

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-27805; 812-13186]

### HSBC Securities (USA) Inc.; Notice of Application

April 26, 2007.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 18(f)(1) of the Act.

**APPLICANT:** HSBC Securities (USA) Inc. ("HSBC Securities").

**SUMMARY OF APPLICATION:** Applicant requests an order permitting registered open-end management investment companies to enter into secured loan transactions with commercial paper and medium-term note conduits administered by HSBC Securities.

**DATES:** *Filing Dates:* The application was filed on May 2, 2005 and amended on April 26, 2007.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 21, 2007, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.  
Applicant, c/o Timothy P. Mohan, Esq., Chapman and Cutler LLP, 111 West Monroe Street, Chicago, IL 60603.

**FOR FURTHER INFORMATION CONTACT:** Laura L. Solomon, Senior Counsel, at (202) 551-6915, or Janet M. Grossnickle, Branch Chief, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Desk, 100 F Street, NE, Washington, DC 20549-0102 (tel. 202-551-5850).

### Applicant's Representations

1. HSBC Securities is an indirectly-held, wholly-owned subsidiary of HSBC Holdings plc ("HSBC Holdings"), one of the largest banking and financial services organizations in the world. HSBC Securities has substantial experience and expertise as an administrator of asset-backed commercial paper note programs. HSBC Securities has administered Bryant Park Funding LLC ("Bryant Park"), a commercial paper note program, since 2001 and has administered Abington Square Funding LLC ("Abington") since 2006. As of February 28, 2007, this commercial paper program had assets of approximately \$4.9 billion. HSBC Securities expects to administer additional asset-backed commercial paper and medium-term note programs established for additional limited purpose securitization entities to be formed in the future (such as HSBC Securities administered conduits, collectively, along with Bryant Park and Abington, the "Conduits"). Applicant states that several registered open-end investment companies have expressed interest in the type of loan facility described in the application.

2. Applicant requests relief to permit any registered open-end management investment company or series thereof that may participate from time to time as a borrower ("Borrowing Fund") in loan facilities administered by HSBC Securities ("Loan Facilities"). The Conduits, which would be the principal source of financing for each Loan Facility, will issue commercial paper and, in certain cases, may issue medium-term notes (collectively, with the commercial paper, "Promissory Notes") and will use liquidity support provided by financial institutions that are "banks" within the meaning of section 2(a)(5) of the Act ("Liquidity Providers") in connection with a Loan Facility. Each of Bryant Park and Abington is organized as a limited liability company under the laws of Delaware. Each Conduit, other than Bryant Park and Abington, will likely be organized as a corporation or limited liability company under the laws of Delaware. The Conduits will issue Promissory Notes to fund loans secured by receivables or other financial assets of the borrowers.

3. The Promissory Notes issued by the Conduits generally are sold to institutional investors that are "accredited investors" as defined in rule 501(a) of Regulation D under the Securities Act of 1933 (the "Securities Act") or "qualified institutional buyers" as defined in rule 144A under the

Securities Act. HSBC Securities will negotiate the business arrangements on behalf of a Conduit, including loan amounts, interest rates, and fees. HSBC Securities will act as agent for the Conduits and the related Liquidity Providers under the agreements entered into with each Borrowing Fund and in such capacity will exercise rights and enforce remedies on behalf of the Conduit and Liquidity Providers. Personnel employed by HSBC Securities have substantially similar levels of experience and expertise as personnel that administer loans backed by financial assets made by HSBC Bank USA, National Association, which may act as a Liquidity Provider.

4. As security for a loan, Borrowing Funds will pledge assets ("Pledged Assets") for the benefit of the Conduit and the Liquidity Providers. The Pledged Assets will meet eligibility criteria set by the Conduit and such criteria will be consistent with the Borrowing Fund's investment objectives and policies. For each loan transaction, HSBC Securities will evaluate: (a) The type and nature of a Borrowing Fund's Pledged Assets to determine whether they meet the Conduit's standards for collateral; (b) the operations and history of the Borrowing Fund; and (c) the financial position and operations of the Borrowing Fund's investment adviser.

5. Applicant states that a Conduit would make loans to a Borrowing Fund on an uncommitted basis and the related Liquidity Providers would, subject to the terms of the Loan Facility, be obligated to make loans to the Borrowing Fund in the event the Conduit was unable or unwilling to make such loans. The Conduit at any time and for any reason may (a) sell an outstanding loan to a Liquidity Provider, or (b) require a Liquidity Provider to provide financing to a Borrowing Fund instead of the Conduit. HSBC Securities states that these arrangements provide additional assurances to the holders of Promissory Notes that the Promissory Notes will be paid at maturity.

6. A Conduit purchases receivables and other assets from, and makes secured loans to, a broad range of sellers and borrowers in a variety of industries. Aggregate loans made by a Conduit to Borrowing Funds are not expected to be more than 20%, and usually would be considerably less than 20%, of the Conduit's outstanding loans and other assets.

7. HSBC Securities represents that the revolving credit and security agreement of a Loan Facility, which will be negotiated by the parties, will contain representations, warranties, covenants

and events of default that are customary for secured loan transactions involving open-end investment companies as well as such other terms that are specific to a particular Borrowing Fund and the conduct of its business. A Borrowing Fund will have the right to prepay its loans and terminate its participation in a Loan Facility upon prior notice at any time. The Pledged Assets of a Borrowing Fund will be available solely to secure repayment of the loans and other outstanding obligations of that Borrowing Fund under a Loan Facility. HSBC Securities further states that a Borrowing Fund would have the same rights and remedies under state and federal law with respect to a loan from a Conduit that it would have with respect to a comparable loan from a bank. HSBC Securities also states that the arrangements with the Liquidity Providers protect Borrowing Funds by providing an alternative source of financing in the event a Conduit is unable to continue lending funds.

8. No Borrowing Fund will participate in a Loan Facility unless it has represented, in writing, to HSBC Securities, the Conduit and the Liquidity Providers that: (a) Its policies permit borrowing and, if applicable, the use of leverage; (b) all borrowing transactions pursuant to the Loan Facility will be subject to the requirements of the Act, the rules and regulations thereunder, and any other applicable interpretations or guidance from the Commission or its staff; and (c) each borrowing transaction will be conducted in accordance with all applicable representations and conditions of the application. Before a Borrowing Fund may participate in a Loan Facility, the Borrowing Fund's board of directors or trustees ("Board"), including a majority of the directors or trustees that are not "interested persons" within the meaning of section 2(a)(19) of the Act ("Disinterested Directors"), will determine that such participation is consistent with the Borrowing Fund's investment objectives and policies and in the best interests of the Borrowing Fund and its shareholders. Each Borrowing Fund's Board, including a majority of the Disinterested Directors, will also adopt procedures for evaluating and making certain determinations concerning the terms of each loan transaction between the Borrowing Fund and a Conduit.

9. HSBC Securities states that the proposed Loan Facilities would enable Borrowing Funds to borrow money from the Conduits at lower cost than obtaining comparable loans from a bank. HSBC Securities states that a Conduit's cost of funds is lower than that of banks,

and this advantage will be passed on to the Borrowing Funds.<sup>1</sup>

#### **Applicant's Legal Analysis**

1. Section 18(f)(1) of the Act prohibits an open-end investment company from issuing any senior security except that a company is permitted to borrow from any bank, if immediately after the borrowing, there is an asset coverage of at least 300% for all borrowings of the company.<sup>2</sup> Section 2(a)(5) defines "bank" as a depository institution, a branch or agency of a foreign bank, a member bank of the Federal Reserve System, a banking institution or other trust company that, as a substantial portion of its business, receives deposits or exercises fiduciary powers similar to those permitted to national banks, or a receiver, conservator or liquidating agent of any of the foregoing. Applicant states that while a Conduit engages in many of the same business activities as banks, it is not a "bank" under this definition.

2. Section 6(c) of the Act permits the Commission to exempt any person or transaction or any class or classes of persons or transactions from any provision or provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. HSBC Securities requests exemptive relief from section 18(f)(1) solely to the extent necessary to allow a Borrowing Fund to borrow from a Conduit that is not a bank. HSBC Securities believes that permitting the Borrowing Funds to borrow from a Conduit is fully consistent with the purposes and policies of section 18(f)(1) and would not implicate the concerns underlying that provision.

3. HSBC Securities states that section 18(f) of the Act reflects Congressional concern about excessive borrowing and the issuance of senior securities by open-end investment companies because these practices could unduly increase the speculative character and investment risk of junior securities. HSBC Securities notes that Borrowing Funds would remain subject to the 300% asset coverage requirement in

<sup>1</sup> The rate at which a Liquidity Provider would make a loan to a Borrowing Fund would not be as favorable as that of the Conduit, but would be comparable to the rates on secured lines of credit from banks. HSBC Securities anticipates that a Conduit, rather than a Liquidity Provider, will be the lender to the Borrowing Funds under a Loan Facility, absent extenuating circumstances.

<sup>2</sup> Under section 18(g) of the Act, the term "senior security" includes any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness.

section 18(f)(1) of the Act for all borrowings, including those from a Conduit. HSBC Securities further represents that Conduit loans will not impose any restrictions on a Borrowing Fund's shareholders that are different from those imposed by a collateralized bank loan. Finally, HSBC Securities argues that permitting a Borrowing Fund to borrow from a Conduit rather than a bank is expected to reduce its costs of borrowing, which should decrease the risk that a Borrowing Fund's borrowing costs will exceed the return from securities purchased with borrowed money and lessen any related incentive to purchase more speculative portfolio securities to cover those costs.

4. HSBC Securities states that section 18(f) of the Act also limited open-end investment companies to borrowing from traditional institutional lending sources out of a Congressional concern that public holders of senior securities might be unaware that they were much riskier instruments than senior securities issued by operating companies. Senior securities of investment companies typically were secured by assets that were subject to wide fluctuations in value. Further, common shareholders could redeem at any time, which also might affect an open-end investment company's ability to repay its outstanding debt.

5. HSBC Securities argues that the Loan Facilities do not involve the type of senior security holder that section 18(f)(1) of the Act was designed to protect and that the structure of the Loan Facilities and related Conduits provide sufficient protection to the parties that face any risk of loss by lending to an open-end investment company. A Conduit is or will be administered by HSBC Securities, which has extensive expertise in administering loans collateralized by financial instruments that equals or exceeds the expertise of most banks. The Liquidity Providers are banks as defined by the Act and thus not the type of senior security holder that Congress believed needed protection. HSBC Securities states that the Promissory Notes are general obligations of a Conduit and loans to Borrowing Funds are not expected to exceed 20% of a Conduit's assets and loans to any individual Borrowing Fund are not expected to exceed 10% of a Conduit's assets. Any risk of loss on the Promissory Notes posed by loans to open-end investment companies is further reduced by HSBC Securities' expertise, a Conduit's ability to sell the loans to the Liquidity Providers, and the Conduit-wide liquidity sources.

6. Applicant states that section 18(f) also reflects a concern that complex capital structures may permit insiders to manipulate the allocation of expenses and profits; facilitate control of the investment company by junior security shareholders with little investment; and make it difficult for investors in the investment company to understand what their stock is worth. HSBC Securities states that borrowing from Conduits would not facilitate pyramiding of control or manipulative reallocation of expenses and profits. Further, HSBC Securities believes that borrowings from a conduit would not be any more difficult for shareholders of a Borrowing Fund to understand than bank borrowings.

7. Applicant also states that section 18(f) reflects a concern that existed when the Act was adopted that borrowings by open-end investment companies could be used to invest in securities without being subject to limitations of the Board of Governors of the Federal Reserve System ("FRB") on the amount of credit that could be used for these purposes ("margin requirements"). Under Regulations U and T under the Securities Exchange Act of 1934, in effect prior to enactment of the Act, only borrowings for such purposes made by a domestic bank or broker-dealer were subject to margin requirements. HSBC Securities states that a Conduit would be subject to the same credit restrictions as a bank under Regulation U as currently in effect.

8. Finally, Applicant believes the requested relief will benefit Borrowing Funds by providing them with an alternative, lower-cost source of financing. For all of these reasons and in light of the protections afforded by the conditions set forth below, HSBC Securities believes that permitting Borrowing Funds to borrow from the Conduits would be in the best interests of the Borrowing Funds and their shareholders, appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

#### **Applicant's Conditions**

The Applicant agrees that any order granting the requested relief will be subject to the following conditions:

1. All Borrowing Funds will comply with the asset coverage requirements in section 18(f)(1) of the Act, including with respect to all borrowings from a Conduit.

2. A loan by a Conduit to a Borrowing Fund will be at an interest rate equal to the Conduit's cost of funds (*i.e.*, the weighted average Promissory Note rate plus dealer commissions).

3. Before a Borrowing Fund may participate in a Loan Facility, the Borrowing Fund's Board, including a majority of the Disinterested Directors, will determine that participation in the Loan Facility is consistent with the Borrowing Fund's investment objectives and policies and is in the best interests of the Borrowing Fund and its shareholders. In addition, a Borrowing Fund will disclose in its statement of additional information all material facts about its participation in the Loan Facility.

4. Before a Borrowing Fund may participate in a Loan Facility, its Board, including a majority of the Disinterested Directors, will adopt procedures governing the Borrowing Fund's participation in the Loan Facility ("Procedures"). In addition to any other provisions the Board may find necessary or appropriate to be included in the Procedures, the Procedures will require that, before a Borrowing Fund may enter into loan transactions with a Conduit, the Board, including a majority of the Disinterested Directors, will determine that:

a. The borrowing is in the best interests of the Borrowing Fund and its shareholders;

b. the borrowing and pledge of assets are consistent with the Borrowing Fund's investment objectives and policies;

c. the total anticipated cost of the Loan Facility (including fees and interest) does not exceed the total anticipated costs of comparable financing alternatives that are available to the Borrowing Fund;

d. the Borrowing Fund's asset eligibility criteria are consistent with its investment objectives and policies; and

e. each Borrowing Fund's investments, consistent with the eligibility criteria and any other requirements of participating in the Loan Facility, will be in the best interests of the Borrowing Fund and its shareholders.

5. If a Conduit determines (a) to require the Liquidity Providers to acquire from the Conduit outstanding loans made to a Borrowing Fund, or (b) not to extend additional loans to a Borrowing Fund, the Board of the Borrowing Fund, including a majority of

the Disinterested Directors, will be notified promptly. As soon as practicable, the Board, including a majority of the Disinterested Directors, must determine whether it is in the best interests of the Borrowing Fund and its shareholders to continue to participate in the Loan Facility or to terminate the Borrowing Fund's participation in the Loan Facility in accordance with its terms.

6. At each regular quarterly meeting, the Board, including a majority of the Disinterested Directors, will (a) review a Borrowing Fund's loan transactions under a Loan Facility during the preceding quarter, including the terms of each transaction; and (b) determine whether the transactions were effected in compliance with the Procedures and the terms and conditions of the order. At least annually, the Board, including a majority of the Disinterested Directors, will (a) with respect to a Borrowing Fund's continued participation in a Loan Facility, make the determinations required in condition 3 above and (b) approve such changes to the Procedures as it deems necessary or appropriate.

7. A Borrowing Fund will maintain and preserve permanently in an easily accessible place a written copy of the Procedures and any modifications to the Procedures. The Borrowing Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction with a Loan Facility occurred, the first two years in an easily accessible place, a written record of each transaction setting forth a description of the terms of the transaction, including the amount, the maturity, and the rate of interest on the loan and all information upon which the determinations required by these conditions were made.

8. The Applicant will not enter into a Loan Facility with any Borrowing Fund if, at the time of such transaction, the Applicant, the Conduit or any Liquidity Provider is an affiliated person of a Borrowing Fund, within the meaning of section 2(a)(3) of the Act, or an affiliated person of an affiliated person of a Borrowing Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

**Florence E. Harmon,**

*Deputy Secretary.*

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