

**STATE OF NEW HAMPSHIRE  
BUREAU OF SECURITIES REGULATION  
DEPARTMENT OF STATE  
CONCORD, NEW HAMPSHIRE**

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		)
<b>STAFF PETITION FOR RELIEF</b>		)
<b>IN THE MATTER OF:</b>		)
		)
<b>UBS Financial Services, Inc.</b>		)
		)
<b>Respondent</b>		)
_____		)

**COM08-027**

**CONSENT ORDER**

1. For purposes of settling the above-referenced matter and in lieu of further administrative proceedings, UBS Financial Services Inc. (hereinafter referred to as "UBS" or "Respondent"), has submitted an offer of settlement, which the Bureau of Securities Regulation, Department of State, State of New Hampshire (hereinafter referred to as "the Bureau") has determined to accept. Accordingly, and without admitting or denying the allegations and findings herein, the Respondent does hereby consent to this Consent Order:

**Statement of Facts**

1. UBS is a registered broker-dealer and federal covered investment adviser, licensed and notice filed with the state of New Hampshire and has a CRD number of 8174. UBS is a subsidiary of UBS AG, a Swiss banking and wealth management company.
2. This case developed as a result of complaints filed by certain New Hampshire investors who purchased structured products issued by Lehman Brothers Holdings, Inc. (hereinafter referred to as "Lehman") and distributed by UBS from March 2007 until June 2008.
3. Structured products are complex debt investments where payment to the investor is linked to changes in the value of underlying assets, such as the performance of an

index, a security, or a basket of commodities or currencies. Because certain structured products have risk profiles similar to options, FINRA (Financial Industry National Regulatory Association), has suggested that purchasers of certain products, particularly those without any level of principal protection, be qualified and suitable for options trading or that firms develop other comparable procedures to ensure that structured products are only sold to persons for whom the risk of such products is appropriate. Certain structured products offer investors varying levels of "principal protection" subject to the credit risk of the issuer. For example, including in this case, UBS offered 100% principal protection notes issued by Lehman (hereinafter referred to as "PPNs"), which provided a limited upside, in exchange for principal protection subject to Lehman's credit risk. In addition, UBS offered Lehman structured products with partial principal protection such that if the index or commodity underperformed, the loss would be limited. The level of principal protection of various Lehman structured products ranged from 100% principal protection to none, with the potential for gains increasing with the increased risk of loss. All structured products constitute senior unsecured debt of the issuer such that if the issuer defaults there will be no protection.

4. UBS offered structured products issued by other approved investment grade rated financial institutions, including Lehman, through an Open Architecture platform. At the beginning of each month, UBS would develop and propose ideas for structured products to participating firms on the Open Architecture platform, who would then bid on the opportunity to act as the issuer of these products. As part of the Distribution Agreement that UBS entered into with Lehman, Lehman issued the structured products on which it had successfully bid, and UBS acted as the purchaser, agent, and distributor of the products. Structured products were issued pursuant to a base prospectus filed with the United States Securities and Exchange Commission. Any new issue of specific structured products was registered pursuant to the base prospectus. Pursuant to UBS internal policy, prior to any structured products purchase, customers of UBS were supposed to receive a preliminary or "free writing prospectus" describing the new offering. After purchasing a structured product, customers received a final prospectus or "pricing supplement," or alternatively, received a trade confirmation with a link to the offering documents. The Structured Products Group developed training, and marketing materials to promote the sales of new products. Included in the Structured Products Group was the Northeast Regional Consultant for Structured Products. This consultant acted as the Structured Products Regional Consultant for the Manchester, New Hampshire and Concord, New Hampshire offices of UBS.
5. UBS was responsible for supervising the sales activities of Financial Advisors selling Lehman structured products to New Hampshire residents. UBS also had training responsibility for the offices from which these Financial Advisors operated.
6. From July 2007, the rate on Lehman credit default swaps (hereinafter referred to as "CDS"), an indicator of the market's perception of credit risk, began to trend higher and never returned to the previously low rates Lehman had experienced. During

October 2007, the rate on the 1-year CDS remained slightly higher than the rate of the 5-year CDS, indicating a perceived enhanced credit risk in the shorter term.

7. On March 17, 2008, Bear Stearns was acquired by JPMorgan Chase with federal assistance. The near failure of one of the top ten American securities firms generated anxiety throughout the financial services community. Following these events, there was speculation in the press that other leading investment banks and securities firms, including Lehman, might face the same future, but this time possibly without a federally-sponsored solution. During this time period, Lehman and other financial firms' CDS spreads periodically widened and narrowed. UBS elected not to stop selling Lehman-issued structured products at this time, though for a short time discussions did occur amongst UBS executives regarding the possibility of refraining from engaging in any new structured products business with third-party Open Architecture issuers.
8. Following the sale of Bear Stearns to JPMorgan with government assistance, the Structured Products Group, along with senior management at UBS, re-emphasized to Financial Advisors the importance of clients being comfortable with credit risk relating to financial institution debt. Nevertheless, in this time period, certain Financial Advisors did not adequately emphasize the credit risk of debt instruments, such as the Lehman structured products, with certain New Hampshire investors. UBS failed to adequately supervise certain of its Financial Advisors in connection with their sale of structured products to certain UBS clients.
9. For example, the Northeast Regional Consultant for UBS, among others, was responsible for providing information, training, and support to Financial Advisors relating to the sale of structured products. The Regional Consultant testified in a deposition that UBS told Financial Advisors to discuss with clients their comfort with the credit risk of the issuer for investments such as structured products. Certain New Hampshire investors in these products have stated to the Bureau that this did not occur.
10. The events surrounding the Bear Stearns failure sent shockwaves through the investment community and led certain analysts to reassess the risk of debt in some financial services companies. On March 31, 2008, Lehman Brothers reported that it intended to offer at least \$3 billion in Non-Cumulative Perpetual Convertible Preferred shares "to bolster the [Lehman's] capital and increase financial flexibility" in the face of press reports that it could face problems similar to Bear Stearns. On June 9, 2008, Lehman Brothers reported losses in the second quarter of 2008 of \$2.8 billion and needed to raise \$6 billion. As a result, UBS was even more aware that there was a need to discuss credit risk with clients purchasing the structured products of financial services companies and the enhanced risk of investments in those companies. Certain Financial Advisors at UBS failed to initiate these discussions with certain investors in New Hampshire.
11. On June 12, 2008, Lehman removed its Chief Financial Officer and its Chief

Operating Officer and President. In addition, Lehman's CDS spreads widened following previous contractions in April and May 2008. As a result of the abrupt change in Lehman's management and the volatility of the credit markets, UBS instituted a suspension of ticketing on June orders of Lehman-issued structured products. On June 18, 2008, UBS lifted the suspension of ticketing after Lehman issued second-quarter financial results and Lehman's CDS spreads contracted. UBS did not distribute Lehman-issued structured products via the Open Architecture platform after June 30, 2008.

12. Following the buyout of Bear Stearns, UBS research analysts continued to rate Lehman equity as a "Buy" and its relative position within its market sector as "Outperform." The issuer credit rating was given as "High A" and the credit trend as "Stable." On June 5, 2008, UBS changed the issuer credit rating from "High A" to "Mid A" and the credit trend from "Stable" to "Watch." On July 14, 2008, UBS changed its equity rating of Lehman "Buy" to "Hold" and its relative position within its market sector from "Outperform" to "Perform."
13. On Tuesday, September 9, 2008, UBS's structured products group sent out an email advising that bids on Lehman structured products were being rejected due to excessive volume. The email advised that bids should be resubmitted the following day. Later that day, the UBS structured products group sent another email advising that bids on Lehman structured products were being rejected due to excessive volume. On Thursday, September 11, 2008, the structured products group sent out an email advising that Lehman was no longer operating a secondary market in its structured products. At this point, there was essentially no secondary market for the sale of Lehman structured products. On Monday, September 15, 2008, Lehman filed for bankruptcy after the federal government refused to intervene to save Lehman, an event that was generally unanticipated in the marketplace.
14. The Bureau was made aware of numerous structured product transactions occurring in New Hampshire through the Respondent's sales force during the relevant time period.

#### **The Law**

1. UBS is a person within the meaning of RSA 421-B:2, XVI.
2. UBS is a broker-dealer within the meaning of RSA 421-B:2, III and operating within the jurisdiction of the state of New Hampshire.

3. UBS is a federal covered adviser within the meaning of RSA 421-B:2, V-d.
4. Pursuant to RSA 421-B:3-a, I, in recommending to a customer the purchase, sale, or exchange of a security, a broker-dealer or broker-dealer agent must have reasonable grounds for believing that the recommendation is suitable for the customer upon the basis of the facts, if any, disclosed by the customer after reasonable inquiry as to his or her other security holdings and as to his or her financial situation and needs. In certain instances, UBS violated this provision.
5. Pursuant to RSA 421-B:8, persons licensed under this chapter to conduct securities business shall abide by the rules of the Securities and Exchange Commission, National Association of Securities Dealers, national and regional stock exchanges, and other self-regulating organizations which have jurisdiction over the licensee, which set forth standards of conduct in the securities industry. In certain instances, UBS violated NASD Rule 2310 which states that members' responsibilities under the suitability rule include having reasonable grounds for recommending a particular security. In certain instances, UBS violated NASD Rule 3010, which states that each member shall establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules.
6. RSA 421-B:10, I(a) and (b)(2) allow the secretary of state to deny, suspend, or revoke any license or application if he finds that it is in the public interest and that the broker-dealer has willfully violated or failed to comply with any provision of this title or a predecessor law, or of any other state's or Canadian province's securities laws, or the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, or any rule under any of such statutes, or any order thereunder of which he has notice and to which he is subject. UBS is subject to this provision.
7. RSA 421-B:10, I(a) and (b)(10) allow the secretary of state to deny, suspend, or revoke any license or application if he finds that it is in the public interest and that the broker-dealer has failed to reasonably supervise its agents. UBS is subject to this provision.
8. RSA 421-B:10, I(a) and (b)(14) allow the secretary of state to deny, suspend, or revoke any license or application if he finds that it is in the public interest and that there is good cause shown. UBS is subject to this provision.
9. RSA 421-B:10, III provides that the secretary of state may issue an order requiring the person to whom any license has been granted to show cause why the license should not be revoked. UBS is subject to this provision.
10. RSA 421-B:10, VI provides that the secretary of state, may upon hearing, assess an administrative fine of not more than \$2,500 per violation, in lieu of or in addition

to, an order to revoke a license. UBS is subject to a fine under this provision.

11. Pursuant to RSA 421-B:22, IV, in any investigation to determine whether any person has violated or is about to violate Title XXXVIII or any rule or order under Title XXXVIII, upon the secretary of state's prevailing at hearing, or the person charged with the violation being found in default, or pursuant to a consent order issued by the secretary of state, the secretary of state shall be entitled to recover the costs of the investigation, and any related proceedings, including reasonable attorney's fees, in addition to any other penalty provided for under RSA 421-B. UBS is subject to this provision.
12. Pursuant to RSA 421-B:23, I(a), whenever it appears to the secretary of state that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule under this chapter, he shall have the power to issue and cause to be served upon such person an order requiring the person to cease and desist from violations of this chapter. UBS is subject to this provision.
13. Pursuant to RSA 421-B:23, II, in a proceeding in superior court under RSA 421-B:23 where the state prevails, the secretary of state and the attorney general shall be entitled to recover all costs and expenses of investigation, and the court shall include the costs in its final judgment. UBS is subject to this provision.
14. Pursuant to RSA 421-B:26, III, any person who, either knowingly or negligently, violates any provisions of this chapter may, upon hearing, and in addition to any other penalty provided for by law, be subject to such suspension, revocation or denial of any registration or license, or an administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation. UBS is subject to this provision.
15. Pursuant to RSA 421-B:26, III-a, every person who directly or indirectly controls a person liable under paragraph I or III every partner, principal executive officer, or director of such person, every person occupying a similar status or performing a similar function, every employee of such person who materially aids in the act or transaction constituting the violation, and every broker-dealer or agent who materially aids in the acts or transactions constituting the violation, either knowingly or negligently, may, upon hearing, and in addition to any other penalty provided for by law, be subject to such suspension, revocation, or denial of any registration or license, including the forfeiture of any application fee, or an administrative fine not to exceed \$2,500, or both. UBS is subject to this provision.
16. Pursuant to RSA 421-B:26, V, after notice and hearing, the secretary of state may enter an order of rescission, restitution, or disgorgement directed to a person who has violated this RSA 421-B, or a rule or order under RSA 421-B. Rescission, restitution or disgorgement shall be in addition to any other penalty provided for under RSA 421-B. UBS is subject to this provision.

17. Pursuant to RSA 421-B:26, VIII, any person who, either knowingly or negligently, engages in any conduct prohibited by RSA 421-B:10, I(b) (7) or (10) may, upon hearing, and in addition to any other penalty provided for by law, be subject to an administrative fine not to exceed \$2,500, or both. UBS is subject to this provision.

### **Undertakings**

- II. In view of the foregoing, the Respondent agrees to the following undertaking and actions:
  1. Respondent agrees that it has voluntarily consented to the entry of this Consent Order and represents and avers that no employee or representative of the Bureau has made any promise, representation or threat to induce its execution.
  2. Respondent agrees to waive its right to an administrative hearing and any appeal therein under RSA Chapter 421-B.
  3. Respondent agrees to cease and desist from all future violations of the New Hampshire Uniform Securities Act relating to the sale of structured products.
  4. Within ten business days of execution of this Consent Order, Respondent agrees to pay an administrative penalty in the amount of One Hundred Thousand Dollars (\$100,000). Payment shall be made by 1) United States postal money order, certified check, bank cashier's check, or bank money order; 2) made payable to the State of New Hampshire; and 3) hand-delivered or mailed to the Bureau of Securities Regulation, Department of State, State House, Room 204, Concord, New Hampshire 03301.
  5. Within ten business days of execution of this Order, UBS agrees to pay investigation costs in the amount of Two Hundred Thousand Dollars (\$200,000) to the State of New Hampshire. Payment shall be made by 1) United States postal money order, certified check, bank cashier's check, or bank money order; 2) made

payable to the State of New Hampshire; and 3) hand-delivered or mailed to the Bureau of Securities Regulation, Department of State, State House, Room 204, Concord, New Hampshire, 03301.

6. UBS agrees to make an administrative payment of Seven Hundred Thousand (\$700,000). Such payment is to be used, at the Bureau's discretion, to settle claims made within six months of execution of this Consent Order of certain New Hampshire investors who purchased Lehman Brothers structured products, for New Hampshire's Investment Education Fund, or for any other purpose that the Bureau deems appropriate. Any investor who receives payment pursuant to this Consent Order shall execute a Release and Settlement Agreement, in the form agreed to by UBS and the Bureau, with UBS prior to the receipt of any such payment. Consistent with the terms of this Consent Order, within thirty days of execution of this Order, UBS shall establish a segregated interest-bearing account with payments to be distributed according to the subsequent direction and request of the Bureau. In addition, at the Bureau's request, UBS shall provide updated addresses and telephone numbers to the Bureau for investors who purchased Lehman structured products. To the extent that an investor that is originally designated by the Bureau to receive payment under this Consent Order does not do so for whatever reason, or refuses to sign a release, such allocated payments shall be made to the New Hampshire Investor Education Fund or shall be used in a manner that the Bureau deems appropriate.
  
7. Respondent agrees that this Consent Order is entered into for the purpose of resolving only the matter as described herein and understands that the Bureau will not initiate an administrative investigation or proceeding relative to the conduct by Respondent or any of its affiliates or employees relating to Respondent's sale of structured products prior to September 15, 2008. This Agreement shall have no collateral estoppel, res judicata, evidentiary, or other legal effect in any other lawsuit, proceeding, or action not described herein. Likewise, this Consent Order shall not be construed to restrict the Bureau's right to initiate an administrative

investigation or proceeding relative to conduct by Respondent or its affiliates or employees which does not relate to Respondent's sale of structured products. Furthermore, this Order shall not disqualify Respondent or any of its affiliates or current employees from any business that they otherwise are qualified or licensed to perform under applicable securities laws in the State of New Hampshire. In addition, this Consent Order is not intended to form the basis for any such disqualification.

8. Respondent may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any allegation in this Consent Order or create the impression that the Consent Order is without factual basis. Nothing in this provision affects Respondent's testimonial obligations or right to take legal positions in litigation in which the State of New Hampshire is not a party.

The Respondent shall not seek or accept, directly or indirectly, reimbursement or indemnification, including but not limited to any payment made pursuant to any insurance policy, with regard to all amounts that Respondent shall pay pursuant to the Bureau's Consent Order.

III. Based on the foregoing, the Bureau deems it appropriate and in the public interest to accept and enter into this Consent Order. **THEREFORE, IT IS HEREBY ORDERED THAT:**

1. Respondent pay a fine to the Bureau in the amount of One Hundred Thousand Dollars (\$100,000).
2. Respondent pay investigation costs to the Bureau in the amount of Two Hundred Thousand Dollars (\$200,000).

3. Respondent make an administrative payment of Seven Hundred Thousand Dollars (\$700,000) to be used as described above.
  
4. Respondent comply with all of the above-referenced undertakings.

Executed this 8 day of August, 2011

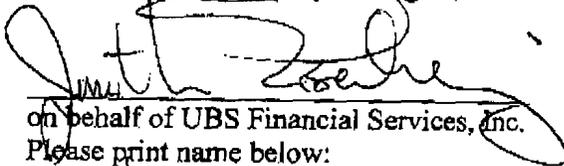


on behalf of UBS Financial Services, Inc.

Please print name below:

Irene Marguier

Executed this 8<sup>th</sup> day of August, 2011

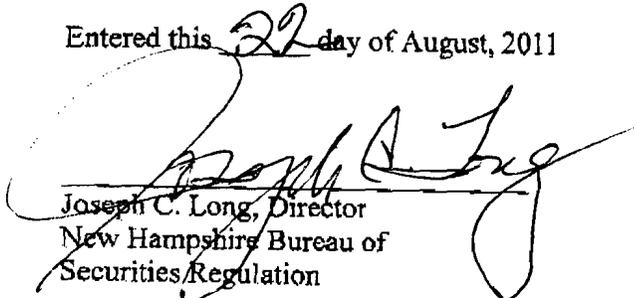


on behalf of UBS Financial Services, Inc.

Please print name below:

Jonathan Eisenberg

Entered this 22 day of August, 2011

  
Joseph C. Long, Director  
New Hampshire Bureau of  
Securities Regulation