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

DIVISION OF
CORPORATION FINANCE

March 16, 2020

Martine M. Beamon, Esq.
Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, NY 10017

Re: **HSBC Holdings plc – Waiver Request of Ineligible Issuer Status under Rule 405 of the Securities Act of 1933**

Dear Ms. Beamon:

This is in response to your letter dated March 13, 2020, written on behalf of HSBC Holdings plc ("HSBC") and constituting an application for relief from HSBC being considered an "ineligible issuer" under clause (1)(iv) of the definition of ineligible issuer in Rule 405 of the Securities Act of 1933 ("Securities Act"). HSBC requests relief from being considered an ineligible issuer under Rule 405, due to the entry on March 16, 2020 of a Commission Order ("Order") pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against HSBC Securities (USA), Inc. ("HSBC Securities"), a subsidiary of HSBC. The Order requires that, among other things, HSBC Securities cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

Based on the facts and representations in your letter, we have determined that HSBC has made a showing of good cause under clause (2) of the definition of ineligible issuer in Rule 405 and that HSBC will not be considered an ineligible issuer by reason of the entry of the Order. Accordingly, the relief described above from HSBC 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.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Sincerely,

/s/

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

New York
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March 13, 2020

By Electronic Mail and Overnight Courier

Re: In the Matter of HSBC Securities (USA) Inc.

Tim Henseler, Esq.
Chief, Office of Enforcement Liaison
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549-7553

Dear Mr. Henseler:

We submit this letter on behalf of HSBC Holdings plc. ("HSBC"), in connection with the settlement of the above-captioned administrative proceeding filed by the Securities and Exchange Commission (the "Commission" or the "SEC") against HSBC Securities (USA) Inc. ("HSI"), an indirect wholly-owned subsidiary of HSBC. The settlement resulted in the entry of a cease-and-desist order (the "Order") against HSI, which is described below.

Pursuant to Rule 405, promulgated under the Securities Act of 1933, HSBC respectfully requests that the Commission, or the Division of Corporation Finance acting pursuant to delegated authority,[1] determine that, for good cause shown, it is not necessary under the circumstances that HSBC be considered an "ineligible issuer" under Rule 405.

BACKGROUND

The Enforcement Staff has engaged in settlement discussions with HSI in connection with the above-captioned matter and has determined that HSI has violated Sections 206(2) and 206(4) of the Investment Advisers Act of 1940 (the "Advisers Act") and Rule 206(4)-7 thereunder. Without admitting or denying the findings in the Order, except as to the Commission's jurisdiction over it and the subject matter of the proceedings, HSI has consented to the entry of the Order, which institutes administrative and cease-and-desist proceedings pursuant to Section 15(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Sections 203(e) and Section 203(k) of the Advisers Act.

[1] *See* 17 C.F.R. § 200.30-1(a)(10).

The Order finds that, between November 2015 and August 2017, HSI made false and misleading disclosures about how its investment advisor representatives ("IARs") were compensated. As described in the Order, IARs are dual-registered as brokers and investment advisers. In 2013, HSI changed how it compensated IARs: whereas IARs previously were compensated on a commission basis, under the new framework they received a fixed salary with the opportunity for a discretionary bonus, based on performance on several financial and non-financial metrics. One of those financial metrics took into consideration recurring income to HSI from clients' investment products, including quarterly asset-under-management fees that IARs generated from clients' managed program accounts. Clients did not pay commissions or fees for activity within those accounts.

HSI's Customer Agreement—which was provided to every customer—disclosed that conflicts of interest may arise with respect to HSI's consideration of income to the firm in determining employee compensation. However, HSI's Form ADV and Wrap Fee Program Brochure, which were provided only to advisory clients, stated that IARs were not compensated based on commissions or fees from the managed program accounts. Those advisory program documents also listed the non-financial factors used to compensate IARs, without describing the financial factors that affected an IAR's compensation. The Order finds that these disclosures were false and misleading and did not sufficiently disclose potential or actual conflicts of interest concerning the factors HSI used to determine IAR compensation.

The Order requires that HSI cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder. Additionally, the Order censures HSI and requires payment of a civil monetary penalty of $725,000.

HSBC is a publicly-traded company listed on the New York Stock Exchange and is a reporting company under the Exchange Act. HSBC has identified itself in filings with the Commission as a well-known seasoned issuer ("WKSI") and is the only issuer that is a parent of HSI, which is a registered investment adviser and broker-dealer.

DISCUSSION

In 2005, the Commission revised the registration, communications, and offering processes under the Securities Act.[2] As part of this offering reform, the Commission revised Securities Act Rule 405 and created a new category of issuer, the WKSI, and a new category of offering communication, the "free writing prospectus." A WKSI is eligible for important benefits under the Commission's rules, which have changed the way corporate finance transactions for large 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). These reforms have reduced the risk of regulatory delays in connection with capital formation, without impacting the protection afforded to investors. In addition, WKSIs are provided with greater flexibility in their communications, including the ability to use free writing prospectuses in advance of filing a registration statement.

[2] *See* Securities Offering Reform, Securities Act Release No. 8591 (July 19, 2005), Exchange Act Release No. 52,056, Investment Company Act Release No. 26,993, 70 Fed. Reg. 44,722, 44,790 (Aug. 3, 2005).

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.[3] As a result, an ineligible issuer that would otherwise qualify as a WKSI 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."[4] The Commission has delegated the function of granting or denying such applications to the Director of the Division of Corporation Finance.[5]

HSBC understands that the entry of the Order against HSI, which is an indirect subsidiary of HSBC, would make HSBC an ineligible issuer under Rule 405. As a result, HSBC would not be able to qualify as a WKSI, and, therefore, would not have access to file-and-go and other reforms available to WKSIs, and would not 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, HSBC respectfully submits that granting HSBC a waiver from ineligible issuer status is in the public interest and that declaring HSBC to be an ineligible issuer is not necessary for the protection of investors. In light of the facts and circumstances of this action and considering the conduct described in the Order, applying the ineligibility provisions to HSBC would be disproportionately and unduly severe. For the reasons set forth below, HSBC's request for a waiver from ineligible issuer status should be granted.

Nature of the Violation

The conduct described in the Order does not pertain to activities undertaken by HSBC in connection with its role as an issuer of securities (or any disclosure related thereto), its financial reporting, or any of its filings with the Commission. Likewise, the Order does not find any weaknesses or violations associated with HSBC's disclosures or other internal controls it maintained in connection with its role as an issuer, or its preparation and review of financial statements and Commission filings.

The Persons Responsible For the Misconduct Described in the Order

HSI is not an issuer of securities, and the employees responsible for the disclosures addressed in the Order did not have any responsibility with respect to HSBC's role as an issuer of securities (or any disclosures related thereto), its financial reporting, or any of its filings with the Commission. The HSI personnel involved in the disclosures addressed in the Order are

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

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

5 17 C.F.R. § 200.30-1(a)(10).

distinct from the personnel involved in HSBC's disclosures as an issuer of securities and HSBC's filings with the commission. Similarly, the HSI procedures governing the disclosures addressed in the Order are distinct from the extensive Sarbanes-Oxley attestation and review process associated with HSBC's disclosures as an issuer of securities and HSBC's filings with the commission. No employee of HSBC participated in the underlying conduct, and there is no evidence that HSBC's directors or senior management were aware of the violative conduct, ignored warning signs or red flags regarding the conduct, or engaged in deliberate misconduct. Further, no employee—from either HSI or HSBC—disregarded indications that the disclosures were inconsistent. The Order does not suggest otherwise, nor does it identify any client who was misled by the disclosures or otherwise harmed.

The Duration of the Misconduct Described in the Order

The conduct at issue in the Order occurred from November 2015 to August 2017. The Order identifies two instances during this 22-month period in which HSI's disclosures, which were provided only to customers of managed program accounts, were false and misleading. As described below, HSI voluntarily revised its Form ADV and Wrap Program Brochures in August 2017 to address the disclosures at issue in the Order.

The Order Does Not Involve a Scienter-Based Violation

The Order does not allege that HSBC or HSI acted with scienter or intent to defraud. Rather, the conduct involves a non-scienter-based violation of the Advisers Act by one of HSBC's subsidiaries, HSI. In addition, while the Order states that HSI provided false and misleading disclosures to customers of managed program accounts about its IARs' conflicts related to compensation, the Order also recognizes that HSI provided every customer with a disclosure stating that a conflict of interest may arise in the consideration of recurring income to the firm when determining employee compensation.

Remedial Action

HSI voluntarily revised its Form ADV and Wrap Program Brochures in August 2017 to address the disclosures at issue in the Order and provide more information about how IARs are compensated. As revised, the disclosures state that IARs do not receive commissions on the products that they sell, and the disclosures provide examples of both the financial and non-financial factors that affect an IAR's compensation.[6] The revised disclosures make clear that HSI's discretionary compensation plan considers the accumulation of assets and income for HSI, which provide an incentive for the IAR to recommend that a client invest assets with HSI. These revisions will prevent the recurrence of the conduct that is the subject of the Order.

In sum, we believe the conduct addressed in the Order does not call into question the reliability of HSBC's current or future disclosures as an issuer of securities because none of the conduct is related in any way to any of HSBC's current or future disclosures as an issuer of

[6] The financial factors described in the disclosures are discretionary compensation plan funding, asset accumulation (including assets gathered and retained in managed accounts and recommended by the representative), and income generation to HSI resulting from client investments (including quarterly fees from managed accounts). The non-financial factors described in the disclosures are the effective management of risk, compliance, quality and values, activities in meeting with clients, and fulfilling clients' financial needs.

securities. HSBC's disclosure controls and procedures as an issuer and its filings with the Commission were, and are, not deficient, and the Commission staff has not made any allegations to the contrary.

Finally, neither HSBC, nor any of its subsidiaries, has previously submitted a WKSI waiver that was considered and voted on by the Commission.

Impact on Issuer

As described in more detail below, the loss of HSBC's status as a well-known seasoned issuer would have an adverse impact on HSBC's ability to raise capital and conduct its operations, which in turn could potentially harm investors. This would be an unduly severe consequence for the non-scienter-based violations that are the subject of the Order—particularly in light of the fact that the conduct at issue ended two years ago; the Form ADV and Wrap Fee Program Brochure language has been revised; and the underlying conduct involved only a non-issuer subsidiary and was wholly unrelated to HSBC's activities as an issuer and HSBC's disclosure to investors in its securities.

HSBC is one of the largest banking and financial services organizations in the world, with operations in 65 countries, linking developing and emerging markets and serving over 40 million customers. HSBC regularly relies on its WKSI status to offer securities under its automatic shelf registration statement. For HSBC, the automatic shelf registration process provides a critical means of access to the United States capital markets, which provides essential funding for its operations and compliance with applicable foreign, federal and state banking regulations, including regulations relating to HSBC's level of capital and liquidity. Losing its status as a WKSI would impose additional restrictions on HSBC's use of shelf registration statements. Among other restrictions, HSBC's registration statements would be subject to a review period upon filing, which could limit its flexibility to access the capital markets expeditiously as the need for additional capital and liquidity arises and when market conditions are most advantageous. As an ineligible issuer, HSBC would also lose the flexibility (i) to offer additional securities of the classes covered by the registration statement without filing a new registration statement, (ii) to register additional classes of securities not covered by the registration statement by filing a post-effective amendment that becomes immediately effective, (iii) to omit certain information from the prospectus, (iv) to take advantage of the "pay-as-you-go" fees and (v) to qualify a new indenture under the Trust Indenture Act of 1939, as amended, should the need arise, without filing or having the Commission declare effective a new registration statement.

In addition, the loss of WKSI status precludes issuers from using free writing prospectuses, other than a free writing prospectus that contains only a description of the terms of the securities in the offering. While HSBC rarely uses free writing prospectuses, this limitation would restrict the ability of HSBC and its underwriters to communicate electronically with investors and use certain road show or other materials, as such electronic and written communications could be considered free writing prospectuses that contain more information than a description of the offering. The Commission has recognized that investors and the securities market benefit from the use of these types of materials, which, among other things, facilitate greater transparency to investors.[7] Without free writing prospectus privileges, HSBC

[7] Securities Offering Reform, Securities Act Release No. 8501 (Nov. 3, 2004).

and its underwriters would be extremely limited in their ability to use written communications to market transactions in a user-friendly format and would be required to revert to the more typically dense statutory prospectus. Not only would this have a negative impact on investors, it would also create significant execution risk for HSBC, because the restrictions on marketing communications could result in decreased demand and/or price tension for an offering, which could adversely impact HSBC's ability to raise the capital it needs.

HSBC issues a variety of securities that are registered under its automatically effective shelf, including regulatory capital securities and senior debt securities (qualifying as MREL/TLAC (as defined below)) issued in syndicated transactions in "benchmark" size. Since January 1, 2016, HSBC has been involved in approximately $63.69 billion of offerings using its automatically effective shelf. The automatic shelf registration process provides HSBC a critical means of access to the capital markets in a timely and efficient manner, including the ability to take advantage of changes in credit spreads or interest rates, which is essential for funding HSBC's business. The procedural and financial flexibility that the automatically effective shelf affords HSBC is essential given the volatility of markets and the impact of macro-economic and political events, such as the UK's departure from the European Union.

In addition to the uncertainty of market conditions, HSBC, like other similar institutions, must adhere to stringent regulatory requirements, including new and proposed rules relating to heightened risk-based and leverage capital, leverage, and liquidity requirements. Meeting these requirements requires the ability to raise capital quickly, which will become significantly more difficult if HSBC loses its WKSI status. Specifically, HSBC is subject to capital requirements as set out in the EU Capital Requirements Regulation and Directive and as implemented by the UK Prudential Regulation Authority. HSBC is also expected to serve as a source of financial strength to its US banking subsidiaries, including HSBC North America Holdings Inc., HSBC USA Inc. and HSBC Bank USA, which are similarly subject to capital requirements promulgated by the US federal banking agencies. These capital requirements have been and continue to be enhanced.

The continuing progress in the implementation of international principles and EU and domestic rules and regulations (including such rules and regulations in the UK or in other jurisdictions in which the HSBC group operates) around additional loss absorbing capacity (such as TLAC and MREL (each as defined below)) are also expected to increase current capital and leverage requirements. For example, the EU Bank Recovery and Resolution Directive requires member states of the EU to enable their resolution authorities to set a minimum requirement for eligible liabilities ("MREL") for banks in their jurisdiction. The United Kingdom implemented the MREL requirements through revisions to the Banking Act 2009 and the Bank Recovery and Resolution (No 2) Order 2014 (which will be further amended to reflect the revisions to the EU Capital Requirements Directive and the EU Bank Recovery and Resolution Directive, which came into force during 2019). The current United Kingdom MREL regime, which took effect on January 1, 2019, at a level which will incrementally increase until January 1, 2022, has been designed to be broadly compatible with the proposed term sheet published by the Financial Stability Board on total loss absorbing capacity ("TLAC") requirements for global systemically important banks (referred to as G-SIIs under the EU proposals). In addition, modifications to the EU Capital Requirements Regulation came into force during 2019 and provide new baseline requirements for MREL/TLAC levels for EU G-SIIs, such as HSBC. This continuing evolution of

the capital and loss absorbing requirements may result in HSBC having to raise additional capital.

HSBC and its US subsidiaries are also regularly subject to supervisory stress tests administered by regulators in a variety of jurisdictions—including by the UK Prudential Regulation Authority, the European Banking Authority and the Federal Reserve—the parameters and requirements of which change annually. These stress tests effectively require subject banking organizations to maintain capital levels significantly in excess of minimum regulatory requirements to demonstrate they will be able to withstand the severe economic shocks and downturns hypothesized by regulators in their severely adverse stress scenarios. The stress tests' inherent variability thus presents significant challenges for capital planning. In addition to supervisory stress tests, HSBC and its US banking subsidiaries are also subject to various buffer requirements, which require maintenance of additional capital above regulatory minimum levels and are also subject to change on an annual basis. Compliance with these regulatory requirements and buffers is premised on and facilitated by an important consideration: that HSBC will have the ability to access the US capital markets at extremely short notice.

Since January 1, 2016, HSBC has completed 33 trades that each raised in excess of $1 billion (thus, considered jumbo in size) using the WKSI Shelf (or the predecessor WKSI shelf), representing $51.77 billion of notes issued to increase the Group's loss-absorbing capacity (known as MREL/TLAC instruments) and $11.92 billion of notes issued to increase the Group's regulatory capital reserves. In 2019, HSBC used its WKSI shelf to complete 6 trades, representing approximately $10.28 billion of notes issued. To capture optimal market conditions and decrease market risk, all issuances using the WKSI shelf—including those in 2019—were executed same-day. It is expected that material amounts of regulatory capital and other senior and subordinated debt securities will be raised by HSBC in the coming years in light of HSBC's increased capital and other regulatory requirements, and the flexibility offered by the WKSI Shelf will be critical to achieving successful offerings.

Without WKSI status, HSBC would be required to file a new, non-WKSI shelf that would be subject to SEC review and comment, creating potential time delays to access the market. Further, if the amount registered on a non-WKSI shelf were for any reason insufficient, or HSBC wished to add additional issuers or new classes of securities (including as a result of any unforeseen changes in regulatory capital, TLAC/MREL requirements, tax laws or otherwise), it would be required to file a post-effective amendment, which would be subject to SEC review and approval prior to becoming effective. Accordingly, this process could lead to a delay in HSBC accessing the US capital markets, particularly as compared to the same-day execution that it can use for trades under its WKSI shelf, thereby inhibiting HSBC's ability to capture optimal market conditions and potentially increasing market risk.

The above figures and considerations demonstrate the importance of the automatically effective shelf to HSBC in meeting its regulatory, capital, funding, and business requirements.

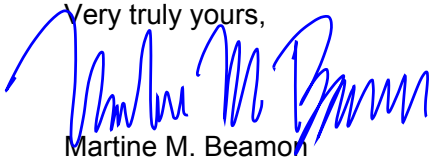
* * *

In sum, HSBC respectfully submits that, based on the foregoing factors, the loss to HSBC of certainty and flexibility if it were to become an ineligible issuer would be a disproportionate hardship in light of the nature of the conduct described in the Order. More importantly, because the conduct described in the Order does not relate to HSBC's ability to

produce reliable disclosures in its role as an issuer of securities, granting a waiver in this instance is consistent with the public interest and the protection of investors.

Please do not hesitate to contact me at the above number should you have any questions. Thank you for your consideration.

Very truly yours,



Martine M. Beamon

cc: Vincent Hull, SEC Division of Enforcement
Maureen Lewis, HSBC Holdings plc