



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

June 13, 2016

Paul R. Eckert, Esq.
WilmerHale
1875 Pennsylvania Avenue, NW
Washington, D.C. 20006

Re: In the Matter of The Bank of New York Mellon
**The Bank of New York Mellon Corporation – Waiver Request of Ineligible Issuer
Status under Rule 405 of the Securities Act**

Dear Mr. Eckert:

This is in response to your letter dated April 6, 2016, written on behalf of The Bank of New York Mellon Corporation (“Company”) and constituting an application for relief from the Company being considered an “ineligible issuer” under clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act of 1933 (“Securities Act”). The Company requests relief from being considered an “ineligible issuer” under Rule 405, due to the entry on June 13, 2016, of a Commission Order (“Order”) pursuant to Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against The Bank of New York Mellon (“BNYM”). The Order requires that, among other things, BNYM cease and desist from committing or causing any violations and any future violations of Sections 31(a) and 34(b) of the Investment Company Act and Rule 31a-1(b) thereunder.

Based on the facts and representations in your letter, and assuming BNYM complies with the Order, the Commission, pursuant to delegated authority, has determined that the Company has made a showing of good cause under clause (2) of the definition of ineligible issuer in Rule 405 and that the Company will not be considered an ineligible issuer by reason of the entry of the Order. Accordingly, the relief described above from the Company being an ineligible issuer under Rule 405 of the Securities Act is hereby granted. Any different facts from those represented or failure to comply with the terms of the Order would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Sincerely,

/s/

Tim Henseler
Chief, Office of Enforcement Liaison
Division of Corporation Finance

April 6, 2016

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Eun Ah Choi
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
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Re: *In the Matter of The Bank of New York Mellon*

Dear Ms. Choi:

This letter is submitted on behalf of The Bank of New York Mellon Corporation (“BNYMCo.”), in connection with the settlement of the above-referenced matter by the Securities and Exchange Commission (the “Commission” or “SEC”) with The Bank of New York Mellon, a New York State chartered bank (“BNYM”), in connection with BNYM’s standing instruction foreign exchange (“FX”) program. BNYM is a subsidiary of BNYMCo. The settlement will result in the entry of an administrative and cease-and-desist order against BNYM (the “Order”), which is described below.

Pursuant to Rule 405 promulgated under the Securities Act of 1933 (the “Securities Act”), BNYMCo. hereby requests that the Commission or the Division of Corporation Finance, pursuant to delegated authority, determine that for good cause shown it is not necessary under the circumstances that BNYMCo. be considered an “ineligible issuer” under Rule 405. BNYMCo. requests that this determination be effective upon the entry of the Order.

BACKGROUND

On October 23, 2015, BNYM submitted an offer of settlement to the Commission which will result in the Commission issuing the Order. BNYM consented to the entry of the Order, which will find that BNYM willfully violated Sections 34(b) of the Investment Company Act of 1940 (“Investment Company Act”) and caused violations of Investment Company Act Sections 34(b) and 31(a) and Rule 31a-1(b) thereunder. The Order will find that from at least 2000 through at least August of 2011, BNYM and its predecessors misled certain of its custodial clients with regard to its execution of their standing instruction FX transactions.

Solely for the purpose of settling these proceedings, BNYM consented to the Order. BNYM will admit only the factual allegations set forth in Annex A to the Order. The Order will require BNYM to cease and desist from committing or causing any violations and any future violations of Investment Company Act Sections 34(b) and 31(a) and Rule 31a-1 thereunder. In addition, the Order will require BNYM to pay \$120 million in disgorgement and pre-judgment interest,

Eun Ah Choi
April 6, 2016
Page 2

which will be satisfied through separate resolutions that BNYM has entered into in litigation, including with the Department of Justice and the New York Attorney General, and \$30 million in civil penalties.

DISCUSSION

In 2005, the Commission revised the registration, communications, and offering processes under the Securities Act.¹ As part of this offering reform, the Commission revised Securities Act Rule 405, creating a new category of issuer, the “well-known seasoned issuer” (or “WKSI”), and a new category of offering communication, the “free writing prospectus.” A well-known seasoned issuer is eligible for important reforms that have changed the way corporate finance transactions for larger issuers are planned and structured. These reforms include the ability to “file-and-go” (i.e., eligibility for automatically effective shelf registration statements) and “pay-as-you-go” (i.e., the ability to pay filing fees as the issuer sells securities off the shelf). In addition, well-known seasoned issuers are provided with greater flexibility in terms of communications, including the ability to use free writing prospectuses in advance of filing a registration statement.

The Commission also created another category of issuer under Rule 405, the “ineligible issuer.” An ineligible issuer is excluded from the category of “well-known seasoned issuer” and is ineligible to make communications by way of free writing prospectuses, except in limited circumstances.² As a result, an ineligible issuer that would otherwise be a well-known seasoned issuer does not have access to file-and-go or pay-as-you-go, and cannot use certain types of free writing prospectuses.

Securities Act Rule 405 authorizes the Commission to determine, “upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer.”³

BNYMC_o. understands that the entry of the Order against BNYM, which is a subsidiary of BYNMC_o., would make BNYMC_o. an ineligible issuer under Rule 405.⁴ As a result, BNYMC_o. would not be able to qualify as a well-known seasoned issuer, and, therefore, would not have access to file-and-go and other reforms available to well-known seasoned issuers, and would not

¹ See Securities Offering Reform, Securities Act Release No. 8591, Exchange Act Release No. 52,056, Investment Company Act Release No. 26,993, 70 Fed. Reg. 44,722, 44,790 (Aug. 3, 2005).

² See Securities Act Rules 164(e), 405 & 433, 17 C.F.R. §§ 230.164(e), 230.405 & 230.433.

³ Securities Act Rule 405, 17 C.F.R. § 230.405.

⁴ The Order is being entered in conjunction with settlements between BNYM and the U.S. Department of Justice, the U.S. Department of Labor, and the Attorney General for the State of New York regarding similar underlying conduct. We believe these other settlements will not cause BNYMC_o. to become an ineligible issuer under Rule 405.

Eun Ah Choi
April 6, 2016
Page 3

be able to be eligible to take advantage of all of the free writing prospectus reforms of Rules 164 and 433.

REASONS FOR GRANTING A WAIVER

Consistent with the framework outlined in the Division of Corporation Finance's Revised Statement on Well-Known Seasoned Issuer Waivers issued on April 24, 2014, BNYMCo. respectfully requests that the Commission determine that it is not necessary for BNYMCo. to be considered an ineligible issuer as a result of the Order. Applying the ineligibility provisions to BNYMCo. would be disproportionately and unduly severe, for the reasons described below.

Nature of Violation: Responsibility for and duration of the alleged violations

The conduct set forth in the Order involved transactions in BNYM's standing instruction FX program that occurred from at least 2000 through at least August 2011. Such conduct, and the alleged violations addressed in the Order, do not pertain to activities undertaken by BNYMCo. in connection with BNYMCo.'s role as an issuer of securities (or any disclosure related thereto) or otherwise involve alleged fraud in connection with BNYMCo.'s offerings of its own securities. No conduct by BNYMCo. and no conduct in respect of BNYMCo.'s financial reporting and SEC filings is implicated. Rather, the conduct occurred at the subsidiary level, without involvement by BNYMCo. No employees of BNYMCo. were named in the Order, and the Commission did not find that any of the directors or senior management of BNYMCo. engaged in any misconduct or were aware of violative conduct or ignored any warning signs or "red flags" regarding the conduct. Moreover, only BNYM was held responsible; no affiliated issuer was involved in any way. The conduct by BNYM does not call into question the reliability of BNYMCo.'s financial reporting and SEC filings.

In addition, all of the senior-most employees of BNYM's Global Markets division that were even arguably involved in the alleged misconduct have left BNYM, and therefore none of these individuals will have any involvement with BNYMCo.'s current or future financial reporting and SEC filings. The former head of BNYM's Global Markets division retired in June 2011, the former head of BNYM's Global Trading retired in February 2012, and the head of BNYM's Global Sales separated from BNYM in July 2015. Individuals primarily involved with drafting responses to requests for proposal ("RFPs") and drafting language for the BNYM Global Markets website, which are the subject of this Order, likewise have separated from BNYM. These individuals, along with hundreds of other BNYM personnel, previously reviewed limited aspects of BNYMCo.'s financial reports and SEC filings, in particular for accuracy regarding their areas of responsibility, before filing with the Commission. None of these individuals will have any involvement with BNYMCo.'s current or future financial reporting and SEC filings.

Eun Ah Choi
April 6, 2016
Page 4

Significantly, the Order does not allege that BNYM acted with scienter. Rather, the Order finds that BNYM violated certain of the provisions of the federal securities laws that require a mental state of no greater culpability than negligence. BNYMCo. believes that such conduct does not call into question the reliability of BNYMCo.'s current and future disclosure as an issuer of securities because none of the alleged conduct is related in any way to any of BNYMCo.'s current or future disclosures as an issuer of securities. BNYMCo. does not believe that its disclosure controls and procedures as an issuer or its filings with the Commission were deficient.

Remedial Steps

BNYM has taken appropriate steps to prevent the conduct described in the Order from recurring. In October 2009, BNYM's Global Markets division removed from its webpage the language describing its standing instruction FX product as "free of charge" and in November 2009 added a fuller description of what it understood "best execution" to mean in the context of standing instruction FX execution. In May 2011, BNYM sent an FX white paper to hundreds of clients which explained that, for standing instruction FX transactions, BNYM tends to purchase currencies from its clients towards the low end of the daily interbank range, and to sell currencies to its clients towards the high end of the daily interbank range.

In January 2012, BNYM entered into a Stipulation with the Department of Justice pursuant to which BNYM agreed both to make additional disclosures and to avoid the use of certain terms in describing its standing instruction FX program. Among other things, BNYM agreed that it would not use the term "best execution" in describing its standing instruction FX program, and further that it would not represent that standing instruction FX was "free." BNYM further agreed to state on its website that it assigns prices to standing instruction FX transactions that are at or near the high end of the range of prices reported in the interbank market for currency sales to clients, and prices that are at or near the low end of the prices reported in the interbank market for purchases of currencies from clients. BNYM additionally agreed to make available to clients, every 90 days, a table displaying the 90-day average rate for purchases and sales of 20 currency pairs in the standing instruction program, as well as the 90-day average of the bid and offer rates in the interbank market as of approximately 3:15 pm EST, for the preceding 90 days.

In February 2012, BNYM rolled out a new standing instruction pricing option to all clients, known as the Defined Spread Program. Under the terms of the Defined Spread Program, BNYM prices all standing instruction FX transactions at a predetermined spread above or below either an objective market source or a reference rate computed by BNY Mellon. A detailed description of the pricing rules is set forth in the Defined Spread Offering's disclosure documentation, which is available to clients and their investment managers. All clients and their investment managers were offered a choice between the Defined Spread pricing option and historical Session Range pricing option.

Eun Ah Choi
April 6, 2016
Page 5

In February 2014, BNYM upgraded its legacy Session Range Program, and further enhanced its disclosures regarding that program. The upgrades include pricing pursuant to pre-defined rules and enhanced post-trade reporting, with transactions priced once per day within the interbank range of the day, and subject to application of a price collar, with price being specific to session, pricing location and currency pair. A description of the pricing rules used in the upgraded Session Range program is set forth in the program's disclosure documentation, which is available to clients and their investment managers.

On March 19, 2015, BNYM entered into stipulations with the Department of Justice and the New York Attorney General in which BNYM agreed to provide functionality allowing customers to compare pricing for Defined Spread and Session Range standing instruction FX transactions. BNYM has been providing that functionality on a quarterly basis since April 2015.

The Commission has previously granted The Bank of New York Company, Inc. ("The Bank of New York"), a predecessor company of BNYMCo., a waiver from being considered an ineligible issuer.⁵ *In the Matter of Bank of New York* (File No. HO-09954) (Jan. 9, 2007) related to alleged conduct by The Bank of New York in connection with the underwriting, marketing and sale of auction rate securities. This matter alleged that The Bank of New York caused violations of Section 17(a)(2) of the Securities Act in connection with certain practices relating to auction-rate securities. The conduct that was the subject of the previous waivers was wholly different from the conduct alleged in the Order. None of the conduct alleged in such orders related to BNYMCo.'s conduct as an issuer of securities and does not call into question BNYMCo.'s ability to make accurate disclosures about its future offerings.

Taking into account the nature of the conduct and the remediation steps which have been described above, BNYMCo. does not believe that conduct alleged in the Order calls into question the reliability of BNYMCo.'s current and future financial reporting and SEC filings.

Impact on Issuer

The Order is the result of substantial negotiations between BNYM and the Commission's Division of Enforcement. The Order directs BNYM to pay disgorgement and a substantial penalty and cease and desist from violating certain provisions of the Investment Company Act. The loss of BNYMCo.'s status as an eligible issuer could, as described in more detail below, have a significant impact on BNYMCo.'s ability to raise capital and conduct its operations,

⁵ In addition, as part of the Commission's Municipalities Continuing Disclosure Cooperation ("MCDC") Initiative with standardized settlement terms, BNY Mellon Capital Markets, LLC and certain affiliates were among the group of firms that received waivers without submitting waiver request letters due to the unique nature of the MCDC Initiative (*In the Matter of BNY Mellon Capital Markets, LLC*, Securities Act Rel. No. 9816 (June 18, 2015)).

Eun Ah Choi
April 6, 2016
Page 6

which in turn could potentially harm investors and the market as a whole. This would be an unduly severe consequence, particularly in light of the fact that the conduct at issue in the Order involves one of BNYMCo.'s subsidiaries and not BNYMCo. itself.

BNYMCo. is focused on helping clients manage and service their financial assets – facilitating liquidity and aiding clients in managing risk in financial transactions. In this capacity BNYMCo. provides critical infrastructure for the global capital markets, making possible a significant percentage of market transactions worldwide each day. As such, BNYMCo. relies on the benefits afforded to well-known seasoned issuers in its day-to-day operations. Being a well-known seasoned issuer provides two primary benefits: (1) additional flexibility over a Form S-3 when issuing from a shelf registration; and (2) the ability to communicate more freely with investors using free-writing prospectuses (“FWPs”).

BNYMCo. regularly relies on its eligible issuer status to offer securities under automatic shelf registration statements. For BNYMCo., the automatic shelf registration process provides a critical means of access to the United States capital markets, which are essential funding for its operations. Losing its status as a well-known seasoned issuer would impose additional restrictions on BNYMCo.'s use of shelf registration statements. Among other things, BNYMCo. would be required to pay all fees upfront at the time of registration and include additional information in its registration statements. Further, BNYMCo.'s registration statements would be subject to a review period, limiting BNYMCo.'s flexibility and ability to access the capital markets when market conditions are most advantageous. All of these consequences would impose additional administrative burdens and costs on BNYMCo. In addition, if BNYMCo. is considered an ineligible issuer, its ability to communicate with investors using free-writing prospectuses (“FWPs”) would be limited. FWPs convey targeted and relevant information to customers in a user-friendly format that is often easier to understand than the typically more dense statutory prospectus. The SEC has recognized that investors and the securities markets benefit from the use of FWPs, which among other things facilitate greater transparency to investors.⁶ BNYMCo. used FWPs containing only a description of the terms of the securities in the offering or the offering itself (“term sheet FWPs”) in connection with each of its issuances of medium term notes in 2013, 2014, 2015 and to date in 2016. Since 2007, BNYMCo. has once used a FWP that was not a term sheet FWP. Although BNYMCo. typically uses only term sheet FWPs, which will continue to be available even if WKSI status is lost, BNYMCo. would lose the flexibility to communicate in other ways with investors and the markets as needed in the future.

BNYMCo. is a frequent issuer of registered securities, offering and selling securities under its automatic shelf registration statements in both one-off transactions and in an ongoing medium-term note program. The automatic shelf registration process provides BNYMCo. a critical

⁶ Securities Offering Reform, Securities Act Release No. 8501 (Nov. 3, 2004).

Eun Ah Choi
April 6, 2016
Page 7

means of access to the capital markets in a timely and efficient manner, which is essential for funding the company's business. Without the granting of a waiver, by the time BNYMCo. is able to launch an offering, the market may no longer be willing to purchase BNYMCo.'s securities in the amount or at the price available upon commencement of the offering process, which could negatively impact certain of its lines of business that rely on BNYMCo. funding. Using its automatic shelf registration statements, BNYMCo. issued approximately \$3.9 billion of senior debt securities in nine transactions (including tranches) under its medium-term note program in 2013, approximately \$4.7 billion of senior debt securities in eight transactions (including tranches) under its medium-term note program in 2014, approximately \$5.0 billion of senior debt securities in seven transactions (including tranches) under its medium-term note program in 2015, and \$1 billion of senior debt securities in one transaction under its medium-term note program to date in 2016. In 2013, BNYMCo. used its automatic shelf registration statements to issue approximately \$500 million of preferred shares and in 2015 BNYMCo. used its automatic shelf registration statement to issue approximately \$1 billion in depositary shares. BNYMCo. also uses an automatic shelf registration statement to issue common stock under its direct stock purchase and dividend reinvestment plans.

Since 2013, BNYMCo. has been, or is involved in approximately \$16.1 billion of offerings using its automatic shelf registration statements. All of BNYMCo.'s issuances of common stock, preferred stock, and long-term debt from 2013 to date have used its automatic shelf registration statements. These figures demonstrate the importance of the WKSI shelf to BNYMCo. in meeting its regulatory, capital, funding, and business requirements. In addition, in the future, certain regulatory proposals, if enacted, could require BNYMCo. to issue additional levels of capital beyond that which is currently required for general corporate purposes.

In light of these considerations, subjecting BNYMCo. to ineligible issuer status is not necessary under the circumstances, either in the public interest or for the protection of investors, and good cause exists to determine that BNYMCo. should not be considered an ineligible issuer under Rule 405 as a result of the Order. We respectfully request the Commission or the Division of Corporation Finance pursuant to delegated authority to make that determination.

Please contact me at (202) 663-6537 if you have any questions regarding this request.

Sincerely,



Paul R. Eckert