

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8844 / September 19, 2007

ADMINISTRATIVE PROCEEDING
File No. 3-12809

In the Matter of

HSBC Bank USA, N.A.,

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), against HSBC Bank USA, N.A. (“HSBC” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. This action concerns the role of a financial institution in a Miami, Florida based offering fraud. Since at least 1999, Pension Fund of America, L.C. and PFA Assurance Group, Ltd. (hereinafter collectively "Pension Fund") had offered and sold retirement and college "trust plans" that purportedly provided investors with term life insurance and the opportunity to invest in one or more of several pre-selected mutual funds. In August 2003, HSBC agreed to serve as trustee of the investment component of Pension Fund's trust plans. HSBC also agreed to allow Pension Fund to use its name and logo in Pension Fund's offering materials. HSBC allowed Pension Fund to use marketing materials that falsely suggested to prospective investors that the trust plans were co-developed by HSBC and Pension Fund, that their funds would be "totally safe," because the investor's money would be deposited into a trust account at HSBC. One of HSBC's representatives drafted a letter on HSBC letterhead announcing the new relationship and inviting certain of Pension Fund's existing investors to transfer their funds to HSBC. In reality, Pension Fund deposited investors' funds into an ordinary checking account in its name at HSBC, with Pension Fund taking up to 95% of the investment amount to pay expenses and fees. Additionally, because of HSBC's negotiated fee arrangement with Pension Fund, HSBC actively participated in the selection of offshore, high front load mutual funds offered to prospective investors. Neither the amount of these sales loads, nor HSBC's role in the funds' selection, were disclosed to investors. As a result, from August 2003 through March 28, 2005, HSBC caused Pension Fund's violations of Section 17(a)(2) and 17(a)(3) of the Securities Act.

Respondent

2. HSBC is a national banking association with its principal place of business in Wilmington, Delaware. HSBC operates in nine states in the United States. HSBC is the principal subsidiary of HSBC USA Inc., which has certain publicly-traded preferred shares that are listed on the New York Stock Exchange. HSBC USA Inc. is an indirect, wholly-owned subsidiary of HSBC North America Holdings, Inc., which, in turn, is a wholly-owned indirect subsidiary of HSBC Holdings, plc ("HSBC Holdings"), a public limited company organized in the United Kingdom. HSBC Holdings' ordinary shares are admitted to trading on the London Stock Exchange and are listed on The Stock Exchange of Hong Kong, Euronext Paris and the Bermuda Stock Exchange and its American depository shares are listed on the New York Stock Exchange.

Other Relevant Entity

3. Pension Fund of America, L.C. is a Florida limited liability corporation formed in June 1999, with its principal place of business in Coral Gables, Florida. Pension Fund is not registered with the Commission in any capacity. Pension Fund offered unregistered securities in the form of retirement and college "trust plans" that purported to have an investment and insurance component. On March 28, 2005, the United States District Court for the Southern

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

District of Florida appointed a receiver over Pension Fund and its affiliated entities in an emergency action filed by the Commission to halt Pension Fund's offering fraud. Securities and Exchange Commission v. Pension Fund of America, L.C., et al., Case No. 05-20863-CIV-MOORE (S.D. Fla.).

Pension Fund's Fraudulent Offering

4. From at least 1999 through March 28, 2005 ("the Relevant Period"), Pension Fund and its principals offered and sold "trust plans" that purported to contain both an investment component and an insurance component. Using a network of over 500 independent sales agents, Pension Fund marketed the trust plans to individuals who primarily lived in Central and South America. Through sales materials and oral presentations, Pension Fund promoted its plans as safe and profitable because the investors could choose mutual funds issued by U.S. fund companies, and U.S. banks and broker-dealers would purportedly serve as "trustees" or "custodians," assuring the safety of their funds. During the Relevant Period, Pension Fund raised at least \$127 million from over 3,400 investors.

5. Pension Fund offered two types of trust plans: a monthly or annual contribution plan ("Liberty Plan"), and a one-time contribution plan ("Capital Plan"). The majority of the investors chose to invest in the Liberty Plan, which required annual contributions of between \$1,000 and \$20,000 a year for a period of 10 to 15 years. The Capital Plan required a minimum one-time contribution of at least \$10,000 for a minimum 10-year term. Both plans imposed significant early withdrawal penalties for the entire term of the plan. The "investment component" of both plans provided investors with a choice of several different mutual funds issued by well-known U.S. fund companies. The plans also included a fixed term life insurance component.

6. Throughout the Relevant Period, several U.S. banks and broker-dealers served as a trustee and/or custodian in connection with the investment component of Pension Fund's trust plans. Pension Fund touted its relationships with these institutions as one of the main selling points for its trust plans and included information about these companies in presentations and marketing materials provided to prospective investors. Pension Fund represented to prospective investors that by investing through their plans, the U.S. bank or broker-dealer would act as "trustee" for the investor. The fact that the investment vehicle was a "trust" was important to prospective investors living in South and Central America because it purportedly assured them that their money was safe.

7. In connection with its offer and sale of the trust plans, Pension Fund made material misrepresentations and omissions to investors. Among other things, Pension Fund failed to disclose to Liberty Plan investors that during the first year of the investment up to 95% of their funds were used to pay exorbitant commissions to sales agents, administrative fees, and other costs. Pension Fund charged Capital Plan investors undisclosed, average fees of 30% on their investments. In addition, Pension Fund falsely told investors that their investments would be held "in trust" by the U.S. bank or broker-dealer servicing Pension Fund's trust plans at the time. However, with one exception, none of the institutions executed trust agreements directly with the investors. Pension Fund forged certificates ostensibly issued by the financial institutions, and lulled investors with annual statements depicting false returns. Pension Fund's principals also misappropriated tens of millions of investors' funds.

**HSBC Becomes Trustee of Pension Fund's Trust Plans and Approves
Certain Language in Pension Fund's Offering Materials**

8. In the spring of 2003, Pension Fund approached HSBC Private Bank representatives (the "relationship representatives") to discuss whether HSBC could serve as trustee for the investment component of its trust plans. Pension Fund's principals explained the nature of the trust plans, and told the relationship representatives they were looking for a new bank to serve as Pension Fund's trustee and provide recordkeeping services for its plans. As part of the new relationship, Pension Fund would seek approval from certain of its plan participants to liquidate the mutual fund investments held by other banks and broker-dealers previously affiliated with the plans, and transfer those proceeds to HSBC for investment. Pension Fund requested HSBC's assistance in selecting off-shore mutual funds similar to the domestic funds Pension Fund previously had been offering to its investors through the trust plans. Pension Fund agreed that HSBC could keep all loads paid by the funds in connection with those transactions. The Pension Fund principals also requested the use of HSBC's logo and name in its revised offering materials.

9. In evaluating whether to accept Pension Fund as a client, HSBC obtained information about Pension Fund and its principals. One of the relationship representatives conducted internet searches for press releases and news articles about Pension Fund. Pension Fund's principals provided HSBC with photo identification, information about their personal net worth, and the approximate net asset value of investor shares and amount of funds that HSBC would receive if it accepted the new relationship.

10. The relationship representatives also conducted an on-site visit of Pension Fund to verify the business' existence and learn about Pension Fund's operations. In addition, because HSBC was not going to have direct contact with the Pension Fund investors, the relationship representatives obtained information regarding Pension Fund's "Know Your Customer" procedures. Pension Fund also sent HSBC its unaudited financial statements for the year ended December 31, 2002, which indicated that while Pension Fund had recognized \$14.2 million in gross revenues for that year, \$5.2 and \$6.0 million of those funds were expenses for sales agents' commissions and distributions to Pension Fund's principals, respectively.

11. In August 2003, HSBC agreed to accept Pension Fund as a new customer and serve as trustee for the investment component of the Pension Fund trust plans. On August 7, 2003, Pension Fund and HSBC executed a Master Trust Agreement, which defined the terms and scope of HSBC's duties as trustee. Specifically, under the Master Trust Agreement, HSBC would serve as trustee for the investment component of the Pension Fund plans and create a Master Trust Account to hold the assets designated by Pension Fund as the investment component of the investors' trust plans. The Master Trust Agreement, printed only in English, also indicated that HSBC's duties were limited to acting as custodian of the investment component of the plan, receiving investor funds, retaining custody of those funds in sub-accounts and investing or disbursing investor funds as directed by Pension Fund. The Master Trust Agreement gave Pension Fund the right to use HSBC's name and logo in Pension Fund's marketing materials. Pension Fund prepared new offering materials purportedly reflecting the new relationship with HSBC, and provided the offering materials to HSBC for its review and approval. The offering materials included two contracts titled "Guide to Plan Provisions" and "Plan Transfer Provisions" (collectively "Plan Provisions"), and two glossy marketing brochures.

12. The marketing brochures, printed in both Spanish and Portuguese, contained a general overview of Pension Fund's plans and included HSBC's logo, pictures of HSBC's corporate headquarters, and other general information about HSBC. The brochure stated that HSBC was the "second largest commercial bank in the world." In addition, the marketing brochures represented that: "Pension Fund and HSBC Bank, USA have created the Liberty Trust Plan for you." The brochures further assured investors of the safety of their funds, describing HSBC as the investors' trustee and claiming, "Your money is in the best hands – HSBC Bank, USA." The marketing brochures provided a list of mutual funds offered as part of the trust plans. Pension Fund's marketing brochures did not disclose information about the sales commissions, administrative expenses, or the front load mutual fund fees charged to the investor. These marketing brochures also did not include information about any limitations to HSBC's role as trustee.

13. The Plan Provisions provided more details about the trust plans' investment and insurance components, and included HSBC's logo and the legend "HSBC Bank USA as Trustee" on the cover page. The Plan Provisions defined "Trustee" as "HSBC Bank USA, which shall serve as trustee for the Investment Component of the Plan in accordance with the provisions of the Master Trust Agreement." The Plan Provisions generally disclosed that up to 80% of the investor's initial contribution in the Liberty Plan would be used to pay "plan expenses," which were generally defined as the cost of insurance, the fees associated with purchasing the mutual funds selected by the investor, sales commissions and brokerage fees, and other "administrative fees." The Plan Provisions did not provide a specific breakdown of the nature and specific amount of all the fees and costs associated with the plans, nor did it disclose that up to 50% would be used to pay commissions to sales agents.

14. During the Relevant Period, HSBC had procedures in place providing for the review of any materials using the HSBC name or logo. Those procedures required that the relationship representatives forward the Pension Fund marketing materials to the marketing department for its review of the size, placement, and color of the HSBC logo. The procedures also required the relationship representatives and/or the marketing personnel to forward the materials to the compliance and legal departments for a substantive review of the language in those materials. Finally, the procedures further required that any materials considered to be "co-branding" (i.e., jointly offered or sold by HSBC and another entity), be sent to the Group Head Office and Group Marketing Office ("Group Offices"), located at HSBC's parent company, HSBC Holdings, in London, England. Given the language in the marketing brochures suggesting that the trust plans were "created" by Pension Fund and HSBC, had these procedures been followed, the compliance and legal departments would presumably have reviewed the materials to determine whether the co-branding procedures were triggered or, in the alternative, whether the language of the brochures should have been modified to make clear that the trust plans were not jointly offered by Pension Fund and HSBC.

15. When reviewing Pension Fund's new marketing materials, HSBC failed to follow its own internal marketing approval procedures. Although the relationship representatives forwarded the marketing brochures to the marketing department for review, neither the relationship representatives nor the marketing department forwarded the materials to the compliance and legal departments, or Group Offices, for a substantive review of the language in the marketing materials. While HSBC did send the Master Trust Agreement and Plan Provisions

to outside legal counsel for review, neither of the marketing brochures were reviewed by HSBC's compliance and legal departments, or outside counsel, for the purpose of assessing the adequacy of the representations and disclosures in those materials.

16. HSBC administered its duties as trustee within its Retirement Financial Services ("RFS") group of HSBC's Private Bank. The Pension Fund trust plans were not the typical retirement plans serviced by HSBC's RFS group, which primarily serviced U.S. employer-sponsored retirement plans, where the member employees reside in the U.S. and have direct access to HSBC's services. In contrast, Pension Fund's investors were not employees of Pension Fund, they were not U.S. residents, and they did not have direct contact with or access to HSBC or its services. Pension Fund's investors did not have access to HSBC's Website, Infoline or Call Center, and HSBC instructed its staff to direct all inquiries from Pension Fund's investors to Pension Fund.

17. After the execution of the Master Trust Agreement, HSBC discussed with Pension Fund using off-shore mutual funds, because Pension Fund represented to HSBC and the marketing brochures expressly stated that the trust plans could not be sold in the U.S. and were not available to U.S. citizens or residents. Pension Fund agreed, stating that its only requirement was that the funds have name recognition and that the available selection included a variety of funds. HSBC identified a variety of off-shore mutual funds similar to the domestic funds Pension Fund previously had been offering. Since Pension Fund had agreed that HSBC could keep any of the fees paid by the mutual funds in connection with the trust plans, one of the significant factors considered by the relationship representative was the amount of front load fees paid by the mutual funds selected. HSBC created a Master Trust Account to hold the mutual fund shares purchased on behalf of Pension Fund investors. The mutual fund selections were included in the investor application provided to prospective investors with the revised offering materials.

18. Pension Fund distributed the revised offering materials to its prospective investors, and instructed certain investors to make their contribution checks payable to HSBC. Pension Fund remitted the checks for deposit to a "Gross Premium" account in the name of Pension Fund, which essentially functioned as a checking account. Pension Fund then provided weekly transmittal reports to HSBC that instructed HSBC as to how much to invest in each of the mutual funds selected, and how much should remain in the "Gross Premium" account (or be transferred to another Pension Fund account) in the form of "fees." During the relevant period, the weekly transmittal reports revealed that in certain instances, Pension Fund directed only a minimal portion of its investors' funds be invested in mutual funds, in some cases allocating as much as 95% of the investor's contribution to "fees" to remain in Pension Fund's "Gross Premium" account.

19. In October 2003, one of the relationship representatives drafted a letter on HSBC letterhead announcing the new relationship between HSBC and Pension Fund, and inviting certain of Pension Fund's existing investors to transfer their funds from other financial institutions to HSBC. Pension Fund sent the letter to approximately half of its existing investors, and enclosed a form with the HSBC logo that listed the new mutual fund selections available to investors upon transfer to HSBC. Neither the letter nor the enclosure informed investors that they would incur new front load fees in connection with that transfer, or the amounts of those prospective costs.

20. In February 2004, HSBC learned that some of the mutual fund companies were not charging Pension Fund's investors the full front load fees they had negotiated with Pension Fund. HSBC asked the mutual fund companies to rebook the trades and charge the higher front load fees for the Pension Fund investors. In return, some of the mutual fund companies required HSBC to provide them with hold-harmless letters. HSBC did not disclose the rebooking of these fees to Pension Fund's investors.

21. During 2004, one of the relationship representatives traveled to Central and South America four times at Pension Fund's request to meet with sales agents. Pension Fund asked the relationship representative to attend these meetings to add credibility to Pension Fund and its relationship with HSBC. Some investors attended at least one of these meetings. At these meetings, the relationship representative discussed HSBC's relationship with Pension Fund and, in one of these meetings, used a power-point presentation to describe different banking and investment services offered by HSBC.

22. In July 2004, certain of the relationship representatives first learned about a civil action brought against Pension Fund by the Guatemalan military pension fund, Instituto De Prevision Militar and Inverma S.A. ("IPM"), from an article in *Prensa Libre*, a Guatemalan newspaper. Instituto De Prevision Militar and Iverma S.A. v. Pension Fund of America, et al. Case No. 020730 CA 27 (Fla. Cir. Ct.) ("IPM civil action"). The newspaper reported that IPM had filed a suit in Florida state court in November 2002, alleging that Pension Fund had defrauded the Guatemalan military pension fund, and that its principals had misappropriated \$24 million of pensioners' funds. These relationship representatives met with Pension Fund's principals and Pension Fund's outside counsel to discuss IPM's allegations, and were told the allegations were "without merit." HSBC accepted this representation.

23. In September 2004, HSBC Holdings informed the relationship representatives that an HSBC branch office in Brazil had obtained copies of the Pension Fund marketing materials from an unaffiliated sales agent whose client was interested in investing in the trust plans. Among other things, the HSBC branch office in Brazil was concerned that the predominance of HSBC in the marketing brochure incorrectly implied that HSBC sponsored the trust plans. Thereafter, HSBC's compliance department, for the first time, reviewed Pension Fund's marketing brochures and the power point presentation used in Latin America. The compliance department made some changes to the marketing brochures and the power point presentation. The compliance department did not, however, forward the marketing brochures or other materials to HSBC's legal department. Moreover, although HSBC's compliance department did not complete its review of Pension Fund's marketing brochures until December 2004, HSBC allowed Pension Fund to continue to use its marketing brochures in all of its sales territories except Brazil.

24. From August 2003 through March 28, 2005, HSBC earned trust and recordkeeping fees from Pension Fund, and fees paid by mutual fund companies in connection with investors' mutual fund transactions.

Violations

25. As a result of the conduct described above, HSBC caused Pension Fund's violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act. A violation of these provisions may be established by a showing of negligence. *Aaron v. SEC*, 448 U.S. 680, 697 (1980).

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent HSBC's Offer.

Accordingly, it is hereby ORDERED that Respondent HSBC cease and desist from committing or causing any violations and future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act.

By the Commission.

Nancy M. Morris
Secretary