

principal underwriter to the Funds would result in potentially severe financial hardships for the Funds and their shareholders. The Applicants have distributed, or will distribute as soon as reasonably practical, written materials, including an offer to meet in person to discuss the materials, to the board of directors of each Fund, including the directors who are not "interested persons," as defined in section 2(a)(19) of the Act, of such Fund, and their independent legal counsel as defined in rule 0-1(a)(6) under the Act, if any, regarding the Judgment, any impact on the Funds, and the application. The Applicants state they will provide the Funds with all information concerning the Judgment and the application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Applicants also state that, if they were barred from serving as investment adviser, depositor or principal underwriter to the Funds, the effect on their businesses and employees would be severe. Applicants state that they have committed substantial resources to establish an expertise in providing services covered by section 9(a) of the Act to Funds. Applicants further state that prohibiting them from providing advisory and distribution services would not only adversely affect their businesses, but would also adversely affect approximately 50 employees that are involved in those activities. Applicants also state that disqualifying the ESC Advisers from continuing to provide investment advisory services to ESCs is not in the public interest or in furtherance of the protection of investors. Because the ESCs have been formed for certain eligible officers, directors and persons on retainer of Citigroup and its affiliates, it would not be consistent with the purposes of the ESC provisions of the Act or the ESC Order to require another entity not affiliated with the ESC Advisers to manage the ESCs. In addition, participating employees of Citigroup and its affiliates subscribed for interests with the expectation that the ESCs would be managed by an affiliate of Citigroup.

7. Applicants previously have received exemptions under section 9(c) as the result of conduct that triggered section 9(a) as described in greater detail in the application.

*Applicants' Condition:*

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

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit

the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

*Temporary Order:*

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

*It is hereby ordered*, pursuant to section 9(c) of the Act, that the Applicants and any other Covered Persons are granted a temporary exemption from the provisions of section 9(a), solely with respect to the Injunction, subject to the condition in the application, from December 23, 2008, until the Commission takes final action on their application for a permanent order.

By the Commission.

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-31090 Filed 12-30-08; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-28569; 812-13609]

### UBS Securities LLC, et al.; Notice of Application and Temporary Order

December 23, 2008.

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

**ACTION:** Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 ("Act").

*Summary of Application:* Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against UBS Securities LLC ("UBS Securities") and UBS Financial Services Inc. ("UBSFS," and together with UBS Securities, the "Settling Firms") on December 23, 2008 by the United States District Court for the Southern District of New York ("Injunction") until the Commission takes final action on an application for a permanent order. Applicants also have applied for a permanent order.

*Applicants:* UBS Securities; UBSFS; UBS Fund Advisor, L.L.C. ("UBSFA");

UBS Willow Management, L.L.C. ("UBS Willow"), UBS Eucalyptus Management, L.L.C., UBS Tamarack Management, L.L.C., UBS Juniper Management, L.L.C., and UBS Enso Management L.L.C. (collectively, "UBSFA Advisers"); UBS Global Asset Management (Americas) Inc. ("UBS Global AM Americas"); UBS Global Asset Management (US) Inc. ("UBS Global AM US"); and UBS AG and UBS IB Co-Investment 2001 GP Limited ("ESC GP") (together, other than UBS Securities, "Fund Servicing Applicants" and together with UBS Securities, the "Applicants").<sup>1</sup>

*Filing Dates:* The application was filed on December 16, 2008. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

*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, 2009, 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, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090; Applicants: UBS Securities, 299 Park Avenue, New York, NY 10171; UBSFS, 1200 Harbor Boulevard, Weehawken, NJ 07086; UBSFA, UBSFA Advisers, and UBS Global AM US, 51 West 52nd Street, New York, NY 10019; UBS Global AM Americas, One North Wacker Drive, Chicago, IL 60606; and UBS AG and ESC-GP, 677 Washington Boulevard, Stamford, CT 06901.

**FOR FURTHER INFORMATION CONTACT:** John Yoder, Senior Counsel, at 202-551-6878 or Julia Kim Gilmer, Branch Chief, at 202-551-6821 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a temporary order and summary of the application. The

<sup>1</sup> Applicants request that any relief granted pursuant to the application also apply to any other company of which either of the Settling Firms is or may become affiliated persons (together with the Applicants, the "Covered Persons").

complete application may be obtained for a fee at the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549-1520 (tel. 202-551-5850).

#### *Applicants' Representations*

1. UBS AG is a bank established under the laws of Switzerland that directly or through its subsidiaries provides global wealth management, securities and retail and commercial banking services. Each of the Applicants are either directly or indirectly controlled by UBS AG. UBS Securities is a full service investment banking firm engaged in securities underwriting, sales and trading, investment banking, financial advisory services and investment research services. UBSFS, UBSFA, UBSFA Advisers and UBS Global AM Americas are registered as investment advisers under the Investment Advisers Act of 1940 and currently serve as investment advisers to registered management investment companies ("Funds"). UBSFS and UBS Global AM U.S. are registered as broker-dealers under the Securities Exchange Act of 1934 ("Exchange Act") and act as principal underwriter to various open-end Funds and unit investment trusts ("UITs"). UBSFS also serves as a depositor to UITs. UBS AG and ESC GP provide investment advisory services to employees' securities companies ("ESCs"), as defined in section 2(a)(13) of the Act, which provide investment opportunities for highly compensated key employees, officers, directors and current consultants of UBS AG and its affiliates.

2. On December 23, 2008, the United States District Court for the Southern District of New York entered a judgment, which included the Injunction, against the Settling Firms ("Judgment") in a matter brought by the Commission.<sup>2</sup> The Commission alleged in the complaint ("Complaint") that the Settling Firms violated section 15(c) of the Exchange Act in connection with the marketing and sale of auction rate securities ("ARS"). The Complaint alleged that the Settling Firms misled their customers regarding the fundamental nature and increasing risks associated with ARS that the Settling Firms underwrote, marketed and sold. The Complaint further alleged that the Settling Firms misrepresented to their customers that ARS were safe, highly liquid investments that were equivalent to cash or money-market funds. Without

admitting or denying any of the allegations in the Complaint, except as to jurisdiction, the Settling Firms consented to the entry of the Injunction and other equitable relief, including undertakings to take various remedial actions for the benefit of purchasers of certain ARS.

#### *Applicants' Legal Analysis*

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security, or in connection with activities as an underwriter, broker or dealer, from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered unit investment trust, or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines "affiliated person" to include, among others, any person directly or indirectly controlling, controlled by, or under common control, with the other person. Applicants state that the Settling Firms are affiliated persons of each of the other Applicants within the meaning of section 2(a)(3). Applicants state that, as a result of the Injunction, they would be subject to the prohibitions of section 9(a).

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) of the Act if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that the conduct of the Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption. Applicants have filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting the Applicants and the other Covered Persons from the disqualification provisions of section 9(a).

3. Applicants believe that they meet the standards for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant

the requested exemption from section 9(a).

4. Applicants state that the alleged conduct giving rise to the Injunction did not involve any of the Applicants acting in the capacity of investment adviser, sub-adviser or depositor to any registered investment company or in the capacity of principal underwriter for any open-end Fund or UIT ("Fund Service Activities"). Applicants note that none of the current or former directors, officers, or employees of the Applicants (other than the Settling Firms) had any involvement in the conduct alleged in the Complaint, except as noted in footnote 3.<sup>3</sup> Applicants further state that the personnel at the Settling Firms who were involved in the violations alleged in the Complaint have had no and will not have any future involvement in Fund Service Activities.

5. Applicants state that the inability of the Applicants to engage in Fund Service Activities would result in potentially severe financial hardships for the registered investment companies they serve and the registered investment companies' shareholders or unitholders. Applicants state that they will distribute written materials, including an offer to meet in person to discuss the materials, to the boards of directors of the Funds (the "Boards"), including the directors who are not "interested persons," as defined in section 2(a)(19) of the Act, of such Funds, and their independent legal counsel as defined in rule 0-1(a)(6) under the Act, if any, regarding the Injunction, any impact on the Funds, and the application. Applicants state that they will provide the Boards with all information concerning the Injunction and the application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Applicants also state that, if they were barred from providing Fund Service Activities to registered investment companies and ESCs, the effect on their businesses and employees would be severe. Applicants state that they have committed substantial resources to establish an

<sup>3</sup> The Complaint alleges that several senior executives of the Settling Firms sold all or some of their personal auction rate securities holdings after becoming aware of undisclosed risk factors associated with the auction rate securities program, including concerns about the Settling Firms' ability and willingness to support the auctions. Certain of these officers or employees may also have been officers or employees of UBS AG. These officers or employees have had no involvement in Applicants' Fund Service Activities and are either no longer employed by the Settling Firms or UBS AG or are not and will not have any involvement in Applicants' Fund Service Activities.

<sup>2</sup> *Securities and Exchange Commission v. UBS Securities LLC and UBS Financial Services Inc.*, Judgment as to UBS Securities LLC and UBS Financial Services Inc., 1:08-CV-10754 (S.D.N.Y.) (entered Dec. 23, 2008).

expertise in providing Fund Service Activities. Applicants further state that prohibiting them from providing advisory and distribution services would not only adversely affect their businesses, but would also adversely affect over 450 employees that are involved in those activities. Applicants also state that disqualifying UBS AG and ESC GP from continuing to provide investment advisory services to ESCs is not in the public interest or in furtherance of the protection of investors. Because the ESCs have been formed for the benefit of key employees, officers, directors and current consultants of UBS AG and its affiliates, it would not be consistent with the purposes of the ESC provisions of the Act to require another entity not affiliated with UBS AG to manage the ESCs. In addition, participants in the ESCs have subscribed for interests in the ESCs with the expectation that the ESCs would be managed by an affiliate of UBS AG.

7. Applicants state that UBS Securities and certain other Applicants have previously received an order under section 9(c) of the Act.<sup>4</sup> Applicants also state that affiliated persons of UBS Securities previously have received exemptions under section 9(c) as the result of conduct that triggered section 9(a), as described in greater detail in the application.

#### *Applicants' Condition*

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

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

#### *Temporary Order*

The Commission has considered the matter and finds that the Applicants have made the necessary showing to justify granting a temporary exemption. Accordingly,

*It is hereby ordered*, pursuant to section 9(c) of the Act, that Applicants

and any other Covered Persons are granted a temporary exemption from the provisions of section 9(a), solely with respect to the Injunction, subject to the condition in the application, from December 23, 2008, until the Commission takes final action on their application for a permanent order.

By the Commission.

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-31087 Filed 12-30-08; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Investment Company Act Release No. 28568; 812-13488]**

### **AdvisorShares Investments, LLC and AdvisorShares Trust; Notice of Application**

December 23, 2008.

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

**ACTION:** Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 2(a)(32), 5(a)(1) and 22(d) of the Act and rule 22c-1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act.

*Applicants:* AdvisorShares Investments, LLC (the "Advisor") and AdvisorShares Trust (the "Trust").

*Summary of Application:* Applicants request an order that permits: (a) Series of certain open-end management investment companies to issue shares ("Shares") redeemable in large aggregations only ("Creation Units"); (b) secondary market transactions in Shares to occur at negotiated market prices; and (c) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units.

*Filing Dates:* The application was filed on January 31, 2008, and amended on October 17, 2008. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

*Hearing or Notification of Hearing:* An order granting the requested relief 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, 2009, 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, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090. *Applicants:* Noah Hamman, c/o Morgan, Lewis & Bockius LLP, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

**FOR FURTHER INFORMATION CONTACT:** Courtney S. Thornton, Senior Counsel, or Michael W. Mundt, 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 Desk, 100 F Street, NE., Washington, DC 20549-1520 (tel. 202-551-5850).

#### *Applicants' Representations*

1. The Trust, a statutory trust established under the laws of Delaware, is registered with the Commission as an open-end management investment company. The Trust is organized as a series investment company with one initial series (the "Initial Fund"). The investment objective of the Initial Fund will be to provide long term growth of capital. The Initial Fund and all future series of the Trust ("Future Funds," collectively with the Initial Fund, "Funds") will attempt to achieve their investment objectives by utilizing active management strategies based on various formulas for asset allocation, security selection, and portfolio construction. Each Fund will primarily hold shares of underlying exchange traded funds ("ETFs"), as well as shares of certain exchange traded products that are not registered as investment companies under the Act.<sup>1</sup> Applicants will only

<sup>1</sup> The Funds may invest in exchange traded products that invest primarily in commodities or currency, but otherwise operate in a manner similar to exchange traded products registered under the Act. In addition, the Funds may also invest in equity securities or fixed income securities traded in a U.S. or non-U.S. markets, as well as futures contracts, options on such futures contracts, swaps, forward contracts or other derivatives, and shares of money market mutual funds or other investment companies, all in accordance with their investment objectives. The Funds may also invest in equity securities or fixed income securities traded in international markets or in a combination of equity,

<sup>4</sup> UBS Securities L.L.C., *et al.*, Investment Company Act Rel. Nos. 26245 (Oct. 31, 2003) (notice) and 27047 (Apr. 25, 2005) (order).