

October 30, 2013

Excerpts from the 95 page decision issued by administrative judge Brenda Murray on the SEC case against Miguel A. Ferrer and Carlos J. Ortiz

Where the closed-end funds good investments for some investors during the 2008-2009 periods? p. 83

The persuasive evidence is that for certain investors during the relevant period the Funds were an attractive investment. They paid higher returns than other comparable investments, had significant tax advantages for Puerto Rico residents, consistently paid monthly interest, and had a dividend reinvestment policy that benefited investors. Tr. 2087, 2220; Ortiz Ex. 201 at 13-14. A key reason the Funds were attractive to investors is that they consistently paid high dividends even in periods of market imbalance. Tr. 152-53. For example, as of the end of October 2008, all the Funds were paying dividends of between 6% and 7%. Tr. 149-51. The Funds have never missed a dividend payment. Tr. 154. In 2008, Fund dividend yields were between 3.5% and 6.7%, and total returns were between -2.5% and 15.6%. Ortiz Ex. 282. Asset Management expected that “[d]ividends will continue to increase in relation to increased earnings.” Tr. 1313-14; Ferrer Ex. 628 at 9.

Ubinas, Belaval, and others were providing the same message as Ferrer – the Fund shares were a good investment for certain investors in 2008-2009. Belaval was not surprised by Ferrer’s many communications to the FAs during the relevant period, which “ask[ed] the sales force to focus on the funds, because [Ferrer] had a strong belief – as did I and, basically, all of [UBS PR] top management – that this particular point in time was a great opportunity for investors to be coming in.” Tr. 223. Price thought that 2009 was a good time to buy the Funds because the yields were superior to comparable financial instruments even on a taxable basis and on non-tax basis they were even more attractive. Tr. 2611-12. The testimony set out in the Facts shows that many of the FAs who testified advised their customers not to sell their Fund shares because they were a good investment.

Did UBS make misleading statements regarding the closed-end funds in Puerto Rico under its management during the 2008-2009 periods? p. 88 and p. 89

UBS PR did not make misrepresentations or omissions to customers or FAs in prospectuses, brochures, or other documents.

UBS PR did not make material misrepresentations or omissions to customers and FAs in 2008 and 2009.

Did UBS Puerto commit antifraud violations by making material misrepresentations to customers and FA's during the 2008-2009 periods? p. 91

For all these reasons, I find that the Division did not show that UBS PR committed antifraud violations by making material misrepresentations or omissions to customers and FAs by: (1) publishing a list of Fund prices in *El Vocero* and not disclosing that the prices included a 3% sales commission, were not trading prices, and that the prices often differed from what the Trading Desk offered; and (2) transmitting Fund prices that included indicative bids to another entity that used the information in customer account statements as “actual market values.”

Where UBS PR materials, prospectuses and literature on closed-end funds true? p.93

I find UBS PR's representations in its prospectuses, brochures, and literature to be true. UBS PR made a market in Fund shares to aid liquidity that it was not obligated to do. For a time in 2008 and 2009, the excess of supply over demand caused UBS PR to exercise the right that it had put everyone on notice it had, to cease buying Fund shares into inventory and to reduce share prices to sell inventory. Riskless Fund transactions continued, but the Risk Committee ordered an inventory reduction, which temporarily sidelined UBS PR as a buyer of Fund shares.

Is there any evidence that Miguel A. Ferrer and Carlos J. Ortiz engaged in a course to mislead investors?
p. 93

There is not one bit of evidence that UBS PR, Ferrer, and Ortiz engaged in a course of conduct to mislead or a scheme to mislead investors by hiding or disguising the fact that UBS PR was in a period when it was not buying Fund shares and was reducing Fund share prices. The Trading Desk did not, and could not, keep its activities secret. FAs knew what the Trading Desk was doing through the inventory sheets, in phone conversations with the Trading desk, in weekly sales meeting held in the branches, and communicated this information to customers. Every customer had to communicate with an FA to buy or sell Fund shares. The evidence shows some days on which indicative bids were posted for all 23 Funds, but the evidence is that trading activity in the Funds continued. As has been noted, Price, Ferrer, Ubinas, Belaval, and some FAs considered the Funds to be profitable, safe, and stable investments during this period.

Was the pricing of the Funds proper and legitimate in during the 2008-2009 periods? Pp.93-94

The record shows that the closed-end Fund market in Puerto Rico was unique, but that it was based on the peculiarities of that sui generis market. The Fund situation was odd compared to other securities in other markets, but the preponderance of the evidence is that in 2008-2009, there was a solid factual basis which showed the pricing of Fund shares to be proper and legitimate. For these reasons, I do not find that the preponderance of the evidence supports the

Division's allegation that UBS PR, Ferrer, and Ortiz engaged in a fraudulent course of conduct or a scheme to mislead customers and FAs when they represented the Funds as profitable, safe, and stable investments and that supply and demand were responsible for Fund prices.

Did Miguel A. Ferrer and Carlos J. Ortiz violate their fiduciary duty to clients when they lowered Fund prices below open customer orders to sell UBS PR shares in inventory first? p. 94

UBS PR, Ferrer, and Ortiz did not engage in a fraudulent course of conduct and scheme or mislead customers and FAs and violate their fiduciary duties to customers when they lowered Fund prices below open customer orders to sell UBS PR shares in inventory first.

Is there any remedial action in the Judge's order? p. 95

I find that no remedial action is appropriate pursuant to Section 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, and Section 9(b) of the Investment Company Act of 1940, and I ORDER that the proceeding is DISMISSED.