

Dated: April 29, 2009.

Karen G. Mills,
Administrator.

[FR Doc. E9-10313 Filed 5-4-09; 8:45 am]

BILLING CODE 8025-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No.
28717; File No. 812-13618]

Citibank, N.A.; Notice of Application

April 29, 2009.

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

ACTION: Notice of an application under
section 6(c) of the Investment Company
Act of 1940 ("Act") for an exemption
from certain requirements of rule 3a-
7(a)(4)(i) under the Act.

SUMMARY: *Summary of Application:*

Applicant requests an order that would
permit an issuer of asset-backed
securities that is not registered as an
investment company under the Act in
reliance on rule 3a-7 under the Act (an
"Issuer") to appoint the applicant as a
trustee to the Issuer when the applicant
is affiliated with an underwriter for the
Issuer's securities.

Applicant: Citibank, N.A.

DATES: *Filing Dates:* The application was
filed on December 30, 2008 and
amended on April 23, 2009.

Hearing or Notification of Hearing: An
order granting the application will be
issued unless the Commission orders a
hearing. Interested persons may request
a hearing by writing to the
Commission's Secretary and serving
applicant 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 22, 2009, and
should be accompanied by proof of
service on the applicant, 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, U.S. Securities
and Exchange Commission, 100 F
Street, NE., Washington, DC 20549-
1090. Applicant, 388 Greenwich Street,
14th Floor, New York, NY 10013.

FOR FURTHER INFORMATION CONTACT: Jean
E. Minarick, Senior Counsel, at (202)
551-6811, or Julia Kim Gilmer, 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 via the Commission's
Web site by searching for the file
number, or an applicant using the
Company name box, at [http://
www.sec.gov/search/search.htm](http://www.sec.gov/search/search.htm) or by
calling (202) 551-8090.

Applicant's Representations

1. The applicant is a subsidiary of
Citigroup, Inc.¹ Citigroup Inc. is a global
financial services organization whose
lines of business include global cards,
consumer banking, an institutional
clients group (including transaction
services such as agency/trust), global
wealth management and corporate
services. The applicant is frequently
selected to act as trustee in connection
with asset-backed securities issued by
Issuers.

2. An asset-backed securities
transaction typically involves the
transfer of assets by a seller, usually by
a "sponsor," to a special purpose
corporate or trust entity that is
established for the sole purpose of
acting as the Issuer and is structured to
be bankruptcy remote and the
subsequent issuance of asset-backed
securities ("ABS") to investors by the
Issuer (an "ABS Transaction"). The
parties to an ABS Transaction enter into
several transaction agreements that
provide for the holding of the assets by
the Issuer and define the rights and
responsibilities of the parties to the
transaction ("Transaction Documents").
The operative Transaction Document
governing the trustee is referred to
herein as the "Agreement."

3. The sponsor of an ABS Transaction
assembles the pool of assets by
purchasing or funding them, describes
them in the offering materials, and
retains the underwriter to sell interests
in the assets to investors. The sponsor
determines the structure, drafts the
documents, and prices the ABS
Transactions. The sponsor selects the
other parties to the ABS Transaction,
including the underwriter, the servicer,
and the trustee.

4. The servicer, either directly or
through subservicers, manages the
assets held by the Issuer. The servicer
pays the income from the assets held by

¹ The applicant also requests that the order apply
to an Issuer's appointment, now or in the future, of
any other entity controlling, controlled by, or under
common control (as defined in section 2(a)(9) of the
Act) with the applicant as a trustee for an Issuer.
The applicant represents that any other entity
relying on this relief now or in the future will
comply with the terms and conditions of the
application. Any existing entity currently intending
to rely on the requested order has been named as
an applicant.

the Issuer over to the trustee, and the
trustee uses the income, as instructed by
the servicer and provided by the
Agreement, to pay interest and principal
on the ABS, to fund reserve accounts
and purchases of additional assets, and
to make other payments including fees
owed to the trustee and other parties to
the ABS Transaction.

5. The sponsor of an ABS Transaction
selects the trustee. In selecting a trustee,
the sponsor generally seeks to obtain
customary trust administrative and
related services for the Issuer at minimal
cost. In some instances, other parties to
an ABS Transaction may provide
recommendations to a sponsor about
potential trustees. An underwriter for an
ABS Transaction also may provide
advice to the sponsor about trustee
selection based on the underwriter's
knowledge of the pricing and expertise
offered by a particular trustee in light of
the contemplated transaction.

6. If an underwriter affiliated with the
applicant recommends a trustee to a
sponsor, both the underwriter's
recommendation and any selection of
the applicant by the sponsor will be
based upon customary market
considerations of pricing and expertise,
among other things, and the selection
will result from an arms-length
negotiation between the sponsor and the
applicant. Applicant will not price its
services as trustee in a manner designed
to facilitate its affiliate being named
underwriter.

7. The trustee's role in an ABS
Transaction is specifically defined by
the Agreement, and under the
Agreement the trustee is not expected or
required to perform discretionary
functions. The responsibilities of the
trustee as set forth in the Agreement are
narrowly circumscribed and limited to
those expressly accepted by the trustee.
The trustee negotiates the provisions
applicable to it directly with the
sponsor and is then appointed by and
enters into the Agreement with the
Issuer.

8. The trustee usually becomes
involved in an ABS Transaction after
the substantive economic terms have
been negotiated between the sponsor
and the underwriters. The trustee does
not monitor any service performed by,
or obligation of, an underwriter,
whether or not the underwriter is
affiliated with the trustee. In the
unlikely event that the applicant, in
acting as trustee to an Issuer for which
an affiliate acts as underwriter, becomes
obligated to enforce any of the affiliated
underwriter's obligations to the Issuer,
the applicant will resign as trustee for
the Issuer consistent with the
requirements of rule 3a-7(a)(4)(i). In

such an event, the applicant will incur the costs associated with the Issuer's procurement of a successor trustee.

9. The sponsor selects one or more underwriters to purchase the Issuer's securities and resell them or to privately place them with buyers obtained by the underwriter. The sponsor enters into an underwriting agreement with the underwriter that sets forth the responsibilities of the underwriter with respect to the distribution of the ABS and includes representations and warranties regarding, among other things, the underwriter and the quality of the Issuer's assets. The obligations of the underwriter under the underwriting agreement are enforceable against the underwriter only by the sponsor.

10. The underwriter may assist the sponsor in the organization of an Issuer by providing advice, based on its expertise in ABS Transactions, on the structuring and marketing of the ABS. This advice may relate to the risk tolerance of investors, the type of collateral, the predictability of the payment stream, the process by which payments are allocated and down-streamed to investors, the way that credit losses may affect the trust and the return to investors, whether the collateral represents a fixed set of specific assets or accounts, and the use of forms of credit enhancements to transform risk-return profile of the underlying collateral. Any involvement of an underwriter in the organization of an Issuer that occurs is limited to helping determine the assets to be pooled, helping establish the terms of the ABS to be underwritten, and providing the sponsor with a warehouse line of credit with which to purchase the pool assets.

11. An underwriter may provide advice to a sponsor regarding the sponsor's selection of a trustee for the Issuer; however, an underwriter's role in structuring a transaction would not extend to determining the obligations of a trustee, and the underwriter is not a party to the Agreement. The underwriter is not a party to any of the Transaction Documents and, except for arrangements involving credit or credit enhancement for an Issuer or remarketing agent activities, typically has no role in the operation of the Issuer after its issuance of securities. The applicant represents that although an underwriter typically may provide credit or credit enhancement for an Issuer or engage in remarketing agent activities, an underwriter affiliated with the applicant will not so provide or so engage.

Applicant's Legal Analysis

1. Rule 3a-7 provides Issuers that would otherwise fall within the definition of investment company under section 3(a) of the Act with an exclusion from the definition of investment company. Under rule 3a-7, an Issuer that meets certain conditions is deemed not to be an investment company under section 3(a) of the Act. One of rule 3a-7's conditions, set forth in paragraph (a)(4)(i), requires, among other things, that the Issuer appoint a trustee that is not affiliated with the Issuer or with any person involved in the organization or operation of the Issuer (the "Independent Trustee Requirement"). Applicant states that the phrase "person involved in the organization and operation of the Issuer" includes an underwriter, and rule 3a-7(a)(4)(i) therefore prohibits an Issuer from appointing a trustee that is affiliated with an underwriter.

2. Section 6(c) of the Act gives the Commission the authority to exempt any person or transaction or any class of persons or transactions from any provision of the Act, or from any rule thereunder, if and to the extent such exemption is necessary or appropriate in the public interest; is consistent with the protection of investors; and the purposes fairly intended by the policy and provisions of the Act.

3. Applicant requests exemptive relief under section 6(c) of the Act from rule 3a-7(a)(4)(i) under the Act to the extent necessary to permit an Issuer to appoint the applicant as a trustee to the Issuer when the applicant is affiliated with an underwriter involved in the organization of the Issuer. Applicant submits that the requested exemptive relief from the Independent Trustee Requirement is necessary and appropriate in the public interest, is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act due to changes in the banking industry, due to the timing and nature of the roles of the trustee and the underwriter and because the requested relief is consistent with the policies and purposes underlying the Independent Trustee Requirement and rule 3a-7.

4. Applicant states that when rule 3a-7 was proposed in 1992, virtually all trustees were unaffiliated with the other parties involved in an ABS Transaction. Applicant states that consolidation within the financial industry, as well as economic and other business factors resulted in a significant decrease in the number of bank trustees providing services to Issuers. Applicant also states that bank consolidation has been

accompanied by the expansion of banks into investment banking and that banks and bank affiliates are now significant participants in securities underwriting, particularly for ABS Transactions. Applicant further states that due to these banking industry changes, most trustees that provide services to Issuers, including the applicant, have affiliations with underwriters to Issuers. Applicant states that, as a result, when an affiliate of applicant is selected to underwrite ABS in an ABS Transaction, rule 3a-7(a)(4)(i)'s Independent Trustee Requirement generally prevents applicant from serving as trustee for the Issuer. Applicant states that the Independent Trustee Requirement imposes an unnecessary regulatory limitation on trustee selection and causes market distortions by leading to the selection of trustees for reasons other than customary market considerations of pricing and expertise. This result is disadvantageous to the ABS market and to ABS investors.

5. Applicant submits that due to the nature and timing of the roles of the trustee and the underwriter, applicant's affiliation with an underwriter would not result in a conflict of interest or possibility of overreaching that could harm investors. Applicant states that the trustee's role begins with the Issuer's issuance of its securities, and the trustee performs its role over the life of the Issuer. Applicant states that, in contrast, the underwriter is chosen early in the ABS Transaction process, may help to structure the ABS Transaction, distributes the Issuer's securities to investors, and generally has no further role subsequent to the distribution of the Issuer's securities. Applicant further states that an ABS trustee does not monitor the distribution of securities or any other activity performed by underwriters and there is no opportunity for a trustee and an affiliated underwriter to act in concert to benefit themselves at the expense of holders of the ABS either prior to or after the closing of the ABS Transaction.

6. Applicant states that the trustee is neither expected nor required to exercise discretion or judgment. Applicant further states that the trustee's role is limited to administrative functions pursuant to the applicable Agreement. Applicant states that the trustee of the Issuer has virtually no discretion to pursue anyone in any regard other than preserving and realizing on the assets. Applicant states that trustees are not required to pursue securities law or fraud claims on behalf of debt holders and may often be foreclosed from such enforcement

because debt holders may have different and conflicting rights.

7. Applicant submits that the concerns underlying the Independent Trustee Requirement are not implicated if the trustee for an Issuer is independent of the sponsor, servicer, and credit enhancer for the Issuer, but is affiliated with an underwriter for the Issuer, because, in that situation no single entity would act in all capacities in the issuance of the ABS and the operation of an Issuer. Applicant states that applicant would continue to act as an independent party safeguarding the assets of any Issuer regardless of an affiliation with an underwriter of the ABS. Applicant submits that the concern that affiliation could lead to a trustee monitoring the activities of an affiliate also is not implicated by a trustee's affiliation with an underwriter, because, in practice, a trustee for an Issuer does not monitor the distribution of securities or any other activity performed by underwriters. Applicant further states that the requested relief would be consistent with the broader purpose of rule 3a-7 of not hampering the growth and development of the structured finance market, to the extent consistent with investor protection.

Applicant's Conditions

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

1. The applicant will not be affiliated with any person involved in the organization or operation of the Issuer in an ABS Transaction other than the underwriter.

2. The applicant's relationship to an affiliated underwriter will be disclosed in writing to all parties involved in an ABS Transaction, including the rating agencies and the ABS holders.

3. An underwriter affiliated with the applicant will not be involved in the operation of an Issuer, and its involvement in the organization of an Issuer will extend only to determining the assets to be pooled, assisting in establishing the terms of the ABS to be underwritten, and providing the sponsor with a warehouse line of credit with which to purchase the pool assets.

4. An affiliated person of the applicant, including an affiliated underwriter, will not provide credit or credit enhancement to an Issuer if the applicant serves as trustee to the Issuer.

5. An underwriter affiliated with the applicant will not engage in any remarketing agent activities, including involvement in any auction process in which ABS interest rates, yields, or dividends are reset at designated intervals in any ABS Transaction

6. All of an affiliated underwriter's contractual obligations pursuant to the underwriting agreement will be enforceable by the sponsor.

7. Consistent with the requirements of rule 3a-7(a)(4)(i), the applicant will resign as trustee for the Issuer if applicant becomes obligated to enforce any of an affiliated underwriter's obligations to the Issuer.

8. The applicant will not price its services as trustee in a manner designed to facilitate its affiliate being named underwriter.

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

Elizabeth M. Murphy,
Secretary.

[FR Doc. E9-10254 Filed 5-4-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold a Closed Meeting on Monday, May 4, 2009 at 9 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), and (10) and 17 CFR 200.402(a)(5), (7), and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Paredes, as duty officer, voted to consider the item listed for the Closed Meeting in closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Monday, May 4, 2009 will be:

Institution of an injunctive action; and
institution of an administrative proceeding of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551-5400.

Dated: April 30, 2009.

Elizabeth M. Murphy,
Secretary.

[FR Doc. E9-10400 Filed 5-1-09; 11:15 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59834; File No. SR-NYSEAmex-2009-14]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Amex Equities Rules 1000, 60 and 123C To Be More Consistent With the Trading Characteristics of Securities Traded on NYSE Amex

April 28, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 20, 2009, NYSE Amex LLC ("NYSE Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Amex Equities Rule 1000 ("Automatic Execution of Limit Orders Against Orders Reflected in Exchange Published Quotation"), NYSE Amex Equities Rule 60 ("Dissemination of Quotations") and NYSE Amex Equities Rule 123C ("Market on the Close Policy and Expiration Procedures") to be more consistent with the trading characteristics of securities traded on NYSE Amex. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.