

Dated: April 15, 2013.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013-09139 Filed 4-17-13; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-30462; 812-14148]

### The Royal Bank of Scotland plc, et al.; Notice of Application and Temporary Order

April 12, 2013.

**AGENCY:** Securities and Exchange Commission (“Commission”).

**ACTION:** Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (“Act”).

**SUMMARY:** Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to a guilty plea entered on April 12, 2013, by RBS Securities Japan Limited (the “Settling Firm”) in the U.S. District Court for the District of Connecticut (“District Court”) in connection with a plea agreement between the Settling Firm and the U.S. Department of Justice (“DOJ”), until the Commission takes final action on an application for a permanent order. Applicants have also applied for a permanent order.

**APPLICANTS:** The Royal Bank of Scotland plc (“RBS plc”), Citizens Investment Advisors (“Citizens IA”), a separately identifiable department of RBS Citizens, N.A., and the Settling Firm (each an “Applicant” and collectively, the “Applicants”).<sup>1</sup>

*Filing Date:* The application was filed on April 12, 2013.

**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 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 7, 2013, 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

<sup>1</sup> Applicants request that any relief granted pursuant to the application also apply to any existing or future company of which the Settling Firm is or may become an affiliated person within the meaning of section 2(a)(3) of the Act (together with the Applicants, the “Covered Persons”) with respect to any activity contemplated by section 9(a) of the Act.

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:** Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. Applicants: RBS plc, RBS, Gogarburn, PO Box 1000, Edinburgh, EH12 1HQ, Scotland; Citizens IA, c/o RBS Citizens, N.A., Mail Stop RC 03-30, One Citizens Plaza, Providence, Rhode Island 02903; Settling Firm, Shin-Marunouchi Center Building, 1-6-2 Marunouchi, Chiyoda-ku, Tokyo 100-0005, Japan.

**FOR FURTHER INFORMATION CONTACT:**

Bruce R. MacNeil, Senior Counsel, at (202) 551-6817 or Daniele Marchesani, Branch Chief, at (202) 551-6821 (Division of Investment Management, Exemptive Applications Office).

**SUPPLEMENTARY INFORMATION:** The following is a temporary order and 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> or by calling (202) 551-8090.

#### Applicants’ Representations

1. Each Applicant is either a direct or indirect wholly-owned subsidiary of The Royal Bank of Scotland Group plc (“RBSG”). RBSG and RBS plc, a company organized under the laws of Scotland, are international banking and financial services companies that provide a wide range of products and services to companies around the world. Citizens IA, an investment adviser registered under the Investment Advisers Act of 1940, is a separately identifiable department of RBS Citizens, N.A. Citizens IA serves as investment sub-adviser to Aquila Narragansett Tax-Free Income Fund (the “Fund”) (such activity, “Fund Service Activities”). The Settling Firm, a company with its principal place of business in Tokyo, Japan, engages in securities business operations, including derivatives trading.

2. On April 12, 2013, the Fraud Section of the Criminal Division and the Antitrust Division of the DOJ filed a one-count criminal information (the “Information”) in the District Court charging one count of wire fraud, in violation of Title 18, United States Code, Section 1343. The Information charges that between approximately 2006 and at least 2010, the Settling Firm engaged in a scheme to defraud

counterparties to interest rate derivatives trades executed on its behalf by secretly manipulating benchmark interest rates to which the profitability of those trades was tied. The Information charges that, in furtherance of this scheme, on or about October 5, 2009, the Settling Firm committed wire fraud in violation of Title 18, United States Code, Section 1343 by transmitting, or causing the transmission of, (i) An electronic chat between a derivatives trader employed by the Settling Firm and an RBS plc derivatives trader, (ii) a subsequent submission for the London InterBank Offered Rate for Japanese Yen (“Yen LIBOR”) to Thomson Reuters, and (iii) a subsequent publication of a Yen LIBOR rate through international and interstate wires.

3. Pursuant to a plea agreement (the “Plea Agreement”), attached as exhibit to the application, the Settling Firm entered a plea of guilty (the “Guilty Plea”) on April 12, 2013, in the District Court. In the Plea Agreement, the Settling Firm, among other things, agreed to a fine of \$50 million. Applicants expect that the District Court will enter a judgment against the Settling Firm that will require remedies that are materially the same as set forth in the Plea Agreement. In addition, RBS plc entered into a deferred prosecution agreement with DOJ (the “Deferred Prosecution Agreement”) relating to submissions of the Yen LIBOR and other benchmark interest rates. In the Deferred Prosecution Agreement, RBS plc has agreed to, among other things, (i) Continue to provide full cooperation with DOJ and any other law enforcement or government agency designated by DOJ until the conclusion of all investigations and prosecutions arising out of the conduct described in the Deferred Prosecution Agreement; (ii) strengthen its internal controls as required by certain other U.S. and non-U.S. regulatory agencies that have addressed the misconduct described in the Deferred Prosecution Agreement; and (iii) the payment of \$150 million, which includes amounts incurred by the Settling Firm for criminal penalties arising from the Judgment. The individuals at the Settling Firm and at any other Covered Person who were identified by the Settling Firm, RBS plc or any U.S. or non-U.S. regulatory or enforcement agencies as being responsible for the conduct underlying the Plea Agreement, including the conduct described in any of the exhibits

thereto (the "Conduct"), have either resigned or have been terminated.<sup>2</sup>

### Applicants' Legal Analysis

1. Section 9(a)(1) of the Act provides, in pertinent part, that a person may not serve or act as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company or registered unit investment trust, if such person within ten years has been convicted of any felony or misdemeanor arising out of such person's conduct, as, among other things, a broker or dealer. Section 2(a)(10) of the Act defines the term "convicted" to include a plea of guilty. Section 9(a)(3) of the Act extends the prohibitions of section 9(a)(1) to a company any affiliated person of which has been disqualified under the provisions of section 9(a)(1). Section 2(a)(3) of the Act defines "affiliated person" to include, among others, any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Settling Firm is an affiliated person of each of the other Applicants within the meaning of section 2(a)(3). Applicants state that the Guilty Plea would result in a disqualification of each Applicant for ten years under section 9(a) of the Act because the Settling Firm would become the subject of a conviction described in 9(a)(1).

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that the Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the exemption. Applicants have filed an application pursuant to section 9(c) seeking temporary and permanent orders exempting the Applicants and the other Covered Persons from the disqualification provisions of section 9(a) of the Act.

3. Applicants believe they meet the standard for exemption specified in section 9(c). Applicants state that the

prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants assert that the Conduct did not involve any of the Applicants' Fund Service Activities, and that the Settling Firm does not serve in any of the capacities described in section 9(a) of the Act. Additionally, Applicants assert that the Conduct did not involve the Fund or the assets of the Fund. Applicants further assert that (i) None of the current or former directors, officers or employees of the Applicants (other than certain personnel of the Settling Firm and RBS plc who were not involved in any of the Applicants' Fund Service Activities) had any knowledge of, or had any involvement in, the Conduct; (ii) no former employee of the Settling Firm or of any other Covered Person who previously has been or who subsequently may be identified by the Settling Firm, RBS plc or any U.S. or non-U.S. regulatory or enforcement agencies as having been responsible for the Conduct will be an officer, director, or employee of any Applicant or of any other Covered Person; (iii) no employee of the Settling Firm or of any Covered Person who was involved in the Conduct had any, or will not have any future, involvement in the Covered Persons' activities in any capacity described in section 9(a) of the Act; and (iv) because the personnel of the Applicants (other than certain personnel of the Settling Firm and RBS plc who were not involved in any of the Applicants' Fund Service Activities) did not have any involvement in the Conduct, shareholders of the Fund were not affected any differently than if the Fund had received services from any other non-affiliated investment adviser. Applicants have agreed that neither they nor any of the other Covered Persons will employ any of the former employees of the Settling Firm or any other Covered Person who previously have been or who subsequently may be identified by the Settling Firm, RBS plc or any U.S. or non-U.S. regulatory or enforcement agency as having been responsible for the Conduct in any capacity without first making a further application to the Commission pursuant to section 9(c).

5. Applicants further represent that the inability of Citizens IA to continue providing Fund Service Activities would result in potential hardships for both the Fund and its shareholders. Applicants state that they will distribute written materials, including an offer to

meet in person to discuss the materials, to the board of trustees of the Fund, including the directors who are not "interested persons," as defined in section 2(a)(19) of the Act, of such Fund, and their independent legal counsel as defined in rule 0-1(a)(6) under the Act, if any, regarding the Guilty Plea, any impact on the Fund, and the application. The Applicants will provide the Fund with all information concerning the Plea Agreement and the application that is necessary for the Fund to fulfill its disclosure and other obligations under the federal securities laws.

6. Applicants also state that, if Citizens IA was barred from providing Fund Service Activities to the Fund, the effect on its business and employees would be severe.

7. Applicants state that none of the Applicants has previously applied for an exemptive order under section 9(c) of the Act.

### Applicants' Conditions

Applicants agree that any order granted by the Commission pursuant to the application will be subject to the following conditions:

1. Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including, without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

2. Neither the Applicants nor any of the other Covered Persons will employ any of the former employees of the Settling Firm or of any other Covered Person who previously has been or who subsequently may be identified by the Settling Firm, RBS plc or any U.S. or non-U.S. regulatory or enforcement agency as having been responsible for the Conduct, in any capacity, without first making a further application to the Commission pursuant to section 9(c).

### Temporary Order

The Commission has considered the matter and finds that the Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly  
*It is hereby ordered*, pursuant to section 9(c) of the Act, that the Applicants and the other Covered Persons are granted a temporary

<sup>2</sup> The Applicants note that a junior level employee of a Covered Person (the "Employee") who was not responsible for the Conduct remains employed by a Covered Person. The Applicants have concluded that the Employee was not responsible for the Conduct and the Employee has not been identified by any U.S. or non-U.S. regulatory or enforcement agencies as being responsible for the Conduct. The Applicants acknowledge that the Commission has not been asked to determine, and has not determined, whether or not the Employee is responsible for the Conduct.

exemption from the provisions of section 9(a), effective forthwith, solely with respect to the Guilty Plea, subject to the conditions in the application, until the date the Commission takes final action on their application for a permanent order.

By the Commission.

**Elizabeth M. Murphy,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30460; 812-14113]

### Trust for Professional Managers and Aurora Investment Management L.L.C.; Notice of Application

April 12, 2013.

**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 section 15(a) of the Act and rule 18f-2 under the Act, as well as from certain disclosure requirements.

**SUMMARY OF APPLICATION:** Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval and that would grant relief from certain disclosure requirements.

**APPLICANTS:** Trust for Professional Managers (the “Trust”) and Aurora Investment Management L.L.C. (the “Initial Advisor”).

**FILING DATES:** The application was filed January 17, 2013, and amended on April 3, 2013.

**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 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 7, 2013, and should be accompanied by proof of service on the 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:** Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. Applicants: John P. Buckel, Trust for Professional Managers, 615 East Michigan Street, Milwaukee, WI 53202; Scott M. Montpas, Esq., Aurora Investment Management L.L.C., 300 North LaSalle Street, 52nd Floor, Chicago, IL 60654.

**FOR FURTHER INFORMATION CONTACT:** Courtney S. Thornton, Senior Counsel, at (202) 551-6812 or David P. Bartels, Branch Chief, at (202) 551-6821 (Division of Investment Management, Exemptive Applications Office).

**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 for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

#### Applicants’ Representations

1. The Trust, a Delaware statutory trust, is registered under the Act as an open-end management investment company. The Trust is organized as a series investment company and currently consists of 28 series, one of which is advised by the Initial Advisor.<sup>1</sup> The Initial Advisor is a limited liability company organized under Delaware law. The Initial Advisor is, and any other Advisor will be, registered as an investment adviser under the Investment Advisers Act of 1940 (“Advisers Act”). The Advisor will serve as the investment adviser to each Fund pursuant to an investment advisory agreement with the Trust (each an “Advisory Agreement” and

<sup>1</sup> Applicants are not requesting relief for any series other than those advised by the Advisor (as defined below). Applicants request relief with respect to any existing and any future series of the Trust or any other registered open-end management company that: (a) Is advised by the Initial Advisor or a person controlling, controlled by, or under common control with the Initial Advisor or its successor (each, an “Advisor”); (b) uses the manager of managers structure (“Manager of Managers Structure”) described in the application; and (c) complies with the terms and conditions of the requested order (any such series, a “Fund” and collectively, the “Funds”). The only existing registered open-end management investment company that currently intends to rely on the requested order is named as an applicant, and the only Fund that currently intends to rely on the requested order is the Aurora Horizons Fund. For purposes of the requested order, “successor” is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization. If the name of any Fund contains the name of a Subadvisor (as defined below), that name will be preceded by the name of the Advisor.

collectively, the “Advisory Agreements”).<sup>2</sup> Each Advisory Agreement was or will have been approved by each Fund’s respective shareholder(s) and the board of trustees of the Trust (“Board”), including a majority of the trustees who are not “interested persons,” as defined in section 2(a)(19) of the Act, of the Trust, the Fund, or the Advisor (“Independent Trustees”) in the manner required by sections 15(a) and 15(c) of the Act and rule 18f-2 under the Act.

2. Under the terms of each Advisory Agreement, the Advisor will provide each Fund with overall management services and, as it deems appropriate, will continuously review, supervise and administer each Fund’s investment program, subject to the supervision of, and policies established by, the Board. For the investment management services it will provide to each Fund, the Advisor will receive the fee specified in the Advisory Agreement from such Fund, payable monthly at an annual rate based on the average daily net assets of the Fund. The Advisory Agreement permits the Advisor to delegate certain responsibilities to one or more subadvisors (each a “Subadvisor”), subject to the approval of the Board.<sup>3</sup>

3. Each Subadvisor will be an investment adviser as defined in section 2(a)(20) of the Act and will be registered with the Commission as an “investment adviser” under the Advisers Act. The Advisor will evaluate, allocate assets to and oversee the Subadvisors, and make recommendations about their hiring, termination, and replacement to the Board, at all times subject to the authority of the Board. The Advisor will compensate the Subadvisors out of the advisory fee paid by a Fund to the Advisor under the Advisory Agreement.

4. Applicants request an order to permit the Advisor, subject to Board approval, to select certain Subadvisors to manage all or a portion of the assets of a Fund or Funds pursuant to a Subadvisory Agreement and materially

<sup>2</sup> Each future investment advisory agreement between an Advisor and a Fund is also included in the term “Advisory Agreement”. The Initial Advisor currently serves as investment advisor only to the Aurora Horizons Fund, a series of the Trust, under the Advisory Agreement.

<sup>3</sup> As of the date of the amended application, the Advisor has entered into subadvisory agreements (“Subadvisory Agreements”) with Chicago Fundamental Investment Partners, LLC, First Oak Capital Management LLC, Graham Capital Management, L.P., Kabouter Management, LLC, Kingsford Capital Management, LLC, Kovitz Investment Group, LLC, Lansdowne Partners Limited Partnership, MPAM Credit Trading Partners L.P., PEAK6 Advisors LLC, and York Registered Holdings, L.P. None of the existing Subadvisors is affiliated with the Advisor.