

the Applicant's publicly-listed shares of common stock present in person or by proxy at a stockholders' meeting convened to consider proposals to approve the Acquisition Transaction and unless holders of less than 20% of the Applicant's publicly-listed shares of common stock seek to convert their shares to cash.

2. Applicant will not invest in any financial services companies other than the SMC Group. Applicant will not actively trade in securities of SAM, SMC or securities of other issuers.

3. The SMC Group and its Affiliates will not sell any securities issued by Applicant as an underwriter, will not make a market in any securities issued by Applicant and will not act as agent or as a broker in connection with the sale of any shares of the Applicant.

4. Applicant and its Affiliates will not use the SMC Group or its Affiliates as a broker-dealer for the purchase or sale of any portfolio securities.

5. The SMC Group and its Affiliates will not act as custodian for Applicant and its Affiliates nor will they provide any other services to Applicant and its Affiliates.

6. No officer of Applicant or member of Applicant's board of directors ("Board") shall be affiliated with the SMC Group or its Affiliates (other than as a result of the Acquisition Transaction discussed herein).

7. Applicant's Chief Compliance Officer will monitor and report to Applicant's Board no less than annually on compliance with these conditions.

8. Applicant will comply with the provisions of rule 12d3-1 under the Act, except for paragraph (b) solely to the extent necessary to permit Applicant to have more than 5% of the value of its total assets invested in more than 5% of the outstanding securities of the classes of SMC Group's equity securities that are described in this application.

For the Commission, by the Division of Investment Management, under delegated authority.

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28080; 812-13453]

### The UBS Funds, et al.; Notice of Application

December 19, 2007.

AGENCY: Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from rule 12d1-2(a) under the Act.

*Summary of Application:* Applicants request an order to permit funds of funds relying on rule 12d1-2 under the Act to invest in certain financial instruments.

*Applicants:* The UBS Funds, SMA Relationship Trust, UBS Investment Trust, UBS Index Trust, UBS Series Trust, and UBS Relationship Funds (collectively, the "Trusts"); UBS Global Asset Management (Americas) Inc. (the "Advisor"); and UBS Global Asset Management (US) Inc. ("UBS Global AM (US)").

*Filing Dates:* The application was filed on November 23, 2007, and amended on December 14, 2007.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 15, 2008 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 100 F Street, NE., Washington, DC 20549-1090; Applicants, c/o Mark F. Kemper, UBS Global Asset Management (Americas) Inc., One North Wacker Drive, Chicago, IL 60606.

**FOR FURTHER INFORMATION CONTACT:** Lewis Reich, Senior Counsel, at (202) 551-6919, or Nadya B. Roytblat, Assistant Director, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F Street, NE., Washington, DC 20549-0104 (telephone (202) 551-8090).

### Applicants' Representations

1. Each Trust organized as a Delaware statutory trust or a Massachusetts business trust and is registered under the Act as an open-end management

investment company. The Trusts offer separate series ("Funds") that may invest in other registered investment companies in reliance on section 12(d)(1)(G) of the Act and rule 12d1-2 under the Act ("Underlying Funds").<sup>1</sup> Applicants propose that the Funds be permitted to invest in futures contracts, options on futures contracts, swap agreements, derivatives, and other financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act ("Other Investments") in addition to the Underlying Funds.<sup>2</sup>

2. The Advisor is a Delaware corporation and an indirect, wholly-owned subsidiary of UBS AG, an internationally diversified organization with operations in many aspects of the financial services industry. The Advisor is registered as an investment adviser under the Investment Advisers Act of 1940 and serves as investment adviser to the Funds. UBS Global AM (US), also a Delaware corporation and an indirect, wholly-owned subsidiary of UBS AG, is registered as a broker-dealer under the Securities Exchange Act of 1934 Act ("Exchange Act") and serves as the principal underwriter to The UBS Funds, SMA Relationship Trust, UBS Investment Trust, UBS Index Trust, and UBS Series Trust.

### Applicants' Legal Analysis

Section 12(d)(1)(A) of the Act provides that no registered investment company ("acquiring company") may acquire securities of another investment company ("acquired company") if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to

<sup>1</sup> Applicants request that the relief apply to all existing and future series of the Trusts and all other management investment companies and their series registered under the Act that are in the same group of investment companies, as defined in section 12(d)(1)(G) of the Act, as the Trusts. All Funds that currently intend to rely on the order have been named as applicants. Any other existing or future entity that relies on the order in the future will do so only in accordance with the terms and conditions in the application.

<sup>2</sup> As part of its strategy to invest in securities, Other Investments and Underlying Funds, an Applicant Fund also may, pursuant to rule 12d1-2 under the Act, invest in securities issued by another registered investment company that is not in the same group of investment companies as the Fund (a "Non-Group Fund") consistent with section 12(d)(1)(A) or 12(d)(1)(F) of the Act.

another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies.

1. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquiring company and acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

2. Rule 12d1-2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (1) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (2) securities (other than securities issued by an investment company); and (3) securities issued by a money market fund, when the investment is in reliance on rule 12d1-1 under the Act. For the purposes of rule 12d1-2, "securities" means any security as defined in section 2(a)(36) of the Act.

3. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provisions of the Act, or from any rule under the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

4. Applicants state that the proposed arrangement would comply with the provisions of rule 12d1-2 under the Act, but for the fact that the Funds may

invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1-2(a) to allow the Funds to invest in Other Investments. Applicants assert that permitting the Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

#### Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Prior to approving any investment advisory agreement under section 15 of the Act, the board of trustees of the appropriate Fund, including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, will find that the advisory fees, if any, charged under the agreement are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any Underlying Fund or any Non-Group Fund in which the Fund may invest. Such findings, and the basis upon which the findings are made, will be recorded fully in the minute books of the appropriate Fund.

2. Applicants will comply with all provisions of rule 12d1-2 under the Act, except for paragraph (a)(2), to the extent that it restricts any Fund from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

**Florence E. Harmon,**  
*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57021; File No. SR-ISE-2007-116]

#### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Open the Exchange's Equity Trading Platform at 9 a.m.

December 20 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup>

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

notice is hereby given that on December 14, 2007, the International Securities Exchange, LLC ("Exchange" or "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to allow the Exchange to open the ISE Stock Exchange at 9 a.m. without regard to whether the primary market in a particular security is open and to make other associated changes to its rules. The text of the proposed rule change is available at ISE's principal office, the Commission's Public Reference Room, and <http://www.ise.com>.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to establish a Pre-Market Session for the trading of equity securities. The proposed Pre-Market Session will start at 9:00 a.m. and conclude when a security is opened for trading according to the existing procedures contained in ISE Rule 2106. Under Rule 2106, the Exchange currently opens securities for trading on the ISE Stock Exchange following the

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).