

State of Missouri
Office of Secretary of State

Case No. AP-09-19

IN THE MATTER OF:

UBS FINANCIAL SERVICES, INC. CRD #8174;

Respondent.

Serve: UBS Financial Services, Inc. at:
1200 Harbor Boulevard,
Weehawken, New Jersey 07086.

CONSENT ORDER

SUMMARY OF ENFORCEMENT SECTION'S ALLEGATIONS

1. The Enforcement Section of the Missouri Securities Division ("Enforcement Section") has alleged that Respondent UBS Financial Services, Inc.'s former Missouri-registered representative Robert T. Anderson ("Anderson") made unsuitable recommendations to certain senior customers causing them: (1) to exchange variable annuities that were no longer subject to surrender charges with variable annuities having new surrender periods and/or (2) to place large amounts of their net worth into above-average risk closed end fund investments.

The Enforcement Section further alleges that during the period from 2003 through 2006, certain UBS Financial Services, Inc. ("UBS" or "Respondent") registered representatives made unsuitable recommendations to six (6) customers causing them to invest in variable annuities or incur surrender charges by exchanging their variable annuities before the surrender penalty period had expired.

The Enforcement Section also alleges that UBS's failure to reasonably supervise Anderson constitutes grounds to discipline UBS's registration pursuant to Section 409.4-412, RSMo. (Cum. Supp. 2008).

2. Respondent and the Enforcement Section desire to settle the allegations and the matters raised by the Enforcement Section relating to the unsuitable recommendations by Respondent's registered agent.

CONSENT TO JURISDICTION

3. Respondent and the Enforcement Section stipulate and agree that the Commissioner has jurisdiction over the Respondent and these matters pursuant to the Missouri Securities Act of 2003, Chapter 409, *et seq.*
4. Respondent and the Enforcement Section stipulate and agree that the Commissioner has authority to enter this Order pursuant to Section 409.6-604(h), RSMo. (Cum. Supp. 2008), which provides:

"The commissioner is authorized to issue administrative consent orders in the settlement of any proceeding in the public interest under this act."

WAIVER AND EXCEPTION

5. Respondent waives its right to a hearing with respect to this matter.
6. Respondent waives any right that it may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Order. Respondent specifically forever releases and holds harmless the Missouri Office of Secretary of State, Secretary of State, Commissioner of Securities and their respective representatives and agents from any and all liability and claims arising out of, pertaining to, or relating to this matter.

CONSENT TO COMMISSIONER'S ORDER

7. Respondent and the Enforcement Section stipulate and agree to the issuance of this Consent Order without further proceedings in this matter, agreeing to be fully bound by the terms and conditions specified herein.
8. Respondent agrees not to take any action or to make or permit to be made any public statement creating the impression that this Order is without a factual basis. Nothing in this paragraph affects Respondent's (a) testimonial obligations; (b) right to take legal or factual position in defense of litigation or in defense of other legal proceedings in which the Commissioner of Securities is not a party; or (c) right to make public statements that are factual.
9. Respondent agrees that Respondent is not the prevailing party in this action since the parties have reached a good faith settlement.

10. Respondent neither admits nor denies the allegations made by the Enforcement Section but consents to the Commissioner's Findings of Fact, Conclusions of Law and Order as set forth below solely for the purposes of this proceeding and any proceeding that may be brought to enforce the terms of this Consent Order.
11. This Order is not intended to indicate that UBS or any of its affiliates or current or former employees shall be subject to any disqualifications contained in the federal securities law, the rules and regulations there under, the rules and regulations of self-regulatory organizations or various states' securities laws including any disqualifications from relying upon the registration exemptions or safe harbor provisions. In addition, this Order is not intended to form the basis for any such disqualifications.
12. This Order shall not disqualify UBS or any of its affiliates or current or former employees from any business that they otherwise are qualified or licensed to perform under applicable state law and this Order is not intended to form the basis for any disqualification.

**COMMISSIONER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER**

I. FINDINGS OF FACT

13. UBS became registered in Missouri as a broker-dealer on March 1, 1967. UBS has a Central Registration Depository ("CRD") number of 8174, and its principal place of business is located at 1200 Harbor Boulevard, Weehawken, New Jersey 07086.
14. UBS maintains various branch offices within the State of Missouri and regularly services customers that are residents of Missouri.
15. Anderson at all times relevant to this order was employed by UBS and worked out of the UBS' St. Louis and Town & Country branches as a Missouri-registered securities agent. Anderson has a residential address of 1109 Windridge Estate Lane, Chesterfield, Missouri 63005. Anderson was registered with UBS through the CRD system and has a CRD number of 2229293.

A. Transactions by Clients of Anderson

1. Missouri Residents 1 & 2

16. From on or around March 1, 2002, to on or around February 25, 2005, Anderson was the agent of record at UBS for two Missouri residents ("MR1" and "MR2"), both seniors. MR1 and MR2 are husband and wife, and both have an eighth grade education. MR1 and MR2 are unsophisticated, conservative investors who do not follow the financial markets, and who have a very limited understanding of financial matters.
17. MR1 and MR2 told an investigator with the Enforcement Section that they:
 - a. trusted and relied on Anderson to guide them in making decisions regarding their investment accounts;
 - b. do not recall initiating any transactions in their accounts and depended on Anderson and UBS to recommend appropriate transactions for their accounts;
 - c. do not recall anytime when they did not take Anderson's advice regarding transactions in their accounts;
 - d. signed various documents that Anderson provided to them, however, they did not understand the nature of these documents or the reasons behind Anderson's recommendations to them;
 - e. understood that Anderson's recommendations would be "good for them;" and
 - f. were not aware how Anderson was compensated by UBS, or how trades in their accounts affected this compensation.
18. The latest new account application for MR1 and MR2, dated March 13, 2002, was supplied to the Enforcement Section by UBS and indicated, among other things, that MR1 and MR2 had:
 - a. a net worth of five hundred fifty thousand dollars (\$550,000.00);
 - b. an annual income of fifty thousand dollars (\$50,000.00);
 - c. an investment objective of "Current Income" (investments seeking the generation of income); and
 - d. a primary risk profile of "Moderate" (seeks potential returns with a lower risk of loss of principal).
19. An examination of MR1 and MR2's financial records by the Enforcement Section indicated that MR1 and MR2's actual net worth was approximately one hundred fifty thousand dollars (\$150,000.00) and their annual income was approximately twenty-six thousand dollars (\$26,000.00). Personal interviews with MR1 and MR2 and an examination of their financial

records by the Enforcement Section indicate that MR1 and MR2 were conservative investors who wanted to preserve their capital.

**a. Unsuitable Mutual Funds and Other Transactions
in MR1 and MR2's Accounts**

20. From August 2003 through October 2004, Anderson recommended and effected the following transactions in MR1 and MR2's accounts:
- a. On August 28, 2003, Anderson sold shares of AIM High Yield Fund Class A (that they had previously purchased at another broker dealer) for twenty-two thousand, six hundred seventy-two dollars (\$22,672.00) and purchased shares of Franklin Templeton LTD Duration Income Trust for twenty-two thousand, five hundred dollars (\$22,500.00). The prospectus for Franklin Templeton LTD Duration Income Trust, indicated among other things, the following:
 - i. it was a newly organized, closed-end management Investment Company;
 - ii. it's primary investment objective was to seek high current income;
 - iii. the fund's "strategies may result in an above average amount of risk and volatility or loss of principal;" and
 - iv. eighty percent (80%) of the fund was invested in below "investment grade" debt securities and other income-producing instruments commonly referred to as "junk bonds."
 - b. On March 25, 2004, Anderson sold shares of the Franklin Templeton LTD Duration, Income Trust in the amount of twenty-five thousand, thirteen dollars (\$25,013.00) and purchased shares of Salomon Brothers High Income Fund II in the amount of nineteen thousand, two hundred forty-five dollars (\$19,245.00). The prospectus for Salomon Brothers High Income Fund II indicated, among other things, that:
 - i. it is a closed-end management investment company that seeks to maximize current income by investing primarily in a diversified portfolio of high- yield debt securities; and
 - ii. the fund invests at least eighty percent (80%) of its total assets in high-yield debt securities.
 - c. On July 20, 2004, Anderson sold shares of Salomon Brothers High Income Fund II in the amount of eighteen thousand, two dollars (\$18,002.00) and purchased shares of Pioneer High Income Trust ("Pioneer Trust") in the amount of fifteen thousand, nine hundred four dollars (\$15,904.00). The prospectus for Pioneer Trust stated, in part, that:
 - i. it was a newly organized, diversified closed-end management investment company;
 - ii. its investment objective was current income;
 - iii. it invested at least eighty percent (80%) of its assets in below investment grade (high-yield) debt securities, loans and preferred stocks;
 - iv. "because the trust investments will be concentrated in high yield securities, it will be subject to risk of such securities...Below investment grade securities are commonly referred to as 'junk bonds' and are considered speculative."
 - d. On October 18, 2004, Anderson sold shares of Pioneer Trust in the amount of sixteen thousand, six hundred thirty dollars (\$16,630.00) and purchased shares of Eaton Vance Enhanced Equity Income Fund in the amount of fourteen thousand dollars (\$14,000.00). The prospectus for Eaton Vance Enhanced Equity Income Fund indicated, among other things, that:
 - i. "this is a newly organized, diversified, closed-end management investment company and the fund invests in at least 80% of its total assets in common stock;" and
 - ii. "common stocks are subject to investment risk, including the possible loss of the entire principal amount invested."

b. Annuity Transactions For MR1

21. During the period from 1996 through 2004, FINRA issued "Notices to Members" on at least five (5) occasions addressing the suitability of variable annuities as investment vehicles for certain customers.
22. On May 27, 2003, FINRA issued an investor alert entitled *Variable Annuities: Beyond the Hard Sell*, which indicated, among other things, that agents should make various disclosures to customers before selling a variable annuity and "must collect important information" from the customer to assess whether a variable annuity is a suitable investment. [\[1\]](#)

23. In June 2004, the United States Securities and Exchange Commission ("SEC") and FINRA issued a report [2] that found the high fees and surrender charges inherent in variable insurance products made them inappropriate for many investors.
24. On November 10, 2003, upon Anderson's recommendation, MR1 exchanged a Putnam Hartford PCM variable annuity ("the Putnam Annuity"), which was no longer subject to any surrender charge, for a MetLife Class B variable annuity. The MetLife Class B variable annuity had lower M&E fees than the Putnam Annuity and a nursing home waiver that was not offered by the Putnam Annuity. With the exchange, however, MR1's assets in the new MetLife variable annuity became subject to a new surrender charge period of seven (7) years. The reason listed for the exchange was that the client did not like the way Putnam was managing money.
25. On November 10, 2003, upon Anderson's recommendation, MR1 exchanged an ING Access variable annuity ("the ING Annuity"), which was no longer subject to any surrender charges, for a MetLife Class B variable annuity. The MetLife Class B variable annuity had lower M&E fees than the ING Annuity and a nursing home waiver that was not offered by the ING Annuity. With the exchange, however, MR1's assets in the new MetLife variable annuity became subject to a new surrender charge period of seven (7) years. The reason listed for the exchange was, "client wishes to transfer due to lack of communication from ING, wants to consolidate @ UBS, client wishes to lower fees and wants to put money with a bigger, known, financial institution." Based on discussions with the client, the Enforcement Section does not believe the reasons given by Anderson for the exchanges were appropriate for that client.

c. Annuity Transactions For MR2

26. On November 10, 2003, upon Anderson's recommendation, MR2 exchanged an ING Access variable annuity, which was no longer subject to any surrender charges, for a MetLife Class B variable annuity. The MetLife Class B variable annuity had lower M&E fees than the ING Annuity and a nursing home waiver that was not offered by the ING Annuity. With the exchange, however, MR2's assets in the new MetLife variable annuity became subject to a new surrender charge period of seven (7) years. The reason listed for the exchange was that MR2 wished to "transfer due to lack of communication from ING, wants to consolidate @ UBS, better product and more features." Based on discussions with the client, the Enforcement Section does not believe the reasons given by Anderson for the exchange was appropriate for that client.

2. Missouri Resident 3

27. Since 2003, Anderson was the agent of record at UBS for the account of another Missouri resident ("MR3"). MR3 is the daughter of MR1 and MR2. An investigation by the Enforcement Section revealed among other things that MR3:
 - a. is mentally challenged and possesses limited social skills;
 - b. works part-time at a fast food restaurant; and
 - c. has never lived away from her parents.
28. MR3 talked with an investigator with the Enforcement Section who stated that MR3:
 - a. had little understanding of financial matters;
 - b. did not understand the difference between a mutual fund and a variable annuity;
 - c. signed documents provided by Anderson but had no understanding of what these documents were, what they meant, or how they would affect her account; and
 - d. had no understanding of the trading that had taken place in her account.
29. MR3's new account application at UBS dated March 13, 2002, which was submitted to the Firm by Anderson, indicated, among other things, that:
 - a. MR3 had a net worth of three hundred thousand dollars (\$300,000.00);
 - b. an annual income of twenty-five thousand dollars (\$25,000.00); and
 - c. MR3 was a homemaker with twenty-five (25) years of experience with equities.
30. An examination of MR3's financial records placed her net worth at approximately one hundred twenty thousand dollars (\$120,000.00) and her annual income at approximately ten thousand dollars (\$10,000.00).

a. Unsuitable Mutual Funds and Other Transactions in MR3's Account

31. From August 2003 to October 2004, Anderson recommended, the following transactions in MR3's account:
 - a. On or about August 28, 2003, Anderson sold shares of AIM Basic Balanced Fund Class A in the amount of thirty-seven thousand, thirty-three dollars (\$37,033.00) and purchased shares of Franklin Templeton LTD Duration Income

Trust in the amount of thirty-seven thousand, five hundred dollars (\$37,500);

- b. On March 30, 2004, Anderson sold shares of the Franklin Templeton LTD Duration Income Trust in the amount of thirty-seven thousand, two hundred ninety-two dollars (\$37,292.00) and purchased shares of Salomon Brothers High Income Fund II in the amount of thirty six thousand, seven hundred fourteen dollars (\$36,714.00);
- c. In July 2004, Anderson sold shares of Salomon Brothers High Income Fund II in the amount of thirty-three thousand, seven hundred eighteen dollars (\$33,718.00), shares of Citigroup Inc. in the amount of eight thousand, seven hundred seventy dollars (\$8,770.00) and shares of NASDAQ 100 in the amount of ten thousand, two hundred eighty-seven dollars (\$10,287.00). Anderson then purchased shares of Pioneer High Income Trust in the amount of fifty-one thousand, eight hundred eighty-eight dollars (\$51,888.00);
- d. On October 18, 2004, Anderson sold shares of Pioneer High Income Trust and Royce Value Trust in the amount of thirty-one thousand, three hundred thirty-one dollars (\$31,331.00) and purchased shares of Eaton Vance Enhanced Equity Income in the amount of thirty thousand, five hundred dollars (\$30,500.00); and
- e. On October 21, 2004, Anderson sold shares of Pioneer High Income Trust in the amount of thirty-two thousand, five hundred seventy-eight dollars (\$32,578.00) and purchased shares of Lord Abbett Affiliated Fund Class A, in the amount of thirty-six thousand, five dollars (\$36,005.00).

b. Annuity Transactions in MR3's Account

- 32. On November 10, 2003, upon Anderson's recommendation, MR3 exchanged a Putnam Hartford PCM variable annuity, which was no longer subject to surrender charges, for a MetLife Class B variable annuity with a premium of nineteen thousand dollars (\$19,000.00). The MetLife Class B variable annuity had lower M&E fees than the Putnam Annuity and a nursing home waiver that was not offered by the Putnam Annuity. With the exchange, however, MR3's assets in the new MetLife variable annuity became subject to a new surrender charge period of seven (7) years. The reason listed for the exchange was that the client wanted to get out of Putnam investments.
- 33. On November 25, 2003, upon Anderson's recommendation, MR3 exchanged a Putnam Hartford PCM variable annuity, which was not subject to surrender charges, for a MetLife Class B variable annuity with a premium of eighteen thousand dollars (\$18,000.00). The MetLife Class B variable annuity had lower M&E fees than the Putnam Annuity and a nursing home waiver that was not offered by the Putnam Annuity. With the exchange, however, MR3's assets in the new MetLife variable annuity became subject to a new surrender charge period of seven (7) years. The reason listed for the exchange was that the client wanted to get out of Putnam investments. Based on discussions with the client, the Enforcement Section does not believe the reasons given by Anderson for the exchanges were appropriate for that client.

3. Missouri Resident 4

- 34. On February 19, 2002, a Missouri resident ("MR4"), who is a senior and has been residing in a nursing care facility since 1996, transferred her account to UBS. Anderson was her agent of record. MR4 was an unsophisticated conservative investor who did not follow the financial markets, and who had a very limited understanding of financial products and financial matters.
- 35. Because of MR4's deteriorating health condition, Anderson talked with MR4's daughter and son-in-law regarding trades in MR4's account. The daughter and son-in-law stated to the Enforcement Section, among other things, that they:
 - a. were "not savvy enough to invest" MR4's money;
 - b. trusted Anderson's knowledge;
 - c. would never have approved investing in high-risk securities;
 - d. could not afford to take any chances with MR4's money as MR4 needed safe investments; and
 - e. talked to Anderson about MR4's need for safe investments many times.
- 36. MR4's account was originally funded with seventy-five thousand dollars (\$75,000.00) from her savings account.
- 37. MR4 relied on income from this account and approximately one thousand, nine hundred fifty dollars (\$1,950.00) a month from Social Security to provide for her living expenses and care at her nursing care facility.
- 38. UBS' new account application for MR4, dated March 8, 2002, listed MR4's net worth at three hundred thousand dollars (\$300,000.00), liquid assets totaling one hundred twenty-five thousand dollars (\$125,000.00), an annual income of twenty-five thousand dollars (\$25,000.00), and an investment objective of capital appreciation with a moderate risk.

a. Unsuitable Mutual Funds and Other Transactions in MR4's Account

- 39. Beginning in 2002, upon Anderson's recommendation, trading occurred in MR4's account in a number of newly organized closed-end management investment company shares. According to the prospectuses for some of these closed-end funds, the

funds contained concentrations of high-yield, below-investment grade securities, which are commonly referred to as "junk bonds" and the investments are considered above-average risk. Further, these funds were designed for long-term investors and not as a short-term trading vehicle.

40. From September 18, 2002 to June 6, 2006, upon Anderson's recommendation, the following transactions occurred in MR4's account:
 - a. On September 18, 2002, Anderson sold MR4's Merrill Lynch BK US CDs, and on September 27, 2002, Anderson purchased shares of Nuveen Quality Preferred Income Fund II;
 - b. On March 3, 2003, Anderson sold MR4's shares of Nuveen Quality Preferred Income Fund II in the amount of sixty-three thousand dollars (\$63,000.00) and purchased on March 31, 2003, shares of Nicholas Applegate Convertible Income fund for approximately fifty-four thousand, seven hundred two dollars and five cents (\$54,702.05);
 - c. On October 16, 2003, Anderson purchased of three thousand five hundred and sixty-one (3561) shares of Dreyfus Premier Core Equity Fund Class A in the amount of fifty thousand dollars (\$50,000.00);
 - d. On October 20, 2003, Anderson sold shares of Nicholas Applegate Convertible & Income Fund in the amount of fifty-seven thousand, three hundred eighty-one dollars and fifty eight cents (\$57,381.58);
 - e. On July 27, 2004, Anderson sold Dreyfus Premier Core Equity Fund Class A in the amount of forty-nine thousand, sixty-one dollars and forty-nine cents (\$49,061.49);
 - f. On July 29, 2004, Anderson sold shares of Nicholas Applegate Convertible & Income fund;
 - g. On July 29, 2004, Anderson purchased of three thousand (3000) shares of Pioneer High Income Trust in the amount of forty-seven thousand, four hundred eighty seven dollars and fifty-five cents (\$47,487.55);
 - h. On September 22, 2004, Anderson sold shares of Pioneer High Income Trust in the amount of forty-eight thousand, nine hundred ninety-nine dollars and thirteen cents (\$48,999.13);
 - i. On September 30, 2004, Anderson purchased shares of Kayne Anderson MLP Investment Company in the amount of forty-nine thousand dollars (\$49,000.00);
 - j. On October 14, 2004, Anderson sold shares of Kayne Anderson MLP Investment Company in the amount of forty-eight thousand, nine hundred sixty-one dollars and forty cents (\$48,961.40);
 - k. On October 29, 2004, Anderson purchased shares of Eaton Vance Enhanced Equity Income in the amount of forty-five thousand dollars (\$45,000.00);
 - l. On July 29, 2005, Anderson sold shares of Eaton Vance Enhanced Equity Income in the amount of forty-nine thousand, nine hundred fifty dollars (\$49,950.00); and
 - m. On July 29, 2005, Anderson purchased shares of Lord Abbett America's Value in the amount of forty-three thousand, five dollars (\$43,005.00).
41. The transactions in MR4's account between 2002 and 2005 resulted in commissions/sales credits of fourteen thousand, seven hundred thirty-seven dollars and forty-one cents (\$14,737.41) to UBS and Anderson. The Enforcement Section has concluded that these trades are not appropriate for MR4.

B. Variable Annuity Transactions

42. Based upon the annuity transactions in the Anderson accounts as described above, the Enforcement Section decided to review UBS's sale of variable annuities to Missouri residents for the period from 2003 through 2006.
43. While UBS had supervisory procedures in place for its annuity transactions, the Enforcement Section concluded that there were instances during this 4 year period where the manner in which certain annuity transactions were effectuated was not in the best interest of six (6) senior clients.

II. CONCLUSIONS OF LAW

44. The Commissioner, after consideration of the stipulations set forth above and on the consent of Respondent and the Enforcement Section, finds and concludes that the Commissioner has jurisdiction over the Respondent and this matter and that the following Order is in the public interest, necessary for the protection of public investors and consistent with the purposes intended by Chapter 409 et seq. RSMo. (Cum. Supp. 2008).

III. Order

NOW, THEREFORE, it is hereby ordered that Respondents...

1. Respondent UBS is hereby CENSURED.
2. Respondent is ordered to disgorge sixty-two thousand, six hundred seventy-five dollars and 54/100 (\$62,675.54) for the losses, surrender charges, and commissions generated by the sales to the Missouri residents as identified in Exhibit 1. This money shall be sent to the Enforcement Section within ten days of the effective date of this Consent Order and made payable to the Missouri Investor Restitution Fund and will be distributed by that fund to the investors in the amounts as identified in Exhibit 1.
3. Respondent shall pay the sum of eighty thousand dollars (\$80,000.00) to the Investor Education and Protection Fund. This amount shall be sent to Missouri Securities Division at 600 West Main Street, Jefferson City, Missouri 65101 within ten (10) days of the effective date of this Consent Order.
4. Respondent shall pay a civil penalty of twenty thousand dollars (\$20,000.00) made payable to the State of Missouri, and delivered to the Securities Division at the above address within ten (10) days of the effective date of this Consent Order, and the Secretary of State shall forward these funds to the state treasury for the benefit of county and township school funds as provided in Article IX, Section 7 of the Constitution of Missouri.
5. Respondent shall pay the sum of seven thousand five hundred dollars (\$7,500.00) as the costs of the investigation. This amount shall be sent to Missouri Securities Division at 600 West Main Street, Jefferson City, Missouri 65101, within ten (10) days of the effective date of this Consent Order and be payable to the Secretary of State's Missouri Investor Education and Protection Fund as provided in Section 409.6-604(e), RSMo. (Cum. Supp. 2008).
6. Respondent shall pay its own costs and attorneys fees with respect to this matter.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 20TH DAY OF MAY, 2009.

ROBIN CARNAHAN
SECRETARY OF STATE

(Signed/Sealed)
MATTHEW D. KITZI
COMMISSIONER OF SECURITIES

[1] See

Consented to by:
(Signed)
Mary S. Hosmer
Assistant Commissioner of Securities
Missouri Securities Division

Consented to by:
UBS Financial Services, Inc.

Approved as to form
(Signed)
Brian F. Amery
Attorney for Respondent

<http://www.finra.org/InvestorInformation/InvestorAlerts/AnnuitiesandInsurance/VariableAnnuitiesBeyond theHardSell/P005976>.

[2] Joint SEC/NASD staff *Report on Examination Findings Regarding Broker-Dealer Sales of Variable Insurance Products*, June 9, 2004, Office of Compliance Inspections and Examinations, United States Securities and Exchange Commission