

COMMONWEALTH OF THE BAHAMAS  
2015/CLE/gen/No.01451  
IN THE SUPREME COURT  
2014/CLE/gen/No.01620  
COMMON LAW AND EQUITY SIDE

APR 23 2019

BETWEEN

JUNKANOO ESTATES LTD

First Plaintiff

YURI STAROSTENKO

Second Plaintiff

IRINA STAROSTENKO

Third Plaintiff

AND

UBS (Bahamas) LTD (In Voluntary Liquidation)

Defendant

(Actions and Counterclaims consolidated by Order of the Judge dated 4 November 2015)

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WITNESS-EXPERT STATEMENT

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1. I, Adrienne Toghraie, founder of "Trading On Target", located in - 12112 Hadden Hall Drive, Chesterfield VA 23838, USA, since 1989 [www.tradingontarget.com](http://www.tradingontarget.com)
2. I am a trader's coach, have worked with traders, brokers, and investors to assist them in achieving high levels of success. I have given talks and seminars all over the world on this subject. And have written 13 successful books on the discipline aspect of trading, such as "Trading on Target: How To Cultivate a Winner's State of Mind", "Winning Edge IV", "Traders' Secrets Psychological & Technical Analysis: Real People Becoming Successful Traders" (featuring interviews and studies of fourteen highly successful independent traders)
3. Among my clients are:
  - Traderbambu
  - Equis International
  - Trader's International
  - Futures & Options World Conference
  - Online Trading Academy
  - Technical Analysts Society World Conference
  - Click Events
  - International Futures Conference
  - Chicago Board of Trade



- New York Mercantile Exchange
  - Options Express
  - Technical Society Association
  - Chicago Mercantile Exchange
  - American Association of Individual Investors
  - Dow Jones Telerate Speaking Tour
  - DYR Conferences
  - Texas A & M
  - MAP Conference for CPA'S
  - Farmers Top Performance Conference
  - Market Technician's Association
  - Online Traders World Expo
  - Online Trading Academy
  - Omega Users Group
  - Aquila Energy
  - Association of Technical Analysis
  - Wealthpire
  - Alaron
  - Traders Accounting
4. In the early 1990s I was hired by UBS Switzerland to present my Top Performance Seminar and to work privately with their top traders to help them improve on their trading results. I found them fair and caring about both their employees and their customers.
  5. Therefore, I was negatively surprised when I was informed by emails of the harsh and out of industry standards services Yuri and Irina Starostenko, one of my clients in the Bahamas, received from UBS Bahamas.
  6. Just to give a history of my relationship with Yuri and Irina Starostenko: nine years ago, in the summer of 2010, Yuri Starostenko participated in the *Top Performance Seminar* in order to have the psychological tools necessary to execute trades on time.
  7. While the odds of being a successful trader are against most people who try to earn

money in this profession, those who make the right choices can earn exceptional profits for themselves and their clients.

8. Yuri Starostenko had the technical and the psychological skills to make professional trading a viable way to earn substantial profits. He proved that with the profits he did earn. Consider the gain of 1,200,000\$ in two months of 2009.
9. Yuri and Irina Starostenko are independent retail traders and not institutional employed traders. There is a notable difference in the operation of those two categories of traders. One traders' category lacks the knowledge to give expertise to the other category since they encounter different challenges, are supported differently and have different outcomes.
10. The two things all traders need in order to be consistent are an environment that supports good performance and trading capital. They should also expect normal business behaviors from banks. Such as: it is the normal part of business for traders to change stop losses or cancel the order after the order is placed.
11. Successful traders vary in style with the number of trades they take. From one trade per day/week/month to hundreds per day such as in the case of scalping and high frequency trading. Whatever their trading frequency traders must rely on industry standards for follow-up and execution in order to maintain their success.
12. From the emails provided to me by Yuri and Irina Starostenko, that as I informed, are included in the bundle of documents filed in the Supreme Court of the Bahamas for the trial, briefly, they amount to the following:
13. UBS refused to hold stop-losses overnight or when their offices closed and even suggested to trade without stop losses! Note, the email chain with email dated 19 August 2013 4:52 pm (this is outrageously risky and against all good trading practices)
14. UBS made wrong executions and sent tens of emails for just one order. And once Irina Starostenko complained, the threat to review mortgage conditions was made. Note, email chain dated 22 August 2013. Please also note UBS's email timed 4:04pm with blackmail to change conditions if she did not stop the complaints. (This is not customer service by anyone's standards)
15. Note, email dated 22 August 2013 timed 4:30 pm, with summary of complaints. In the same chain, lower, you may see the 13 minutes delays in executions. Which is not acceptable for securities with high volumes, after electronic trading implementation
16. UBS admitted they were late and often wrong. Note, email chain dated 23 August 2013 email timed 10:14 am. (So the follow-up by any bank should be to take responsibility by compensating for their wrong actions)
17. **Here are accepted market practices traders should expect:**
  - 17.1. - non-interference of brokers into the trader's activity

- 17.2. - maximum assistance from the brokers in terms of immediate executions and reporting: time and sale reports
  - 17.3. - time and sale reports will include all the dates according to exchange regulations. For NYSE, as for other major exchanges, it would include at least a number of clearinghouses, the registration number of the trade at the exchange and execution times with accuracy of seconds, if not of milliseconds
  - 17.4. - use of an electronic platform, often more than one, so the trader can choose
  - 17.5. - incentives for traders to increase the number of trades such as rebates in fees from exchanges for high volumes
  - 17.6. - moving entry and exit prices, stop losses is normal
  - 17.7. - orders are placed by phones only in case of an emergency
  - 17.8. - brokers are prohibited from interference with the traders trading style
  - 17.9. - margin calls are issued only if the value of assets falls below secured capital
  - 17.10. - the terms of margin calls are defined in brokers' terms and conditions and are respected.
  - 17.11. - DMA (Direct Market Access) is offered by many brokers and is not barred by minimum capital. If so, the clients are notified accordingly, before the relationship begins.
18. It is not clear why and plainly wrong that UBS decided to halt trading on 19 September 2013, contrary to their own terms and conditions.

**Conclusion**

With all the stress of UBS not fulfilling their agreement with Yuri and Irina Starostenko, they did not have this support, their activity was continuously disturbed, ended with wrong halt of trading and they should be compensated for their missed gains.

I believe that the facts stated in this witness statement are true.

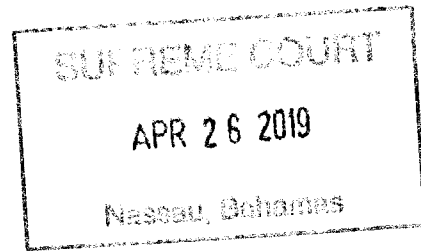


Adrienne Toghraie,

Traders' Coach

VIA EMAIL, 17th April 2019

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WITNESS-EXPERT STATEMENT

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1. I, Alex Krainer, resident in Monaco (Monte-Carlo), resident in Monaco (Monte-Carlo), resident at 4 bis Boulevard de Belgique, MC-98000 Monaco, author of the book "Mastering Uncertainty in Commodities Trading: Generating sustainable profits in forex, commodities and financial markets through trend following," am called as a witness in the above civil proceedings.
2. My education includes Associate in Science (Business Management) degree from Moorpark College in Moorpark, California (1990) and Bachelor of Science (Business Administration / Marketing) from the American College of Switzerland in Leysin, Switzerland. I've worked in oil trading since 1996 and in the hedge fund industry since 2004. I've actively traded stocks, bonds, currencies and financial and commodity futures since the late 1990s. I am currently employed at Altana Wealth S.A.M. - Monaco as a portfolio manager.
3. This Witness Statement is a statement of fact on such matters as (1) the handling and execution of clients' orders by UBS; (2) Client Relationship Management responsibility and other matters on which I am also qualified to give expert evidence.
4. The statements in this Witness Statement are made as a way of conveying relevant facts personally perceived from my experience as a hedge fund manager and obtained by me from information contained in the following documents, which were provided to me or extracts of the same provided, by Yuri and Irina Starostenko.
5. Index
  - 1-4 - Introduction
  - 5 - Index

6 - List of documents provided to me

7-9, 37, 38 - Evaluation of Starostenko potential performance

10-12, - Confirmation of Starostenko profit in August 2013

13-36 - Evidence of UBS' breaches in providing service, contrary to industry standards

39-68 Additional facts of UBS' failures and weaknesses

69-72 Conclusion

6. The documents, which are the basis for part of my statement, as I am informed now, filed in the trial bundle of documents for the Plaintiffs are the following [in square brackets are references to an electronic bundle within CaseLines]:
  - 6.1. Credit Suisse account statement January-March 2009 [1215-1223]
  - 6.2. Securities Industry Act, 2011 of the Bahamas (the "Act");[1224-1329]
  - 6.3. Dealing Procedure Manual UBS Capital Markets (CM) (Booking Center Bahamas) by Thibaud Halewyck, version V2, April 2013 (the "Manual");[1330- 1356]
  - 6.4. Email chain 16 July 2013 Irina Starostenko - UBS;[1357]
  - 6.5. Email chain 19 August 2013 Irina Starostenko - UBS;[1358-1363]
  - 6.6. Email chain 22 August 2013 Irina Starostenko - UBS;[1364-1375]
  - 6.7. Email chain 23 August 2013 Irina Starostenko - UBS;[1376-1379]
  - 6.8. Email 25 September 2013 Irina Starostenko - UBS;[1380-1381]
  - 6.9. Irina Starostenko's email sent on 9th October 2013, timed at 11:41 AM, to UBS Management with a sample of the track record and other performance information of the Yuri and Irina Starostenko between 9th to 17th September 2013 (the "Track Record Sample");[1382-1388]
  - 6.10. Irina Starostenko email - Virtual Trading -Stop loss 41.00 Re\_ Limit buy DUST 4K at 39.78 at 10.59 AM;[1389]
  - 6.11. Affidavit of Yuri Starostenko dated 2015-03-23 ("1st Yuri Affidavit");[1390-1565]
  - 6.12. RMG Consulting LLC (U.S.) Report dated 7th September 2015 (the "RMG Report");[1566-1582]
  - 6.13. Junkanoo et al. Statement of Claim filed on 14th November 2017 (the "Statement of Claim"); [16 - 207]

- 6.14. Securities Commission of The Bahamas (SCB) List of Recognised Examinations for Individuals To Perform Registrable Activities Pursuant to the Securities Industry Act, 2011, effective on 23rd January 2017 (the "SCB List of Recognised Examinations");[1583-1584]
- 6.15. UBS Amended Defence filed on 13th December 2018 (the "Defence");[1585-1633]
- 6.16. Affidavit 17 of Yuri Starostenko filed on 28th January 2019 ("17th Yuri Affidavit");[1634-1703]
- 6.17. Fifth Affidavit of Renate Raeber filed on 7th March 2019 ("Renate Affidavit");[1709-1798]
7. Yuri and Irina Starostenko are individual retail traders, who based their strategy on close monitoring of daily prices.
8. Paragraph 232 of the Statement of Claim reads: "*232. Past experience of Messrs Starostenko is the proof of profitability, from which lost profits may be estimated. They have a history of profitability as evidenced by the trading track record of net profit of USD\$1,147,418 or so on an investment account at Credit Suisse Branch in Nassau with an initial balance of USD\$360,312 in February 2009 and an interim balance of US\$1,507,730 in May 2009.*"
9. It is clear on the Credit Suisse Account Statement that Yui Starostenko and Irina Starostenko have a proven trading track record of profit of US\$1,147,418 or about in an investment account at Credit Suisse Branch in Nassau with an initial balance of US\$360,312 in the period of two months between February to May 2009. This result can prove that there was a serious basis to believe that Yuri and Irina Starostenko, employing certain strategies, discipline, and using adequate service would be able to make a significant profit.
10. Paragraph 35 of the Statement of Claim reads: "*35 In the course of business, the Company had made net profit per month of USD\$30,694 in August 2013, while UBS only partially compensated the Company for loss of profits sustained due to UBS' faults in the investment business by way of two (2) compensation payments for a total of USD\$3,110, as evidenced by the relevant reports sent to Messrs Starostenko by email timed at 11:59 AM on 1 August 2013 and email timed at 5:31 PM on 4 September 2013.*" This Is clear and plain confirmation, with the emails contained in "1st Yuri Affidavit"of:
11. Starostenko's net profit in August 2013 shown as a difference in account balance confirmed by UBS emails exhibited in 1st Yuri Affidavit under "Monthly Trading Profit", as follows:  
  
*UBS email Aug 1, 2013 at 11:59 AM reads: "The existing balance is USD 671,772.01"*

UBS email August 30, 2013 1:45 PM reads: "Monday you should see the below amended balance. Total: USD 702,465.96"

This deference represents the trading profit during one month..

12. Existence of two minor refunds of a total US\$3,110 material and undeniable recognition of breaches by UBS and for which Starostenko must be compensated fully and not only in minor part, especially considering the way UBS choose to "resolve" this contentious issue.
13. Paragraph 34 of the Defence reads, among other things: "34. ... *The Defendant avers that on 21 August 2013 it cancelled a sale of 1,000 shares of Direxion Shs ETF Trust Daily Gold Miners that it executed on behalf of the Plaintiffs at a price of 90.87 and resold those shares at a price of 92.50. Also on 26 August 2013 the Defendant cancelled a sale of 2,000 shares Direxion Shs ETF Trust Daily Gold Miners, executed on behalf of the Plaintiffs at a price of 95.947848 and resold those shares at 96.68. Both cancellations were done in order to ensure that the Defendant obtained the best execution possible on behalf of the Plaintiffs. The sales at the increased prices were reflected on the First Plaintiff's account statements for the period of July -December 2013. The deposits made to the First Plaintiffs account merely reflected the shares being resold at the increased prices.*" The words "the shares being resold at the increased price" is an undisputed confirmation of profit. It is another instance when the presence of such un-prepared staff in UBS is surprising. It seems that with her statement Ms. Raeber inviting us to participate in a conversation like:  $2+4 = 6$ , but 4 was not a gain, it was just increase?
14. From the email chain on 16 July 2013, the evidence is that UBS was:
  - 14.1. unprofessional in entering trade orders, UBS admitted "every time we put in orders we risk that we will mistake" - it is similar with a bus driver who would say: everytime I turn steering wheel, I risk incident. While Irina Starostenko justly pointed that change of order is just a click on the button. I am surprised to meet this grade of unprofessional staff in the front line of one of the biggest Institutions. This surely was unexpected for Starostenko, and unpredictable for any person with even a very minimal experience in finance. This built a basis for the damages that occurred and the successive accumulation of them.
  - 14.2. UBS' managers attitude towards client is overall unacceptable in the financial industry and similar more with detention center officer. This certainly created undesirable disturbance and damaged clients and of course not of industry standard, as well as not of standard of any human communication.
  - 14.3. UBS denied Direct Access, while it is an industry standard and contained in UBS' brochures, exhibited in "Ist Yuri Affidavit".
15. From the email chains of 19, 22 and 23 August, 2013, the evidence is that Starostenko were:



- 15.1. denied prompt executions
- 15.2. indulged in a heavy traffic of emails in order to simply obtain executions of their orders. This type of execution is not implemented since 90-s with the introduction of electronic trading. The phone is used to place trades only in emergency cases such as electricity shortages. The way Starostenko were induced to conduct their trading activity is out of industry standards
- 15.3. UBS complained of Starostenko changing orders and stop losses to often, but this is a standard industry practice and depends exclusively on the trader's style. Trades can be from a few a year to as many as hundreds a day, but no broker would interfere with trader's decision. Brokers will promptly assist and invite the trader to increase volumes, because exchanges offer rebate fees.
- 15.4. UBS even recommended to not use stop loss, which is a pillar in every trading strategy in order to protect capital and control eventual losses. It is out of industry standards and can be compared with advice to driving a car without breaks, or breaks function only during office hours.
- 15.5. UBS denied to place stop losses overnight or in hours when their office closes. The industry's modern standards 24/24.
- 15.6. UBS denied DMA (Direct Market Access), used di routine and advanced its request for a minimum capital of 5.0 mln\$ after 10 months of loan issue and client (Starostenko) already compromised.
- 15.7. UBS recognized its own failures and weakness in service but made no offer to recompense.
- 15.8. Starostenkos' complaint of this poor service resulted in the threat to change conditions of the mortgage if they will continue to complain.

This behaviour of UBS is out of industry standards. The banks-brokers would promptly refund should they fail in their duties of execution, would never interfere with traders' style of trading, and would provide expected service according to industry standards, some of which are mentioned above. It is a highly unexpected treatment from the operator of the size and reputation of UBS.

16. In paragraph 114 of the Statement of Claim it is stated, among other things: *"114. In the course of business, UBS only partially compensated the Company by way of two (2) compensation payments for a total amount of USD\$3,110 partially compensating the Company for loss of profit due to UBS' faults to comply with certain trading orders of the Company and take all reasonable steps and care to obtain the best possible result (or "best execution") on behalf of the Company either when executing trading orders or receiving and transmitting trading orders for execution ..."*
17. After the compensation, UBS did not modify its service and continued to create damages to Starostenko by proving late executions, as it is evident from the Track Record Sample in 7 trading sessions between 9th to 17th September 2013. The

Plaintiffs did not make a profit of US\$75,000 or about. The traders' orders prices included in the Track Record Sample are real time prices on NYSE at the time of order placing and as such would be executed at those prices if UBS had not failed in its duty of best execution.

18. In paragraph 112 the Statement of Claim states, among other things: *"112. The Company, at all material times was clearly making orders to trade (or "trading orders") and UBS failed to comply with certain trading orders of the Company and take all reasonable steps and care to obtain the best possible result (or "best execution") on behalf of the Company either when executing trading orders or receiving and transmitting trading orders for execution, thereby breaching the conditions of the Investment Agreement,"* followed by a description of 26 trading incidents of trade booking errors, trade capturing timing differences, and delayed pricing on the part of UBS's Nassau Branch.
19. In paragraph 113 the Statement of Claim states, among other things: *"113. By reason of the matters stated, on the basis of the records of trades set out as aforesaid, the Company suffered actual loss of profits in the total sum of USD\$137,977, which is the actual net profit which the Company lost due to the erosion of prices due to the faults of UBS either in executing trading orders or receiving and transmitting trading orders for execution, ... "*
20. In paragraph 115 the Statement of Claim states, among other things: *"115. ... on or about 18 September 2013 and 8 October 2013, orally, and, in writing, by email sent to UBS on 9 October 2013 timed at 11:35 AM, the Company demanded full compensation for losses, but UBS failed to compensate the Company fully and effect further compensation payments."*
21. Paragraph 109 of the Statement of Claim reads: *"190. On 19 September 2013, in response to the Company's demands to compensate it fully for the loss of profits sustained due to UBS' faults, UBS in breach of the condition precedent contained in a document constituting the Investment Agreement called "Depreciation in the value of your portfolio" Section of the "Margin Call - Close Out Process" Clause of the Terms and Conditions, issued "halt of trading" in effect on the investment account 32377, with a balance of USD\$589,362, and, acting unlawfully, required the Plaintiffs to provide money to bring the additional security in cash up to a sum of USD\$700,000 (margin call)"*
22. This margin call was contrary to UBS' Terms and Conditions, as it is read in paragraph 95.5 of the Statement of Claim: *"The "Depreciation in the value of your portfolio" Section of the "Margin Call - Close Out Process" clause of the Terms and Conditions, providing the condition precedent regarding the "margin call", which formed a contract between UBS and their clients, including the Company, applies to this Investment Agreement and reads: "If UBS observes that the value of the collateral securing the loan has declined, your UBS client advisor will contact you and request you to provide additional collateral (margin call) or to undertake other risk-mitigating measures."*

23. It is highly irregular that the margin call was issued to Starostenko, when:
- 23.1. net cash value was of USD\$589,362
  - 23.2. no position held - flat
  - 23.3. refunds in process of discussion of *USD\$137,977*, which would bring the total to *USD \$727,339*, which is *USD \$27,339* above the hypothetical minimum of *USD \$700,000*.
24. This is plainly wrong. The brokers margin policy is discussed upon opening of the account and maintained. It is a clear absurdity that the margin call was issued to the customers with a cash balance of *USD \$589,362* under the pretense to bring it to the hypothetical margin of *USD \$700,000*, when UBS was well aware of their own breaches, admitted weakness of service and should have concentrated on an immediate refund and worked on implementation of service.
25. Paragraph 222 of the Statement of Claim reads: "*Certain UBS officers or agents had conspired to bring about the collapse of the Plaintiffs by engineering a "default" by the Company, with regard to its borrowings from UBS, and in fact injured the interests of the Plaintiffs by dishonestly forcing them out of the investment business four (4) years before expiration of the Investment Agreement, leaving Messrs Starostenko without funds for their business and for life.*" From the evidence brought before me ( the Track record sample) and paragraphs above, this statement is confirmed.
26. Paragraph 222 of the Statement of Claim reads: "*222. The damages include loss of profits in the amount of USD\$59,520, the actual net profit which the Company lost due to the trades not carried out by UBS during the period from 19 September 2013 to 10 October 2013.*" From emails with trade orders not executed by UBS: 19 September 2013, 9 October 2013.
27. While the trade orders were not executed, the odds that Starostenko would make more or see a profit could be the same, but the one fact is evident - they were not in a position to make any profit due to UBS' wrongful issuing of the margin call and halt of trading. On the evidence, UBS' trade capture and processing systems displayed significant deficiencies. The systems' and controls' failings reveal serious weaknesses in the firm's procedures, management systems, and internal controls.
28. UBS failed to implement the best execution rule on the evidence of the facts of trading conducted by the Execution Desk in the Bahamas, a part of UBS Capital Markets (Booking Center Bahamas), between 12th June to 18th September 2013 as set out in 1st Yuri Affidavit and the Statement of Claim, at times employing up to 19 minutes for the receiving and transmission of an order for execution, as from Irina Starostenko's email sent on 9th October 2013, timed at 11:41.

29. As a result, the trades in question were not executed in a timely manner, while the difference between the best and worst execution are only a fraction of a second, the Plaintiffs reasonably did not receive prospected profits or even experienced losses.
30. UBS did not compare the quality of the execution obtained via their existing order routing and execution arrangements (including order-by-order review for the internalization of order flow) against the quality of execution they could have obtained from competing markets.
31. UBS failed to provide for the prompt, fair and expeditious execution of the Plaintiffs' orders in question while it was obliged to take into account the following execution factors: price; speed; likelihood of execution; size; and nature of financial instruments critically relevant to the execution of them, where the price merited a high relative importance in obtaining the best possible result.
32. Both MiFID and FINRA set forth market standards for order to execution time for securities traded on U.S. exchanges which are reportable and comparable under the U.S. Securities and Exchange Commission (SEC) Rule 605 (Best Execution).
33. According to the RMG Report under SEC Rule 605 (Best Execution) as of 2015:
  - 33.1. Execution times based on the executions as recorded by a firm's order management system: 1. Schwab – 0.12 seconds; 2. TD Ameritrade – 0.20 seconds; 3. Wells Fargo – 0.21 seconds.
  - 33.2. Percentage of Trades Price Improved: 1. Wells Fargo – 88% of trades price improved; 2. Schwab – 84% of trades price improved; 3. E-trade – 79% of trades price improved.
34. Amount of Price Improvement: 1. Interactive Brokers – \$0.0144 average price improvement; 2. Wells Fargo – \$0.0049 average price improvement; 3. Scottrade – \$0.0044 average price improvement.
35. Considering employed trading capital and an active style of the Plaintiffs' intraday trading this number is more than reasonable.
36. The fact of monthly profit of US\$30,694 in August 2013 is respectful, considering the non-market circumstances of Client Relationship Management in the Nassau Branch, please see below.
37. The Plaintiffs' monthly profit would be even greater had appropriate procedures for the handling and execution of clients' orders been implemented by UBS and manual interventions would be excluded by providing an electronic platform that would link the Plaintiffs directly with markets from their computer.
38. Monthly profit of US\$30,694 is more than an appropriate performance of the Plaintiffs to be included and utilized as a part of the historical composite performance record of their trading program up to the end of relationship with UBS.

39. In my opinion, the way in which compensations were made, the following variants of these trades were used by UBS (1) the off-market pricing of ETF trades and (2) amendments to the prices of these ETF trades, because it is wrong to assert that UBS ever had the power to cancel any transaction executed on the New York Stock Exchange (NYSE) rigorously regulated by NYSE Rule 128 (Clearly Erroneous Executions for NYSE Equities).
40. Paragraph 19 of the Statement of Claim reads: "19. UBS failed to perform their obligations imposed under the Investment Agreement, Statute Laws and the applicable regulations of The Bahamas and the U.S." And this statement now is fully confirmed by above mentioned evidences.
41. In conclusion, UBS's failure to serve the Plaintiffs' leveraged ETF trading and control the handling and execution of clients' orders over a period of only two and a half months resulted in the Plaintiffs' loss of profits in approximately US\$200,000 due to the unfit and improper conduct of business operations on the part of UBS which internal guidelines were either deficient or not properly implemented.
42. Paragraph 38 of the Statement of Claim reads: "38. On 9 October 2013, by email timed at 11:41 AM, Messrs Starostenko offered to pay in advance the amount of interest for the full term of the loan, i.e. upon 28 September 2017 from money in the sum of USD\$589,362 or about standing to the Company's credit in the investment account 32377; and that UBS failed to effect such payment;" This is another highly alarming decision by UBS management which to this day is not explained or confirmed by any substantial valid documentation and as such this refusal is another demonstration of UBS' malicious and oppressive behaviour.
43. Paragraph 42 of the Statement of Claim reads: "42. On 7 March 2014, UBS announced in the Nassau Guardian and the Tribune that they **"winding down the banking side of its operations over the next year"** making itself:  
42.1 no longer a going concern; and  
42.2 not available to be part of the investment business under the Investment Agreement, which was the root of the relationship between the parties.'
- Those facts are obvious and self evident - once UBS went in liquidation it was impossible to bring the contract to its expiration and provide service to execute trading activity. You can not sail on a dismantled boat.

#### **ADDITIONAL FACTS OF UBS' FAILURES AND WEAKNESSES**

44. Paragraph 2.2 Responsibilities of the Manual reads: "Responsibilities of the Execution Desk include receipt and execution of orders from: (1) Client Advisors; (2) Portfolio

*Management. In all cases, Client Relationship Management responsibility remains with the Markets / Client Advisors."*

45. Customer relationship management (CRM) refers to the principles, practices, and guidelines that an organization follows when interacting with its customers. Customer Relationship Manager Duties and Responsibilities: In one of their most important roles, customer relationship managers are the face of their company to clients and customers. Customer relationship managers must address any customer issues and problems. Ultimately, CRM serves to enhance the customer's overall experience.
46. I believe that my evidence is admissible to prove the existence of duties and obligations on the part of UBS's Nassau Branch under the European Parliament and the Council of 21 April 2004 on Markets in Financial Instruments and any implementing directives and local regulations (MiFID Best Execution) and the FINRA Rule 5310 (Best Execution and Interpositioning).
47. The losses in the form of lack of profit were incurred on leveraged Exchange Traded Funds (ETFs) trades received, handled, routed, and executed by the UBS Capital Markets' Execution Desk (Booking Center Bahamas) on behalf of Junkanoo Estates Ltd., Irina and Yuri Starostenko, between 12th June to 18th September 2013 when the bank had encountered evident challenges with meeting its duty of best execution in trading.
48. In paragraph 2, Organisation and Responsibilities, of the Manual it states, among other things: *"The execution desk in the Bahamas is part of Capital Markets."*
49. According to the Bloomberg website, UBS Capital Markets L.P, 111 Pavonia Avenue East, Jersey City, NJ 07310, United States, founded in 1967, provides brokerage and trade execution services to institutions and broker-dealers. The firm trades in New York, America, Boston, and Chicago stock exchanges. It offers market making, equities trading, order handling, agency trading, online trading and reports, and institutional research services. As of October 29th, 2004, UBS Capital Markets L.P operates as a subsidiary of UBS Americas, Inc., Wilmington, Delaware, USA.
50. According to UBS AG' annual report for the year ending on 31st December 2013, filed with the U.S. Securities and Exchange Commission (SEC) on 14th April 2014, UBS Americas, Inc. is one of the UBS Group's individually significant subsidiaries as of 31st December 2013, part of the Investment Bank business division.
51. In sub-paragraph 2.1 the Manual reads: *"The current business model still relies on some intensive progresses and manual interventions due to limitations in our IT infrastructure."*
52. The Plaintiffs were promised access to an electronic platform for orders' submission, according to industry standards - all traders are routinely offered a choice among different electronic platforms in order to satisfy their trading strategies and styles. UBS is among the industry leaders and was naturally expected to offer highest quality of available trading platform. If that promise would materialise, delays in the

execution would be eliminated. According to the UBS website, KeyTrader is a tool for professional users that links you directly with the trading rooms of UBS Investment Bank and allows you to pass orders directly to over 50 international stock markets from your computer, host, or order management system.

53. In sub-paragraph 3.4 the Manual reads: "*Orders will be accepted by the Execution Desk from Client Advisors and Investment Management using: (1) The Order Entry System (OES) for non-derivative products; (2) Paper Tickets for derivative products and time-sensitive orders where the security is not open in OES.*"
54. On the facts of Renate Affidavit and 17th Yuri Affidavit, showing the expired licenses of five individuals involved in assisting trading activity of the Plaintiffs. In particular, according to the Act, after 2011 only an individual having ten years of specific experience or recognized examination, would be qualified to be licensed as a trading representative.
55. The level of competence and education of the Client Advisors failed to meet the standards prescribed in the securities policies of the Bahamas such as, for example, the "SCB List of Recognised Examinations" with regard to the education, examination papers or other proof of exams approved by overseas authorities recognized by the SCB assessing the competence to perform functions similar to those of a Trading Representative, or securities-related experience necessary to meet the appropriate standard of care and diligence customary in securities business.
56. On the evidence, the Client Advisors' poor understanding of trading in general and the high volatility leveraged ETF trading in particular meant that they were not in a position to render proper services to the traders in the leveraged ETFs.
57. The failure to respond to policies and guidelines of the regulator contributed to low quality of services and deficient Client Relationship Management, both conducted in an unfit and improper manner lacking the due skill, care and diligence.
58. On the facts of 1st Yuri Affidavit, within UBS' Nassau Branch, it was well known amongst Client Advisors that the Execution Desk created a lot of reconciliation breaks, often due to late or misbooked trades.
59. On the evidence given in 17th Yuri Affidavit, the execution process proved to be ineffective and the Plaintiffs complained to UBS' Nassau Branch Management indicating widespread deficiencies across the Execution Desk's execution and Client Relationship Management environments, but no reviews were carried out before the ETF trading of the Plaintiffs stopped by UBS.
60. In sub-paragraph 3.4.1 the Manual reads, among other things: "*3.4.1 The majority of orders must be entered via OES on a timely basis. After an order is entered into OES by the Client Advisor, the order is routed to the Execution Desk electronically. The time of order entry is retained by the OES system. STP [Straight Through Processing] via Osmosys. STP trades are executed via Osmosys Tool. Equities, Bonds, Equity Funds and some Fixed Income Structured Products are STP eligible. Equities have a*"

*STP limit of US\$200,000".*

61. STP of trades is an internal Straight Through Processing (internal STP) within the UBS group encouraging branches of UBS to work together to improve the quality of the automation of transaction information between themselves, bilaterally rather than as a community of other users (external STP) participating in the financial markets such as exchanges, brokers, clearing facilities, depositories etc.; and the procedure, as described above, is not appropriate to handle highly volatile financial instruments as triple leveraged ETFs.
62. For the orders of value of more than *US\$189,000* the Manual provides the procedure for "Non STP" starting: *"These orders are time stamped by CM when 'placed with broker'."* and *"When executed, the orders are enriched by CM and forwarded to Operations for settlement. CM maintains an OES print screen of all orders that are manually executed and these are filed with the daily trades."* 3.4.2 *General Execution Desk Order Procedures using Paper Tickets:* *"In exceptional circumstances, orders are received by internal e-mail. For securities, upon receipt of the confirmation of a trade execution from a broker (or an electronic notification of an execution via KeyTrader), the CM Execution Desk will enrich the order with execution details in OES. The trade will then be forwarded to Operations for further enrichment."*
63. The procedure for "Non STP", as described above, is even more inappropriate to handle highly volatile financial instruments as triple leveraged ETFs, because it provides an extremely long time for the receiving and transmission of an order.
64. The Manual in sub-paragraph 3.5.4 *Trade Execution Priority* provides: *"Consistent with their duty to obtain Best Execution it is the Execution Desk policy to handle all clients orders fairly and in due turn with care and professionalism. Trades will be executed in the order they are received (first-in), unless exceptional circumstances require a re-ordering, all actions being subject to the best interests of our clients and subject to the general code of practice below."*
65. UBS, as UBS AG's Investment Bank, was required under the Directive 2004/39/EC of the European Parliament and the Council of 21 April 2004 on Markets in Financial Instruments and any implementing directives and local regulations (MiFID):
  - 65.1. to take all steps necessary to obtain the best possible result (best execution) on behalf of its clients either when executing client Orders or receiving and transmitting Orders for execution;
  - 65.2. to execute Orders from its clients in a prompt, fair and expeditious manner;
  - 65.3. to provide appropriate information to its clients on its order execution policy.
66. As soon as all transactions took place on the New York Stock Exchange (NYSE), UBS Capital Markets were required under the FINRA Rule 5310 (Best Execution and Interpositioning) in any transaction for or with a customer, among other things, (1) to use reasonable diligence to ascertain the best market for the subject security and buy



or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions; and (2) must make every effort to execute a marketable customer order that it receives for the purpose of facilitating the handling and execution fully and promptly.

67. It is imperative that UBS has suitable systems and controls in place to implement the best execution rules, but UBS' Nassau Branch, at least in 2013, fell short in this regard.
  - 67.1. In particular, I observed that UBS did not comply with the both FINRA Rule 5310 (Best Execution and Interpositioning) and MiFID (Best Execution) because it relied upon deficient procedures, which did not provide for highly volatile financial instruments such as triple leveraged ETFs.
  - 67.2. UBS failed to assure that order flow was directed to markets in a timely manner, providing the most beneficial terms for the Plaintiffs' orders.
68. I am concerned that UBS allowed conflicts of interest relating to financial benefits from routing orders to a particular third party, the UBS Investment Bank, to adversely affect the results and objectivity of their regular and rigorous review to be conducted under the FINRA Rule 5310 (Best Execution and Interpositioning), including, among other things, speed of execution, price improvement and the likelihood of execution of limit orders.

#### **CONCLUSION**

69. Briefly, from the all stated above the events are:
  - 69.1. UBS committed a long chain of breaches in promised service,
  - 69.2. it has in its own structure weaknesses but instead of recompensing the client, preferred to oppress them;
  - 69.3. UBS refused access to standard trading tools;
  - 69.4. Instead of refunding for late executions, UBS wrongly issued a margin call;
  - 69.5. UBS refused to have interests prepaid;
  - 69.6. 18 Months after the contract initiation, UBS declared its decision to go in liquidation;
70. Should Starostenko have known about UBS' lack of service in the Bahamas, had they been notified of absence of an electronic platform, high limit of DMA not reachable for them, that their trades would be executed by un-prepared staff with delays of up to 20 minutes, that for execution of one trade they would have to call and send numerous emails, that in response to their complaint UBS would pretend for the minimum of US\$700,000, it is hardly imaginable that they they would enter this agreement.

71. Should they choose to direct their investment elsewhere and considering the markets strong movement up since 2012, a significant profit would be more than probable. The is only one certainty - Starostenko were induced into an unfair agreement by omissions and misrepresentations, treated out of industry standards, maliciously oppressed.
72. I believe UBS' misconduct was all the more serious because of the orchestrated attempts to financially kill the traders who took a loan from the bank for the purpose of trading within one of the most prestigious financial institutions but were deceived and almost financially broken due to poor service of their trading.

I believe that Starostenko were induced into a six year litigation, with their children grown under this hardship, and they are now entitled to receive full and immediate compensation.

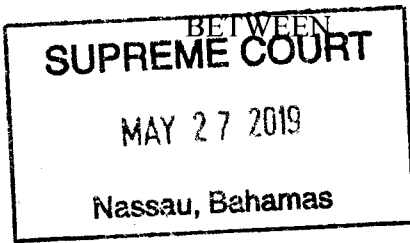
I believe that the facts stated in this witness statement are true.

VIA EMAIL

.... 25 April 2019



Alex Krainer



JUNKANOO ESTATES LTD

First Plaintiff

YURI STAROSTENKO

Second Plaintiff

IRINA STAROSTENKO

Third Plaintiff

AND

UBS (Bahamas) LTD (In Voluntary Liquidation)

Defendant

(Actions and Counterclaims consolidated by Order of the Judge dated 4 November 2015)

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EXPERT REPORT

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**Introduction**

1. I, Muhammad Zakir, resident of 6080 Monterey Road, Apt. 207, San Jose, California, 95138, USA, Area Technical Manager in the field of enterprise engineering software, am called as an expert in the above civil proceedings.
2. I am an expert witness independently instructed by the Plaintiffs in the above action who, collectively, was a retail client of the Defendant and a market participant within the meaning of the words in Securities regulation in the United States, the field of U.S. law that covers transactions and other dealings with securities.
3. The Defendant in the above action is a professional financial services provider and a wholly owned subsidiary of UBS AG, who is a well-known seasoned issuer, as defined in Rule 405 of Securities Act of 1934, the Securities Act which regulates offers and sales of securities in the United States.
4. My experience and technical qualifications are that I have experience in trading financial markets for a time period of 16 years, with an understanding of complex securities and sophisticated strategies involving stock, equity options, and index and commodity futures through numerous brokerages. This interest and active involvement in the area of trading has accompanied my professional duties as an engineer and engineering manager, motivating me to also maintain an online blog related to market/trading insights (<http://dtowntrader.blogspot.com>).

Other professional qualifications include the following collegiate and graduate degrees:

Bachelor of Science, College of Engineering, Cornell University (2001)

Masters of Engineering, Electrical and Computer Engineering, College of

Engineering, Cornell University (2002)

5. This expert evidence is evidence as to matters of a technical nature and include the opinion on the matter of market data on trades that have been executed on the New York Stock Exchange (NYSE) on which I am qualified to give expert evidence.
6. I believe (1) that my expert evidence is admissible to prove the existence of any public or general right; (2) that the Supreme Court of the Commonwealth of The Bahamas seeking assistance to do justice between the parties in this case, where complex, technical matters are in issue, will receive and give the detailed reliance on it in the above civil proceedings; and that (3) any points arising from such evidence can be dealt with by the judge on an application or at the pre trial review.

***Factual Material***

7. It is made as a way of conveying relevant facts personally perceived by me from the factual material used for my assessment, and more particularly:
  - 7.1. the Defendant's Dealing Procedure Manual UBS Capital Markets (CM) (Booking Center Bahamas) by Thibaud Halewyck, version V2, April 2013 (the "Manual");
  - 7.2. UBS AG' annual and transition report for the year ended 31st December 2013, filed with the U.S. Securities and Exchange Commission (SEC) on 14th April 2014, acc-no: 0001193125-14-099050 (the "2013 Annual Report");
  - 7.3. an email sent by Irina Starostenko on 20th December 2013 timed at 15:54 to the office of Group Chief Executive Officer Sergio Ermotti, with the information of a misconduct in ETF trading conducted on a behalf of a client, Junkanoo Estates Ltd., in which numerous employees and senior managers of the Nassau Branch were involved between 12th June to 18th September 2013;
  - 7.4. the Plaintiffs' Statement of Claim filed on 14th November 2017 (the "Statement of Claim");
  - 7.5. the Defendant's Amended Defence filed on 13th December 2018 (the "Amended Defence");
  - 7.6. the Plaintiffs' 17th Affidavit of Yuri Starostenko filed on 28th January 2019 ("17th Affidavit");
  - 7.7. the Defendant's Fifth Affidavit of Renate Raeber filed on 7th March 2019 ("Fifth Affidavit").
8. Paragraph 2 of the Manual states:

*2 Organisation and Responsibilities*

*"The execution desk in the Bahamas is part of Capital Markets."*

## *2.1 Current Business Model*

*“The current business model still relies on some intensive progresses and manual interventions due to limitations in out IT infrastructure.”*

## *2.2 Responsibilities*

*“Responsibilities of the Execution Desk include receipt and execution of orders from:*

- Client Advisors*
- Portfolio Management*

*In all cases, Client Relationship Management responsibility remains with the Markets / Client Advisors [CAs]”*

9. According to the Bloomberg website, UBS Capital Markets L.P, 111 Pavonia Avenue East, Jersey City, NJ 07310, United States, founded in 1967, provides brokerage and trade execution services to institutions and broker-dealers. The firm trades in New York, American, Boston, and Chicago stock exchanges. It offers market making, equities trading, order handling, agency trading, online trading and reports, and institutional research services. As of October 29th, 2004, UBS Capital Markets L.P operates as a subsidiary of UBS Americas, Inc., Wilmington, Delaware, USA.
10. According to the 2013 Annual Report, UBS Americas, Inc. is one of the UBS Group’s individually significant subsidiaries as of 31st December 2013, part of the Investment Bank business division.
11. Paragraph 3 of the Manual states:

### *3 Securities*

#### *3.1 Wealth Management Securities Dealing Policy Statement*

*“Within UBS Wealth Management in the Bahamas, there is centralised Execution Desk function for all securities transactions.*

*The Execution Desk places all market orders in any instrument type with UBS Investment Bank or with any approved third party broker, by phone, by ‘chat’ or other reliable medium.”*

#### *3.2 Exceptions / Special Situations*

##### *3.2.1 Investment Management:*

*“These procedures assume that IM [Investment Management] has satisfied its fiduciary duty, including the duty to treat clients fairly and equitably in making investment decisions on behalf of various accounts in accordance with clients’ investment objectives and policies.”*

### 3.2.5 Riskless Principal trades:

*"The Execution Desk will only execute orders on the basis of riskless principal, upon receipt of the commitment in the electronic ticket from CA [Client Advisor], advising that margin to be taken."*

### 3.4 Orders

*Orders will be accepted by the Execution Desk from Client Advisors and Investment Management using:*

- *The Order Entry System (OES) for non-derivative products*
- *Paper Tickets for derivative products and time-sensitive orders where the security is not open in OES*

*3.4.1 The majority of orders must be entered via OES on a timely basis. After an order is entered into OES by the Client Advisor, the order is routed to the Execution Desk electronically. The time of order entry is retained by the OES system.*

*STP [Straight Through Processing] via Osmosys*

*STP trades are executed via Osmosys Tool. Equities, Bonds, Equity Funds and some Fixed Income Structured Products are STP eligible.*

*Equities have a STP limit of USD 200,000"*

*"Unless a trading text is in the ticket or the order exceeds the above limits, the orders are directly routed for execution to UBS IB [Investment Bank]"*

*"UBS Investment Bank is responsible for best execution. The trade details are fed back into OES from KeyTrader. Orders that exceed the above mentioned limits in Osmosys are managed by the CM Execution Desk."*

*"Non STP"*

*"These orders are time stamped by CM when 'placed with broker'."*

*"When executed, the orders are enriched by CM and forwarded to Operations for settlement. CM maintains an OES print screen of all orders that are manually executed and these are filed with the daily trades."*

### 3.4.2 General Execution Desk Order Procedures using Paper Tickets

*"In exceptional circumstances, orders are received by internal e-mail."*

*For securities, upon receipt of the confirmation of a trade execution from a broker (or an electronic notification of an execution via KeyTrader), the CM Execution Desk will enrich the order with execution details in OES. The trade will then be forwarded to Operations for further enrichment."*

### 3.4.10 Cancellation of Orders

*"The CA [Client Advisor] is responsible for the management of STP orders and should contact the Execution Desk if a request is not acknowledged by the system to confirm the order status."*

*"Please note that the Execution Desk has no authorization or means to cancel client securities orders within OES at its own discretion."*

### 3.5 Trade Execution

#### 3.5.3 Broker Selection

*"The Execution desk will place orders with UBS Investment Bank for all Products except for Bonds, equities (on exceptional basis) and Structured Products."*

#### 3.5.4 Trade Execution Priority

*"Consistent with their duty to obtain Best Execution it is the Execution Desk policy to handle all clients orders fairly and in due turn with care and professionalism. Trades will be executed in the order they are received (first-in), unless exceptional circumstances require a re-ordering, all actions being subject to the best interests of our clients and subject to the general code of practice below."*

12. Paragraph 4 of the Statement of Claim states, among other things:

*"4. This Statement of Claim is issued with a genuine intention of pursuing the aforesaid claims for the following purposes of:*

*"4.3. obtaining particulars of broker's contract notes and material proof of funds passing through UBS' hands under trading contracts of the Plaintiffs at the New York Stock Exchange (NYSE);*

*4.5. enabling court orders for the purposes of investigations by prosecution and regulatory authorities;*

*4.6. being used in The Bahamas, in the United States, in United Kingdom and elsewhere;*

*4.7. commencing further proceedings, including criminal, class and group litigation proceedings;*

*4.8. reporting attempts to mislead the civil court and the other parties, competing and conflicting public interests, the illegal or unlawful conduct to the relevant prosecuting authorities;*

4.10. promoting the public interest in the prosecution of crime that is unrelated to the conduct of the relevant civil proceedings that:

4.10.1. a civil court should have all relevant information before it;"

13. Paragraphs 71 to 72 of the Statement of Claim state:

"71. UBS [the Defendant], at all material times, was the agent of UBS AG and UBS Financial Services Inc in respect of the business of dealing in U.S. Securities listed on the major U.S. securities market, the New York Stock Exchange (NYSE) on and subject to their disclosures which formed contracts between UBS and their clients, including the Company [Junkanoo Estates Ltd., the First Plaintiff]" (Square brackets added)

"72. A special feature of UBS' involvement in relationship with the Plaintiffs was that financial services for purposes of the investment business will be provided by UBS in accordance with a Disclosure of UBS Financial Services Inc called "important account related information" on the basis that:

72.1. UBS and UBS Financial Services Inc both are wholly-owned subsidiaries of UBS AG giving "access to products and services offered by the UBS Group as well as by selected third parties worldwide through our open architecture approach"; and

72.2. Head of UBS' Trading Desk, Mr Kevin L Price, according to the U.S. FINRA BrokerCheck Report KEVIN LEE PRICE CRD# 2159039 Report# 66539-83561, data current as of Friday, September 04, 2015, which reads, inter alia:

72.2.1. The broker previously was registered with the following firms:

72.2.1.1. "01/2010 - 10/2014 UBS FINANCIAL SERVICES INC. CRD# 8174 WEEHAWKEN, NJ;

72.2.1.2. 12/1994 - 08/1998 BERNARD L. MADOFF CRD# 2625 NEW YORK, NY"; and

72.2.2. an individual broker's employment history as reported by the individual broker on the most recently filed Form U4:

72.2.2.1. "01/2010 - Present UBS FINANCIAL SERVICES INC. WEEHAWKEN, NJ

72.2.2.2. 12/2002 - Present UBS BAHAMAS LTD. NASSAU, BAHAMAS""

14. Paragraph 77 of the Statement of Claim states:



*"77. Claim No. 1 against UBS is for breach of contract, promise or breach of trust and for non-performance by UBS of its contractual obligations under an agreement, based on compensation of pecuniary loss of profits, resulting from UBS' breach of this agreement, according to which UBS acted as the agent for reward of the Company and carried out transactions of sale or purchase of securities on behalf of the Company at the New York Stock Exchange (NYSE)."*

15. Paragraph 85 of the Statement of Claim states:

*"85. In the course of the business, on or about 10 August 2012, UBS entered into the Investment Agreement with the Company by which UBS was appointed and instructed by the Company to act as an agent for reward and carry out transactions of sale or purchase of U.S. Securities listed on the major U.S. securities market, the New York Stock Exchange (NYSE) on behalf of the Company, and UBS agreed."*

16. Paragraph 128 of the Statement of Claim states:

*"128. In the premises, UBS owed to the Company a contractual or statutory or tortious or fiduciary duty to exercise reasonable care and skill in and about executing trading orders of the Company to buy or sell U.S. Securities on the New York Stock Exchange (NYSE), thereby UBS' breaches as aforesaid entitle the Company to both general and special damages."*

17. Paragraph 136 of the Statement of Claim states:

*"136. The second and thirds Plaintiffs claim against UBS specific performance for breach:*

*136.1 statutory duty and obligations, which were intended to confer rights of action upon a class of persons of whom the Plaintiffs are one and may suffer an injury or damage of a kind against which the statute was designed to give protection;*

*136.2 contractual obligations under an agreement between the Company and UBS, according to which UBS acted as the agent for reward of the Company and carried out or purportedly carried out the sale or purchase transactions in the market on behalf of the Company related to dealings in U.S. Securities listed on the New York Stock Exchange (NYSE) and had to provide, inter alia, regulated markets data reporting service and deliver to the Company a Member Broker's or Designated Market Maker's (DMM) contract note of each transaction of any sale or purchase (or trade) executed by UBS and recorded through the New York Stock Exchange (NYSE)."*

18. Paragraphs 148 to 150 of the Statement of Claim state:

*“148. In the instant case UBS carried out transactions in U.S. Securities represented an asset class called “exchange-traded funds” which took place at the NYSE, an American Stock Exchange on Wall Street in New York City, the world’s largest stock exchange regulated by the Securities and Exchange Commission (or SEC).”*

*“149. The NYSE holds five regulated markets, including the New York Stock Exchange, Arca, MKT and Amex Options. On the NYSE, investors can trade several major asset classes: equities, options, exchange-traded funds (NYSE Arca) and bonds.”*

*“150. Listing of securities on the NYSE is done in accordance with the U.S. securities regulations and the financial industry standards, the Rules and the Byelaws of the NYSE and the regulatory instruments of the U.S. clearing facilities, the Depository Trust Company (DTC) and the National Securities Clearing Corporation (NSCC).”*

19. Paragraph 172 of the Statement of Claim states:

*“172. In the premises, UBS owed to the Company a contractual or statutory or tortious or fiduciary duty to exercise reasonable care and skill in and about executing trading orders of the Company to buy or sell U.S. Securities on the New York Stock Exchange (NYSE) with recording of the trades executed on the NYSE, thereby UBS’ breaches as aforesaid entitle Messrs Starostenko to receive NYSE’s Member broker’s (or DMM’s) contract notes of the trades recorded through the NYSE.”*

20. Paragraphs 175 to 176 of the Statement of Claim state:

*“175. In the premises, the Company is entitled to an order for specific performance by UBS in respect of the sales and purchases of securities executed or purportedly executed on the New York Stock Exchange in the period from 12 June 2013 to 18 September 2013 on behalf of the Company under the Investment Agreement, that UBS provides:*

*175.1 (1) the broker’s (or Designated Market Maker’s) contract notes produced by Member firms or license holders of the New York Stock Exchange in accordance with the regulatory instruments of the NYSE, referred to in Section 72 of the Securities Industry Regulations, 2012, the Statute Law of The Bahamas; and*

*176.1 (2) material proof of funds passing through UBS’ hands under trading contracts of the Plaintiffs at the New York Stock Exchange (NYSE) in consequence of purchase transactions executed on behalf of the Company from 12 June 2013 to 18 September 2013 and delivered the aforesaid Member firms or license holders of the New York Stock Exchange (NYSE) in accordance with the regulatory instruments of the*

*NYSE and U.S. clearing facilities, the Depository Trust Company (DTC) and the National Securities Clearing Corporation (NSCC), referred to in Section 77 of the Securities Industry Regulations, 2012, the Statute Law of The Bahamas.”*

*“176. This is on the basis that UBS, UBS AG or UBS Financial Services Inc were and remain liable to fulfill this legal duty which they were bound to do in the first place.”*

21. Paragraph 194 of the Statement of Claim states:

*“194. In the premises, UBS owed to Messrs Starostenko statutory or tortious or fiduciary duty to exercise reasonable care and skill in and about executing trading orders of the Company to buy or sell U.S. Securities on the New York Stock Exchange (NYSE), thereby UBS’ breaches as aforesaid entitle the Company to both general and special damages.”*

22. Paragraph 200 of the Statement of Claim states:

*“200. Claim No. 4 against UBS is for breach of contract, promise or breach of trust and for non-performance by UBS of its contractual obligations under an agreement, based on compensation of loss of actual and further profits, resulting from UBS’ breach of this agreement, according to which UBS acted as an agent for reward of the Company and failed to carry out certain transactions of sale or purchase of securities on behalf of the Company at the New York Stock Exchange.”*

23. Paragraph 275 of the Statement of Claim states:

*“275. In the premises, UBS owed to the Company a contractual or statutory or tortious or fiduciary duty to exercise reasonable care and skill in and about executing trading orders of the Company to buy or sell U.S. Securities on the New York Stock Exchange (NYSE), thereby UBS’ breaches as aforesaid entitle the Company to both general and special damages.”*

24. Sub-paragraph 394.7 of the Statement of Claim states:

*“394.7. that UBS did not intend to provide the financial services in conformity with accepted market practices, precise standards of the financial industry, regulatory instruments of the New York Stock Exchange (NYSE) and statutory obligations in respect of the securities business and the financial services under the Statute Laws of The Bahamas, as described more particularly in Claims No.No. 1 and 6 or damages for breaches of the Investment Agreement and in Claim No. 2 for specific performance and for fulfilment of the statutory duty under a Statute Law of The Bahamas.”*

25. Sub-paragraph 608.3 of the Statement of Claim states:

*“608.3. that UBS was obliged to provide a broker’s contract note of each transaction and carry out transactions of any sale or purchase of securities on behalf of the Company in lawful manner, made by a Member Broker or license holder of the New York Stock Exchange (NYSE);”*

26. Paragraph 111 of the Amended Defence states, among other things:

*“111. Paragraphs 159 and 160 are denied and the Plaintiffs are required to strictly prove the same. In particular, the Defendant denies that it breached the “Investment Agreement” or its statutory duty as alleged or at all. The Defendant avers that it complied with all its contractual and statutory duties and acted in accordance with industry standards in facilitating the said trades. The Defendant further avers that it did produce contract notes, also referred to as Trade Slips or Trade Advice for the Plaintiffs’ trades which were provided to the Plaintiffs.”*

27. Paragraph 56 of 17th Affidavit states, among other things:

**OBVIOUSLY UNSUSTAINABLE**

*“First of all, it is obviously unsustainable to plead a defence such as one in paragraph 111 which denies the statutory duty provided by Regulations 72 and 77 of the Securities Industry Regulations, 2012 (SIR 2012), the Subsidiary Law of The Bahamas, and rely on provisions of a regulation from time to time made by the Defendant in general meeting, the Terms and Conditions, provided that:*

*no regulation so made shall invalidate any provision of any Statute or Subsidiary Law or Public policy of The Bahamas; and*

*“Distribution of Transaction Advices and other Mailing” clause in the Terms and Conditions of the Defendant does not provide for Contract Notes or other documents subject to Regulations 72 and 77 of Securities Industry Regulations, 2012 (SIR 2012).*

*Second of all, it is obviously unsustainable to plead a defence such as one in paragraph 111 which contradicts terms of the regulatory instruments, subject to Regulations 72 and 77 of the Securities Industry regulations, 2012 (SIR 2012), as stated above paragraphs 104, 107 and 109 and here below.*

*Thirdly, it is obviously unsustainable to plead a defence such as one in paragraph 111 which contradicts both evidence of UBS AG’s Membership in the Membership Directory of the NYSE and evidence of UBS AG’s Registration in the FINRA Central Registration Depository (“Web CRD®”), the central licensing and registration system for the United State securities industry and its regulators.*

*Fourthly, it is obviously unsustainable to plead a defence such as one in paragraph 111 which denies facts which were clearly proven by evidence from both sides that Trade Slips for the Plaintiffs' trades created by the Defendant, are documents of correspondence between the Defendant and its owner, UBS AG of Switzerland, called "Junkanoo Estates Ltd - Trade Confirmation" and "UBS (Bahamas) Ltd - Custodian Instructions" for the period from 13th June to 18th September 2013 and "UBS (Bahamas) Ltd Security Trail Contracts" dated from 13th June to 23rd August 2013, but not documents required by the regulatory instruments, the Rules, Byelaws, Regulations and usages of the NYSE, subject to Regulation 77 of the Securities Industry Regulations, 2012 (SIR 2012), providing additional evidence that even this internal exchange of information between the Defendant and UBS AG regarding the Plaintiffs' trades was interrupted after 23rd August 2013."*

#### **INCAPABLE OF PROOF**

*"First of all, it is an abuse of process to plead a defence such as in paragraph 111 which is incurably incapable of proof of any bargain transacted on the New York Stock Exchange (NYSE) for account of the Plaintiffs fulfilled according to the regulatory instruments, the Rules, Byelaws, Regulations and usages of the NYSE, subject to Regulation 77 of the Securities Industry Regulations, 2012 (SIR 2012), according to which any transaction must be recorded through the NYSE platform by a member or member organisation, having a Registration with the Securities and Exchange Commission of the United States (the "SEC") pursuant to Section 15 of the Securities Exchange Act of 1934, as amended, and registered with the FINRA Central Registration Depository ("Web CRD®"), the central licensing and registration system for the United State securities industry and its regulators. for the reason that the NYSE does not recognise in its dealings any parties other than its own members or member organisations holding NYSE Trading License issued by the NYSE, as is required to effect approved securities transactions on the NYSE equities trading facilities.*

*Second of all, it is an abuse of process to plead a defence such as in paragraph 111 which is incurably incapable of proof neither of UBS AG's Membership of the NYSE nor of UBS AG's Registration with the SEC and FINRA Central Registration Depository."*

#### **The Regulatory Instrument**

##### **28. NYSE Rule 0. Regulation of the Exchange and its Member Organizations**

*The Exchange and the Financial Industry Regulatory Authority, Inc. ("FINRA") are parties to a Regulatory Services Agreement ("RSA") pursuant to which FINRA has agreed to perform certain regulatory functions of the Exchange on behalf of the Exchange. Exchange Rules that refer to Exchange staff or Exchange departments*

*should be understood as also referring to FINRA staff and FINRA departments acting on behalf of the Exchange pursuant to the RSA, as applicable. Notwithstanding the fact that the Exchange has entered into an RSA with FINRA to perform certain of the Exchange's functions, the Exchange shall retain ultimate legal responsibility for, and control of, such functions.*

*Adopted: June 22, 2010 (NYSE-2010-46).*

*Amended: September 28, 2015 (NYSE-2015-27).*

*Dealings and Settlements (Rules 111—132)*

*Rule 111. Reports of Executions*

*This Rule is not applicable to trading UTP Securities on the Pillar trading platform.*

*Reports by Non-Competitive Traders.*

*Form 82-B-Report filed monthly. Any transactions initiated on the Floor by a member for any account in which he has an interest:*

*(1) for bona fide arbitrage; (2) when a Floor Official expressly invites a member or members to participate in a difficult market situation; or (3) when such transactions are effected in a security which is the subject of rights in which the member is registered as a DMM and they are made for the purpose of acquiring or liquidating a bona fide hedge position against the rights.*

*Form 82-B in duplicate is to be sent to the Market Surveillance Division, 11 Wall Street, 10th Floor, by the opening of business on the second business day following the end of the calendar month.*

*(c) See paragraph (d)(iv) of Rule 900 (Off-Hours Trading: Applicability and Definitions) in respect of (a) the impact of transactions effected through the "Off-Hours Trading Facility" (as Rule 900 defines that term) on the calculation of stock positions and (b) the inapplicability of tick tests to such transactions.*

*Adopted: May 21, 1964.*

*Amended: July 16, 1964 effective August 3, 1964, ¶(b)(1) effective January 1, 1965; January 17, 1977 effective January 20, 1977; May 1, 1978; August 11, 1978; October 26, 1989; June 17, 1994; October 1, 2002 effective August 10, 2002 (NYSE-02-31); January 29, 2003 (NYSE-2003-02); February 1, 2008 (NYSE-2007-52); December 10, 2008 (NYSE-2008-127); July 21, 2009 (NYSE-2009-08); August 26, 2014 (NYSE-2014-44); March 26, 2018 (NYSE-2017-36).*

*Rule 112. Orders initiated "Off the Floor."*

*(a) All orders in stocks for the account of a member organization or any member, principal executive, approved person, officer, or employee of such organization or a*

*discretionary account serviced by the member or member organization must be sent to the Floor through a clearing firm's order room or other facilities regularly used for transmission of public customers' orders to the Floor.*

*The restrictions of paragraph (a) above shall not apply to an order*

*(i) when a Floor Official expressly invites a member or members to participate in a difficult market situation;*

*(ii) to facilitate the purchase or sale of a block of stock because the market on the Floor could not readily absorb the block at a particular price or prices;*

*(iii) to sell stock for an account in which the member organization is directly or indirectly interested if, in facilitating the sale of a large block of stock, the member organization acquired its position on the Floor because the demand was not sufficient to absorb the block at a particular price or prices;*

*(iv) to effect bona fide arbitrage or to engage in the purchase and sale, or sale and purchase of securities of companies involved in publicly announced merger, acquisition, consolidation, tender, etc.;*

*(v) to offset a transaction made in error.*

*(b) "On the Floor" or "On-Floor" means the trading Floor of the Exchange and the premises immediately adjacent thereto, such as the various entrances and lobbies of the 11 Wall Street, 18 New Street, 8 Broad Street, 12 Broad Street and 18 Broad Street Buildings, and also means the telephone facilities available in these locations.*

*(c) A member using a communication facility located on the Floor of the Exchange to enter an order for his own account will be deemed to be initiating an off-Floor order if such order is routed through a clearing firm's order room, where a time-stamped record of the order is maintained, before such order is re-transmitted to the Floor for execution. However, an off-Floor order for an account in which a member has an interest is to be treated as an on-Floor order if it is executed by the member who initiated it.*

*(d) Any order entered by a member organization for any account in which it, or any member, principal executive, approved person, officer, or employee of such organization is directly or indirectly interested, or for any discretionary account serviced by the member organization, following a conversation with a member or employee in that organization who is on the Floor, shall be deemed to be an off-Floor order, provided (i) that such order is transmitted to the Floor through an order room or other facility regularly used for the transmission of public orders to the Floor, where a time-stamped record of the order is maintained; or (ii) an exception from the order room transmission requirement is available under paragraph (a) of this Rule.*

*(e) No member or member organization shall execute, or cause to have executed, on*

*the Exchange, any order for any account in which such member, member organization, or any member, principal executive, approved person, officer, or employee of such organization is directly or indirectly interested, or for any discretionary account serviced by the member or member organization, in contravention of any Exchange policy against the front-running of block transactions that the Exchange may from time to time adopt and make known to its members.*

*Adopted: May 21, 1964.*

*Amended: July 16, 1964 effective August 3, 1964; September 21, 1967 revised October 19, 1967 effective December 11, 1967; December 11, 1975 effective March 12, 1976; May 18, 1972; August 9, 1976; August 11, 1978; February 1, 1979; June 2, 1983; September 27, 1985; October 26, 1989; May 24, 1991, June 17, 1991; October 1, 2002 effective August 10, 2002 (NYSE-02-31); June 14, 2007 (NYSE-2007-51); April 2, 2012 (NYSE-2012-06).*

### *Rule 123. Record of Orders*

#### *(a) Given Out*

*Every member shall preserve for at least three years a record of every order originated by him on the Floor and given to another member for execution and of every order originating off the Floor, transmitted by any person other than a member or member organization, to such member on the Floor, which record shall include the name and amount of the security, the terms of the order and the time when such order was so given or transmitted; provided, however, that the Exchange may, upon application, grant exemptions from the provisions of this Rule.*

#### *(b) Receipt of Orders*

*Every member shall preserve for at least three years a record of every order received by that member on the Floor from off the Floor. Such record shall include the name and amount of the security, the terms of the order and the time when such order was received. The provisions of this paragraph shall not apply to orders in NYSE listed securities initiated and/or routed from a member organization's booth premise operating pursuant to Exchange Rule 70.40 for execution on another market center. Orders initiated and/or routed from a member organization's booth premise operating pursuant to Exchange Rule 70.40 for execution on another market center must comply with the provisions of the 7400 Series.*

#### *(c) Cancelled or Executed*

*Whenever a cancellation is entered with respect to such an order or commitment or obligation to trade, or a report of the execution of such an order or commitment or obligation to trade, is received, there shall be preserved for at least three years, in addition to the record required by the foregoing paragraph, a record of the cancellation of the order or of the receipt of such report, which shall include the time*



*of the entry of such cancellation or of the receipt of such report.*

*(d) By Accounts*

*Before any such order is executed, there shall be placed upon the order slip or other record the name or designation of the account for which such order is to be executed. No change in such account name or designation shall be made unless the change has been authorized by any member, allied member or officer in the member organization or authorized representative thereof who shall, prior to giving his approval of such change, be personally informed of the essential facts relative thereto and shall indicate his approval of such change in writing on the order.*

*(e) System Entry Required*

*(i) Except as provided in paragraphs .21 and .22 below, immediately following the receipt of an order in an NYSE listed security on the Floor, members and member organizations must record the details of the order in an electronic system on the Floor. Any member organization proprietary system used to record the details of the order and agency interest file must be capable of transmitting these details to a designated Exchange database within such time frame as the Exchange may prescribe. No Floor member or member organization shall represent, execute or place an agency interest file within the Display Book system or routed to a Floor broker for execution at the post unless the details of the order have been entered into an electronic system on the Floor.*

*(ii) Member organizations operating an approved booth premises pursuant to Exchange Rule 70.40 are only subject to the provisions of subparagraph (i) above when the order received or any part thereof in a member organization's approved booth premise is to be represented, executed or placed in an agency interest file within the Display Book System or routed to a Floor broker for execution at the post.*

*(iii) The details of each order required to be recorded by paragraphs (i) and (ii) above shall include the following data elements, any changes in the terms of the order and cancellations, in such form as the Exchange may from time to time prescribe:*

- 1. Symbol;*
- 2. Clearing member organization;*
- 3. Order identifier that uniquely identifies order*
- 4. Identification of member or member organization recording order details;*
- 5. Number of shares or quantity of security;*
- 6. Side of market;*
- 7. Designation as market or limit order;*

8. Any limit price, discretionary price range, discretionary volume range, discretionary quote price, pegging ceiling price, pegging floor price and/or whether discretionary instructions are active in connection with interest displayed by other market centers;

9. Time in force;

10. Designation as held or not held;

11. Any special conditions;

12. System-generated time of recording order details, modification of terms of order or cancellation of order; and

13. Such other information as the Exchange may from time to time require.

(iv) The Floor member must identify which orders or portions thereof are being made part of the Floor broker agency interest file and, with respect to such orders or portions thereof, what discretionary and/or pegging instructions, if any, have been assigned pursuant to such procedures as required by the Exchange.

(f) Reports of Order Executions

Order execution reports must be entered into the same database as required by this rule for the entry of orders. Any member organization proprietary system used to record the details of an order pursuant to paragraph (e) must also be capable of transmitting a report of the order's execution to such database. Order execution reports must be entered into such system within such time frame as the Exchange may prescribe. The details of each execution report required to be recorded shall include the following data elements, and any modifications to the report, in such form as the Exchange may from time to time prescribe:

1. Order identifier that uniquely identifies the order as required by paragraph (e);

2. Symbol;

3. Number of shares or quantity of security;

4. Transaction price;

5. Time the trade was executed;

6. Executing broker badge number, or alpha symbol as may be used from time to time, in regard to its side of the contract;

7. Executing broker badge number, or alpha symbol as may be used from time to time, of the contra side to the contract;

8. Clearing firm number, or alpha symbol as may be used from time to time, in regard to its side of the contract;

9. Clearing firm number, or alpha symbol as may be used from time to time, in regard to the contra side of the contract;

10. Whether the account for which the order was executed was that of a member or member organization or of a non-member or non-member organization;

11. Identification of member or member organization which recorded order details as required by paragraph (e);

12. Date the order was entered into an Exchange system;

13. Indication as to whether this is a modification to a previously submitted report;

14. Special Trade Indication, if applicable;

15. Online Comparison System (OCS) Control Number;

16. Such other information as the Exchange may from time to time require.

*Reserved*

••• *Supplementary Material:*

.10 *Orders originated on or transmitted to the Floor.—When giving out orders originating on the Floor, or transmitted by any person other than a member or member organization to members on the Floor, or when changing or cancelling orders previously given, members are required to do so electronically, or in writing. This requirement, as well the requirement as provided in Rule 123, above, relating to the keeping of records, may be met by preparing and retaining a duplicate of each such order given out and of any subsequent changes.*

.20 *Orders.—For purposes of paragraph (e), an order shall be any written, oral or electronic instruction to effect a transaction.*

.21 *Orders not subject to paragraph (e) recording requirements.—Any order executed by a DMM for his or her own account and any orders which by their terms are incompatible for entry in an Exchange system relied on by a Floor member to record the details of the order in compliance with this Rule shall be exempt from the order entry requirements of paragraph (e) above.*

.22 *With respect to a bona fide arbitrage order, a member may execute such order before entering the order into an electronic system as required by paragraph (e) above, but such member must enter such order into such electronic system no later than 60 seconds after the execution of such order. With respect to an order to offset a transaction made in error, a member may, upon discovering such error within the same trading session, effect an offsetting transaction without first entering such order into an electronic system, but such member must enter such order into such electronic system no later than 60 seconds after the execution of such order.*

*.23 Time standards.—Any vendor or proprietary system used by a member or member organization on the Floor to record the details of an order or report for purposes of this rule must be synchronized with reference to a time source as designated by the Exchange.*

### ***The Assessment***

29. The primary function of exchanges is to match buyers and sellers of securities at a fair price based on transparent rules.
30. United States' national securities exchanges operate with an exclusive government license, which gives them unique benefits and also subjects them to close oversight with the goal of ensuring they operate in ways that serve the public interest and do not unfairly discriminate or impede competition.
31. Exchanges charge a variety of fees, which historically have been transaction fees, to compensate them for performing this primary function.
32. Over the last two decades the financial services providers such as, for example, routing broker-dealers have augmented their businesses by selling speed and information in the form of direct market access, various connectivity options, and real-time market data. These secondary business lines are not inherent to the core function of operating a broker-dealer, but as the dominant financial services providers have all come to adopt this change in business strategy, these market data and connectivity offerings have become indispensable to many market participants who must compete in a market system where trading outcomes can depend on time differences measured in millionths of a second.
33. Market data is provided via network switch and cabling infrastructure, as well as the server infrastructure that runs the processes responsible for producing such messages for external consumption (market data process).
34. Market data processes may distribute data via different protocols that either provide no guarantee of delivery (UDP) or guarantee delivery of the data to the recipient (TCP). When offering market data via a UDP protocol, an exchange also offers one or more services for a participant to recover data that has been lost during transmission, usually referred to as gap fill or snapshot services (collectively known as retransmission services) that re-send missed (i.e., dropped) messages or send the current state of the exchange's order book, respectively.
35. The physical infrastructure for order entry, order receipt (i.e., confirmation that an order has been received), receipt of drop copies and trade reporting (i.e., messages confirming whether a trade is executed or canceled), and data product dissemination (i.e., real time distribution of proprietary market data feeds) offered by exchanges is the same for all these functions.
36. The lifecycle of an order through the New York Stock Exchange (NYSE) system

architecture starts on with a user submitting a new order single message through the cross-connect cable provided to the user at the NYSE "point of presence" (NYSE POP) at a datacenter in Secaucus, NJ. The message traverses several network switches and a defined length of optical fiber coil before reaching the first piece of software in the NYSE system located in Weehawken, NJ 350 microseconds ( $\mu$ s) later. This 350 $\mu$ s of intentional latency is typically referred to as the NYSE speed bump. A client gateway receives, validates, and transforms each user NYSE's internal message protocol, then sends the message to the system for further processing. The market data processes receive messages from the system, transform the data into the format specified in those protocol specifications, then sends the messages to data recipients.

37. For example, assume that a user sends a new order that is intended to be displayed and that sets the best bid price on NYSE. The system processes the order, posts it to the order book, and sends several messages, including a message acknowledging the receipt of the order and another updating the top of book quotation of NYSE for that security. The acknowledgement is received by the client gateway and sent back to the user at the NYSE POP after passing through the 350 $\mu$ s speed bump. Virtually simultaneously, the quote update message is received by the NYSE applications that publish NYSE's proprietary market data feeds and disseminated to each market data recipient via multicast (transmission of one message to multiple recipients simultaneously) at the NYSE POP after passing through the 350 $\mu$ s speed bump.
38. The remainder of this Assessment is divided into three main sections that mirror the three main processes described above: Market Data; Physical Connectivity; and Logical Connectivity, which concerns the processing of orders in order entry sessions.
39. Market data refers to the real-time data produced by an exchange to disseminate information about its order book. Exchange market data is derived exclusively from orders that are sent by the exchange's members. The exchange's function is to format and rebroadcast the data contained in these order messages back to participants and to data vendors.
40. NYSE provides many different types of market data which can be divided into four generic categories: Depth of Book, Top of Book, Last Sale, and Auction Imbalance. In addition, NYSE and FINRA jointly oversee the dissemination of the consolidated data feeds by the securities information processors (SIPs).
41. Depth of Book data shows all displayed orders at an exchange at all price levels. This data, together with data on trades that have been executed on the exchange and data showing order imbalances related to opening or closing auctions, provides the full view of an exchange's order book. Depth of Book feeds provide either (i) the aggregated number of shares available at each price within the order book (an aggregated feed) or (ii) details about each individual order that has been entered, modified, or canceled from the order book (an order-by-order feed). The Nasdaq family, NYSE Arca, and NYSE National provide an order-by-order feed but not an

aggregated feed, whereas all other exchanges offer both.

42. Order-by-order depth of book market data processes perform the least amount of logic on the messages received by the system, even though they involve more granular data. This is because each incoming order-related message produces an analogous output message on the data feed and corresponds directly with each user's order. order-by-order data feeds are priced more expensively than aggregated products by exchanges that offer both, which results primarily from the fact that order-by-order feeds are generally faster and contain more information that is actionable by many trading firms, compared to aggregated feeds. Further, firms consuming order-by-order feeds incur additional expense because they are required to perform the book building logic themselves (i.e., they must manage each order in the book based on the inputs from the order-by-order feed), while customers of aggregated feeds simply update their view of the market with the latest data the exchange provides at a given price level.
43. Customers of an order-by-order depth of book feed are likely to need or desire faster access to the data, and therefore those feeds typically are optimized for speed, which can include delivery through a different architecture than is used for the aggregated depth of book or top of book feeds offered by the same exchange. For example, Nasdaq offers a field-programmable gate array (FPGA) solution on dedicated hardware for Nasdaq TotalView customers that are particularly latency-sensitive. Additionally, NYSE Arca offers order-by-order depth of book via two competing products - NYSE ArcaBook and NYSE Arca Integrated.
44. Aggregated depth of book feeds must perform additional logic on each order-related message received from the system to calculate the total shares at a given price level and, in some cases, the total number of orders at such price, before publishing an output message on the data feed.
45. Top of Book data only shows orders at the best bid and offer (BBO) at an exchange. Depending on the particular feed offered, an exchange may or may not include information about trades or auctions in a Top of Book feed. For example, the NYSE BBO feed does not provide trade or imbalance data, which is provided in separate feeds for additional costs.
46. Last Sale data shows only executed trades at an exchange and is the most broadly disseminated, commonly known stock exchange price data, since most retail investors equate the "price" of security with the last trade price, not the bid or offer prices.
47. Auction Imbalance data shows only order imbalance and potential clearing prices prior to a primary listing NYSE's auction.

### ***Conclusion***

48. I examined documents of correspondence between the Defendant and UBS AG of Switzerland referred to in the Defendant's Fifth Affidavit also called "Trade Slips for the Plaintiffs' trades created by the Defendant" or "Junkanoo Estates Ltd - Trade

Confirmation” and “UBS (Bahamas) Ltd - Custodian Instructions” for the period from 13th June to 18th September 2013 and “UBS (Bahamas) Ltd Security Trail Contracts” dated from 13th June to 23rd August 2013.

49. In my opinion, the said documents can in no way be considered as pieces of data on trades that have been executed on the New York Stock Exchange (NYSE) in the relevant period of time and instantly disseminated by NYSE.
50. According to Fifth Affidavit, the Defendant, UBS AG or its trading partners were unable to produce the documents referred to in Regulation 72 of the Securities Industry Regulations of the Bahamas, 2012 (SIR 2012) as “contract notes” relating to transactions of sale or purchase of securities carried out by the Defendant through the Operations Division of UBS AG on behalf of Junkanoo Estates Ltd., which are also called “execution reports” in “the regulatory instruments of the applicable marketplace” within the meaning of Regulation 77 of the SIR 2012, which are the Rules of the New York Stock Exchange adopted by 22nd June 2010 (NYSE-2010-46) and in particular Rule 123(f), which provides for the details of each execution report, because it is technically impossible to reproduce the details of execution reports required to be recorded by the above Rule if immediately following the receipt of an order in an NYSE listed security on the Floor, members and member organizations did not record the details of the order in an electronic system on the Floor according Rule 123(e) (both Rules cited above), which states, among other things:

*“Any member organization proprietary system used to record the details of the order and agency interest file must be capable of transmitting these details to a designated Exchange database within such time frame as the Exchange may prescribe. No Floor member or member organization shall represent, execute or place an agency interest file within the Display Book system or routed to a Floor broker for execution at the post unless the details of the order have been entered into an electronic system on the Floor.”*

51. Overall, it is technically impossible to extract data, physically or virtually, from the New York Stock Exchange (NYSE) system unless orders related to the same have lived their full lifecycles through the New York Stock Exchange (NYSE) system architecture described above.
52. In my opinion, if the Defendant, UBS AG or its trading partners didn't send out new order single messages or trade confirmations through the New York Stock Exchange (NYSE) system as a matter of course, the opportunity may have presented itself for false records to be created in the UBS AG Group's proprietary systems used to record the details of clients' orders in the course of an off-the-book accounting.

I believe that the facts stated in this Report are true.

VIA EMAIL  
May 27, 2019

Just you



BETWEEN

JUNKANOO ESTATES LTD

First Plaintiff

YURI STAROSTENKO

Second Plaintiff

IRINA STAROSTENKO

Third Plaintiff

AND

UBS (Bahamas) LTD (In Voluntary Liquidation)

Defendant

(Actions and Counterclaims consolidated by Order of the Judge dated 4 November 2015)

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WITNESS STATEMENT

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1. I, Irina Tsarev-Starostenko *pro se*, the Third Plaintiff in the above mentioned action, roofless since the 27th February 2018, Nassau, The Bahamas, am called as a witness in the above civil proceedings.
2. This Witness Statement is a statement of relevant facts personally experienced or perceived by me from experience as a trader in securities and obtained from the information contained in the Statutes of Law of the Commonwealth of The Bahamas, regulatory instruments of the relevant marketplaces in the United States and Industry Guidances such as, for example, “Unit 5 What is the Role of Compliance Function?” of Course Manual International Compliance Training (ICT) and Compliance and the Compliance Function in Banks published by the Basel Committee on Banking Supervision of the Bank for International Settlements in April 2005.
3. The plaintiffs will rely on these facts at the trial of claims contained in the Statement of Claim filed and served on the defendant on the 14th November 2017 (the “Statement of Claim”) on their full meanings and effects.
4. Terms and meaning of words used in this Witness Statement are the same as those used in the Statement of Claim.

<u>No.</u>	<u>FACT</u>	<u>Date - Time</u>
1.	UBS offered to Starostenko a financial product through issuance of a brochure called “introducing the UBS Real Estate Collateralized Loan” (or RECL)	July 2012

2.	<p>Starostenko where inclined to consider and accept this product in order to enhance an existing successful business of trading in securities, being able to establish a career as traders in securities and predicting their future profits was not difficult, having a history of profitability as evidenced by the Account Statement for the period from 03.07.08 to 20.04.09 to Account USD 01/008177.001 at Credit Suisse, Nassau branch in respect of trading track record of net profit in the amount of US\$1,147,418 which is the difference between the initial account balance of US\$360,374.77 on 29 January 2009 and an interim account balance of US\$1,507,730.00 on 27 March 2009</p>	July 2012 (on 29 January 2009 to 27 March 2009)
3.	<p>Starostenko had a plan or the expectation interest which comport with the amount of lost profits claimed, and there were good reasons to expect an anticipated profit on trading in securities in the same or a larger amount, as aforesaid, having an account with an initial balance of US\$729,749. The Plaintiffs contracted with a view of obtaining not a performance itself but the financial equivalent of a notional increase in their overall wealth</p>	July 2012
4.	<p>Originally, the general effect of the offered arrangement was to impose for five years</p> <ol style="list-style-type: none"> <li>1.1. upon UBS: <ol style="list-style-type: none"> <li>1.1.1. the obligation of opening a credit in favour of the Company to the extent of US\$1,400,000, to be secured by the property belonging to the Company worth of B\$2,800,000;</li> <li>1.1.2. the obligations regarding the investment business in the exchange trading of U.S. Securities; and</li> </ol> </li> <li>1.2. upon the Plaintiffs: <ol style="list-style-type: none"> <li>1.2.1. the obligations regarding the interest and repayment of loan for purposes of the investment business with UBS; and</li> <li>1.2.2. the obligation for a minimum amount of trading capital to be kept on the investment account, equal to 50% of the loan and higher than US\$500,000</li> </ol> </li> </ol>	July 2012
5.	<p>Oral pre-contract representations by UBS set out in Claim No. 8 herein for conspiracy to defraud, on which the Plaintiffs relied on contractual words used and stated by UBS, and, in particular, an intention regarding electronic trading which was expressed orally by an officer or agent of UBS at the first meeting, who stated that "the electronic platform is on the way" offering the Plaintiffs an opportunity for their</p>	10 July 2012

	<p>trading orders to be executed instantaneously upon receipt in accordance with current industry standards.</p> <p>The UBS Real Estate Collateralized Loan” to them, in which UBS advertised, inter alia, <b>“Leveraging Bahamas residential property to unlock the potential of your investment”</b>, <b>“Unlock the potential of your Bahamas residential property”</b>, <b>“Make your real estate work for you”</b>, <b>“UBS (Bahamas) Ltd. offers a world of advantages”</b> and <b>“A simple arrangement to meet your most ambitious plans“</b>.</p> <p>In particular, the brochure of UBS stated:</p> <ul style="list-style-type: none"> <li>1.1. (i) <b>“UBS is offering ... an opportunity to monetize up to 50% of the current appraised value of their Bahamas residential real estate”;</b></li> <li>1.2. (ii) Opportunity... <ul style="list-style-type: none"> <li>1.2.1. <b>“You... - are looking for an easy way to tap into the value of your real estate to provide additional funding for other investment opportunities... ”</b></li> <li>1.2.2. <b>- may want to consolidate all of your assets and liabilities... with a single financial services provider... ”</b></li> <li>1.2.3. <b>- believe that there are investment opportunities that will likely exceed the mortgage costs... ”</b></li> <li>1.2.4. ii) Solution... A UBS Real Estate Collateralized Loan... <ul style="list-style-type: none"> <li>1.2.4.1. <b>- in the form of an uncommitted, short-term advance facility of up to 60 months (5 years)</b></li> </ul> </li> </ul> </li> </ul>	
6.	<p>The services offered by UBS are genuine well-known branded financial services of UBS AG that have acquired a goodwill in the financial markets and known worldwide by distinguishing names, e.g.:</p> <ul style="list-style-type: none"> <li>1.1.1. UBS Direct Market Access (DMA);</li> <li>1.1.2. UBS Direct Market Access plus (DMA+);</li> <li>1.1.3. UBS Pinpoint;</li> <li>1.1.4. KeyTrader;</li> <li>1.1.5. KeyLink;</li> </ul> <p>and that UBS was in position to provide UBS AG's warranty related to financial services, including fast and reliable executions (“best executions”) of trading orders of the Plaintiffs</p>	July 2012 up today
7.	<p>The Account Application for Entities (or “Account Application”) constituting the agreement to take positions in Derivative products and in U.S. Securities was made in writing and signed on behalf of the Company o and by UBS on 10 August 2012.</p>	18 July 2012

	<ul style="list-style-type: none"> <li>- The Clauses and Statements and Policies relating to investments, Investment Services, Fund Master Agreement, Additional Risk Information of the Terms and Conditions of UBS (Bahamas) Ltd. (or “Terms and Conditions”) which formed a contract between UBS and their clients, including the Company, and apply to this Investment Agreement</li> </ul>																					
8.	Starostenko and UBS held meetings and exchanged correspondence where issues related to future profits were discussed, and more particularly Starostenko met and discussed these issues with UBS officers or agents, including Mr George Maillis, Mr Kevin Price and Mr Thibaud Halewyck	July-October 2012																				
9.	<p>UBS entered into the Investment Agreement with the Company by which UBS was appointed and instructed by the Company to act as an agent for reward and carry out transactions of sale or purchase of U.S. Securities listed on the major U.S. securities market, the New York Stock Exchange (NYSE) on behalf of the Company, and UBS agreed The Company agreed pursuant to the Investment Agreement that it would buy then sell U.S. Securities in NYSE.</p> <ul style="list-style-type: none"> <li>- UBS agreed pursuant to the Investment Agreement that the transactions would be made via UBS AG’s electronic trading platforms and the software, which would provide access to the bid/offer pricing data on the NYSE order book.</li> <li>- the trading capital amount pursuant clause “Minimum invested assets under management”, which reads: <b>“The higher of USD\$500,000 (net of any Lombard financing) or 50% of the Facility Amount”</b> (or USD\$700,000); and</li> <li>- the term of the Investment Agreement for a period of 5 years pursuant “Term” clause, which reads: <b>“The Term of the facility shall be 5 years 0 months”</b> (or 28 September 2017)</li> </ul>	10 August 2012																				
10.	The Plaintiffs’ investment in the relationship with UBS in the form of a trust property in the amount of money of USD\$729,749 was the initial financial capital to sustain growth, and the projected profit was a ready source of additional financial capital	September 2012																				
11.	<p><b>Historical Prices</b></p> <table border="0"> <tr> <td>Number</td> <td>Company</td> <td>Ticker</td> <td>Purchase Price, Sep 2012</td> <td>Invested, Sep 12</td> </tr> <tr> <td>10,000</td> <td>Tesla, Inc.</td> <td>TSLA</td> <td>USD\$29.00</td> <td>USD\$290,000</td> </tr> <tr> <td>15,000</td> <td>Facebook, Inc.</td> <td>FB</td> <td>USD\$21.00</td> <td>USD\$315,000</td> </tr> <tr> <td colspan="3">Monies invested in purchase of Share Portfolio 2012</td> <td>USD\$605,000</td> <td></td> </tr> </table>	Number	Company	Ticker	Purchase Price, Sep 2012	Invested, Sep 12	10,000	Tesla, Inc.	TSLA	USD\$29.00	USD\$290,000	15,000	Facebook, Inc.	FB	USD\$21.00	USD\$315,000	Monies invested in purchase of Share Portfolio 2012			USD\$605,000		27 and 28 September 2012
Number	Company	Ticker	Purchase Price, Sep 2012	Invested, Sep 12																		
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15,000	Facebook, Inc.	FB	USD\$21.00	USD\$315,000																		
Monies invested in purchase of Share Portfolio 2012			USD\$605,000																			
12.	UBS pre-announced in the Curacao Chronicles, that it was meditating an application for voluntary winding up in The Bahamas, confirming	November 2012																				

	so that it has no intention to respect Investment Agreement for its term of five (5) years	
13.	<p>UBS was engaged by the Company in the provision of UBS AG' and UBS Financial Services Inc.'s prime brokerage services, which is the generic name for a package of services offered by major investment banks such as UBS AG to their clients</p> <p>In particular, the services in question included the execution, clearing and settlement of securities trades, the reporting services accordingly NYSE, as from their statutory duties pursuant the Statute Laws of The Bahamas, the SIA, 2011 and the SIR, 2012</p>	August 2012- April 2014
14.	Under the Investment Agreement, the role served by this prime brokerage was that of facilitating large, active trading operations such as were agreed upon with the Company, and UBS being the agent of UBS AG and UBS Financial Services Inc was a sort of central agent, facilitating and coordinating the extensive trading operations of the Company in U.S. Securities	August 2012- April 2014
15.	<p>UBS Financial Services Inc's disclosure "Important account related information" which formed a contract between UBS Financial Services Inc. and their clients, including UBS and the Company, applies to this Investment Agreement and reads:</p> <p>in "Highlights" Section: "As always, UBS will continue its best execution obligations along with regular and rigorous reviews of the firm's execution quality to ensure the best execution for you.";</p> <p>In "The execution process" Section:</p> <p>"1. Execution speed is particularly important in volatile markets. The impact of volatile markets on order execution is discussed in Section II. The firm seeks to provide customer orders with the fastest execution reasonably possible under the existing market conditions."; and</p> <p>"2. Price and size improvement. In the equity markets in the United States and many other countries, firm quotations for stocks are published on a regular and continuous basis. The quotations consist of the prices and quantities at which market participants are willing to buy (bid) and sell (offer) stocks. The National Best Bid or Offer (NBBO) is the highest published bid and the lowest published offer for the quoted size (generally under 1,000 shares). UBS Financial Services Inc. seeks price and size improvement for its customers' orders by routing orders to execution venues that may execute trades at prices or sizes better than the NBBO."</p>	August 2012- April 2014

16.	<p>The US SEC Rule 605 (Best Execution) analysis  Report results High Speed Execution  <b>1. Schwab – 0.12 seconds</b>  <b>2. TD Ameritrade – 0.20 seconds</b>  <b>3. Wells Fargo – 0.21 seconds</b>  Percentage of Trades Price Improved  <b>1. Wells Fargo – 88% of trades price improved</b>  <b>2. Schwab – 84% of trades price improved</b>  <b>3. E-trade – 79% of trades price improved</b>  Amount of Price Improvement  <b>1. Interactive Brokers – \$0.0144 average price improvement</b>  <b>2. Wells Fargo – \$0.0049 average price improvement</b>  <b>3. Scottrade – \$0.0044 average price improvement</b>  Conclusion  <i>The difference between the best and worst execution are only a fraction of a second</i></p>	<p>Since June 2005  until further  update</p>
17.	<p>The U.S. FINRA Best Execution Rules reads, inter alia:  “<b>5310. Best Execution and Interpositioning (a)(1) In any transaction for or with a customer or a customer of another broker-dealer, a member and persons associated with a member shall use reasonable diligence to ascertain the best market for the subject security and buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions. Among the factors that will be considered in determining whether a member has used "reasonable diligence" are:</b>  <b>(A) the character of the market for the security (e.g., price, volatility, relative liquidity, and pressure on available communications);</b>  <b>(B) the size and type of transaction;</b>  <b>(C) the number of markets checked;</b>  <b>(D) accessibility of the quotation; and</b>  <b>(E) the terms and conditions of the order which result in the transaction, as communicated to the member and persons associated with the member.</b>  <b>(2) In any transaction for or with a customer or a customer of another broker-dealer, no member or person associated with a member shall interject a third party between the member and the best market for the subject security in a manner inconsistent with paragraph (a)(1) of this Rule.</b>  <b>(b) When a member cannot execute directly with a market but must employ a broker's broker or some other means in order to ensure an execution advantageous to the customer, the burden of showing the acceptable circumstances for doing so is on the member.</b>  <b>(c) Failure to maintain or adequately staff an over-the-counter order</b></p>	

<p><i>room or other department assigned to execute customers' orders cannot be considered justification for executing away from the best available market; nor can channeling orders through a third party as described above as reciprocation for service or business operate to relieve a member of its obligations under this Rule.</i></p> <p><i>(d) A member through which an order is channeled and that knowingly is a party to an arrangement whereby the initiating member has not fulfilled its obligations under this Rule, will also be deemed to have violated this Rule.</i></p> <p><i>(e) The obligations described in paragraphs (a) through (d) above exist not only where the member acts as agent for the account of its customer but also where transactions are executed as principal. Such obligations are distinct from the reasonableness of commission rates, markups or markdowns, which are governed by Rule 2121 and its Supplementary Material.</i></p> <p><b>.09 Regular and Rigorous Review of Execution Quality.</b></p> <p><i>(a) No member can transfer to another person its obligation to provide best execution to its customers' orders. A member that routes customer orders to other broker-dealers for execution on an automated, non-discretionary basis, as well as a member that internalizes customer order flow, must have procedures in place to ensure the member periodically conducts regular and rigorous reviews of the quality of the executions of its customers' orders if it does not conduct an order-by-order review. The review must be conducted on a security-by-security, type-of-order basis (e.g., limit order, market order, and market on open order). At a minimum, a member must conduct such reviews on a quarterly basis; however, members should consider, based on the firm's business, whether more frequent reviews are needed.</i></p> <p><i>(b) In conducting its regular and rigorous review, a member must determine whether any material differences in execution quality exist among the markets trading the security and, if so, modify the member's routing arrangements or justify why it is not modifying its routing arrangements. To assure that order flow is directed to markets providing the most beneficial terms for their customers' orders, the member must compare, among other things, the quality of the executions the member is obtaining via current order routing and execution arrangements (including the internalization of order flow) to the quality of the executions that the member could obtain from competing markets. In reviewing and comparing the execution quality of its current order routing and execution arrangements to the execution quality of other markets, a member should consider the following factors:</i></p> <p><i>(1) price improvement opportunities (i.e., the difference between the</i></p>	
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	<p><i>execution price and the best quotes prevailing at the time the order is received by the market);</i></p> <p><i>(2) differences in price disimprovement (i.e., situations in which a customer receives a worse price at execution than the best quotes prevailing at the time the order is received by the market);</i></p> <p><i>(3) the likelihood of execution of limit orders;</i></p> <p><i>(4) the speed of execution;</i></p> <p><i>(5) the size of execution;</i></p> <p><i>(6) transaction costs;</i></p> <p><i>(7) customer needs and expectations; and</i></p> <p><i>(8) the existence of internalization or payment for order flow arrangements.</i></p> <p><i>(c) A member that routes its order flow to another member that has agreed to handle that order flow as agent for the customer (e.g., a clearing firm or other executing broker-dealer) can rely on that member's regular and rigorous review as long as the statistical results and rationale of the review are fully disclosed to the member and the member periodically reviews how the review is conducted, as well as the results of the review.”</i></p>	
18.	<p>The duty imposed on UBS by the Statute Law of The Bahamas, the Securities Industry Regulation, 2012, (or SIR, 2012) is an obligation in respect of the regulated relationship of dealing in securities for the purposes of Section 72 “Reporting to clients - contract note”, which reads: <i>“(1) Any registered firm that carries out any sale or purchase of securities on behalf of a client shall, within one business day after the sale or purchase was executed, make a contract note of the transaction.</i></p> <p><i>(2) Unless otherwise expressly directed by the client in writing, any registered firm that carries out any sale or purchase of securities on behalf of a client shall immediately after the sale or purchase was executed, transmit a contract note of the transaction to its client.</i></p> <p><i>(3) A contract note shall set out –</i></p> <p><i>(a) the quantity and description of the security;</i></p> <p><i>(b) the price at which the transaction was effected and the commission and any other fees charged on the transaction;</i></p> <p><i>(c) the settlement date of the transaction;</i></p> <p><i>(d) the name of the registered firm involved in the transaction;</i></p> <p><i>(e) whether the registered firm was acting as principal or agent;</i></p>	Since 2012



	<p><b><i>(f) the marketplace, if any, on which the transaction took place, or, if applicable, a statement that the transaction took place on more than one marketplace or over more than one day; and</i></b></p> <p><b><i>(g) any other information required by the Commission.</i></b></p>	
19.	The finance was secured against the real estate property of the Company valued at B\$2,800,000 at the time of the transaction, as from the appraisal rapport NA 10680 prepared by HG Christie, Elbert C.thompson and Ryan A. Knowles ordered by UBS, Kevin Price.	20 August 2012
20.	a loan for a period of five (5) years to the Plaintiffs for the main purpose of an investment business under the Investment Agreement, was signed. A part of which was a written offer of UBS called Commitment to Finance (or “Commitment to Finance”) containing a term that 50% of the loan amount would be available for exchange trading in U.S. Securities through UBS’, UBS AG and UBS Financial Services Inc’s trading facilities.	23 August 2012
21.	UBS gave a loan for five years to the Company for a total of USD\$1,400,000 as part of arrangements in the investment business pursuant to the Investment Agreement.	28 September 2012
22.	UBS confirmed that the execution speed of trading orders would be 20 seconds or so, which amounted to UBS’ offer and this offer was accepted by the Plaintiffs when Starostenko sent emails in Response	15 February 2013 timed 11:25 AM
23.	UBS sent email, which reads, inter alia: <b><i>“Hi Irina, you can trade the security. Just let me or Marsha have your order whenever you are ready”</i></b> , when the cash balance standing to the credit of the Company in the investment account 32377 was reduced from USD\$729,749 to below USD\$700,000	17 May 2013 timed 11:06 AM
24.	The Company has sustained loss, USD\$31,721 of interest paid by the Company on the loan amount of USD\$729,749 held in the investment account 32377 by UBS as the additional security to the loan, debited to that investment account by UBS, made useless as a result of non-performance by UBS of contractual obligations under the Investment Agreement, and a delay in commencement of the investment business for a period of eight (8) months and (15) fifteen days in particular, not providing a time based “flat fee” at a rate of	29 September 2012 to 11 June 2013

	0.4% of trading capital per three months and which caused an inactivity on the Company's investment account	
25.	RECL was approved by the Central Bank, a year later after its offering to the Plaintiffs, for the purposes of financing vacation home purchases but not for financing the Defendant's securities activities with dwelling house as collateral	21st June 2013
26.	UBS carried or purported to carry on the trust services pursuant to both the Investment Agreement and the Statute Law of The Bahamas, the SIR, 2012 and the money on the investment account 32377 were held through UBS on trust for purposes of the investment business	June 2013 to April 2014
27.	UBS carried out or purported to carry out sales or purchases of securities on behalf of the Company pursuant to the Investment Agreement, on which, accordingly to the Starostenko, UBS failed to render substantial performance and the Plaintiffs sustained loss, as more particularly described in Claim No. 1 for breach of the Investment Agreement	12 June 2013 to 18 September 2013
28.	Head of UBS' Trading Desk, was Mr Kevin L Price, according to the U.S. FINRA BrokerCheck Report KEVIN LEE PRICE CRD# 2159039 Report# 66539-83561, of Friday, September 04, 2015	
29.	Irina Tsareva in connection with the above and below -referenced securities activities: <ol style="list-style-type: none"> <li>1. sent to George Maillis 226 emails between 13th June and 18th September 2013; and received from George Maillis 142 emails between 14th June and 18th September 2013;</li> <li>2. sent to Jamaal Wright 133 emails between 24th June and 9th September 2013; and received from Jamaal Wright 49 emails between 19th July and 18th September 2013;</li> <li>3. sent to Lynette Martinborough 168 emails between 27th June and 16th September 2013 and received from Lynette Martinborough 51 emails between 23rd July and 17th September 2013;</li> <li>4. sent to Marsha Adderley 333 emails between 18th June and 18th September 2013; and received from Marsha Adderley 112 emails between 18th July to 18th September 2013</li> </ol>	13 June 2013 - 18 September 2013
30.	The Company has sustained loss, USD \$4,350 of the brokerage and transaction based fee at the rate of 1% per transaction paid by the Company and debited to the investment account 32377 by UBS	14 June 2013
31.	With a delay of eight (8) months and (15) fifteen days caused wholly by the fault of UBS, it was confirmed that UBS would provide the	21 June 2013 timed 12:16 PM

	Plaintiffs with direct access to the trading desk, Direct Market Access (DMA), which amounted to UBS' offer and this offer was accepted by the Plaintiffs when Starostenko sent emails in response	and on 26 June 2013 timed 3:08 PM
	UBS demonstrated their inability to render substantial performance of the Investment Agreement and the intention no longer to be bound by it or to fulfil it only in a manner substantially inconsistent with its terms, and repeatedly admitted (verbally and in writing) their weakness in carrying out transactions of sale or purchase of securities evidenced orally and in writing, in particular, by email sent to Starostenko.	16 July 2013 timed 10:33 AM
32.	UBS sent account balance to the company by email <i>1st August 2013 USD\$672,771.01</i> <i>and</i> <i>4th September 2013 USD\$702,465.96</i> As a result, in August 2013, the Company earned a profit of USD\$30,694.95	1 August 2013 timed 11:59 AM and 4th September 2013 timed to 5:31 PM)
33.	the Company sent by email timed at 2:00 PM a trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having received for execution the trading order 19 minutes after it was sent and executed the trading order at a substantially different price from the quoted offer, as a result, loss of profit was incurred by the Company	2 August 2013
34.	the Company sent by email timed at 12:41 PM a trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having received for execution the trading order 12 minutes after it was sent and executed the trade at a substantially different price from the price set in the trading order, as a result, loss of profit was incurred by the Company	6 August 2013
35.	the Company sent by email timed at 10:25 AM a trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having received for execution trading order 2 minutes after it was sent and executed the trade at a substantially different price from the price set in the trading order, as a result, loss of profit was incurred by the Company	9 August 2013
36.	the Company had made net profit per month of USD\$30,694 in	1-30 August 2013
37.	UBS, director Mr Kevin Price, sent an internal email of UBS <b>"2) stop losses are only valid when the market is open 9:30 - 4p".</b>	19 August 2013 timed 4:52 PM

38.	Starostenko complained to Mr George Maillis both orally and in writing by email sent to UBS, which read, inter alia: <b><i>“Good morning George, please all communications when the market is close. Also would love to see you as client advisor and not obstacle maker, as you are doing since May 2013. I have feeling that all your energy now is busy to cancel flat fee - reason? If it is to hard for you we are absolutely fine to not have you in execution team”</i></b>	19 August 2013
39.	Starostenko complained further to Mr George Maillis, which read, inter alia: <b><i>“Why you keep intimidate me? Just adjust stop loss, please. It's disturbing for everybody. As professional traders we have rights to the flat fees. As client advisor you knew from the first meeting - we are not long term investors and promise us Electronic access 'e' in programma", year ago ,..... Emails are long because you do not understand my emails so I am trying to explain it all to you. Please, my time is busy and have to be dedicated to other things. You are there to help us. And truly hope you can start to do so. Will follow with replay on your about DMA.”</i></b> and <b><i>“I can not understand why you keep make our work so difficult, full of obstacles. If really there is good will from your side why don't we all tomorrow NY UBS and asking there technicians how really it function.”</i></b> [grammar from the email]	22 August 2013
40.	Starostenko filed a formal complaint with UBS by email which reads: <b><i>“Dear Marsha, this is really to much. Could you help, please. Please, explain me our rights. Is It possible legally, technically to not have more G.M. In our relationships with the bank? We had no problem till August 12. And our trades was less then 10 per week. You said, and It seems to me as well, everything was fine. Now, George made wrong stop loss execution and instead to ask us sorry and to put amount back, intimidates me with all possible tools.</i></b>	22 August 2013
41.	UBS mail sent to Starostenko, which reads: <b><i>“Irina, I suggest you call me before things get much more complicated for you. 4243024 George”</i></b>	20 August 2013 timed 15:56
42.	UBS in relation to Starostenko were recognized by UBS, as evidenced by email sent to Starostenko which reads: <b><i>“IT ALL STARTS with A DREAM...ops meant NIGHTMARE !! Marsha Adderley Executive Director”</i></b>	20 August 2013 timed 3:21 PM
43.	the Company sent by email a trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having executed the trade at a substantially different price from the price set	21 August 2013 timed 11:18 AM

	in the trading order, as a result, loss of profit was incurred by the Company	
44.	UBS email sent to Starostenko, which reads, inter alia: <b><i>“Irina, This e-mail is to advise you that if you continue to send long, unintelligible e-mails such as the below, I will recommend that your e-mail order privileges be revoked and your fees adjusted sufficiently to amply reflect the time you require us to spend servicing you as a client. Unfortunately, the entire business relationship has to be reviewed, including the mortgage.”</i></b> [grammar from the email]	22 August 2013 timed 4:04 pm
45.	the Company sent by email a trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having executed the trade at a substantially different price from the price set in the trading order, as a result, loss of profit was incurred by the Company	26 August 2013 timed 9:29 AM
46.	Starostenko made a profit of USD\$30,694, as evidenced by the relevant reports sent by email timed at 11:59 AM on 1 August 2013 and email timed at 5:31 PM on 4 September 2013	1 August 2013 timed 11:59 AM to 4 September 2013 timed 5:31 PM
47.	the Company sent by email a trading order, and the Defendant failed to obtain the best possible result on behalf of the first Plaintiff, having executed the trade at a substantially different price from the price set in the trading order, as a result, loss of profit was incurred by the Company	9 September 2013 timed 10:22 AM
48.	UBS only partially compensated the Company for loss of profits sustained due to UBS’ faults in the investment business by way of two (2) compensation payments for a total of USD\$3,110, as evidenced by the relevant reports sent to Starostenko by email	4 September 2013 timed 5:31 PM
49.	the Company transmitted by phone a trading order, timed at 10:12 AM, and the Defendant failed to obtain the best possible result on behalf of the Company, having executed the trade at a substantially different price from the price set in the trading order, as a result, loss of profit was incurred by the Company	10 September 2013
50.	the Company sent by email a trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having executed the trade at a substantially different price from the price set in the trading order, as a result, loss of profit was incurred by the Company	11 September 2013 timed 10:59 AM

51.	the Company sent by email a trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having executed the trade at a substantially different price from the price set in the trading order, as a result, loss of profit was incurred by the Company	11 September 2013 timed 12:35 PM
52.	the Company sent by email a trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having executed the trade at a substantially different price from the price set in the trading order, as a result, loss of profit was incurred by the Company	11 September 2013 timed 2:05 PM
53.	the Company sent by email a trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having executed the trade at a substantially different price from price set in the trading order, as a result, loss of profit was incurred by the Company	11 September 2013 timed 2:26 PM
54.	the Company sent by email a trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having executed the trade at a substantially different price from the price set in the trading order, as a result, loss of profit was incurred by the Company	12 September 2013 timed 10:40 AM
55.	the Company sent by email a trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having executed the trade at a substantially different price from the price set in the trading order, as a result, loss of profit was incurred by the Company	13 September 2013 timed 10:52 AM
56.	the Company sent by email trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having executed the trade at a substantially different price from the price set in the trading order, as a result, a loss of profit was incurred by the Company	13 September 2013 timed 11:36 AM
57.	the Company sent by email a trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having executed the trade at a substantially different price from the price set in the trading order, as a result, loss of profit was incurred by the Company	13 September 2013 timed 12:00 PM
58.	the Company sent by email a trading order, and Defendant failed to obtain the best possible result on behalf of the Company, having executed the trade at a substantially different price from the price set	13 September 2013 timed 12:52 PM

	in the trading order, as a result, a loss of profit was incurred by the Company	
59.	the Company sent by email a trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having executed the trade at a substantially different price from the price set in the trading order, as a result, loss of profit was incurred by the Company	13 September 2013 timed 1:51 PM
60.	the Company transmitted by phone a trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having transmitted the trading order for execution 10 minutes after its receipt and executed the trading order at a substantially different price from the quoted bid, as a result, loss of profit was incurred by the Company	13 September 2013 timed 2:05 PM
61.	the Company sent by email a trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having executed the trade at a substantially different price from the price set in the trading order, as a result, loss of profit was incurred by the Company	16 September 2013 timed at 10:00 AM
62.	the Company sent by email a trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having executed the trade at a substantially different price from the price set in the trading order, as a result, loss of profit was incurred by the Company	16 September 2013 timed 10:49 AM
63.	the Company sent by email a trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having executed the trade at a substantially different price from the price set in the trading order, as a result, loss of profit was incurred by the Company	16 September 2013 timed 12:28 PM
64.	the Company sent by email a trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having executed the trade at a substantially different price from the price set in the trading order, as a result, loss of profit was incurred by the Company	16 September 2013 timed 1:28 PM
65.	the Company sent by email a trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having executed the trade at a substantially different price from the price set in the trading order, as a result, loss of profit was incurred by the Company	17 September 2013 timed 9:47 AM

66.	the Company sent by email a trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having executed the trade at a substantially different price from the price set in the trading order, as a result, loss of profit was incurred by the Company	17 September 2013 timed 10:10 AM
67.	the Company sent by email trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having executed the trade at a substantially different price from price set in the trading order, as a result, loss of profit was incurred by the Company	17 September 2013 timed 10:17 AM
68.	the Company transmitted by phone a trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having executed the trading order at a substantially different price from the quoted bid, as a result, loss of profit was incurred by the Company	18 September 2013 timed 1:58 PM
69.	The repudiatory breach of UBS went to the root of the Investment Agreement by depriving the Plaintiffs of virtually the whole benefit of it because the Company's investment account 32377 was the most important thing to the Investment Agreement. Due to the facts that UBS held the money of the Company on investment account 32377 for carrying out transactions of sale or purchase of securities and that it was impossible to carry out the sale and purchase of securities with this money elsewhere, the Plaintiffs were not able to replace the Investment Agreement that they had with UBS and they were put in an impossible position to take any step to mitigate the loss	18 September 2013
70.	By reason of the matters stated, on the basis of the records of trades set out as aforesaid, the Company suffered actual loss of profits in the total sum of USD\$137,977, which is the actual net profit which the Company lost due to the erosion of prices due to the faults of UBS either in executing trading orders or receiving and transmitting trading orders for execution, thereby breaching the conditions of the Investment Agreement during the period of trades	from 2 August 2013 to 18 September 2013.
71.	the Company demanded full compensation for the loss of profits in the reduced amount of USD\$125,000 . If UBS would have compensated the Company in full for the loss of profits sustained until 18 September 2013 in the amount of USD\$125,000 or about, the Company was entitled to claim, the amount of the balance standing to the Company's credit in the investment account would have been at least USD\$722,820 or about	18 September 2013



72.	UBS in breach of its own terms and Conditions contained in document constituting the Investment Agreement, namely, the “Depreciation in the value of your portfolio” Section of the “Margin Call - Close Out Process” Clause of the Terms and Conditions, UBS issued “halt of trading” in effect on the investment account 32377, with a balance of USD\$589,362, and, acting unlawfully, required the Company to provide money to bring the additional security in cash up to a sum of USD\$700,000 (margin call); actions and conduct that amounted to injury by independently unlawful means	19 September 2013
73.	Starostenko loss of congenial self-employment	from September 2013 to the present
74.	the Company has sustained loss, USD\$2,812 of the brokerage and time based “flat fee” at a rate of 0.4% of trading capital per three months for the period of aid by the Company and debited to the investment account 32377 by UBS, while UBS issued “halt of trading” to that investment account since 19 September 2013	October through December 2013
75.	the Company has sustained loss, which was wasted expenditure made useless as a result of repudiatory breach by UBS of its contractual obligations under the Investment Agreement, which caused a forced inactivity on the Company’s investment account for a period of eight (4) months and (22) twenty days, having paid an excessive amount of USD\$16,000	19 September 2013 to 11 April 2014
76.	the Company sent by email timed a trading order, and the Defendant failed to execute the trading order and to carry out the trade on behalf of the Company, as a result, the loss of profit of USD\$30,000 or so was incurred by the Company	25 September 2013 timed 12:55 PM
77.	the Company sent by email a trading order, and the Defendant failed to execute the trading order and to carry out the trade on behalf of the Company, as a result, the loss of profit of USD\$19,520 or so was incurred by the Company	9 October 2013 timed 10:59 AM
78.	the Company sent by email, a trading order, and the Defendant failed to execute the trading orders and to carry out the trade on behalf of the Company, as a result, a loss of profit of USD\$10,000 or so was incurred by the Company	10 October 2013 timed 10:02 AM
79.	The Company loss of profits in the amount of USD\$59,520, the actual net profit which the Company lost due to the trades not executed by UBS during this period	from 19 September to 10 October 2013

80.	<p>The further lost profits were as follows:</p> <ol style="list-style-type: none"> <li>1.1. the time during which performance was due is three (3) years, eleven (11) months or forty seven (47) months and eighteen (18) days;</li> <li>1.2. actual net profit per month in August 2013 was USD\$30,694;</li> <li>1.3. actual net profit per month in September 2013 would have been USD\$27,339;</li> <li>1.4. actual net profit per month in October 2013 that would have been USD\$59,520;</li> <li>1.5. average actual net profit for three months was USD\$39,184; and</li> <li>1.6. average actual net profit computed by forty seven months (47) months and eighteen (18) day gives the further lost profits in the sum of USD\$1,861,240.</li> </ol>	from August to October 2013 up to 28 September 2017
81.	Starostenko met with UBS' officers or agents, including Mr Maillis, Mr Paoletto, Mr Jenny and others and requested request UBS for substantial performance of the Investment Agreement	8 October 2013
83.	<p>the Company by e-mail sent to UBS filed a complaint with UBS containing the following:</p> <ol style="list-style-type: none"> <li>1.1. an allegation of breach of the Investment Agreement;</li> <li>1.2. a statement of loss of profits;</li> <li>1.3. Proposals: <ol style="list-style-type: none"> <li>1.3.1. to restructure the securities business;</li> <li>1.3.2. pay in advance the amount of interest for the full term of the loan, i.e. upon 28 September 2017 from money in the sum of USD\$589,362 or about standing to the Company's credit in the investment account 32377</li> <li>1.3.3. to fulfill the UBS' intention to start the operation with online trading accounts in the near future on a UBS AG's electronic trading platform to ensure instant executions of trading orders;</li> </ol> </li> </ol> <p>UBS failed to effect such payment</p>	9 October 2013 timed 11:35 and 11:41 AM
84.	UBS had acknowledged the complaint by email sent to the Company and the letter	10 October 2013 timed 16:16 and 12 November 2013
85.	Starostenko filed by email a complaint with UBS AG, and the latter, being a legal entity which holding 99.999975% of the issued shares in	20 December 2013 timed 9:54 AM.

	UBS	
86.	UBS AG, being a legal entity, which legally appointed UBS to act on its behalf, confirmed their involvement in the principal-agent relationship with UBS as principal by two emails sent to the Company	20 December 2013 timed 12:40 and 10 January 2014 timed 14:07
87.	UBS held internal meeting, where in Memorandum from George Maillis, an employee of the Defendant, reads: <i>“Compliant/response: Failure of CA, and BS to deliver on “promise” of fast execution ... <u>Where there was a true CA error or delay, the client received a deoris restitution (2 cases) with adjusted pricing ...”</u></i>	13th January 2014
88.	Starostenko filed the formal request for delivery of the broker’s contract notes, by email sent to UBS	30 January 2014 timed at 9:50 AM
89.	UBS acknowledged the request by email sent by Mr Fabian Jenny of UBS to Starostenko which reads: <b><i>“Good Morning Irina, thank you for the reminder. We will be in touch with you shortly. best regards Fabian”</i></b>	30 January 2014 timed at 10:30 AM
90.	UBS failed to deliver to Starostenko contract notes of the trades executed by UBS and recorded through the NYSE - the NYSE’s Member broker’s (or DMM’s), that represent a benefit of the reporting service under the Investment Agreement and is statutory duty of UBS. UBS handed to Starostenko the so called “trade advices” which purported to be information on the trades executed or purportedly executed at the NYSE on behalf of the Company during the period from 12 June to 18 September 2013, which were actually: <ul style="list-style-type: none"> <li>1.1. not brokers’ contract notes;</li> <li>1.2. not legal documents attesting the legality of the transactions</li> </ul>	2013 up to this day
91.	Starostenko were forced to make arrangements for the education of their children, all homeschooled, switching from fee-paying web-based school for free of charge educational solutions and adopt other restrictions, combined with the inability to travel negatively and substantially affected the wellbeing of said children from September 2013 until the present; and more - Starostenko's experience of the aforesaid loss was aggravated by the fact that two of their children having received offers on admission to the John Cabot University of Rome and King’s College of London were unable to start their studies in 2017, because of financial	2013 up to this day

	starvation created by UBS conspiring against and prosecuting maliciously the Plaintiffs	
92.	UBS wrote to Starostenko that they “proceed towards exploring possible resolutions” and confirmed a meeting with Starostenko on 12 March 2014 to review the position	February 2014
93.	UBS declared, without reasonable and probable cause, the loan in “default” and demanded repayment of the whole outstanding balance along with “breakage penalty” of USD\$140,000 or vacate up possession of the property	28 February 2014
94.	<p>Starostenko sent the letter to UBS, pointed to UBS for its wrongs, as well as an error regarding the use of the terms contained in the “Minimum invested assets under management” and the “Purpose” clauses of the Commitment to Finance that were invalid and not binding on the parties.</p> <p>By this letter, Starostenko confirmed the fact that the Company constantly sought to annul the aforesaid terms and that they were excluded, invalid and not binding on the parties, also because UBS agreed to a new term regarding balances in the investment account 32377 in the amounts USD\$500,000 to USD\$700,000 evidenced e.g. by email sent to Starostenko on 17 May 2013 timed at 11:06 AM, which reads, inter alia: <b><i>“Hi Irina, you can trade the security. Just let me or Marsha have your order whenever you are ready”</i></b>, when the cash balance standing to the credit of the Company in the investment account 32377 was reduced from USD\$729,749 to below USD\$700,000.</p> <p>Further, the aforesaid letter contains a Manifest of Errors regarding so called “Breakage penalty” in the amount of USD\$140,000, erroneously calculated by UBS which, in fact, equals to USD\$171</p>	5 March 2014
95.	<p>UBS announced in the Nassau Guardian and the Tribune that they <b><i>“winding down the banking side of its operations over the next year”</i></b> making itself:</p> <ol style="list-style-type: none"> <li>1.1. no longer a going concern; and</li> <li>1.2. not available to be part of the investment business under the Investment Agreement, which was the root of the relationship between the parties</li> </ol>	7 March 2014
96.	<p>Meeting with the management of UBS:</p> <ul style="list-style-type: none"> <li>- UBS declared its intention to seek orders for the sale, possession or foreclosure of the property, which was and still is a dwelling house let under a tenancy since 2008</li> </ul>	10 March 2014

	<ul style="list-style-type: none"> <li>- Starostenko, orally, requested UBS to provide the broker's contract notes, and Mr Fabian Jenny, to whom the request was redirected by CEO Mr Beat Paoletto, said that he had not received an email with the formal request and promised to provide the broker's contract notes as soon as all the necessary data were received by UBS</li> </ul>	
97.	<p>UBS:</p> <ol style="list-style-type: none"> <li>1.1. entitled itself to the right of set-off which did not exist in law, under statute or in the Investment Agreement;</li> <li>1.2. having no right either under common law or statute or agreement, debited the Company's investment account with the sum of USD\$526,323.49 standing to its credit, which was under statute and agreement a trust property held by UBS on trust; and</li> <li>1.3. made a usurpation of that money of the Company under the Investment Agreement, Statute Laws of the Bahamas and in common law three (3) years and five (5) months before expiration of the term of the Investment Agreement</li> </ol>	11 April 2014
98.	<p>UBS instituted a court proceedings against the Plaintiffs No. 01620 UBS (Bahamas) Ltd (In Voluntary Liquidation) (or UBS) sought possession of a residential property at Lyford Cay belonging to Junkanoo Estates Ltd (or Company) and tenanted by Starostenko since 2008, claiming that a default on a loan given for purposes of an investment business and secured by the property, was caused by the Company's "failure":</p> <ul style="list-style-type: none"> <li>- firstly, to keep at UBS a sum under management equal to 50% of the loan amount, subject to the Investment Agreement between the parties</li> <li>- secondly, to pay periodical interest under an agreement with UBS contained in a Commitment to Finance dated 23 August 2012 (or Commitment to Finance), which in fact was paid by UBS itself debiting to the Company's investment account 32377</li> <li>- - the interest was not paid since 11 April 2014, when UBS made a wrongful usurpation of that money of the Company the sum of USD\$526,323.49 the under the Investment Agreement, Statute Laws of the Bahamas and in common law three (3) years and five (5) months before expiration of the term of the Investment Agreement.</li> </ul>	3 October 2014
99.	<p><i>There was fraud on the part of Counsel for UBS through concealments during the hearing held before Evans J on 23 March 2015 in that he concealed from the Court the fact that UBS,, or four (4) days</i></p>	19 March 2015

	<i>before the hearing, resolved by resolution passed by the member, UBS AG, holding 99.999975% of its issued shares, that UBS be wound up voluntarily commencing 1 April 2015.</i>	
100.	<p>During an oral hearing a judgment was obtained and an unless order was made for the debt claimed and for the possession of a dwelling-house let under a tenancy since 2008 in the tenants', Starostenko, absence who, with good reason, were unable to attend the hearing, while no real attempt was made to present the Plaintiffs' (then Defendants) case at this hearing and the points of their defence were never tested. <b>"(1) It is adjudged that the Plaintiff [UBS] to recover against the defendants [Appellants] the sum of USD \$920,164.87... (2) Upon the Defendants [Appellants] paying to the Plaintiff [Respondent] the money hereby adjudged... (3) Unless the Defendants [Appellants], within 21 days of the date hereof pay to the Plaintiff [UBS] the sum of USD \$920,164.87 due and owing as of 5th December, 2014, together with interest thereon at rate of USD \$129.82 per day from that date until payment, the Defendants [Appellants] must (1) deliver up vacant possession of the Property to the Plaintiff [Respondent] ..."</b> (Emphasis added)</p> <p>During the same hearing also, the Counsel for UBS :</p> <ul style="list-style-type: none"> <li>- concealed from the Court the fact that UBS, or four (4) days before the hearing, resolved by resolution passed by the member</li> <li>- represented withholding of wrongly calculated so called "Breakage penalty" was fraudulently stated by Counsel for UBS as a set-off</li> </ul>	23 March 2015
101.	The possession order was served on the property belonging to the Company, which is a dwelling house let under tenancy of Starostenko since 2008, at 6:30 AM on Saturday by a process server engaged by UBS to use the service for the purposes of intimidating and terrorising not only those who were supposed to be obedient to that order but all the household, including six (6) than minor children and an elderly woman, proved that this and other wrongful acts committed either intentionally or negligently by UBS in trespass, provided that UBS was not carried and thrown onto the tenants' land, failing to take reasonable care, caused that elderly woman harm and her sudden and unexpected death	18 April 2015 6:30 AM on the Saturday
102.	The Plaintiffs (the then Defendants) filed their application to set aside order of Evans J and, on 20 April 2015	9 April 2015
103.	The electricity in the property, the dwelling house with six minor and	April 2015

	one elder, was turned off due to unpaid bills	
104.	During an oral hearing held before Evans J, the set aside application was dismissed on the ground that the Supreme Court was <i>functus</i>	8 May 2015
105.	UBS maliciously and without reasonable or probable cause issued a Writ of possession directed to the enforcement officer Mr Jack Davis, the Deputy Provost Marshal, commanding him to take possession of real estate property of the Company	17 February 2016
106.	The Property, by which a loan of USD\$1,400,000 was secured, revalued at the Fair Market Value of B\$3,355,000	29 April 2016
107.	The matter was heard in the Court of Appeal and, they dismissed the applications of the Defendants on the grounds that the matter had been dealt with and the Court of Appeal was <i>functus</i> . Counsel for UBS acting maliciously threatened an invasion against their home and eviction against them for the purpose of securing entry into premises for UBS, saying things like: " <b><i>As soon as I reach my office I will send you the Provost Marshal</i></b> "	6 June 2016
108.	-The Plaintiffs (then Defendants) had applied for special leave to appeal to Her Majesty in Council from the decisions of the Court of Appeal of the Bahamas	8 June 2016
109.	an oral hearing was held before the Judicial Committee of the Privy Council (or Board) and a formal judgment was given in open court. the Board gave their judgment pronounced by Lord Sumption	24 February 2017 3 April 2017
110.	<b>Real Time Prices</b> Number Company Ticker Sale Price, Sep 2012 Proceeds, Sep'12 10,000 Tesla, Inc. TSLA USD\$345.00 USD\$3,450,000 15,000 Facebook, Inc. FB USD\$167.00 USD\$2,505,000 Proceeds of the sale of the Share Portfolio in 2017 USD\$5,955,000	27 September 2017
111.	Starostenko were frightened by the presence of Mr Jack Davis on chambers premises, at all time during the oral proceedings held before Evans J, and when I spoke to Mr Jack Davis and said about such a state of mind after this hearing, he did not deny that they would have felt scared by his presence	24 October 2017
112.	The Property, by which a loan of USD\$1,400,000 was secured, revalued at the Fair Market Value of \$3,684,000	26 December 2017
113.	A bailiff wrongfully instructed by UBS to conduct certain acts against the Starostenko forcibly entered the property to execute a writ of	27th February 2018

	possession and forcibly removed the Starostenko with their six children from the property in acts of an unlawful execution and unlawful violation of their rights caused by an unjustifiable intrusion.	
114.	Books, sport and leisure equipment, golf carts, furnishings, furniture and other household effects, personal chattels purchased by the Starostenko, having been entitled to possession of the same, and other items which were in custody of the Starostenko, which all were kept by the Starostenko in the property (hereinafter collectively referred to as the “chattels”	27th February 2018
115.	Thereafter that unlawful execution, UBS without any authority from the Plaintiffs or any authority to dispose of the chattels, imposed conditions precedent for collection by the Plaintiffs of their personal belongings and that of their children, and the conditions were upsetting and unacceptable and anyone could find them all 'absolutely vile' for reasons of the non-existence of any valid enduring power to do so and malice or spite on the part of agents of UBS acting in conspiracy to harm the Plaintiffs together with their children, and the conditions were rejected by the Plaintiffs, and therefore the conditions were void. There was no any delivery over of possession, either actual or constructive, of the chattels by the Plaintiffs to anybody for any purpose, and there is no any contract, express or implied, with anybody either for removal from the property or storage of the chattels	March 2018
116.	Since eviction, a partnership of attorneys, the firm, who is very active in conveyancing transactions in Lyford Cay, one of the partners in which is Mr. John Delaney, who is ex-Attorney General of the Commonwealth of The Bahamas, and, since 1st April 2015, is a Joint voluntary liquidator of UBS residing in a house in Lyford Cay known as Villa Nequa at Royal Palm Way, is in charge of the Property	from 27 th April 2018 to the date
117.	The chattels were wrongfully removed from the property and since then are wrongfully detained from the Starostenko, remains in control of Moving U Places or Mrs. Knowles or Mr. Knowles, the moving company hired by UBS and receiving instruction from it	On or about the 5th May 2018 to this date
118.	Starostenko removed their books and some items of furnishings and furniture from the warehouse of Moving U Places But has no access to the remaining part of the chattels	May 2018 and August 2018
119.	Starostenko's experience of the aforesaid loss was aggravated by the facts	September-January 201



	<ul style="list-style-type: none"> <li>- that their oldest son, Herman Starostenko, was accepted by the John Cabot University for one semester, as part of University's charity-courtesy but because of their inability to pay further, he was dismissed from the said University from January 2019</li> <li>- Hermann also was slipping on the street for 20 days in September 2019, when he arrived in Rome for study because of Starostenko's inability to sustain him and entire summer job earned salary were used to purchase his air ticket. Hermann's health had been damaged and more assessments will follow.</li> </ul>	
120.	<p><i>Mr. Gawaine J. Ward, a manager of the Enforcement Department of the Securities Commission sent to the Plaintiffs an email from an email address which reads "gward@scb.gov.bs" with the answer to their query regarding, inter alia, the registrations of individuals employed by the Defendant, which reads, inter alia: "Kindly note, further to your query below, that our files, per the filed Annual Declaration for 2013, indicate the individuals who were registered in 2013 as the CEO and Compliance Officer, were Mr. Beat Paoletto and Ms. Cherise Cox-Nottage, respectively.""</i></p>	<p><i>1st November 2018 timed 13:07</i></p>
121.	<p>On 20th November 2018, UBS by an email timed to 16:34, the Defendant sent to the Plaintiffs copies of disclosed documents, including "UBS (Bahamas) Ltd Security Trail Contracts" dated 13th June to 23rd August 2018 purported to be Contract Notes or a material proof of funds requested in the First Notice.</p>	<p>20 November 2018 Timed 16:34</p>
122.	<p>On 13th December 2018, UBS filed an Affidavit of Renate Raeber ("Raeber Affidavit") disclosing material facts.</p>	
123.	<p>On the face of facts in the Raeber Affidavit, the following individuals were licenced as Principals by the Securities Commission of The Bahamas and the relevant Licences read:  <i>"Pursuant to Regulation 30 of the Securities Industry Regulations, 2000 Kevin Lee Price is hereby licensed as a PRINCIPAL with UBS (Bahamas) Ltd. ..." Issued 29th June 2005";</i>  <i>"Pursuant to Regulations 30 and 31 of the Securities Industry Regulations, 2000 Thibaud Halewyck is hereby licensed as a PRINCIPAL with UBS (Bahamas) Ltd. ..." Issued 23rd June 2010";</i>  <i>"Pursuant to Regulations 30 and 31 of the Securities Industry Regulations, 2000 George Pericles Maillis is hereby licensed as a PRINCIPAL with UBS (Bahamas) Ltd. ..." Issued 27th November 2007";</i></p>	

	<p><i>“Pursuant to Regulations 30 and 31 of the Securities Industry Regulations, 2000 Fabian Felix Jenny is hereby licensed as a PRINCIPAL with UBS (Bahamas) Ltd. ...” Issued 5th July 2010”;</i></p> <p><i>“Pursuant to Regulation 30 of the Securities Industry Regulations, 2000 Marcia Vinzanna Adderley is hereby licensed as a PRINCIPAL with UBS (Bahamas) Ltd. ...” Issued 29th June 2005”</i></p>	
124.	<p>In the financial services sector of The Bahamas the position of Compliance Officer requires specific authorisation from the regulator. It means that such persons are personally responsible for any regulatory sanctions if they do not perform their role to the appropriate standards.</p> <p>Regulation 22(a) of the Securities Industry Regulations, 2000 (repealed) provided for the Compliance Function of an individual licences as a Principal and reads inter alia:</p> <p><i>“22. A broker-dealer shall —</i></p> <p><i>(a) designate <u>an officer as the compliance director</u> of the broker-dealer who shall be <u>licensed as a principal</u> and such principal shall have the authority and responsibility for the supervision of the broker-dealer’s securities business which requirement shall not be delegated to any nominee;”</i></p>	
125.	<p>Only two (2) individuals out of four (4) individuals who, on behalf of UBS, dealt with the Plaintiffs in securities, Marcia Vinzanna Adderley and George Pericles Maillis, were licensed by the Securities Commission of The Bahamas (the “Commission”) as Principals pursuant to Regulations 30 and 31 of the Securities Industry regulations, 2000 (SIR 2000), which never allowed them to legally perform any securities-related functions; further</p> <p>Marcia Vinzanna Adderley and George Pericles Maillis have never been registered by the Commission as Brokers or Stockbrokers under the Securities Industry Act, 1999 (SIA 1999) or as Trading Representatives under the Securities Industry Act, 2011 (SIA 2011) before or in 2013; and two (2) other individuals, Lynette Martinborough and Jamaal Wright, have never been registered by the Commission in any capacity in relation to any securities business before or in 2013</p>	
126.	<p>UBS breached the statutory duty provided by Regulations 71 and 74(1)(2) of the Securities Industry Regulations, 2012 (SIR 2012) to supervise Marcia Vinzanna Adderley, George Pericles Maillis, Lynette Martinborough and Jamaal Wright; establish, maintain and apply a system of controls and supervision sufficient to provide reasonable assurance that Marcia Vinzanna Adderley, George Pericles Maillis,</p>	

	Lynette Martinborough and Jamaal Wright comply with securities laws of The Bahamas	
127.	There is no proof that four (4) individuals, Marcia Vinzanna Adderley, George Pericles Maillis, Lynette Martinborough and Jamaal Wright, through actions of which the Defendant, from 13th June to 18th September 2013, provided to the Plaintiffs cross-border brokerage services or made the arrangements for or with a view to transactions relating to securities, including but not limited to trading order routing, post-trade processing and reporting, in a securities business, and who acted as Trading Representatives in respect of that business, had the education, examination papers or other proof of exams approved by overseas authorities recognized by the Commission, assessing their competency to perform functions similar to those of a Trading Representative, or securities-related experience necessary to meet the appropriate standard of care and diligence customary in securities business within the meaning of "Distribution of Transnational Advices and other Mailing" clause of the Defendant's Terms and Conditions	
128.	<p>"Unit 5 What is the Role of Compliance Function?" of Course Manual International Compliance Training (ICT) Wilmington Risk &amp; Compliance, the largest and longest established provider of professional qualifications in anti money laundering, governance, risk and compliance and financial crime prevention awarded by the International Compliance Association in collaboration with The Bahamas Association of Compliance Officers, administered by The Bahamas Institute of Financial Services and listed by the Securities Commission of The Bahamas in the List of Recognised Examinations for Individuals to perform Registrable Activities Pursuant to the Securities Industry Act, 2011 (the "Unit 5 of ICT").</p> <p>The purpose of the Unit, among other things, is to (1) discuss the key internal and external relationships, and why they are so critical to the regulated business; (2) explain what is meant by consumer conduct and market conduct; and (3) review the role of the Compliance Officer today, and the skills a compliance professional needs in order to be successful in the compliance role.</p> <p>The Unit 5 of ICT reads in <b>Introduction</b> Section:</p> <p><i>"The role of the Compliance function (or the Compliance department, or compliance team: these terms are all also used) is very wide, because it has to mirror all the different business activities in which the firm is engaged. Its more traditional role as a technical function has evolved so that today its responsibilities include providing advice, expertise and support to all business areas, alongside monitoring and reporting, and being the Point of contact with the regulators. In this unit we will look at the various aspects of the role in some detail."</i></p>	

<p>Sub-section <b>3.1.2 Identifying compliance risks</b> of the Unit 5 of ICT reads, among other things:</p> <p><i>“3.1.2 Quantifying risk is a difficult and time-consuming exercise. Often individuals have different attitudes to risk and therefore it can be difficult to agree on a consistent approach. While risk-modelling systems can take some of the subjectivity out of the exercise, in the area of operational risk in particular (which is the category into which a number of compliance risks fall) it can be difficult to accurately assess or measure the potential loss. In many cases, the answer as to whether or not the firm is prepared to accept the loss is ‘it depends’ ~ for example on the level of risk to which the firm is exposed. It is therefore crucial to determine the firm’s risk appetite, that is, the level of risk it is prepared to accept.</i></p> <p><i>A possible outcome could be acceptance of the risk; for example, because the impact of any loss would be small; it is unlikely to happen; or it is inherent in running the business. Alternatively, the outcome could be the implementation of controls for the risk.”</i></p> <p>Sub-section <b>3.1.3 Self-assessment</b> of the Unit 5 of ICT reads, among other things:</p> <p><i>“3.1.3 Self-assessment can be conducted in various ways, such as a review of risk logs, completion of questionnaires and participation in interviews and workshops involving business line managers and the Compliance function. In these exercises, regulatory obligations and possible reasons for failure to adhere to them are discussed. Work processes should also be discussed and managers should identify weak or ineffective compliance controls or those that are or can be easily circumvented.</i></p> <p><i>This form of dialogue is essential. Compliance staff are not usually as familiar with work processes and the interface between service provision and compliance controls as the individuals who work with them on a daily basis. The key to a successful self-assessment exercise, therefore, is the engaged involvement of business units.”</i></p> <p>Section <b>5. Conduct of business compliance</b> of the Unit 5 of ICT reads, among other things:</p> <p><i>“5. For the purposes of this section, we will assume the following are the common core international objectives of regulation;</i></p> <ul style="list-style-type: none"> <li>- <i>protecting investors</i></li> <li>- <i>maintaining confidence in the financial system</i></li> <li>- <i>preserving market stability.</i></li> </ul> <p><i>The first of these is a consumer conduct objective, whereas the second and third are part of the market conduct agenda.</i></p> <p><b>5.1 Consumer conduct</b></p> <p><i>The consumer conduct agenda refers to how a firm or an organisation interacts with its customers. Expressed differently, the question asked</i></p>	
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<p>is 'how does the firm behave in its dealings with all its customers'? The current consumer conduct agenda can be seen as the natural progression of the increased focus on ensuring that customers are treated fairly.</p> <p>As we have already discussed in Unit 1, section 3.1, protecting consumers is perhaps the most fundamental aim of regulation. This in itself contributes to the achievement of the other objectives, maintaining market confidence and market stability. Whether a customer is depositing wages in a bank account or investing billions of pension fund assets with a fund manager, they both have broadly similar concerns.</p> <ul style="list-style-type: none"> <li>- Is the provider secure so that customers can access their money when they need it?</li> <li>- Can the provider be trusted to look after their investments so that they will get back the sums invested (and any return due on them)?</li> <li>- If something goes wrong, for example the provider goes out of business, will their investment be protected? Would they be eligible for compensation?</li> </ul> <p>Protection designed to satisfy these concerns is achieved in a number of ways. Generally, only authorised firms can offer financial services. Before being permitted to offer financial services, firms must meet and maintain certain requirements, called threshold conditions, which include the 'fit and proper' requirement for senior management. Regulators set conduct of business rules designed to provide customers with all the information they need, both pre-and post-sale. These disclosure requirements are at the very heart of consumer conduct requirements as customers must either be able to rely upon any advice received from an authorised firm, or be given sufficient information to be able to make a fully informed decision themselves. Failures in disclosure have been the underlying cause of many of the mis-selling scandals.</p> <p><u>Given the very diverse nature of the customer base, it is usual to weight the Protection in favour of those who are least experienced, such as individual customers dealing on their own account, and small businesses, which also enjoy a high level of protection. Substantial businesses and experienced investors investing their assets are expected to have some knowledge and understanding of the transactions they are undertaking.</u></p> <p><b>5.2 Company conduct</b></p> <p><u>Regulatory expectations are that firms must determine their own approach to conduct and conduct risk — which consequently places consumer interests and market integrity at the heart of the firm's approach.</u></p>	
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<p><u>Firms publish their codes of conduct externally and internally.</u>  <u>There are other ways in which firms can communicate their conduct expectations and these are a fair measure of how seriously conduct is taken at senior levels within the firm.</u>  <u>Other examples that are used include; training and guidance, including but not restricted to annual refresher training, and conduct standards being introduced early in the career of new recruits; key information messages describing and illustrating the core components of good conduct; and we must not forget the importance of boards and the senior management establishing the 'tone from the top', which sets the cultural and conduct agenda for the firm.</u></p> <p><b>5.3 Market conduct</b></p> <p>Market conduct can be defined as the interaction between the firm and the markets within which it operates. It is often linked very closely with market abuse as it tends to be market abuse cases that cause the most damage to confidence in, and the stability of, financial markets. Market abuse is examined in Unit 9, section 7.</p> <p>Other market conduct requirements, such as producing accurate, audited accounts, help promote transparency in the financial markets and, consequently, trust. Should that trust be lost it can take a very long time to regain and have a significant impact upon confidence and stability in that market.</p> <p>Most firms take a three-step approach. Firstly, the firm has policies in place, outlining the regulations, staff responsibilities and obligations to ensure that these are met. These policies should include, as a minimum:</p> <ul style="list-style-type: none"> <li>- a conflicts of Interest policy</li> <li>- a personal account dealing policy</li> <li>- an order execution policy, and</li> <li>- a high-level policy relating to market conduct, which would incorporate reference to market abuse.</li> </ul> <p>Secondly, the firm provides training to all staff, and additional training in higher- risk areas, where appropriate, The purpose of this is to ensure that employees understand the policies, and their responsibilities and obligations.</p> <p>Finally, the firm must ensure that there is a robust monitoring plan in place so that if there are breaches of market conduct requirements, or if incidents of market abuse take place, the firm is able to identify these, and report them to the regulator as soon as possible.</p> <p><b>5.3.1 Market confidence</b></p> <p>Market confidence is at the heart of a stable financial services system. This makes it the cornerstone of regulation and it is closely linked to the other core objectives, particularly consumer protection. <u>To be confident, a customer or investor needs to trust that the market is</u></p>	
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<p><i>operating fairly. Confidence in the market is critical to the viability of national and global economic interests. <u>Like other markets, financial markets are dependent on customers doing business with them. The markets rely on the conduct of transactions, for example customers depositing their money in a bank account, paying bills, borrowing money on a residential mortgage or unsecured personal loan, using their credit cards, trading stocks and shares, taking and laying off financial risks, and investing for the future.</u></i></p> <p><i>If customers lose confidence in the market, they will stop doing business with financial services companies. When this happens, it is not just the financial services industry that is affected; the whole economy suffers.</i></p> <p><i>Consumer confidence can be affected very quickly and can be lost easily. Confidence can be lost in seconds but restoring it takes time, in some cases, years. During the global financial crisis we have seen well-established names such as Bear Stearns, Lehman Bros and the UK's HBOS destabilised in a matter of days, their strong track records and sound reputation providing no immunity from consumer and investor concerns in prevailing conditions. Market confidence can no longer be viewed solely in terms of the local (i.e. national or regional) market.</i></p> <p><b>Section 6. Overseeing prudential compliance</b> of the Unit 5 of ICT reads, among other things:</p> <p><i>"6. Prudential regulation is the means by which the stability of the financial services industry is underpinned. It takes two forms: macro-prudential regulation and micro-prudential regulation. Macro-prudential regulation focuses on issues relating to the stability of the financial system as a whole. It is in essence a rules-based form of supervision. Although there are occasions when an element of supervisory discretion may be allowed, it is important that this is constrained.</i></p> <p><i>Micro-prudential regulation deals with the stability of individual institutions and is concerned with the responses of individual financial services firms to risks from outside sources.</i></p> <p><i>In both cases the overriding objective is to protect depositors. To achieve this, standards are applied that aim at reducing the risk that an institution will fail owing to a lack of capital. The need to ensure capital adequacy has been prominent in the minds of regulators since prudential regulation was first introduced in the early 1970s. Even so, some financial commentators are of the opinion that a lack of liquidity, rather than insufficient capital, led to the financial crisis.</i></p> <p><b>6.1 Senior management responsibilities</b></p> <p><i>There is a close relationship between prudential regulation and corporate governance, and senior management is responsible for this.</i></p>	
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<p><i>As the term implies, corporate governance is about the way in which an organisation is governed, and this governance should be for the benefit of its stakeholders. The Organisation for Economic Co-operation and Development (OECD) has described its purpose as 'maximising value subject to meeting the corporation's financial and other legal and contractual obligations'.</i></p> <p><i>Senior management responsibilities were explained in some detail in the Basel II rules, which were published in 2001, Banks were expected to ensure that robust internal capital-assessment processes were in place and that these set realistic targets for capital adequacy in line with the level of risk involved. Furthermore, credit assessment procedures would need to be sufficiently robust to stand up to external scrutiny by the regulators. The past practice of 'box-ticking' would be replaced with more in-depth probing by regulators.</i></p> <p><i>The Basel Committee was of the opinion that the proposals would also require a more detailed dialogue between the regulatory supervisors and banks. This, in turn, would have implications for the training and expertise of the regulatory supervisors of banks. This was regarded as an important issue, and one which should not be underplayed, for supervisors' ability to perform their role effectively would depend to an extent on their experience and training.</i></p> <p><b>6.1.1 'Fit and proper' requirements</b></p> <p><i>Example: British Virgin Islands</i></p> <p><i>The BVI Financial Services Commission (FSC) issued its amended guidelines for its Approved Persons Regime in March 2009, as amended in December 2013. The following extract explains clearly the purpose of the guidelines and the expectations and duties required of senior persons in financial services firms regulated in that jurisdiction.</i></p> <p><i>These Guidelines outline senior officer duties and responsibilities and incorporate a set of rules governing the process and procedure for the approval of senior officers of a regulated person and actuaries, auditors and other independent officers.</i></p> <p><i>A suitable candidate for a senior officer position must be qualified and have appropriate experience. In order to be appointed as a senior officer, a candidate must demonstrate a high level of competence and integrity. Before granting approval of an application for a senior officer, the Commission must be satisfied that the person to whom the application relates is fit and proper in accordance with the criteria established in Division 2 of Part II of the Regulatory Code, 2009. The Commission exercises judgement and discretion in assessing fitness and propriety and takes into account all relevant matters including honesty, integrity, reputation, competence, expertise, experience, capability and financial soundness."</i></p>	
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<p>Section 7. <b>Recent developments in the role of the Compliance Officer</b> of the Unit 5 of ICT reads, among other things:  <b>“7.1 How the role has changed significantly</b>  7.1.1 <i>Evolution and focus</i>  As explored in Unit 2, section 7.1.3, in order to demonstrate effective GRC in a firm, ethical behaviour and standards must flow from the top down. The board of directors and senior management should demonstrate their commitment to high standards of compliance and ethics, through both actions and words. They should communicate to all employees their expectation that everyone (including themselves) will comply with laws, rules and internal standards when conducting business. The Compliance function should Support and influence management in building a robust compliance culture based on ethical standards of behaviour, which themselves contribute to effective corporate governance.  Compliance starts at the top. It will be most effective in a corporate culture that emphasises standards of honesty and integrity and in which the board of directors and senior management lead by example.  Read <b><u>the guidance Compliance and the Compliance Function in Banks published by the Basel Committee on Banking Supervision in April 2005</u></b>. What message does the paper convey? How does this compare with the situation in your firm? Are you surprised that it was written as far back as 2005?  The Compliance function is managed by the Compliance Officer, but all compliance professionals (compliance managers, compliance analysts, etc.) have key responsibilities, required knowledge and skill sets, which are set out below.  <b>7.1.2 The GRC context</b>  <u>The general responsibility of the Compliance Officer is to provide an in-house compliance service that effectively supports business areas in their duty to comply with relevant laws, regulations and internal procedures.</u> The specific responsibilities of a Compliance Officer depend upon a number of factors, including the particular industry sector, the size of the business, the nature and complexity of its activities, its resources, and the attitude of the organisation to the Compliance function and the issue of compliance generally.  In the financial services sector the position of Compliance Officer requires specific authorisation from the regulator. Anyone wishing to perform this role must go through the proper application process and is subject the Fit and Proper rules. <u>It also means that such persons are personally responsible for any regulatory sanctions if they do not perform their role to the appropriate standards.</u>  In January 2012, a UK Compliance Officer, Alexander Ten-Holter of Greenlight Capital (UK), LLP was fined £130,000 for failing to</p>	
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<p>question and make reasonable enquiries before Greenlight sold shares in Punch Taverns plc ahead of an anticipated significant equity fund raising by Punch Taverns plc in 2009. He was also prohibited from performing the Compliance Oversight and Money Laundering Reporting functions.</p> <p><u>It is clear that the role is no longer a standalone assurance activity. Compliance is at the heart of GRC, and the Compliance Officer has a pivotal role to play in helping the board and senior management to develop and instil the required cultural and ethical standards that are needed to help a firm to be successful in today's regulated environment.</u></p> <p><b>7.2 Key technical knowledge and skills needed now</b></p> <p><b>7.2.1 Role-related knowledge</b></p> <p>The Compliance Officer must have sound regulatory knowledge covering a variety of topics. While specialist team members may retain the more detailed knowledge of the rules, <u>the Compliance Officer must still hold a sound understanding of the objectives, principles and management of compliance.</u></p> <p><u>Knowledge of the laws and regulations is not in itself sufficient. Compliance Officers also need to be able to apply knowledge effectively in the context of their own firm. Hence, a sound knowledge and understanding of the business in which a Compliance Officer works is fundamental.</u></p> <p><u>This is especially important in a principles-based and outcomes-focused regulatory environment, where the regulatory regime requires a focus on the 'bigger picture, looking beyond the rules to identify the spirit in which they were written and the intention behind them. It is how you comply that is most important.</u></p> <p><b>7.2.2 Analytical, investigative and research skills</b></p> <p>Compliance Officers must have the ability to analyse and interpret data gathered for a number of purposes, for example when undertaking compliance reviews and monitoring activities. This is key to being able to quantify the level of regulatory and compliance risk to which the business is exposed and to assist in implementing improvements.</p> <p><u>The Compliance Officer must also have good investigative (including questioning) skills, for example when dealing with customer complaints or with a regulatory review or investigation. These skills are usually called upon when something has gone wrong.</u></p> <p>The ability to conduct appropriate research is important since an understanding of the broader regulatory or business perspective is the best way of ensuring that appropriate advice is provided.</p> <p><b>7.2.3 Business awareness and pragmatism</b></p> <p>These two skills complement each other.</p>	
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	<p><i><u>Compliance Officers must be able to demonstrate a good understanding of the market and business in which they operate in order to exercise good judgement as to the best way to achieve compliance. Failure to do this may result in the development of impractical solutions.</u></i></p> <p><i><u>Compliance Officers must remember that compliance is not an end in itself; it is the positive outcome for customers and other stakeholders that is key, and this contributes to ensuring the continuing viability of the firm.</u></i></p> <p><i>It is the Compliance Officer's role to advise senior management on how the firm can safely recommend and market products, and balance compliance with the commercial pressures it is facing. To do this effectively <u>the Compliance Officer must understand the business structure and its operations, the type of client to whom any new product will be sold, and the business' risk appetites, to enable them to provide suggestions for a practical solution.</u></i></p>	
129.	<p>The guiding principle in the Unit 5 of ICT is that a Compliance Officer must show the required range of skills, technical knowledge and personal qualities necessary to manage the Compliance function effectively.</p> <p>In the governance, risk and compliance (GRC) context a Compliance Officer has general responsibility which is to provide an in-house compliance service that effectively supports business areas in their duty to comply with relevant laws, regulations and internal procedures.</p> <p>UBS' compliance officers mentioned above in relationships with the plaintiffs in the period 2012 to 2014 failed:</p> <ul style="list-style-type: none"> <li>- To understand their responsibilities for maintaining employees' core competence in meeting regulatory requirements and the importance of the key external relationships such as, for example Customer Relationship, for carrying out the role effectively and know how to develop and maintain them;</li> <li>- To appreciate the importance of thoroughly understanding the work and objectives of the firm's business unit responsible for trading transactions and the importance of monitoring business activities;</li> <li>- To provide guidance on the proper application and interpretation of laws, regulations and policies applicable to the firm. Such regulation may include rules, guidance documents,</li> </ul>	2012 to 2014

	<p>codes of conduct and internal policies designed to achieve regulatory compliance and in the development, implementation and maintenance of robust policies, procedures and practices for regulated activities;</p> <ul style="list-style-type: none"> <li>- To implement and maintain a compliance-monitoring programme to provide management with assurance that key regulatory risks are being adequately managed within the business areas;</li> <li>- To set policies and procedures and propose improvements in the event that the monitoring programme identifies weaknesses, significant issues, concerns or regulatory breaches;</li> <li>- To be able to explain the significance of conduct of business regulation, and how to meet the objectives of protecting customers and consumers of financial services, maintaining public confidence in the financial system and to explain to the board the Compliance Officer's role in helping the business to comply macro-prudential and micro-prudential regulation, understand the close relationship between prudential regulation and corporate governance, and the role of the 'fit and proper' requirements for the firm and its employees.</li> </ul>	
130.	<p>The guidance Compliance and the Compliance Function in Banks published by the Basel Committee on Banking Supervision of the Bank for International Settlements in April 2005 (the "Guidance "Compliance and the Compliance Function in Banks`") provides the guiding principles for governance structures of all existing banks, as follows:</p> <p><i>"8. A bank should organise its compliance function and set priorities for the management of its compliance risk in a way that is consistent with its own risk management strategy and structures. For instance, some banks may wish to organise their compliance function within their operational risk function, as there is a close relationship between compliance risk and certain aspects of operational risk. Others may prefer to have separate compliance and operational risk functions, but establish mechanisms requiring close cooperation between the two functions on compliance matters.</i></p> <p><b><i>Responsibilities of senior management for compliance</i></b></p> <p><b><i>Principle 2</i></b></p> <p><b><i>The bank's senior management is responsible for the effective management of the bank's compliance risk.</i></b></p> <p><i>15. The following two principles articulate the most important elements of this general principle. Principle 3 The bank's senior</i></p>	

<p><i>management is responsible for establishing and communicating a compliance policy, for ensuring that it is observed, and for reporting to the board of directors on the management of the bank's compliance risk.</i></p> <p><i>16. The bank's senior management is responsible for establishing a written compliance policy that contains the basic principles to be followed by management and staff, and explains the main processes by which compliance risks are to be identified and managed through all levels of the organisation. Clarity and transparency may be promoted by making a distinction between general standards for all staff members and rules that only apply to specific groups of staff.</i></p> <p><i>17. The duty of senior management to ensure that the compliance policy is observed entails responsibility for ensuring that appropriate remedial or disciplinary action is taken if breaches are identified. 18. Senior management should, with the assistance of the compliance function:</i></p> <ul style="list-style-type: none"> <li><i>• at least once a year, identify and assess the main compliance risk issues facing the bank and the plans to manage them. Such plans should address any shortfalls (policy, procedures, implementation or execution) related to how effectively existing compliance risks have been managed, as well as the need for any additional policies or procedures to deal with new compliance risks identified as a result of the annual compliance risk assessment;</i></li> <li><i>• at least once a year, report to the board of directors or a committee of the board on the bank's management of its compliance risk, in such a manner as to assist board members to make an informed judgment on whether the bank is managing its compliance risk effectively; and</i></li> <li><i>• report promptly to the board of directors or a committee of the board on any material compliance failures (e.g. failures that may attract a significant risk of legal or regulatory sanctions, material financial loss, or loss to reputation).</i></li> </ul> <p><b><i>Principle 4</i></b></p> <p><b><i>The bank's senior management is responsible for establishing a permanent and effective compliance function within the bank as part of the bank's compliance policy.</i></b></p> <p><i>19. Senior management should take the necessary measures to ensure that the bank can rely on a permanent and effective compliance function that is consistent with the following principles.</i></p> <p><b><i>Compliance function principles</i></b></p> <p><b><i>Principle 5: Independence The bank's compliance function should be independent.</i></b></p> <p><i>20. The concept of independence involves four related elements, each of which is considered in more detail below. First, the compliance function should have a formal status within the bank. Second, there</i></p>	
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<p><i>should be a group compliance officer or head of compliance with overall responsibility for co-ordinating the management of the bank's compliance risk. Third, compliance function staff, and in particular, the head of compliance, should not be placed in a position where there is a possible conflict of interest between their compliance responsibilities and any other responsibilities they may have. Fourth, compliance function staff should have access to the information and personnel necessary to carry out their responsibilities.</i></p> <p><i>21. The concept of independence does not mean that the compliance function cannot work closely with management and staff in the various business units. Indeed, a co-operative working relationship between compliance function and business units should help to identify and manage compliance risks at an early stage. Rather, the various elements described below should be viewed as safeguards to help ensure the effectiveness of the compliance function, notwithstanding the close working relationship between the compliance function and the business units. The way in which the safeguards are implemented will depend to some extent on the specific responsibilities of individual compliance function staff. Status</i></p> <p><i>22. The compliance function should have a formal status within the bank to give it the appropriate standing, authority and independence. This may be set out in the bank's compliance policy or in any other formal document. The document should be communicated to all staff throughout the bank.</i></p> <p><i>23. The following issues with respect to the compliance function should be addressed in the document:</i></p> <ul style="list-style-type: none"> <li><i>• its role and responsibilities;</i></li> <li><i>• measures to ensure its independence;</i></li> <li><i>• its relationship with other risk management functions within the bank and with the internal audit function;</i></li> <li><i>• in cases where compliance responsibilities are carried out by staff in different departments, how these responsibilities are to be allocated among the departments;</i></li> <li><i>• its right to obtain access to information necessary to carry out its responsibilities, and the corresponding duty of bank staff to co-operate in supplying this information;</i></li> <li><i>• its right to conduct investigations of possible breaches of the compliance policy and to appoint outside experts to perform this task if appropriate;</i></li> <li><i>• its right to be able freely to express and disclose its findings to senior management, and if necessary, the board of directors or a committee of the board;</i></li> <li><i>• its formal reporting obligations to senior management; and</i></li> <li><i>• its right of direct access to the board of directors or a committee of</i></li> </ul>	
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<p><i>the board.</i></p> <p><i>Head of Compliance</i></p> <p>24. <i>Each bank should have an executive or senior staff member with overall responsibility for co-ordinating the identification and management of the bank's compliance risk and for supervising the activities of other compliance function staff. This paper uses the title "head of compliance" to describe this position.</i></p> <p>25. <i>The nature of the reporting line or other functional relationship between staff exercising compliance responsibilities and the head of compliance will depend on how the bank has chosen to organise its compliance function. Compliance function staff who reside in operating business units or in local subsidiaries may have a reporting line to operating business unit management or local management. This is not objectionable, provided such staff also have a reporting line through to the head of compliance as regards their compliance responsibilities. In cases where compliance function staff reside in independent support units (e.g. legal, financial control, risk management), a separate reporting line from staff in these units to the head of compliance may not be necessary. However, these units should co-operate closely with the head of compliance to ensure that the head of compliance can perform his or her responsibilities effectively.</i></p> <p>26. <i>The head of compliance may or may not be a member of senior management. If the head of compliance is a member of senior management, he or she should not have direct business line responsibilities. If the head of compliance is not a member of senior management, he or she should have a direct reporting line to a member of senior management who does not have direct business line responsibilities.</i></p> <p>27. <i>The supervisor of the bank and the board of directors should be informed when the head of compliance takes up or leaves that position and, if the head of compliance is leaving the position, the reasons for his or her departure. For internationally active banks with local compliance officers, the host country supervisor should be similarly informed of the arrival or departure of the local head of compliance.</i></p> <p><i>Conflicts of interest</i></p> <p>28. <i>The independence of the head of compliance and any other staff having compliance responsibilities may be undermined if they are placed in a position where there is a real or potential conflict between their compliance responsibilities and their other responsibilities. It is the preference of the Committee that compliance function staff perform only compliance responsibilities. The Committee recognises, however, that this may not be practicable in smaller banks, smaller business units or in local subsidiaries. In these cases, therefore,</i></p>	
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<p><i>compliance function staff may perform non-compliance tasks, provided potential conflicts of interest are avoided.</i></p> <p><i>29. The independence of compliance function staff may also be undermined if their remuneration is related to the financial performance of the business line for which they exercise compliance responsibilities. However, remuneration related to the financial performance of the bank as a whole should generally be acceptable.</i></p> <p><i>Access to information and personnel</i></p> <p><i>30. The compliance function should have the right on its own initiative to communicate with any staff member and obtain access to any records or files necessary to enable it to carry out its responsibilities.</i></p> <p><i>31. The compliance function should be able to carry out its responsibilities on its own initiative in all departments of the bank in which compliance risk exists. It should have the right to conduct investigations of possible breaches of the compliance policy and to request assistance from specialists within the bank (e.g. legal or internal audit) or engage outside specialists to perform this task if appropriate.</i></p> <p><i>32. The compliance function should be free to report to senior management on any irregularities or possible breaches disclosed by its investigations, without fear of retaliation or disfavour from management or other staff members. Although its normal reporting line should be to senior management, the compliance function should also have the right of direct access to the board of directors or to a committee of the board, bypassing normal reporting lines, when this appears necessary. Further, it may be useful for the board or a committee of the board to meet with the head of compliance at least annually, as this will help the board or board committee to assess the extent to which the bank is managing its compliance risk effectively.</i></p> <p><b><i>Principle 7: Compliance function responsibilities</i></b></p> <p><b><i>The responsibilities of the bank’s compliance function should be to assist senior management in managing effectively the compliance risks faced by the bank. Its specific responsibilities are set out below. If some of these responsibilities are carried out by staff in different departments, the allocation of responsibilities to each department should be clear.</i></b></p> <p><i>34. Not all compliance responsibilities are necessarily carried out by a “compliance department” or “compliance unit”. Compliance responsibilities may be exercised by staff in different departments. In some banks, for example, legal and compliance may be separate departments; the legal department may be responsible for advising management on the compliance laws, rules and standards and for preparing guidance to staff, while the compliance department may be responsible for monitoring compliance with the policies and</i></p>	
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<p><i>procedures and reporting to management. In other banks, parts of the compliance function may be located within the operational risk group or within a more general risk management group. If there is a division of responsibilities between departments, the allocation of responsibilities to each department should be clear. There should also be appropriate mechanisms for co-operation among each department and with the head of compliance (e.g. with respect to the provision and exchange of relevant advice and information). These mechanisms should be sufficient to ensure that the head of compliance can perform his or her responsibilities effectively.</i></p> <p><i>Advice</i></p> <p><i>35. The compliance function should advise senior management on compliance laws, rules and standards, including keeping them informed on developments in the area.</i></p> <p><i>Guidance and education</i></p> <p><i>36. The compliance function should assist senior management in:</i></p> <ul style="list-style-type: none"> <li><i>• educating staff on compliance issues, and acting as a contact point within the bank for compliance queries from staff members; and</i></li> <li><i>• establishing written guidance to staff on the appropriate implementation of compliance laws, rules and standards through policies and procedures and other documents such as compliance manuals, internal codes of conduct and practice guidelines.</i></li> </ul> <p><i>Identification, measurement and assessment of compliance risk</i></p> <p><i>37. The compliance function should, on a pro-active basis, identify, document and assess the compliance risks associated with the bank's business activities, including the development of new products and business practices, the proposed establishment of new types of business or customer relationships, or material changes in the nature of such relationships. If the bank has a new products committee, compliance function staff should be represented on the committee.</i></p> <p><i>38. The compliance function should also consider ways to measure compliance risk (e.g. by using performance indicators) and use such measurements to enhance compliance risk assessment. Technology can be used as a tool in developing performance indicators by aggregating or filtering data that may be indicative of potential compliance problems (e.g. an increasing number of customer complaints, irregular trading or payments activity, etc).</i></p> <p><i>39. The compliance function should assess the appropriateness of the bank's compliance procedures and guidelines, promptly follow up any identified deficiencies, and, where necessary, formulate proposals for amendments.</i></p> <p><i>Monitoring, testing and reporting</i></p> <p><i>40. The compliance function should monitor and test compliance by performing sufficient and representative compliance testing. The</i></p>	
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<p>results of the compliance testing should be reported up through the compliance function reporting line in accordance with the bank's internal risk management procedures.</p> <p>41. The head of compliance should report on a regular basis to senior management on compliance matters. The reports should refer to the compliance risk assessment that has taken place during the reporting period, including any changes in the compliance risk profile based on relevant measurements such as performance indicators, summarise any identified breaches and/or deficiencies and the corrective measures recommended to address them, and report on corrective measures already taken. The reporting format should be commensurate with the bank's compliance risk profile and activities.</p> <p><i>Statutory responsibilities and liaison</i></p> <p>42. The compliance function may have specific statutory responsibilities (e.g. fulfilling the role of anti-money laundering officer). It may also liaise with relevant external bodies, including regulators, standard setters and external experts.</p> <p><i>Compliance programme</i></p> <p>43. The responsibilities of the compliance function should be carried out under a compliance programme that sets out its planned activities, such as the implementation and review of specific policies and procedures, compliance risk assessment, compliance testing, and educating staff on compliance matters. The compliance programme should be risk based and subject to oversight by the head of compliance to ensure appropriate coverage across businesses and co-ordination among risk management functions.</p> <p><b>Other matters</b></p> <p><b>Principle 9: Cross-border issues</b></p> <p><b><i>Banks should comply with applicable laws and regulations in all jurisdictions in which they conduct business, and the organisation and structure of the compliance function and its responsibilities should be consistent with local legal and regulatory requirements.</i></b></p> <p>46. Banks may conduct business internationally through local subsidiaries or branches, or in other jurisdictions where they do not have a physical presence. Legal or regulatory requirements may differ from jurisdiction to jurisdiction, and may also differ depending on the type of business conducted by the bank or the form of its presence in the jurisdiction.</p> <p>47. Banks that choose to conduct business in a particular jurisdiction should comply with local laws and regulations. For example, banks operating in subsidiary form must satisfy the legal and regulatory requirements of the host jurisdiction. Certain jurisdictions may also have special requirements in the case of foreign bank branches. It is for local businesses to ensure that compliance responsibilities specific</p>	
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	<p><i>to each jurisdiction are carried out by individuals with the appropriate local knowledge and expertise, with oversight from the head of compliance in co-operation with the bank's other risk management functions.</i></p> <p><i>48. The Committee recognises that a bank may choose to carry on business in various jurisdictions for a variety of legitimate reasons. Nevertheless, procedures should be in place to identify and assess the possible increased reputational risk to the bank if it offers products or carries out activities in certain jurisdictions that would not be permitted in its home jurisdiction."</i></p>	
131.	<p>In the period 2012 to 2014, UBS failed to organise its compliance function and set priorities for the management of its compliance risk in a way that is consistent with the Guidance "Compliance and the Compliance Function in Banks" which sets out sound practices related to the principles 2, 4, 5, 7 and 9 quoted above which should be applicable to all banks.</p> <p>The most serious violations of the Guidance "Compliance and the Compliance Function in Banks" is the violation of principle 9 in that UBS failed to comply with applicable laws and regulations in the jurisdiction of the Commonwealth of The Bahamas in which it conducted business, having the responsibilities of the organisation and structure of the compliance function being inconsistent with local legal and regulatory requirements.</p> <p>In 1968, UBS AG had chosen to conduct business in this jurisdiction, but, at least in the period 2012 to 2014, failed to implement and maintain procedures that would exclude the possibility that it offered products and carried out activities in The Bahamas not permitted in its home jurisdiction of Switzerland.</p>	

I believe that the facts stated in this witness Statement are true.

SWORN to at New Providence, The Bahamas)

This                                      day of July, A.D., 2019) \_\_\_\_\_

Before Me,  
NOTARY PUBLIC

COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
COMMON LAW AND EQUITY SIDE

BETWEEN

JUNKANOO ESTATES LTD

First Plaintiff

YURI STAROSTENKO

Second Plaintiff

IRINA STAROSTENKO

Third Plaintiff

AND

UBS (Bahamas) LTD (In Voluntary Liquidation)

Defendant

(Actions and Counterclaims consolidated by Order  
of the Judge dated 4 November 2015)

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WITNESS STATEMENT

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2014/CLE/gen/No.01620

2015/CLE/gen/No.01451

YURI & IRINA STAROSTENKO

Roofless since 27 February 2018

New Providence, The Bahamas

Cell: 817-4372

*Second and Third Plaintiffs Pro Se*