



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

June 16, 2009

DIVISION OF  
CORPORATION FINANCE

Mr. Christian J. Mixter  
Morgan, Lewis & Bockius LLP  
1111 Pennsylvania Avenue, NW  
Washington, D.C. 20004

Re: SEC v. Deutsche Bank Securities, Inc.-- **Waiver Request of Ineligible Issuer Status under Rule 405 of the Securities Act by Deutsche Bank AG**

Dear Mr. Mixter:

This is in response to your letter dated June 16, 2009, written on behalf of your client Deutsche Bank AG ("Company") and its subsidiary Deutsche Bank Securities, Inc. ("DBSI") and constituting an application for relief from the Company being considered an "ineligible issuer" under Rule 405(1)(vi) of the Securities Act of 1933 ("Securities Act"). The Company requests relief from being considered an ineligible issuer under Rule 405, arising from the settlement of a civil injunctive proceeding with the Commission. The Commission filed a civil injunctive complaint against DBSI in the United States District Court for the Southern District of New York alleging that DBSI violated Section 15(c) of the Securities Exchange Act of 1934 ("Exchange Act"). DBSI filed a consent in which it agreed, without admitting or denying the allegations of the Commission's Complaint, to the entry of a Final Judgment against it. Among other things, the Final Judgment as entered on June 9, 2009, permanently enjoins DBSI from violating Section 15(c) of the Exchange Act.

Based on the facts and representations in your letter, and assuming the Company and DBSI comply with the Final Judgment, the Commission, pursuant to delegated authority has determined that the Company has made a showing of good cause under Rule 405(2) and that the Company will not be considered an ineligible issuer by reason of the entry of the Final Judgment. Accordingly, the relief described above from the Company being an ineligible issuer under Rule 405 of the Securities Act is hereby granted and the effectiveness of such relief is as of the date of the entry of the Final Judgment. Any different facts from those represented or non-compliance with the Final Judgment might require us to reach a different conclusion.

Sincerely,

A handwritten signature in black ink that reads "Mary Kosterlitz".

Mary Kosterlitz  
Chief, Office of Enforcement Liaison  
Division of Corporation Finance

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June 16, 2009

**VIA E-MAIL AND HAND DELIVERY**

Mary J. Kosterlitz, Esquire  
Chief of the Office of Enforcement Liaison  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F. Street, NE  
Washington, DC 20549-0310

Re: Deutsche Bank AG

Dear Ms. Kosterlitz:

On behalf of our client Deutsche Bank AG. ("Deutsche Bank"), we hereby respectfully request a waiver of any "ineligible issuer"<sup>1</sup> status that may arise pursuant to Rule 405 ("Rule 405") promulgated under the Securities Act of 1933 ("Securities Act") with respect to Deutsche Bank as a result of a settlement between Deutsche Bank Securities Inc. ("DBSI"), an indirect wholly-owned subsidiary of Deutsche Bank, and the Securities and Exchange Commission ("Commission"). The settlement resulted in the issuance of a Judgment that is described below. We respectfully request that this waiver be granted effective as of the date of the entry of the Judgment. It is our understanding that the Staff of the Division of Enforcement (the "Staff") does not object to the grant of the requested waiver.

**BACKGROUND**

The Staff engaged in settlement discussions with DBSI in connection with the investigation described above. DBSI submitted an executed Consent, solely for the purpose of proceedings by or on behalf of the Commission, which consented to the entry of a Judgment (the "Judgment"). The Judgment was entered on June 9, 2009.

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<sup>1</sup> See Securities Offering Reform, 70 Fed. Reg 44, 772; 44,810-811 (Aug. 3, 2005) (codified at 17 C.F.R., pt. 230.405).

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Under the Judgment, entered, in part, pursuant to Sections 21(d)(1), 21(e), 21(f), and 27 of the Exchange Act, DBSI is enjoined from violating Section 15(c) of the Exchange Act, 15 U.S.C. § 78o(c). The Commission's Complaint alleged, without admission or denial by DBSI, that DBSI misled its customers about the fundamental nature and increasing risks associated with ARS that it underwrote, marketed and sold. The Complaint further alleged that DBSI, through client advisers, marketing materials, and account statements, misrepresented ARS to its customers as safe, highly liquid investments comparable to cash or money market instruments, and that DBSI reinforced this perception by committing its own capital to support ARS auctions for which it served as the lead manager to ensure that those auctions did not fail. The Judgment permanently enjoins DBSI from engaging in violations of Section 15(c) of the Exchange Act, requires it to comply with the undertakings specified in the Judgment, and provides that DBSI may be required to pay civil monetary penalties pursuant to Section 21(d)(3) of the Exchange Act.

### DISCUSSION

Securities Act rules, which were adopted and amended effective December 1, 2005, provide substantial benefits to issuers classified as a "well-known seasoned issuer" ("WKSI"), including the use of a streamlined automatic shelf registration process and exemption from "quiet period" restrictions prohibiting communication during the 30-day period prior to the filing of a registration statement.<sup>2</sup> The new rules also permit most other issuers to use a "free writing prospectus" after a registration statement is filed to communicate information about a registered offering of securities.<sup>3</sup> However, these benefits are unavailable to issuers who are excluded from the WKSI definition, and therefore such issuers may not use automatic shelf registrations or make communications within 30 days prior to filing a registration statement.<sup>4</sup> Similarly, the rules prohibit ineligible issuers from using post-filing free writing prospectuses.<sup>5</sup> An issuer is an ineligible issuer for the purposes of Rule 405 if, among other things,

[w]ithin the past three years . . . the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud

<sup>2</sup> See Rule 405 (definition of "well-known seasoned issuer"); *id.* (definition of "Automatic shelf registration statement"); Securities Offering Reform, 70 Fed. Reg. 44, 772; 44,805-806 (Aug. 3, 2005) (codified at 17 C.F.R. pt. 230.163 & 163A) ("Rule 163").

<sup>3</sup> Securities Offering Reform, 70 Fed. Reg. 44,772; 44,806-807 (Aug. 3, 2005) (codified at 17 C.F.R. pt. 230.164) ("Rule 164"). The new rules permit WKSI's to use a free writing prospectus *before* a registration statement is filed as well. Rule 163.

<sup>4</sup> See Rule 405 (definition of "Well-known seasoned issuer," para. (iii)).

<sup>5</sup> See Rule 164.

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provisions of the federal securities laws; (B) Requires that the person cease and desist from violating the anti-fraud provisions of the federal securities laws.<sup>6</sup>

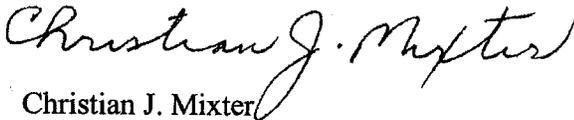
Ineligible issuer status may be waived if “the Commission determines, upon a showing of good cause that it is not necessary under the circumstances that the issuer be considered an ineligible issuer.”<sup>7</sup> The Commission has delegated to the Division of Corporation Finance the authority to grant or deny applications requesting that an issuer not be considered an ineligible issuer as defined in Rule 405.<sup>8</sup>

Accordingly, Deutsche Bank hereby requests a waiver, effective as of the date of the entry of the Judgment, of any ineligible issuer status that may arise under Rule 405 as a result of the entry of the Judgment.<sup>9</sup> We do not believe that the protection of investors or the public interest would be served by denying Deutsche Bank the benefits afforded by the Securities Act to issuers that are not classified as ineligible issuers. The SEC’s case, which resulted in the Judgment, does not relate in any way to any public disclosures by Deutsche Bank. Accordingly, Deutsche Bank should be determined not to be an “ineligible issuer” within the meaning of Rule 405.

In light of the grounds for relief discussed above, we believe that Deutsche Bank has shown good cause that relief should be granted. Accordingly, we respectfully urge the Division of Corporation Finance to grant a waiver, effective as of the date of the entry of the Judgment, of any ineligible issuer status with regard to Deutsche Bank that may arise pursuant to Rule 405.

If you have any questions regarding this request, please contact the undersigned at 202.739.5575.

Very truly yours,



Christian J. Mixer

cc: Andrew Weinberg, Esquire, DBSI

<sup>6</sup> Rule 405 (definition of “Ineligible issuer,” para (1)(vi)).

<sup>7</sup> *Id.* (definition of “Ineligible issuer,” para (2)).

<sup>8</sup> Securities Offering Reform, 70 Fed. Reg. 44,772; 44,798-799 (Aug. 3, 2005) (codified at 17 C.F.R. pt. 200.30-1(a)(10)).

<sup>9</sup> Deutsche Bank reserves all rights to claim that this disqualification provision is inapplicable.