SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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THE PEOPLE OF THE STATE OF NEW YORK : by ELIOT SPITZER, Attorney General of the State of New York, :	**SUMMONS**
Plaintiff, :	Index No.
-against- :	Plaintiff Designates New York County as
UBS FINANCIAL SERVICES, INC., :	the Place of Trial
Defendant. :	
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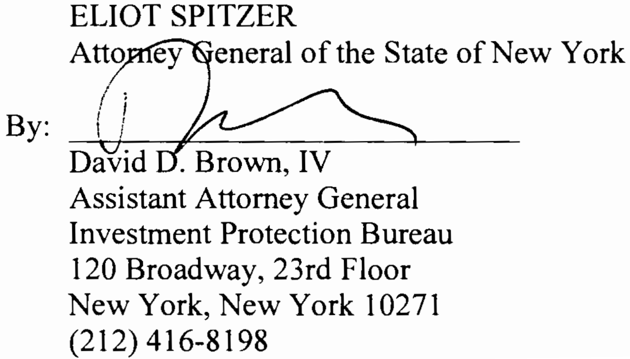
TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is where Plaintiff has a business address which is 120 Broadway, New York, New York 10271.

Dated: December 12, 2006
New York, New York

ELIOT SPITZER
Attorney General of the State of New York



By: ______________________________
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
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THE PEOPLE OF THE STATE OF NEW YORK, by ELIOT SPITZER, Attorney General of the State of New York,	:	
Plaintiff,	:	**COMPLAINT**
-against-	:	Index No.
UBS FINANCIAL SERVICES, INC.,	:	
Defendant.	:	

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Plaintiff, the People of the State of New York, by Eliot Spitzer, Attorney General of the State of New York, complaining of the above-named defendant, alleges upon information and belief:

PRELIMINARY STATEMENT

1. UBS Financial Services, Inc. ("UBS") is a subsidiary of UBS AG, an international financial services corporation. UBS provides financial services to investors within New York State and across the United States.

2. Throughout the late 1990s, UBS and other full-commission brokerage houses suffered from intense competition with discount brokerage firms. UBS, which had long enjoyed average commissions of $150 or more per equity trade, wanted to stem the exodus of customers to discount brokers, who commonly charged $20 or less. At the same time, UBS was loath to compete on price because, as problematic as customer defections were, slashing commissions by over 80% would have been even more harmful to UBS's profits.

3. UBS solved the dilemma by putting tens of thousands of brokerage customers into "InsightOne," a new fee based (or "wrap") account that UBS introduced in October 1999. Unlike traditional brokerage accounts, where customers pay a commission for each transaction, InsightOne accounts instead charged customers a percentage of their account's assets. UBS designed InsightOne to be far more profitable than its traditional commission-based brokerage accounts, many of which had little trading activity and thus generated little revenue. If converted to InsightOne, these low-trading accounts would produce higher, more constant revenue – what UBS referred to internally as an "annuitized" revenue stream.

4. UBS used the following scheme to get its customers to move to what was, for many, a far more expensive brokerage account. First, UBS promised prospective customers that they would receive in InsightOne a high level of personalized advice in return for the fees they paid. In fact, UBS never intended to provide – and in the end failed to provide – InsightOne clients with a true advice-based account. Second, UBS purposefully failed to implement mandatory guidelines to exclude unsuitable applicants from InsightOne, thus ensuring that unsuitable (but profitable) accounts would be enrolled in the program. Third, UBS incentivized and pressured its brokers to convert unsuitable accounts to InsightOne.

5. Having pushed unsuitable customers into InsightOne, UBS delayed for years before taking genuine steps to get them out. When, at long last, UBS finally adopted purposefully feeble compliance guidelines, it proceeded to undermine them through accounting gimmickry, lax enforcement and churning. As one broker freely admitted in an August 2004 email, "now we have to trade heavy or light to stay within guidelines to keep insight-one alive

…. How Wrong is that? You are not looking at the best interest of the client." [I/Oe 149720]. The broker continued: "CONFLICT is all over this." [*Id*. (emphasis in original)].[1]

6. The scheme injured UBS's customers. UBS's own calculations reveal that, over one 18-month period, 31,565 accounts paid excessive fees of more than $51 million. At the individual account level, InsightOne could be disastrous. For example:

- UBS charged a 91-year-old InsightOne client more than $35,000 for just four trades over two years (approximately $8,800 per trade). This was some $33,000 more than the same investor would have paid in a traditional brokerage account.
- One 82-year-old account holder paid approximately $24,000 in InsightOne fees in 2003 while executing only one transaction.
- A retiree paid a fee of $1,250 in 2003 – more than 10% of her annual income of $11,000 – despite having traded only twice during the year.
- Over a three year period in InsightOne, a farming couple executed only two trades, effectively paying more than $23,000 per trade and paying some $46,000 more than they would have paid in a traditional account. These fees amounted to more than 20% of the couple's annual income.
- An 83-year-old investor, who had previously made only four trades over two years in her traditional brokerage account, was nonetheless enrolled in InsightOne, where she then made only four trades over three years, at an effective cost of $4,300 per trade. In all, she spent almost 8% of her annual income on these transactions.
- One customer kept most of her assets in cash and paid UBS more than $1,700 over a 12-month period to maintain two InsightOne accounts that functioned like checking accounts.

7. According to Marcel Ospel, UBS's Chairman, UBS promotes "a corporate culture that adheres to the highest ethical standards ...." [http://www.ubs.com/1/e/about /corporate_responsibility/our_commitment/foreword.html]. UBS's handling of the InsightOne program made a mockery of this claim.

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[1] Cited documents are in the Exhibits Volume.

8. As a result of the foregoing, and as further set forth below, UBS has violated New York statutory and common law.

PARTIES

9. This action is brought by the Attorney General on behalf of the People of the State of New York pursuant to his authority under Article 23-A of the General Business Law (the "Martin Act"), § 63(12) of the Executive Law, § 1301 of the Civil Practice Law and Rules, and the common law of the State of New York.

10. Defendant UBS is incorporated under the laws of the State of Delaware. UBS has offices in the State of New York, conducts extensive business in New York, and engaged in fraudulent activities in New York.

JURISDICTION

11. The Attorney General has an interest in the economic health and well-being of those who reside or transact business within the State of New York. In addition, the Attorney General has an interest in ensuring that the marketplace for the trading of securities and for financial products, including brokerage services and products, functions honestly and fairly with respect to all who participate or consider participating in the marketplace. The Attorney General, moreover, has an interest in upholding the rule of law generally. Defendant's conduct injured these interests.

12. The Attorney General sues in sovereign and quasi-sovereign capacities, as *parens patriae*, and pursuant to the Martin Act, § 63(12) of the Executive Law, and the common law of the State of New York. The Attorney General seeks to redress injury to the State and to its economy and its residents, as well as on behalf of people who purchased securities and brokerage and other services from UBS.

13. The Defendant's schemes alleged herein were nationwide in scope and included numerous transactions in, from and to New York. Moreover, numerous New York residents and businesses, as well as the interests of the State of New York, were harmed by UBS's conduct.

FACTS

I. Background of InsightOne

14. In the mid- to late-1990s, UBS's traditional commission-based brokerage business faced increasing competition from discount brokerage firms. This competition drove down trading costs and increased market liquidity but hurt full-commission brokerage houses like UBS. UBS executives expressed alarm at how UBS's brokerage business' "assets and accounts [were] being lost to discount brokers (Schwab and Fidelity) …." [I/Oe 65140]. Management worried that brokerage transactions had "become commoditized" and that investors believed that they "can do it themselves." [I/Oe 1973].

15. UBS could have attempted to compete with discount brokers on price but, from 1994 to 1999, the profitability of commission-based accounts had declined by 23%. Lower prices would only have further diminished UBS's profits. Moreover, the majority of these traditional accounts rarely traded and thus generated little commission revenue. Also, commission-based revenue depended on market conditions, with investors trading less during market downturns.

16. Accordingly, UBS devised a scheme, centered on InsightOne, that could stanch the flow of business to discount brokers and serve as a higher-profit substitute for traditional brokerage accounts. UBS understood that assets like stocks, bonds, mutual funds and cash would generate far more revenue if they were transferred from commission-based accounts to fee-based wrap accounts, whose fees would generate significant, recurring and consistent

revenue, regardless of trading activity or market conditions. (InsightOne's average annual fee was 1.1%, although it could be set as high as 2.5%, with a minimum of $1,250). As a UBS executive would note in a 2003 business plan: "Our focus has been to 'annuitize' our revenue stream by offering clients products with asset based pricing …. [This] enables us to better withstand down market environments." [I/Oe 604285].

17. As shown in detail below, UBS moved unsuitable customers into InsightOne (and kept them there) by promoting it as an advice-based account, failing to install prescreening procedures, creating a lopsided broker incentive system, delaying the implementation of suitability guidelines, ultimately implementing weak guidelines, and undermining those guidelines by artifice.

II. The Fiduciary Model: Each Broker Becomes a "True Advisor"

18. Seeing that investors believed they could "do it themselves," UBS concluded that its securities brokers – which it called "Financial Advisors" or "FAs" – had "to prove they add value." [I/Oe 1973]. To do so, the Financial Advisors needed to "change the dialogue" from "Price" to "Advice & Services." [I/Oe 1974]. Accordingly, UBS promised prospective InsightOne customers a personalized, advice-based relationship in return for a fee, and thus undertook a fiduciary duty to the account holders.

19. As part of the promised advisory relationship, each account holder was to be served not by a broker (the word did not appear in InsightOne brochures), but by a "professional Financial Advisor" – *i.e.* a professional advisor on financial matters – who gives "personalized financial consultation." [*See*, *e.g.*, I/Oe 62502]. Account holders were not "customers," which would suggest a sales relationship, but rather "clients," indicating a confidential relationship like the kind that clients have with their lawyers and accountants. Indeed, UBS compared Financial

Advisors' fees to "the fees of attorneys, accountants, doctors and other professionals." [I/Oe 27370].

20. UBS did very little marketing of InsightOne directly to customers. Instead UBS relied on its Financial Advisors to promote the program, specifically training them to sell InsightOne as an advice-based account. In marketing sessions, Financial Advisors were informed that InsightOne was a platform "for developing a deeper, consultative relationship with your clients" and that "[i]nvestors who thought they could do it on their own are searching for a professional to help with their investment future. They now realize the value of advice and planning but they need your help." [I/Oe 23910, 23912]. UBS Financial Advisors heard that assessing a client's needs and goals "[p]ositions you as a key advisor." [I/Oe 62508].

21. Financial Advisors were trained to market InsightOne as "more than just a pricing alternative" to traditional brokerage accounts. [I/Oe 62497]. Rather, the Financial Advisors were instructed that the "fee is based on the 'value added' services you provide – not simply price alone – and for this reason, your fee can command premium pricing." [I/Oe 801470]. Thus, InsightOne's "positioning" was that of an "All Inclusive Program," which specifically differentiated the program from a mere "Pricing Alternative" like UBS's Premiere Asset Account program ("PAA"). [I/Oe 118925]. As InsightOne training materials explained:

- Our Goal is to move away from the pricing alternative
  - Maintain clients when trading declines
  - Add services to provide additional value
  - <u>FA becomes a true advisor</u>. [*Id.*; emphasis added].

22. UBS marketed InsightOne to instill in prospective clients the perceived need for a "true advisor." For example, UBS taught its Financial Advisors to tout InsightOne's purported offering of the following sophisticated financial services:

- Personalized Financial Consultation
- UBS Warburg Research
- Asset Allocation Assistance
- Model Portfolios
- Retirement Planning Strategies
- Education Planning Strategies
- Estate Planning Strategies
- Stock Option Planning Strategies

[I/Oe 1977].[2] InsightOne clients would thus sense the need to rely on their expert Financial Advisors for advice regarding these products and services.

23. UBS further instructed Financial Advisors that InsightOne fees paid for these advisory services. As one training tool explained: "InsightOne -- All services and advice for one fee." [I/Oe 118925]. Branch managers were told that InsightOne "offers the client the opportunity to access a wide range of advice and other services for one inclusive fee." [UBS 46184]. Upon reading in a manual that InsightOne gave "wide latitude for FAs to charge an appropriate fee for superior advice and service" [I/Oe 801391], one executive commented that "it suggests we're getting paid for advice not as a broker." [I/Oe 180749].

24. Financial Advisors got the message. As one Financial Advisor noted in an internal email to Bruce Bursey, the senior executive who oversaw the InsightOne program, "InsightOne is a fee based account, meaning we are paid an investment advisory fee." [I/Oe 68744]. Another Financial Advisor wrote in an email: "My view of the I[nsight]One account is the client is paying me for my advice …." [I/Oe 1236273]. Another Financial Advisor notified Bursey that "the only means we have to be paid for our advice is through the InsightOne program" and that his group was "not modeled to move product and transact with clients as traditional brokers." [I/Oe 65429]. Still another Financial Advisor stated that InsightOne was

[2] As shown in Section VI, *infra*, this sales pitch was misleading: these financial planning services were not all genuinely available to ordinary InsightOne customers.

"touted in marketing materials as the right way to price an 'advisory' relationship." [I/Oe 954034]. A fourth Financial Advisor wrote his superiors:

> The issue at hand is why we charge a fee? What are we providing for this fee? … Trading activity is a very small part of the picture …. We are Financial Advisors, not traders. We get paid for our financial advice and level of high-quality service we provide and we want it that way. [UBS 49203].

He added that he and his fellow Financial Advisors "worked hard" with InsightOne to attract "more fee-based business based on a relationship of advice and trust." [*Id.*].

25. Financial Advisors of course shared their understanding of InsightOne with their clients. As one Financial Advisor stated, "InsightOne was sold to me and my clients as an 'advice, one fee account' as per marketing materials." [I/Oe 923723; 68744]. Another Financial Advisor candidly observed that InsightOne's "fee is viewed by clients as a combination of pricing plus advice …." [I/Oe 954259].

26. The limited direct-marketing materials distributed to some prospective clients reiterated the advice-for-fee message. InsightOne's tagline, repeated on brochures and in presentations, was: "Service. Flexibility. Advice. One Fee." [*See*, *e.g.*, UBS 1448]. This slogan contrasted markedly with promotional materials for traditional UBS brokerage accounts, which never mentioned advice.

27. The earliest InsightOne brochures never mentioned brokers, or even that InsightOne was a brokerage account. They did, however, along with later brochures, state that "InsightOne gives you easy access to all the services, advice, and investment solutions you may need to help you meet your financial objectives …." [UBS 1448, 1452]. Promotional presentations, consisting of screens shown to prospective clients, stated that the first benefit of InsightOne was "Full Service, Including Advice." [*See*, *e.g.*, I/Oe 1233406]. The accompanying script explained: "Advice and Full Service. You get personalized consultation with your UBS

PaineWebber Financial Advisor, access to all UBS Warburg Research, and access to all UBS Paine Webber products and services." [*Id.*].

28. The brochures and presentations also explicitly offered the sophisticated financial planning services listed above [I/Oe 1233398; *see also* UBS 1452, 279, 328]. UBS told prospective clients that InsightOne offered all these products and services "with the insight of your personal Financial Advisor…for one annual, asset-based fee." [I/Oe 1233397].

29. Moreover, the marketing brochures promised clients that Financial Advisors would provide them with broad services that necessarily encompassed extensive advice-giving. Such services included:

- "helping you manage and protect your wealth" [UBS 326]
- helping clients "analyze and streamline incoming data, as well as tailor investments designed to fit your specific goals" [UBS 290]
- "helping you meet all your investment planning needs" [UBS 293]
- providing "a relationship that offers focused, creative financial solutions and attentive, personalized service" [UBS 326, 1450; I/Oe 1230687]
- "helping you create personal investment plans" [UBS 285]
- "knowing you, what you want and when you need it" [UBS 1450]
- "Assess[ing] your financial situation" [UBS 329]
- "helping you build an investment portfolio designed to help meet *your* specific needs" [UBS 335 (emphasis in original)]
- "helping you create a highly individualized investment program" [UBS 290]
- "allocating your assets" [UBS 290]
- "provid[ing] the insights you need and the solutions you want" [UBS 290]
- "provid[ing] customized investment strategies that are designed to help investors accumulate, preserve and transfer their wealth." [I/Oe 1230686].

30. Until 2000, UBS made no disclaimers in its brochures to qualify the foregoing promises. Thereafter, it inserted a small-type footnote stating that "InsightOne is not an advisory account," [*See*, *e.g.*, UBS 279], and later changed the footnote to read, "InsightOne is not an investment advisory account." [I/Oe 1230687]. Yet, even this disclaimer was vitiated on the following page of the same brochure: "By utilizing these research capabilities, <u>your Financial Advisor can provide you with investment advice based on your needs, goals, risk profile and time horizon</u>." [I/Oe 1230688 (emphasis added)]. Notably, the script distributed to brokers for customer presentations did not mention the footnoted "disclaimer." [UBS 327].[3]

31. In sum, UBS lured prospective clients to InsightOne by leading them to believe that a central purpose of InsightOne was to provide substantial advice, that clients' fees paid for that advice, that clients should (and would need to) trust and rely on the expert advice of InsightOne Financial Advisors, that InsightOne created an advisory relationship between the Financial Advisors and the clients, and that InsightOne was much more than just an ordinary brokerage account. Accordingly, UBS owed its InsightOne clients a fiduciary duty.

32. Having convinced clients to place their trust in UBS, however, UBS then abused that trust. As shown below in Sections III, IV and V, UBS breached its duties to its InsightOne clients by, among other things, failing to implement necessary prescreening procedures, creating an improper employee incentive scheme to push unsuitable customers into the InsightOne, and delaying and diluting compliance safeguards to protect InsightOne clients. Finally, as shown in Section VI below, many of the promises UBS made to lure clients to InsightOne – *e.g.*, promises

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[3] The account agreements (prior to revisions in 2004) are even more opaque, stating in minute type that "neither PaineWebber nor any of its Financial Advisors … will act as an "investment advisor" as such term is defined in the Investment Advisers Act of 1940, as amended ("Advisers Act"), and that the provisions of the Advisers Act will not be applicable to the relationship between UBSPaineWebber … and Client …. " [*See*, *e.g.*, UBS 2306].

of an advice-based account, of aligned interests, of sophisticated financial planning services – were false.

III. UBS Fails to Prescreen for Suitability

33. Although UBS: (a) understood that InsightOne was a bad deal for many prospective customers, and (b) had the means to identify unsuitable prospective customers and steer them away from the program, UBS nonetheless permitted thousands of unsuitable clients to enroll in InsightOne and collectively overpay UBS tens of millions of dollars in fees.

34. UBS was fully aware that InsightOne would be more costly than commission-based accounts for many investors. Because the average stock trade cost $146, a client would have to trade stocks nine times a year on average before commissions reached the InsightOne minimum fee of $1,250. A client with $1,000,000 in assets paying a 1% fee would on average have to trade stocks some 68 times to reach the client's $10,000 annual fee.

35. Accordingly, UBS knew that InsightOne was generally inappropriate for investors who historically made relatively few trades per year. UBS was also aware that InsightOne was unsuitable for investors who historically held high levels of cash, mutual funds and fixed income assets.

36. In addition, internal analyses alerted UBS that prescreening was necessary. For example, compliance measures for PAA – a fee based brokerage program antecedent to InsightOne – warned UBS that low-trading accounts would be a problem when, in July 1999, 929 PAA accounts triggered PAA's low-trading thresholds.[4] Later UBS analyses showed that applicants with UBS's traditional commission-based brokerage account (called a "Resource Management Account" or "RMA") were, in the main, inappropriate for InsightOne. For

[4] InsightOne evolved from PAA, and UBS considered the two programs so similar that it lumped their profit and revenue data together. The programs overlapped in existence for less than a year, and by September 2000, all remaining PAA accounts were converted to InsightOne.

example, UBS records show that from August 2001 through July 2002, more than 42% of RMA accounts executed zero trades, with an additional 21% executing only one to four trades. More generally, UBS internal memoranda in late 2001 and early 2002 reminded executives that one of the risks associated with InsightOne was "converting unsuitable accounts to InsightOne," and warned that "the growth of the InsightOne program will lead to [an] increase in unsuitable accounts and risk …." [I/Oe 771717, 63399].

37. UBS was fully capable of implementing prescreening procedures to identify unsuitable applicants. Nearly 80% of all InsightOne households in 2002 had a prior account at UBS, which maintained internal databases that provided easy access to – and analysis of – clients' trading histories. Further, UBS was experienced at prescreening candidates for fee-based programs, having previously instituted mandatory prescreening policies for PAA. Prior to approving PAA applications, UBS required suitability analyses of prospective clients' trading histories, looking at both the number of trades executed during the prior year and how much those trades would have cost the investor. Improving technology made such prescreening ever more practicable.

38. Despite the foregoing, UBS abandoned PAA's prescreening requirements for InsightOne and elected not to implement any substitute procedures to steer unsuitable investors away from InsightOne or to discipline Financial Advisors who enrolled unsuitable investors. By officially ignoring investors' prior trading activity (or inactivity), which would show InsightOne to be the costlier option for many prospective clients, UBS actually encouraged the enrollment of inappropriate investors in InsightOne.

IV. UBS Pays Its Brokers to Steer Clients into InsightOne

39. UBS employed a scheme of misaligned employee incentives that it knew would induce unsuitable investors to join and remain in InsightOne. As an initial matter, InsightOne was designed to (and did) generate more revenue than commission-based RMA accounts even though they both offered essentially the same services. From 1999, InsightOne generated at least .90% in average "return on assets" under management, while traditional RMA brokerage accounts generated less than .75%. Because Financial Advisors' income is a function of the revenue generated from their clients' accounts, InsightOne was inherently more lucrative for Financial Advisors.

40. In late 2001, UBS redesigned its compensation "grid" to make InsightOne even more profitable for Financial Advisors. Most UBS brokers received a grid baseline of 39% of the account revenue generated. Financial Advisors received "grid plus one" (*i.e.* 40%) for revenue generated in traditional RMA accounts, but the new plan gave them "grid plus four" (*i.e.* 43%) for fees generated by InsightOne accounts. In a presentation, UBS summed up the choice faced by Financial Advisors: "To Fee … Or Not to Fee: Is it a question?? InsightOne = Grid + 4." [I/Oe 27359]. At the same time, UBS made commission-based accounts less lucrative by imposing new charges on Financial Advisors, like a $12 fee for each stock transaction. One Financial Advisor complained: "The average broker writes about 5,000 tickets per year. That's $60,000. This policy will personally cost me $20,000." [I/Oe 1199878]. Another Financial Advisor noted in an email that these fees "discouraged" him from doing commission business. [I/Oe 900744].

41. The plan to motivate Financial Advisors to favor fee-based accounts came from the top. Discussing these compensation changes, UBS's CEO at the time, Mark Sutton, said: "If

you do fee-based business, you just got a raise." [I/Oe 1199878]. Sutton later stated that UBS intended to increase fee-based business from one-third to one-half of broker-generated revenue over the following four years. [Dow Jones, 6/5/03]. Management emphasized in presentations to divisional and branch managers how lucrative InsightOne was to UBS and Financial Advisors. At training sessions, UBS advised Financial Advisors to "Get Paid More for Less" by moving clients from commission-based accounts into InsightOne. [I/Oe 1972, 18888-89].

42. Senior management pressured junior executives and Financial Advisors to recruit clients into InsightOne. Branch managers were told to "mention InsightOne at every sales meeting." [I/Oe 18935]. Presentations to Financial Advisors lauded InsightOne over traditional brokerage accounts. Year after year, management set aggressive revenue targets for InsightOne, which one junior executive called "unrealistically high." At the same time, UBS failed to implement any disciplinary system to penalize Financial Advisors who placed inappropriate clients in InsightOne.

43. UBS fully understood, but did not disclose to its clients, that it was giving Financial Advisors a clear monetary incentive to steer unsuitable clients into InsightOne. Indeed, it was this conflict of interest that drove UBS's fraudulent scheme – encouraging Financial Advisors to overlook suitability problems in order to grow the program. As one Financial Advisor noted, Financial Advisors were "discouraged from doing" commission business by financial disincentives that "even apply in cases where a conversion to fees is not appropriate." [I/Oe 900744].

44. With Financial Advisors strongly motivated to move clients into InsightOne regardless of suitability, UBS believed, correctly, that the migration would take place, despite InsightOne's greater costs for many clients. UBS acknowledged in October 2001 that the "most

obvious effect [of] the new proposed Financial Advisor compensation Plan changes should be an increase in InsightOne assets, as the Financial Advisor has a higher incentive to convert their book to wrap business." [I/Oe 190915]. Another memo one month later noted: "With the upcoming compensation changes, InsightOne accounts and assets are expected to grow dramatically." [I/Oe 62492].

45. Indeed, as a result of UBS's scheme, the InsightOne program took off – from 10,046 accounts (and $4.47 billion in assets) at the end of 1999 to 88,558 accounts (and $24.65 billion in assets) by the end of 2003. In 2001, InsightOne became the third largest fee-based brokerage program in the United States. As planned, InsightOne was far more profitable than commission-based accounts. One UBS study determined that InsightOne accounts were on average approximately 35% more profitable than traditional RMA accounts.

V. <u>UBS Fails to Implement Effective Compliance Guidelines</u>

46. Promoting growth without regard to suitability, the InsightOne program teemed with demonstrably inappropriate accounts. Had UBS diligently culled these accounts, InsightOne's profits soon would have decreased. Instead, UBS dithered as both profits and evidence of massive unsuitability mounted.

A. UBS Knew that Demonstrably Inappropriate Clients Had Enrolled in InsightOne

47. Almost from the outset of InsightOne, UBS was confronted by a tide of facts demonstrating that its clients were being overcharged.

1. Low Trading Accounts

48. From 2000 to 2002, UBS classified thousands of InsightOne accounts as "Low Trading." UBS executives reviewed multiple studies that found some 25% of InsightOne clients had executed only a few trades at a very high cost. [*See, e.g.*, UBS 45471]. One report showed

that, from January 2001 to August 2001, 16,814 out of 52,332 InsightOne accounts executed two or fewer trades. By year-end 2001, UBS described more than 12,000 accounts as low trading. By summer 2002, UBS identified 14,135 accounts as low trading. UBS found that, from mid-2002 to mid-2003, 12,199 InsightOne accounts executed zero trades. A June 2003 UBS study noted that 10,692 InsightOne accounts (16% of accounts open for 12 months) executed zero trades during the prior 12 months.

49. Low trading clients usually paid extremely high fees per trade. UBS data revealed that low trading accounts in 2000 paid, on average, approximately $391 per trade (compared to the average of $146 paid by UBS's traditional brokerage customers). A 2002 analysis showed that 18% of InsightOne accounts paid at least $500 per trade, with 2,367 clients paying more than $1,750 per trade. A June 2003 UBS study found that, from mid-2002 to mid-2003, 9,073 accounts paid the equivalent of at least $500 per trade and that 4,002 accounts paid more than $1,000 per trade.

50. In February 2004, a UBS compliance bulletin observed that "InsightOne is not appropriate … if it reasonably can be expected to result in a materially greater cost to the client than a commission-based account." [UBS 48649]. Nonetheless, in seven quarterly reviews from 2004 to 2005, UBS identified 15,677 InsightOne accounts that paid at least twice as much in fees as the "commissions waived" (*i.e.* commissions that would have been paid in a commission-based account but were "waived" by InsightOne) and an additional 15,888 accounts that paid 20% to 100% more in fees than commissions waived. In aggregate, these accounts overpaid UBS by more than $50 million.

51. UBS fully understood the potential regulatory ramifications of such overcharging. For clients who paid twice as much in fees as commissions waived, UBS believed that "it is a

place that a regulator can clearly tell us the account was overcharged ….” [I/Oe 923721]. Commenting on a client whose InsightOne fees were double the commissions waived over the prior 12 months, a senior UBS executive noted that, “from a regulatory standpoint a strong argument can be made that [the Financial Advisor] overcharged the client in the past.” [I/Oe 923722].

2. High-Cash Accounts

52. From 2000 to 2005, thousands of InsightOne clients maintained accounts with high cash balances for extended periods of time. UBS documents expressed concern about high-cash accounts as early as 2000: “A cash concentration of 50% or more over a six-month period may indicate that the client is not suitable.” [UBS 48816]. Internal reviews revealed that in October 2001, 1,300 accounts kept more than 50% of their assets in cash for more than nine months. As of November 2001, 14,045 accounts with assets of $20,000 or more had at least 25% of their holdings in cash. A year later, UBS identified 1,262 accounts with 40% or more of assets in cash for at least 12 months. Indeed, UBS allowed a number of clients to hold 100% of their assets in cash for prolonged periods of time, often more than a year, while engaging in no trading activity.

3. Mutual Funds

53. It made little sense to carry no-load funds in InsightOne, whose fees would in essence convert the no-load funds (which assess no upfront or ongoing sales charges) into level-load funds (which assess ongoing annual charges). And although InsightOne waived the sales charges for front-load funds (which assess a one-time upfront sales charge), such purchases made sense only if held for a relatively short time. An internal UBS study confirmed that InsightOne clients who bought mutual funds almost always paid higher total costs (*i.e.* fund

charges plus InsightOne fees) than traditional RMA brokerage clients. The average holding period for mutual funds in InsightOne was approximately two and a half years (and was 12 years for American Funds, the fund family most commonly held by InsightOne clients). UBS found that InsightOne clients who held front-load funds for seven years paid on average more than twice the total costs that an RMA client would have paid.

54. InsightOne clients should have been warned that they would pay far higher fees and enjoy far lower returns by holding these assets in InsightOne. Instead, Financial Advisors led clients to believe that they could purchase “low-cost funds” with “lower expense ratios” in InsightOne than in RMAs. [I/Oe 779792]. This was misleading because InsightOne’s fees in fact made these funds more expensive.

4. Low Asset Level Accounts

55. InsightOne required an initial deposit of at least $50,000 in assets but allowed the balance to fall far below that level. In 2001, UBS reduced the minimum balance necessary to maintain an InsightOne account from $40,000 to $15,000, while keeping the minimum fee at $1,250, permitting clients to pay nearly 10% of their account assets in fees. In December 2002, executives learned that 6,438 low-asset accounts had been charged more than 2.5% of assets during at least one of the four previous billing cycles. More than half of these accounts paid UBS over 5% of their assets in fees. Indeed, contrary to UBS’s own rules, numerous accounts had balances of even less than $15,000. In the fourth quarter of 2002, 419 accounts contained less than $10,000 but nonetheless paid the minimum fee. Compounding the offense, most low-balance accounts were also low-trading accounts. For example, in the fall of 2001, UBS determined that 53% of accounts with less than $50,000 traded fewer than three times over the prior 12 months.

B. UBS Fails to Create and Enforce Effective Compliance Guidelines

56. Rather than immediately eject unsuitable InsightOne accounts and refund the overpayments, UBS executives undertook a twofold scheme to continue overcharging these clients. First, as shown in this Subsection B, UBS delayed and diluted compliance reforms. Second, as shown in Subsection C, once weak compliance guidelines were in place, UBS undermined them by churning its clients' assets.

1. Fall 1999 to Fall 2002: UBS Management Delays Implementing Mandatory Compliance Guidelines

57. UBS failed to adopt not only PAA's prescreening procedures, but also its ongoing compliance guidelines. With PAA, UBS had analyzed each account's trading activity over the prior year and terminated those accounts which executed fewer than five trades and whose "commissions waived" were less than the fees paid. A similar commissions-waived analysis for InsightOne would have allowed Financial Advisors and clients to easily gauge whether InsightOne was preferable to a traditional brokerage account. As one UBS document noted, a commissions-waived analysis "provides the most 'fair' comparison" for clients. [I/Oe 478978]. Management nonetheless refused to act, despite mounting evidence of suitability problems.

58. Between 2000 and 2002, senior managers, including Bursey, received regular briefings on the need to bolster InsightOne's compliance measures. Report after report showed enormous suitability problems. One UBS executive predicted in April 2001 that low-trading and high-cash accounts would "surface to the very top" of "problems [that were] getting worse, fastest." [UBS 45977]. But management was also aware that winnowing unsuitable accounts would hurt profitability. For example, one UBS study concluded that culling low trading accounts would reduce InsightOne's revenue per trade by at least 52%. Accordingly, management stalled.

59. In December 1999, UBS announced the creation of a "Low Velocity Report" to compare InsightOne fees to commissions waived, but the plan was not put into effect. In February 2000, the compliance department circulated a proposal for "[c]reation of a quarterly surveillance report that mimics the current PAA monthly exception report in order to identify InsightOne accounts that may have a low number of trades relative to the InsightOne fees charged." [UBS 49603]. The proposal was abandoned. In November 2000, InsightOne's program manager set forth a plan to notify Financial Advisors and branch managers of low-trading accounts. The idea went nowhere. In June 2001, UBS identified 1,363 accounts that should have triggered warning notices to branch managers. The notices were never sent. In August 2001, UBS considered a low trading report that would list accounts with two or fewer trades or whose revenue per trade was greater than $500. The report was not implemented. In 2002, UBS's compliance department, which was already using commissions-waived analyses for field audits, urged management to adopt them for InsightOne suitability guidelines. Management declined.

60. In December 2001, InsightOne's program manager commented that low trading guidelines had been an "open issue for a year now" with senior executives, including Bursey. The program manager noted that his supervisor had "not had much luck pushing [compliance efforts] along." [I/Oe 63906]. Over the next year, Bursey and other executives continued to defer compliance reforms. Guidelines were drafted but not distributed. Deadlines were set and ignored. Compliance metrics were considered and rejected. A prototype compliance report comparing fees paid to commissions waived was created in January 2002, but was ignored by management. Financial Advisors' pleas to implement such a commissions-waived report fell on deaf ears. As one employee noted, management kept the development of a commissions-waived

report "on the back burner" even though it was "doable." [I/Oe 23289]. UBS delayed implementation of a commissions-waived report until April 2004.

61. In contrast to UBS's sluggish pace of implementing compliance guidelines that might hurt profitability, UBS was lightning-fast in revising guidelines that might boost profits, like eliminating high-trading accounts. One document noted that reducing high-trading accounts had "priority" over eliminating low-trading and high-cash accounts. [UBS 45772]. Executives, including Sutton and Bursey, repeatedly ordered the swift removal of high-trading accounts. By 2002, UBS began applying its internal revenue-per-trade guideline for high-trading accounts that immediately expelled or increased the fees of 1,214 high-trading accounts. The driving concern was not clients' well-being, but profits. InsightOne's program manager explained that "excessive trading is an economic issue not a suitability issue …." [I/Oe 801233]. In other words, had low-trading accounts been unprofitable, they would have been swiftly eliminated from InsightOne.

2. Fall 2002 to Spring 2004: UBS Implements Ineffective Guidelines and Then Fails to Enforce Them

62. On or about November 15, 2002, UBS implemented InsightOne compliance guidelines (the "2002 Guidelines"), which finally mandated account reviews for low trading activity and high cash holdings. However, the new guidelines purposely kept many unsuitable accounts in InsightOne. For example, under the new guidelines, if an account fell below the 40% cash threshold for only one day per year, the account was not considered high-cash.

63. The 2002 Guidelines required quarterly reviews. If an account with fees below 2% had two or fewer trades over the prior year, the client would receive a notice. If, nine months later, the account had two or fewer trades over the prior 21-month period, it would be converted to a traditional RMA account. For accounts with fees above 2% and assets over $50,000, UBS

required at least nine trades take place over a six-month period. If this requirement was not met, then the Financial Advisor could either convert the account to an RMA or lower the fee to 2%, which could allow continued overcharging (*e.g.*, reducing the fee of an account with $400,000 in assets and five trades per year from 2.1% ($8,400) to 2.0% ($8,000) would still yield $1,600 per trade).

64. The InsightOne program was so overloaded with unsuitable accounts that even the inadequate 2002 Guidelines could capture a significant number of them. One study concluded that the guidelines would force 9% (or $374 million) of InsightOne assets to be removed by November 2003. UBS evaded this threat by failing to properly enforce the new guidelines. For the fourth quarter 2002 review period, UBS mailed clients notices nearly four weeks late. For the first and second quarters of 2003, UBS failed to send the notices at all, even though from March through September 2003 more than 10,000 accounts continued to violate the 2002 Guidelines. For these compliance failures (but profit successes), management scapegoated InsightOne's program manager, who was fired in January 2004. Clients, however, were not reimbursed for their continued excess payments and senior management received no reprimands or demotions.

3. Spring 2004 to Fall 2005: UBS Further Dilutes Its Guidelines

65. In November 2003, the NASD announced that member firms like UBS "must have reasonable grounds for believing that a fee-based program is appropriate for a particular customer" and suggested that firms "create reports that compare the asset-based fees to those that would have been generated in the same account on a commission basis." [http://www.nasd.com/RulesRegulation/NoticestoMembers/2003NoticestoMembers/NASDW_003078]. In response, UBS adopted new guidelines in April 2004 (the "2004 Guidelines").

66. As an initial matter, the 2004 Guidelines did nothing to remove InsightOne accounts with high concentrations of cash (they actually jettisoned the November 2002 restrictions on high-cash accounts) or no-load mutual funds. Further, many of the seeming improvements made in the 2004 Guidelines proved illusory. When a March 2004 review found that new low-trading guidelines would likely reduce InsightOne's assets by between 10% and 20%, UBS revised them to prevent such diminution in revenue.

67. For example, starting in December 2003, UBS planned to remove from InsightOne all Category I accounts – *i.e.*, accounts with fees to commissions-waived ratios of 140% or more over the prior 12 months. But UBS learned in mid-March 2004 that more than 10,500 accounts – representing almost one quarter of InsightOne's assets – landed "substantially outside the new guidelines." [UBS 48848]. Accordingly, UBS adjusted Category I to include only accounts with ratios of 200% or more.

68. In another example, UBS had previously treated each InsightOne account individually. The 2004 Guidelines, however, allowed the aggregation of active and inactive accounts for spouses, trusts and retirement plans, even though InsightOne's program manager had previously recognized that, where "a wife that trades frequently and a husband that does not trade at all[, t]he husband's single account is not suitable for InsightOne." [I/Oe 29512].

69. UBS also sought to reduce the number of Category I accounts through numerical gimmickry. A February 2004 review identified 12,300 low-trading accounts. Over the next month, 6,500 accounts were removed from the list by rejiggering UBS's definition of "unsuitable." One trick was to artificially inflate the value of the waived commissions by, among other things, crediting the "full rate commission" for stock trades even though commissions were typically discounted by 40% and UBS had admitted at the time that

discounted figures provide "a more accurate representation of what the client would actually pay in commissions in a standard brokerage account." [I/Oe 1260364]. Nor did UBS's analysis take into account breakpoint discounts that commission clients receive when making large purchases of mutual funds.

70. UBS also inflated waived commissions for mutual funds. In one gimmick, UBS began calculating the commission waived on no-load purchases at four percent, crediting commissions waived for commissions that would never actually have been charged.

71. In another ruse, UBS lengthened from 12 to 24 months its look-back period for commissions waived for fund purchases, even though the look-back for comparable InsightOne fees was only 12 months. This artifice removed 936 of 7,389 accounts from imminent termination.

72. In 2004, UBS also finally implemented a prescreening protocol, but this too suffered from glaring inadequacies. Rather than provide a bright-line suitability test, the determination as to whether prospective clients would incur "materially larger fees" than in a commission-based account was left to the discretion of the conflicted Financial Advisors. In addition, for prescreening purposes, UBS calculated projected commissions waived in the same artificially inflated manner that it used in the post-enrollment suitability analyses, thereby precluding accurate predictions of suitability.

73. Even after the inadequate 2004 Guidelines were adopted, they were further diluted. For example, the 2004 Guidelines originally required UBS to send a letter to clients with Category II accounts (which had commissions-waived ratios from 120% to 200% over the prior year), warning that if such an account remained in Category II for six more months, it would automatically convert to a traditional RMA brokerage account. This policy was later

weakened: instead of automatic conversion, UBS would merely re-review the account a full 12 months after the initial review.

74. Finally, to this day UBS continues to understate its commissions-waived ratios by refusing to use in its calculations the true commissions that the client would have actually paid in a traditional brokerage account. By utilizing unrealistic numbers untethered to real-world experience, UBS deceives its clients on the fundamental issue of which of its brokerage accounts is most suitable for the clients' needs.

C. UBS Allows Brokers to "Churn" Out of Its Compliance Guidelines

75. Any protection that UBS's ineffectual guidelines might have afforded its clientele was severely undercut by the firm's policy of inducing additional trading activity in otherwise low-trading accounts. During the first review under the 2002 Guidelines, Financial Advisors were notified in November 2002 of 11,959 low-trading and high-cash accounts. Instead of immediately informing clients that their trading activity fell below the guideline benchmarks, UBS urged branch managers and Financial Advisors to be proactive and encourage these clients to trade, thereby boosting numerous accounts over the compliance threshold and preventing their inclusion in the January mailing to clients. Indeed, contrary to the established rules (and logic), the review period was extended several weeks into January 2003 to allow additional trading (thereby enlarging the 12-month look-back period to almost 13 months).

76. The tactics worked. By late January 2003, UBS removed more than 5,700 accounts from the January mailing list, despite the compliance department's stated policy that "IO accounts that trade just prior to policy deadlines" were "potentially abusive situations." [UBS 45773].

77. UBS further circumvented the guidelines by giving some Financial Advisors the extraordinary power to send their own compliance letters to their clients. These Financial

Advisors repeatedly extended the 12-month look-back for an additional month or so (the timing was within the Financial Advisors' discretion), during which period they could convince clients to trade more and thereby surpass the compliance minimum. These Financial Advisors unilaterally decided which of their clients violated the guidelines, who should receive a letter, and when the letter should be sent. Thus, for the second quarter of 2003 which closed June 30, these Financial Advisors included additional trading for several weeks into July. For the third quarter, which closed September 30, the same Financial Advisors included trading well into October, during which time the Financial Advisors prevented 76 clients from receiving warning letters.

78. Furthermore, even clients who received letters were subject to churning. The low-trading letter did not explain that a client's inactivity was causing the client to pay more in fees than in a commission-based RMA account or would result in an automatic transfer to an RMA. Instead, the letter simply encouraged more trading:

> We suggest you discuss the effectiveness of your current asset allocation with your UBS Financial Advisor. This may be an opportune time to discuss reallocation strategies in light of your personal investment needs and financial objectives. [I/Oe 801461].

UBS failed to disclose that reallocation trading would likely boost the accounts above compliance minimums and prevent conversion to an RMA. Similarly, the high-cash letter deceptively encouraged "investing in certain short-term fixed income securities," without disclosing that clients' cash levels were causing them to pay more in fees than they would in an RMA and would soon result in automatic conversion to an RMA unless the cash was invested soon. [I/Oe 801462].

79. UBS internally acknowledged the churning. A communication among senior executives admitted that InsightOne's program manager:

> Allow[ed] FA to skirt policy requirements. ([He] allowed [the FA] to “trade out” of the requirement of sending low trading letters after the time period for counting trades but before the letters were sent. This included delaying the date for sending the letters in order to execute trades). [I/Oe 419673].

Despite this knowledge, in March 2004 UBS again attempted to circumvent impending mailings by sending Financial Advisors and managers advance notice of “inappropriate accounts” that would potentially fall into Category I during the April 2004 review. [UBS 48316, 48387]. Managers worked “to address problematic situations” with the 1,000 highest-revenue InsightOne accounts. [*See*, *e.g.*, UBS 48316]. UBS suggested that “corrective action can be taken on these accounts in order to remain in InsightOne.” [UBS 46494].

80. UBS took the same approach for the July 2004 Category II review. Financial Advisors received warnings more than two months before letters would be sent to clients. Management urged Financial Advisors to “consider an appropriate course of conduct that may be taken *before* the letters are sent in July.” [UBS 48733 (emphasis in original)].

81. Financial Advisors got the message. One Financial Advisor freely admitted that “now we have to trade heavy or light to stay within guidelines to keep insight-one alive …. How Wrong is that? You are not looking at the best interest of the client.” [I/Oe 149720]. He continued: “CONFLICT is all over this.” [*Id.* (emphasis in original)]. Another Financial Advisor explained to Bursey in October 2003: “[I]ncreasing transactions in order to comply with this new policy could be detrimental to many clients, which is not something we want to do. Fee based or not, increasing transactions for the sake of increasing transactions (not for the benefit of the client) is called churning.” [I/Oe 68744]. Despite all these questionable practices that could lead to unnecessary account activity, UBS never reviewed or investigated the appropriateness of client trades during these periods.

VI. UBS's Conduct Confirms the Deceptiveness of Its Marketing Statements

82. UBS attracted clients to InsightOne by promising them an advice-based account with sophisticated financial planning services and in which UBS and the client are "on the 'same side of the table'" and their "goals are aligned." [I/Oe 5453, 1233405, UBS 335]. These promises were misleading, deceptive and often untrue. As shown above, for example, UBS set up a system for InsightOne in which UBS's interests in fact often conflicted with its clients' interests. Regarding financial planning, the former InsightOne program manager commented that the services offered to most InsightOne clients "were some really simple calculators that you or I could do on the web …." Bursey admitted in testimony that "[s]ome of these things [*i.e.*, some financial planning services] we didn't really do" and that "I think we actually started having financial planning capability in '03," some four years after UBS began promoting it. Moreover, Financial Advisors found the tools cumbersome and poorly designed. Unsurprisingly, only a tiny fraction of all InsightOne clients ended up using these "services."

83. As shown in Section II, UBS plainly trained its Financial Advisors to sell InsightOne as an advice-based account with full advisory services. Further, UBS executives fully understood that Financial Advisors were in fact marketing InsightOne as an advisory account. One executive noted in January 2003: "We are getting lots of [emails] which tells me that the Financial Advisor's [*sic*] and [branch managers] don't truly understand the difference between this [InsightOne] account and an advisory account." [I/Oe 960491].[5] Given the way InsightOne was marketed to UBS's own sales force, this was not surprising.

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[5] UBS offered investors a selection of both non-advisory accounts (*e.g.*, RMA, PAA, Basic Investment Account) and advisory accounts (*e.g.*, PACE, PMP, SELECTIONS, ACCESS, MAC), each providing a different combination of products and services. Advisory accounts typically yielded UBS a higher return on assets than non-advisory accounts.

84. When asked: "Has it [InsightOne] ever been an advisory account?" a senior UBS executive testified unequivocally: "No." Similarly, Bursey also testified: "We never considered it [InsightOne] an advisory account." Indeed, UBS now admits that InsightOne was merely an ordinary brokerage account with an alternative pricing method and that InsightOne's higher fees paid for essentially the same services offered in UBS's standard RMA brokerage account.

85. UBS's internal treatment of InsightOne accounts confirms the deceptiveness of its sales rhetoric. For example, InsightOne accounts were not coded as advisory accounts; required forms for advisory accounts were not filed with the SEC; necessary compliance and quality oversight was not established; and appropriate training was not performed. Indeed, despite all the promises to InsightOne clients that they would receive expert advice regarding complex financial planning products and services, UBS did not require that InsightOne's "professional Financial Advisors" have any more degrees, licenses or certifications than other brokers. Nor did UBS give InsightOne Financial Advisors any greater substantive training than ordinary brokers or even ascertain that InsightOne Financial Advisors were well qualified to dispense advice on sophisticated financial matters.

86. Only after UBS came under regulatory scrutiny in late 2003 did the question of whether InsightOne was an advisory account draw any attention at UBS. One executive noted with concern that an InsightOne manual "suggests we're getting paid for advice not as a broker." [I/Oe 180749]. Accordingly, UBS began to inform its brokers that InsightOne was not an advisory account. One executive told a Financial Advisor in an August 2004 email: "I recognize the value of advice but that is not the basis of this program." [I/Oe 149719]. In response, the Financial Advisor demurred:

> [T]his was the basis of this program[;] it was sold to me and my clients that way. Would you like to see the marketing materials[?] The fee is consistent with the services. You

> define services as commissions only[;] the marketing materials define service as flexibility, advice, research. [*Id.*].

87. One Financial Advisor wrote to a senior UBS executive: "While I do not think we have been lied to by UBS (the jury is still out on that, though), we have certainly been misled." [I/Oe 954034]. According to this Financial Advisor, InsightOne was "touted in marketing materials as the right way to price an 'advisory' relationship. Now they seem to render the title 'Financial Advisor' obsolete." [*Id.*]. Branch managers also complained that InsightOne had been "sold as an advice account." [I/Oe 109312].

88. Internally, UBS executives admitted that the representations to clients had been misleading and deceptive. One executive conceded in a 2004 memorandum: "In fact, InsightOne was probably misunderstood and thus sold incorrectly." [I/Oe 550657]. In other words, UBS "sold" InsightOne "incorrectly" as an advisory account so that clients "misunderstood" what they were getting.

89. Despite this knowledge, UBS compounded the fraud by failing to disclose the deception to its clients and accept responsibility therefor. Instead, further breaching its duties to its clients, UBS attempted to sweep what one Financial Advisor called "the InsightOne mess" [I/Oe 954034] under the rug. UBS began a stealthy campaign to remove promises of advice from its marketing materials. For example, in December 2003, the InsightOne website still stated that InsightOne "gives you easy access to all the services, <u>advice</u>, and investment options you may need to help you meet your financial objectives." [I/Oe 1235642 (emphasis added)]. With no explanation, UBS subsequently deleted the word "advice." [*Id.*].

90. But even in 2004, some promotional literature still marketed InsightOne as an advisory account and some Financial Advisors still sold it that way. One Financial Advisor wrote a senior executive in January 2004: "I wanted to encourage our firm to look at our

InsightOne brochures and possibly take out the misleading information on the cover..…(ie: Advice, Flexibility and Service…..One Fee). [I/Oe 189106]. Another Financial Advisor wrote to a compliance officer in late January 2004: "My view of the I[nsight]One account is the client is paying me for my advice rather than a certain # of trades per year." [I/Oe 1236273].

FIRST CAUSE OF ACTION
(Gen. Bus. Law § 352-c(1))

The fraudulent and deceptive acts and practices of defendant set forth above violated section 352-c(1) of the General Business Law.

SECOND CAUSE OF ACTION
(Gen. Bus. Law § 352-c(2))

The acts and practices of defendant set forth above violated section 352-c(2) of the General Business Law, in that defendant engaged in an artifice, agreement, device or scheme to obtain money, profit or profit by a means prohibited by section 352-c of the General Business Law.

THIRD CAUSE OF ACTION
(Executive Law § 63(12))

The acts and practices of defendant set forth above violated section 63(12) of the Executive Law, in that defendant engaged in repeated fraudulent or illegal acts or otherwise demonstrated persistent fraud or illegality in the carrying on, conducting or transaction of a business.

FOURTH CAUSE OF ACTION
(Common Law Fraud)

The acts and practices of defendant alleged herein constitute actual and/or constructive fraud under the common law of the State of New York.

FIFTH CAUSE OF ACTION
(Breach of Fiduciary Duty)

The acts and practices of defendant alleged herein constitute a breach of fiduciary duty under the common law of the State of New York.

WHEREFORE, plaintiff demands judgment against defendant as follows:

A. That defendant be permanently restrained and enjoined from engaging in any fraudulent practices in violation of Article 23-A of the General Business Law or section § 63(12) of the Executive Law;

B. That defendant, pursuant to General Business Law § 353(3) and Executive Law § 63(12), disgorge profits obtained from the fraudulent practices; pay restitution of any monies obtained directly or indirectly from the fraudulent practices; and pay damages caused by the fraudulent practices complained of herein;

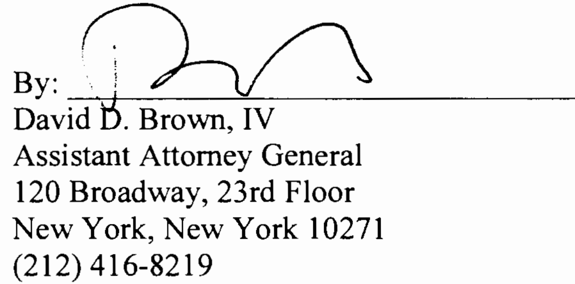
C. That defendant pay punitive damages;

D. That defendant pay costs and additional allowances in the maximum amount allowable under General Business Law § 353(1) and Civil Practice Law and Rules § 8303(a)(6); and

E. That the Court award such other and further relief to plaintiff as the Court may deem just and proper in the circumstances.

Dated: New York, New York
December 12, 2006

ELIOT SPITZER
Attorney General of the State of New York
Attorney for Plaintiff



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