conceicao**  
**Head of Wholesale**  
**FSA Enforcement Division**