

SECURITIES AND EXCHANGE COMMISSION
Release No. 34-61884

April 9, 2010

**ORDER EXEMPTING THE FEDERAL RESERVE BANK OF NEW YORK,
MAIDEN LANE LLC AND THE MAIDEN LANE COMMERCIAL MORTGAGE
BACKED SECURITIES TRUST 2008-1 FROM BROKER-DEALER
REGISTRATION**

I. Introduction

The Federal Reserve Bank of New York (“Fed-NY”), Maiden Lane LLC and the Maiden Lane Commercial Mortgage Backed Securities Trust 2008-1 (“Maiden Lane”) (together, “Applicants”) have requested exemptions from Section 15(a)(1) of the Securities Exchange Act of 1934 (“Exchange Act”) and certain other related requirements in connection with the restructuring of certain debt instruments acquired by Maiden Lane to facilitate the merger of The Bear Stearns Companies Inc. (“Bear Stearns”) with JP Morgan Chase & Co. (“JPMC”).

II. Background

This section summarizes the facts as they have been represented to the Commission by counsel on behalf of the Applicants:¹

It has been represented that, in March 2008, the Fed-NY entered into an arrangement to facilitate the merger of JPMC and Bear Stearns. In connection with the transaction, the Board of Governors of the Federal Reserve (“Board”) authorized the Fed-NY under Section 13(3) of the Federal Reserve Act to extend credit to a Delaware limited liability company, Maiden Lane LLC, to fund the purchase of a portfolio of mortgage related securities, residential and commercial mortgage loans and associated hedges from Bear Stearns (the “Asset Portfolio”). Maiden Lane LLC, in turn, established two grantor trusts to hold the Asset Portfolio.² The Maiden Lane trust at issue here holds an approximately \$4 billion interest in a \$20 billion mortgage and mezzanine financing provided to Blackstone LLP (“Blackstone”) in 2007 in connection with Blackstone’s acquisition of Hilton Worldwide, Inc. (“Hilton”).

¹ See Letter from Dennis C. Hensley, Sidley Austin LLP, to Elizabeth M. Murphy, Secretary, Commission, dated April 8, 2010 (“Maiden Lane Exemptive Request”). The Commission has not independently verified these facts. To the extent that the facts presented and the representations made by counsel are or become inaccurate, the validity of the exemption granted by this order may be called into question.

² Maiden Trust LLC owns the trust certificates representing all of the beneficial ownership in each trust.

In addition, it has been further represented that Blackstone has been in negotiations with lenders, including Maiden Lane, in connection with a proposed restructuring of the Hilton debt. Under the proposed restructuring plan, the most junior tranches of the Hilton loans will be converted to preferred equity; portions of more senior tranches will be retired pursuant to a discounted payoff (“DPO”); and various terms and conditions will be amended to address the current financial condition of the assets. As a condition of the DPO, the other lenders that are participating in the DPO (together with Maiden Lane, the “Restructuring DPO Sellers”) would have the opportunity to recoup some of their losses by participating in an offering of the common equity of Hilton (the “Offering”) at some future date. Each of the other Restructuring DPO Sellers is affiliated with a registered broker-dealer that is generally qualified to serve as an underwriter in any future Offering.

It has further been represented that Maiden Lane, Maiden Lane LLC and the Fed-NY are not registered as broker-dealers, and are not affiliated with a registered broker-dealer. The parties have proposed to enter into a “Closing Statement and Agreement (Mezzanine H, I)” (“DPO Agreement”) which will provide that Maiden Lane will not serve or act as underwriter or broker-dealer, or take any action whatsoever with respect to any future Offering.³ Instead, pursuant to the DPO Agreement, Maiden Lane is to receive a “Contingent DPO Payment” that is to be substantively in the form of:

an amount equal to the average of the underwriting fee and other fees in connection with the Offering actually paid by Hilton to the Restructuring DPO Sellers at competitive market rates in connection with the Offering (the “Contingent DPO Payment”). If the Offering is for less than \$4 Billion, the Contingent DPO Payment payable to [Maiden Lane] shall continue to apply to each supplemental Offering or new initial public Offering of Hilton until the face amount of such Offerings in the aggregate are at least \$4 Billion.

It has been represented that any amounts payable to Maiden Lane will be paid in cash by Hilton directly and not out of the underwriters’ fee or by the underwriting group.

III. Request for Relief

³ Section 5 of the DPO Agreement, Hilton Payment, will provide in substance:

Hilton acknowledges and agrees that [Maiden Lane]’s right to receive any payment pursuant to this Section 5 is not conditioned upon [Maiden Lane]’s serving or acting as an underwriter, broker-dealer, finder, investment adviser or consultant, or otherwise taking any action whatsoever with respect to, or in connection with, the Offering, including any structuring or other preparation of the Offering or participating in any roadshow relating to the Offering, and Hilton acknowledges and agrees that [Maiden Lane] will not serve or act as an underwriter or broker-dealer and will not take any action whatsoever with respect to the offering.

The Applicants state that they do not believe that Maiden Lane will be acting as a broker or dealer as those terms are defined in the Exchange Act by entering into the DPO Agreement and receiving the contemplated Contingent DPO Payment. Nonetheless, they are seeking this exemptive order to give them legal certainty with respect to this issue.⁴

The Applicants have requested exemptions from the registration requirements of Exchange Act Section 15(a)(1)⁵ and the reporting and other requirements of the Exchange Act (other than Sections 15(b)(4) and 15(b)(6)),⁶ and the rules and regulations thereunder, that apply specifically to a broker or dealer whether or not registered with the Commission, to the extent these obligations would arise solely as a result of the DPO. Maiden Lane, Maiden Lane, LLC and the Fed-NY would remain subject to all other applicable provisions of the federal securities laws, including, without limitation, Section 10(b) of the Exchange Act⁷ and Rule 10b-5 thereunder.⁸

IV. Exemptions from Section 15(a)(1) of the Exchange Act and Certain Other Requirements

A broker is generally defined as “any person engaged in the business of effecting transactions in securities for the account of others,”⁹ and a dealer as “any person engaged in the business of buying and selling securities for his own account, through a broker or otherwise.”¹⁰ A person may be “engaged in the business,” by receiving compensation

⁴ Section 5 of the DPO Agreement provides:

Notwithstanding the foregoing, DPO Lender’s agreement to the Contingent DPO Payment is subject to receipt by DPO Lender of a confirmation from the SEC, in form and substance satisfactory to the DPO Lender in its sole discretion, with respect to the ability of DPO Lender to hold such Contingent DPO Payment.

⁵ 15 U.S.C. 78o(a)(1).

⁶ 15 U.S.C. 78o(b)(4) and 78o(b)(6).

⁷ 15 U.S.C. 78j(b).

⁸ 17 C.F.R. 240.10b-5.

⁹ Exchange Act Section 3(a)(4)(A) [15 U.S.C. 78c(a)(4)(A)]. There are statutory exceptions, not applicable here, for banks to the extent they engage in certain limited activities. See Section 3(a)(4)(B) [15 U.S.C. 78c(a)(4)(B)].

¹⁰ Exchange Act Section 3(a)(5) [15 U.S.C. 78c(a)(5)]. The term “dealer” does not, however, include “a person that buys or sells securities for such person’s own account, either individually or in a fiduciary capacity, but not as a part of a regular business.” The dealer/trader distinction recognizes that dealers normally have a regular clientele, hold themselves out as buying or selling securities at a regular place of business, have a regular turnover of inventory (or participate in the sale or distribution of new issues, such as by acting as an underwriter), and generally provide liquidity services in transactions with investors (or, in the case of dealers who are market makers, for other professionals). See Definition of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks Under Sections

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tied to the successful completion of a securities transaction.¹¹ Indeed, the receipt of transaction-based compensation often indicates that such a person is engaged in the business of effecting transactions in securities.¹² Registration helps to ensure that persons who have a “salesman’s stake” in a securities transaction operate in a manner that is consistent with customer protection standards governing broker-dealers and their associated persons.¹³

Exchange Act Section 15(a)(2) authorizes the Commission, by rule or order, as it deems consistent with the public interest and the protection of investors, to conditionally or unconditionally exempt from Exchange Act Section 15(a)(1) any broker or dealer or class of brokers or dealers specified in such rule or order,¹⁴ and Exchange Act Section 36 more broadly provides that the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person or class of persons from any provision or provisions of the Exchange Act or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.¹⁵

The Applicants represent that the DPO is a one-time, extraordinary event for Maiden Lane. They further represent that Maiden Lane’s right to receive the Contingent DPO Payment is not conditioned upon Maiden Lane or any of the other Applicants serving or acting as an underwriter, broker-dealer, finder, investment adviser or consultant, or otherwise taking any action whatsoever with respect to, or in connection with, the Offering, including any structuring or other preparation of the Offering or participating in any roadshow relating to the Offering, and Maiden Lane and the other Applicants will not serve or act as underwriter or broker-dealer and will not take any action whatsoever with respect to the Offering. The Applicants also represent that they will not participate in any negotiations between the issuer and any potential investors,

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3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934, Exchange Act Release No. 47364 (Feb. 14, 2003).

¹¹ See Strengthening the Commission’s Requirements Regarding Auditor Independence, Exchange Act Release No. 47265, n.82 (Jan. 28, 2003) (noting that a person may be “engaged in the business,” among other ways, by receiving transaction-related compensation).

¹² Persons Deemed Not To Be Brokers, Exchange Act Release No. 22172 (June 27, 1985) (noting that “the receipt of transaction-based compensation often indicates that such a person is engaged in the business of effecting transactions in securities”) (hereinafter “Rule 3a4-1 Adopting Release”).

¹³ See Rule 3a4-1 Adopting Release (“Compensation based on transactions in securities can induce high pressure sales tactics and other problems of investor protection which require application of broker-dealer regulation under the Act.”).

¹⁴ 15 U.S.C. 78o(a)(2).

¹⁵ 15 U.S.C. 78mm.

prepare any materials (including financial data and sales literature) relating to the sale of securities, be involved in any distribution of any materials to potential investors, perform any independent analysis of any future Offering, engage in any due diligence activities, assist in or provide financing for any purchases, provide advice relating to the valuation of or the financial advisability of such an investment, perform any of the usual activities of an underwriter, handle any funds or securities, or otherwise engage in activities that would require any of them to register with the Commission as a broker or dealer.

On these unique facts, the receipt by Maiden Lane of compensation that is calculated by reference to the underwriting fees and other fees that the other Restructuring DPO Sellers are likely to receive in connection with any future Hilton Offering does not implicate the sales practice and other protections that broker-dealer registration and other related requirements are designed to provide. Accordingly, based on Applicants' representations that Maiden Lane's right to receive the Contingent DPO Payment is not conditioned upon Maiden Lane or any of the other Applicants serving or acting as an underwriter, broker-dealer, finder, investment adviser or consultant, or otherwise taking any action whatsoever with respect to, or in connection with, the Offering, including any structuring or other preparation of the Offering or participating in any roadshow relating to the Offering, and that the Applicants will not serve or act as an underwriter or a broker or a dealer, or take any action whatsoever with respect to any future Offering, other than receiving the DPO payment, and that they will not participate in any negotiations between the issuer and any potential investors, prepare any materials (including financial data and sales literature) relating to the sale of securities, be involved in any distribution of any materials to potential investors, perform any independent analysis of any future Offering, engage in any due diligence activities, assist in or provide financing for any purchases, provide advice relating to the valuation of or the financial advisability of such an investment, perform any of the usual activities of an underwriter, handle any funds or securities, or otherwise engage in any activities that would require any of them to register with the Commission as a broker or a dealer, the Commission finds that it is consistent with the public interest, the protection of investors, and the purposes of the Exchange Act to grant the requested exemptive relief solely with respect to the activities described in Part II of this order concerning the receipt of the Contingent DPO Payment,

ACCORDINGLY,

IT IS HEREBY ORDERED, pursuant to Section 15(a)(2) of the Exchange Act, that each of Maiden Lane, Maiden Lane, LLC and the Fed-NY is exempt, with respect only to the activities described in this order concerning the receipt of the Contingent DPO Payment, from the registration requirements of Section 15(a)(1) of the Exchange Act.

IT IS HEREBY FURTHER ORDERED, pursuant to Section 36 of the Exchange Act, that each of Maiden Lane, Maiden Lane, LLC and the Fed-NY is exempt, only to the extent the obligations arise from the activities described in this order concerning the receipt of the Contingent DPO Payment, from the reporting and other requirements of the Exchange Act (other than Sections 15(b)(4) and 15(b)(6)), and the rules and regulations thereunder, that apply specifically to a broker or dealer whether or not registered with the Commission.

PROVIDED THAT the exemptive relief granted by this order is conditioned upon the Applicants' representations that Maiden Lane's right to receive the Contingent DPO Payment is not conditioned upon Maiden Lane or any of the other Applicants serving or acting as an underwriter, broker-dealer, finder, investment adviser or consultant, or otherwise taking any action whatsoever with respect to, or in connection with, the Offering, including any structuring or other preparation of the Offering or participating in any roadshow relating to the Offering, and that Applicants will not serve or act as and underwriter or a broker or a dealer, or take any action whatsoever with respect to any future Offering, other than receiving the DPO payment, and that they will not participate in any negotiations between the issuer and any potential investors, prepare any materials (including financial data and sales literature) relating to the sale of securities, be involved in any distribution of any materials to potential investors, perform any independent analysis of any future Offering, engage in any due diligence activities, assist in or provide financing for any purchases, provide advice relating to the valuation of or the financial advisability of such an investment, perform any of the usual activities of an underwriter, handle any funds or securities, or otherwise engage in any activities that would require any of them to register with the Commission as a broker or a dealer.

FURTHER PROVIDED THAT, notwithstanding this exemption, Maiden Lane, Maiden Lane LLC and the Fed-NY remain subject to all other applicable provisions of the federal securities laws, including, without limitation, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

By the Commission.

Elizabeth M. Murphy
Secretary