



DIVISION OF
CORPORATION FINANCE

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

January 9, 2007

Mr. Richard C. Pepperman, II
Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004-2498

Re: In the Matter of Auction Rate Securities Practices (HO-09954), The Bank of New
York Company
**Waiver Request of Ineligible Issuer Status under Rule 405 of the Securities
Act**

Dear Mr. Pepperman:

This is in response to your letter dated December 14, 2006, written on behalf of your client The Bank of New York Company (Company) and its subsidiary, the Bank of New York (BNY) and constituting an application for relief from the Company and BNY being considered "ineligible issuers" under Rule 405(1)(vi) of the Securities Act of 1933 (Securities Act). The Company and BNY each request relief from being considered an ineligible issuer under Rule 405, due to the entry on January 9, 2007, of a Commission Order (Order) pursuant to Section 8A of the Securities Act of 1933 (Securities Act) naming BNY as a respondent. The Order finds, among other things, that BNY caused violations of Section 17(a)(2) of the Securities Act.

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

Sincerely,

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

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December 12, 2006

Via Federal Express

Mary Kosterlitz, Esq.,
Chief of the Office of Enforcement Liaison,
Division of Corporation Finance,
Securities and Exchange Commission,
100 F Street, N.E.,
Washington, D.C. 20549.

Re: In the Matter of Auction Rate Securities Practices,
File No. HO-09954 (The Bank of New York)

Dear Ms. Kosterlitz:

We are writing on behalf of our client, The Bank of New York Company, Inc. ("BNYCo."), and its subsidiary, The Bank of New York ("BNY"), which is a respondent in the above-referenced investigation commenced by the Securities and Exchange Commission (the "Commission"). The investigation relates to certain practices involving auction-rate securities. Two other auction agents are also respondents in this proceeding and, together with BNY, are negotiating a settlement with the Division of Enforcement.

We hereby request, pursuant to amended Rule 405 under the Securities Act of 1933 (the "Securities Act"), that the Division of Corporation Finance, on behalf of the Commission, determine that BNY and BNYCo. shall not be considered "ineligible issuers" as defined in Rule 405 as a result of the proposed order to be entered in the above-referenced investigation, as described below. We request that this determination be made effective upon entry of the proposed order. We understand that the Division of Enforcement does not object to such determination.

BACKGROUND

In connection with the above-referenced proceeding, which was brought pursuant to Section 8A of the Securities Act, BNY and the Division of Enforcement have reached an agreement in principle to settle the matter as described below, and BNY has submitted to the Commission an offer of settlement in which, for the purpose of this proceeding, it consents to the entry of an order by the Commission (the "Order") without admitting or denying the matters set forth in the Order (except as to the jurisdiction of the Commission and the subject matter of the proceeding).

In the Order, the Commission will make findings, without admission or denial by BNY, that BNY caused violations of Section 17(a)(2) of the Securities Act in connection with certain practices relating to auction-rate securities. Based on these findings, the Order will require BNY to cease and desist from committing or causing any current or future violations of Section 17(a)(2) and to pay a civil money penalty of \$750,000.

DISCUSSION

Under a number of Securities Act rules that became effective on December 1, 2005, a company that qualifies as a "well-known seasoned issuer" as defined in Rule 405 will be eligible, among other things, to register securities for offer and sale under an "automatic shelf registration statement," as so defined, and to have the benefits of a streamlined registration process under the Securities Act. Companies that qualify as well-known seasoned issuers will be entitled to conduct registered offerings more easily and with substantially fewer restrictions. Pursuant to Rule 405, however, a company cannot qualify as a well-known seasoned issuer if it is an "ineligible issuer." Similarly, the new Securities Act rules will permit an issuer and other offering participants to communicate more freely during registered offerings by using free-writing prospectuses, but only if the issuer is not an "ineligible issuer."¹ Thus, being an ineligible issuer will disqualify an issuer from a number of significant benefits under the new rules.

¹ Being an ineligible issuer will disqualify an issuer under the definition of "well-known seasoned issuer," thereby preventing the issuer from using an automatic shelf registration statement (*see* new Rule 405) and limiting its ability to communicate with the market prior to filing a registration statement (*see* new Rule 163). In addition, being an ineligible issuer will disqualify an issuer, whether or not it is a well-known seasoned issuer, under new Rules 164 and 433, thereby preventing the issuer and other offering participants from using free-writing prospectuses during registered offerings of its securities. Consequently, this request for relief is being made not only for the purpose of qualifying as a well-known seasoned issuer but for all purposes of the definition of "ineligible issuer" in Rule 405 – *i.e.*, for whatever purpose the definition may now or hereafter be used under the federal securities laws, including SEC rules.

Rule 405 defines “ineligible issuer” to include any issuer of securities with respect to which the following is true: “Within 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 . . . administrative . . . order arising out of a governmental action that . . . [r]equires that the person cease and desist from violating the anti-fraud provisions of the federal securities laws.” Notwithstanding the foregoing, paragraph (2) of the definition provides that an issuer “shall not be an ineligible issuer 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.” The Commission has delegated authority to the Division of Corporation Finance to grant waivers from any of the ineligibility provisions of this definition.²

The Order might be deemed to be an administrative order of the kind that would result in BNYCo., as well as BNY, becoming an ineligible issuer for a period of three years after the Order is entered. This result would preclude BNYCo. (and such other entities) from qualifying as a well-known seasoned issuer and having the benefit of automatic shelf registration and other provisions of the new rules for three years. This would be a significant detriment for BNYCo. BNYCo. is a frequent issuer of registered securities that offers and sells securities under a shelf registration statement in both one-off transactions and in an ongoing medium-term note program. For BNYCo., the shelf registration process provides an important means of access to the U.S. capital markets, and these markets are an essential source of funding for the company’s global operations. Consequently, automatic shelf registration and the other benefits available to a well-known seasoned issuer will be significant for BNYCo.

As described above, Rule 405 authorizes the Commission to determine that a company shall not be an ineligible issuer, notwithstanding that the company becomes subject to an otherwise disqualifying administrative order. BNYCo. and BNY believe that there is good cause, in their case, for the Commission to make such a determination with respect to the Order on the following grounds.

1. Disqualification of BNYCo. or BNY as an ineligible issuer is not warranted given the nature of the violation found in the Order. The alleged conduct relates primarily to auction agents’ conduct of auctions of auction rate securities in ways that were not adequately disclosed in the disclosure documents for the securities or that did not conform to the procedures disclosed in those documents. The Order does not challenge BNY’s or BNYCo.’s disclosures in their own filings with the Commission, nor does it allege fraud in connection with BNY’s or BNYCo.’s offerings of their own securities.

2. BNYCo. and BNY have a strong record of compliance with the securities laws and voluntarily cooperated with the Division of Enforcement’s inquiry into

² See 17 C.F.R. § 200.30-1. See also note 215 in Release No. 33-8591 (July 19, 2005).

this matter. BNY also has implemented policies and procedures designed to help prevent recurrence of the conduct that is the subject of the Order.

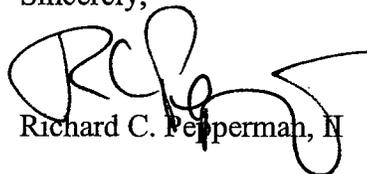
3. Disqualification of BNYCo. or BNY as an ineligible issuer would be unduly and disproportionately severe. The Order will require BNY to pay a civil money penalty of \$750,000. Making BNYCo. an ineligible issuer would result in an additional penalty beyond what the Order requires.

* * * * *

In light of the foregoing, we believe that disqualification of BNYCo. or BNY as an ineligible issuer is not necessary under the circumstances, either in the public interest or for the protection of investors, and that BNYCo. and BNY have shown good cause for the requested relief to be granted. Accordingly, we respectfully request that the Division of Corporation Finance, on behalf of the Commission, pursuant to Rule 405, determine that it is not necessary under the circumstances that BNYCo. or BNY be an "ineligible issuer" within the meaning of Rule 405 as a result of the Order. We request that this determination be made for all purposes of the definition of "ineligible issuer," however it may now or hereafter be used under the federal securities laws and the rules thereunder.

If you have any questions regarding this request, please contact the undersigned at (212) 558-3493.

Sincerely,



Richard C. Pepperman, II

cc: Kenneth R. Lench, Esq.
Melissa E. Lamb, Esq.
(Division of Enforcement)