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STATEMENT

Statement Regarding Public Disclosures of AIG Concerning Maiden Lane III LLC

January 19, 2010

The Federal Reserve Bank of New York ("FRBNY") is today providing to the House Committee on Oversight and Government Reform over 250,000 pages of documents that relate to, among other things, **Maiden Lane III LLC** ("Maiden Lane III") and the public disclosures made by American International Group, Inc. ("AIG") in December 2008 concerning the transactions entered into by Maiden Lane III. We believe that these materials demonstrate that the FRBNY's actions assisted AIG in ensuring the accuracy of its disclosures and protected important U.S. taxpayer interests. (See end note i below.)^f

Background to the Maiden Lane III Transaction

In the third quarter of 2008, AIG experienced increasing liquidity pressures, partly as a result of AIG Financial Products Corp.'s ("AIGFP") obligations to post collateral in connection with credit default swaps ("CDS") related to multi-sector collateralized debt obligations ("CDOs"). AIG was unable to obtain sufficient capital or liquidity in the private markets and, by the week of September 15, 2008, it faced the threat of imminent failure. After determining that a disorderly failure of AIG could add to already significant levels of financial market instability and materially weaken the economy, the Board of Governors of the Federal Reserve System ("Board of Governors"), with the full support of the Treasury Department, authorized the FRBNY to make a secured loan to AIG.

Over the following weeks, AIGFP was required to provide ever-increasing amounts of cash collateral to its CDS counterparties under the terms of its contracts. On November 10, 2008, the Board of Governors and Treasury Department announced a restructuring of the government's financial support in order to, among other things, address the liquidity drain caused by the continuing collateral calls and to establish a more durable capital structure for AIG, and thus to protect taxpayer interests. As part of this restructuring, the FRBNY provided approximately \$24.3 billion in senior secured financing to an entity newly formed by the FRBNY, Maiden Lane III, to fund the purchase of CDOs from counterparties of AIGFP. AIG made a \$5 billion equity contribution to Maiden Lane III that is subordinated to the Federal Reserve's senior loan and that was designed to provide additional protection to the Federal Reserve and the U.S. Government against loss on the Federal Reserve's loan. Maiden Lane III used the proceeds to purchase CDOs with an aggregate par value of \$62.1 billion from AIGFP's counterparties in multiple transactions in November and December 2008. Maiden Lane III paid counterparties approximately \$26.8 billion for title to these CDOs. The counterparties were also allowed to retain approximately \$35.1 billion in collateral previously posted by AIGFP pursuant to its obligations under the CDS contracts. In return, the counterparties agreed to terminate the credit protection AIGFP had provided for the CDOs, relieving AIGFP of, among other things, the obligation to post additional collateral. (For more information concerning the structure of the Maiden Lane III transaction, please click [here](#) to visit the portion of our website that, since April 28, 2009, has been devoted to providing the public with information about that facility.)

Disclosure Obligations Remained at All Times With AIG

These transactions were all fully disclosed by AIG in its securities filings. The Federal Reserve provided additional information on its websites, in congressional testimony and correspondence, and in public reports. In preparing its securities filings, AIG consulted with the FRBNY to ensure that the transactions involving the FRBNY were accurately disclosed to the public. This type of dialogue regarding securities filings is common; indeed, it is customary for public companies to seek comments on their proposed disclosures from counterparties to the material transactions that they are required to disclose. This reflects an effort to obtain input from multiple sources, and to ensure the accuracy of the filings.

AIG at all times remained responsible for complying with its disclosure obligations under the securities laws and, during the period at issue, AIG devoted substantial resources to fulfilling its disclosure obligations, including obtaining expert legal advice from the experienced outside law firms of Sullivan & Cromwell LLP and Weil Gotshal & Manges LLP. The role of the FRBNY and its counsel in communicating with AIG regarding the securities disclosures associated with the transaction did not supplant the decision making of AIG and its counsel with respect to AIG's legally required disclosures. Rather, the role of the FRBNY and its counsel was (1) to work with AIG to further the goals of accuracy and consistency of AIG's filings with respect to the transactions, and (2) to protect, where appropriate, the substantial taxpayer funds at stake in Maiden Lane III. In the end, after receiving the FRBNY's suggestions, AIG, aided by its internal and outside attorneys, made the disclosures that it deemed to be legally required and otherwise appropriate.

Disclosure of Par Value Payments to CDS Counterparties

One assertion that has been made by some in recent days is that, as a result of the FRBNY's conduct, the 8-K filings that AIG made on December 2, 2008 and December 24, 2008 to report the closings of the Maiden Lane III transactions did not disclose that AIGFP's CDS counterparties were essentially being paid the par value of the CDOs being purchased by Maiden Lane III. This is incorrect. In both 8-K filings, AIG stated that CDOs were being purchased by allowing counterparties to retain cash collateral posted by AIGFP and by making additional cash payments that, when added together, approximately equaled their par value. (For a detailed explanation of how this disclosure revealed exactly how much money AIGFP's counterparties received in relation to the par value of the underlying CDOs, please (see endnote ii below).ⁱⁱ)

Moreover, this fact was widely understood at the time of AIG's 8-K filings in December 2008. An analyst report published by Credit Suisse on December 2, 2008 – the same day as the initial 8-K filing addressing the first settlements with the counterparties – opens with the following sentence: "This evening AIG terminated \$46.1b of its \$71.6b of targeted multi-sector CDO exposure, at par." Similarly, a Fox-Pitt-Kelton report dated the next day, December 3, 2008, contains the following statement: "Along with surrendering \$25.9 billion of collateral that had been previously posted by AIG with the counterparties, the purchase of the \$46.1 billion of par value essentially made the counterparties whole." In addition, it was widely reported in the press. For example, on November 12, 2008, shortly after the initial announcement of the Maiden Lane III facility, an article in [The Wall Street Journal](#), available [here](#), stated: "The banks that participate will be compensated for the securities' full, or par, value in exchange for allowing AIG to unwind the credit default swaps it wrote." On December 25, 2008, an article in [The Washington Post](#), available [here](#), further reported that, "The fund, called Maiden Lane III, paid about \$6.7 billion to the investors for the securities in the latest purchases. The counterparties were also able to keep more than \$9 billion that AIG had posted in collateral, reimbursing them at face value for the assets."

Comments by FRBNY Counsel Regarding AIG's December 2008 8-K Maiden Lane III Disclosures

Some have also suggested that the FRBNY pressured AIG not to make required disclosures about material elements of the Maiden Lane III transactions, including that the counterparties received par value. This is also incorrect. It appears that this assertion is based, at least in part, on a misreading of emails among lawyers for the FRBNY and AIG.

- In connection with a draft of AIG's December 24th 8-K, the FRBNY, through its counsel Davis Polk & Wardwell LLP ("Davis Polk"), suggested in a markup, available [here](#), the deletion of the statement that, as a result of Maiden Lane III, "the AIGFP counterparties received 100 percent of the par value of the Multi-Sector CDOs sold." The principal reason for the suggested deletion is that a more precise statement, which conformed to the language used in AIG's 8-K filed on December 2nd regarding the initial closings, was included in its place. This language first stated the par value of the CDOs purchased and then gave the amount of the net payment made to the counterparties to purchase the CDOs, as well as the amount of the collateral surrendered to them. The sum of the net payment and the surrendered collateral equaled approximately par.
- Moreover, because of the gap between the trade date and the date that the transactions closed – and the fact that the FRBNY had demanded favorable settlement arrangements from AIG's counterparties – the counterparties ultimately received slightly less than 100% of par value. (See endnote iii below).ⁱⁱⁱ
- The FRBNY, through its attorneys, also suggested deleting the portion of AIG's draft December 24th press release that initially implied that the FRBNY would enter into additional transactions with AIG relating to the termination of a portfolio of CDS relating to synthetic CDOs. This appropriate edit, available [here](#), was proposed because, in fact, there was no commitment at the time for either the Federal Reserve or Maiden Lane III to acquire the synthetic CDOs that backed this portfolio of CDS; indeed, neither the Federal Reserve nor Maiden Lane III has acquired any synthetic CDOs from the counterparties of AIGFP. Thus, rather than seeking to conceal information, the FRBNY comment was made in an effort to help ensure the accuracy of the disclosures so as to avoid any suggestion that the FRBNY had made a commitment that was not made at the time (and in fact was never made). The comment also ensured that there would be no incorrect expectation created in the public markets that such additional assistance to AIG would be forthcoming.
- In an e-mail on November 24, 2008, a lawyer for the FRBNY asked a lawyer at AIG if it would be feasible to hold off on the filing of the 8-K and the related press release until the following week in order to allow the FRBNY sufficient time to review the proposed filings and to make a contemporaneous FRBNY informational release. The FRBNY and AIG agreed that the rules of the Securities and Exchange Commission ("SEC") provided the company until Tuesday of the following week (December 2, 2008) to file the 8-K. The filing was timely made on December 2.

Identity of the CDS Counterparties and Related Commercially Sensitive Information

Another concern recently expressed by some is whether the FRBNY improperly pressured AIG not to disclose the identities of the CDS counterparties and other commercially sensitive information (which information was contained in a Schedule A to the "shortfall agreement").

This concern has apparently arisen from an e-mail exchange between the FRBNY's counsel and AIG regarding whether the Maiden Lane III credit agreement and the shortfall agreement should be attached at all to AIG's December 2nd 8-K. Under SEC rules, when the material terms of an agreement are adequately described in the body of an 8-K, the agreement itself need not be attached to the 8-K as an exhibit. In an e-mail, available [here](#), counsel for the FRBNY suggested, as permitted by the SEC rules, that the agreements need not be attached to the 8-K as exhibits. AIG counsel responded in an e-mail, available [here](#), that although AIG agreed that it was not required to file the agreements with the 8-K, under the unique circumstances presented, AIG and its counsel preferred to attach the agreements to the 8-K. The FRBNY and its counsel did not pursue this point further, and AIG attached the agreements, but without Schedule A.

Schedule A contains the names of the CDS counterparties from which Maiden Lane III purchased the CDOs, information that identifies the individual securities in the Maiden Lane III portfolio, and certain economic terms related to each such security. Because this type of data does not provide any additional information that would be material to AIG's securityholders and because such data is routinely considered to be confidential, AIG determined that Schedule A need not be attached to its December 2nd 8-K, a position that the FRBNY supported. With respect to the December 24th 8-K, AIG took the same position and did not attach the amended Schedule A to that filing either.

On December 30, 2008, the SEC inquired as to why AIG had not attached Schedule A to its 8-K filings. In response, AIG initiated a process pursuant to a long-standing SEC rule that allows companies to request confidential treatment for information of this type. This is a common process: as noted recently in the press ([here](#)), the SEC typically receives 1,500 requests each year for confidential treatment, and it grants such requests, entirely or in part, 95 percent of the time. Under that process, AIG formally requested that the SEC agree to treat Schedule A confidentially. AIG was concerned at the time that its counterparties, and potentially other AIG customers, would cease doing business with AIG if they believed that the government would cause the disclosure of ordinarily confidential customer information – including, in some cases, customer identities. For this reason and in light of the commercial sensitivity of the security-specific information on Schedule A, the FRBNY supported this application to protect the taxpayers' interests.

Thereafter, in response to requests by Congress that the identities of the CDS counterparties from which Maiden Lane III had acquired the related CDOs should be revealed, AIG made the counterparty names public in March 2009. The FRBNY supported this decision.

Following the public disclosure of the counterparty names in March 2009, and after further discussion with the FRBNY, AIG maintained its request to the SEC for confidential treatment of the economic terms relating to individual securities held by Maiden Lane III. The FRBNY actively supported AIG's request in light of its concern regarding the impact that disclosure of the specific terms of the securities held by Maiden Lane III might have on its ongoing management of Maiden Lane III on behalf of the taxpayer. If such information were to become available to traders in such securities, traders would be able to use such information to their advantage, and undercut the ability of Maiden Lane III to sell those assets for the maximum total return, to the detriment of taxpayers and AIG. Furthermore, as AIG stated in its application to the SEC for confidential treatment, this commercially sensitive information did not provide any additional information that would be material to investors in AIG. On May 22, 2009, the SEC, after examination of the full, unredacted Schedule A that AIG submitted to it, officially determined that this commercially sensitive information at issue need not be disclosed. To be clear, it is only this sensitive security-by-security information that has received confidential treatment and has not been included in AIG's 8-K filings.

The Federal Reserve provides weekly public reports on the aggregate performance of the Maiden Lane III assets – information that is highly relevant to taxpayer evaluation of the success of this program, but that does not undercut the ultimate taxpayer recovery that is such an important objective. (These weekly reports about Maiden Lane III and the Federal Reserve's other lending activities are available [here](#).) Also, on a monthly basis, the Federal Reserve publishes a [transparency report](#) (*Credit and Liquidity Programs and the Balance Sheet*) that provides additional information and analysis regarding Maiden Lane III and the Federal Reserve's other lending programs. The Federal Reserve will continue its efforts to provide transparency consistent with its central bank functions and stewardship of public funds.

ⁱ As the FRBNY General Counsel has recently written, Treasury Secretary Geithner, who was president of the FRBNY at the time, had no role in, or knowledge of, the disclosure matters that are the subject of this statement, nor would matters of this nature warrant the involvement of the president of the FRBNY.

ⁱⁱ AIG's December 2nd 8-K, available [here](#), describes payments related to the initial closing of the purchase of multi-sector CDOs by Maiden Lane III LLC (referred to as "ML III") and concurrent termination by AIGFP of CDS that took place on November 25, 2008, as follows:

"On November 25, 2008, ML III bought approximately \$46.1 billion in par amount of Multi-Sector CDOs through a net payment to CDS counterparties of approximately \$20.1 billion, and AIGFP terminated the related CDS with the same notional amount. The aggregate cost of the purchases and terminations was funded through approximately \$15.1 billion of borrowings under the Senior Loan, the surrender by AIGFP of approximately \$25.9 billion of collateral previously posted by AIGFP to CDS counterparties in respect of the terminated CDS and AIG's equity investment in ML III of \$5.0 billion."

The total payment to the CDS counterparties for the purchase by ML III of the CDOs and the concurrent termination by AIGFP of the corresponding CDSs is determined simply by adding up each of the two payments that the 8-K specifies were made to the CDS Counterparties, namely: (1) the "Net Payment by ML III to CDS Counterparties of approximately \$20.1 billion" and (2) the "Surrender by AIGFP of approximately \$25.9 billion of collateral previously posted by AIGFP to CDS Counterparties in respect of the terminated CDS" (\$20.1 billion + \$25.9 billion = \$46.0 billion).

The fact that this combined payment is close to par is obvious from the first line which specifies that \$46.1 billion is the par amount of the Multi-Sector CDOs purchased on November 25, 2008.

Similarly, AIG's December 24 8-K, available [here](#), describes payments related to the subsequent closings that took place on December 18, 2008 and December 22, 2008 as follows:

"AIG Financial Products Corp. ("AIGFP"), the Federal Reserve Bank of New York ("NY Fed") and Maiden Lane III LLC ("ML III") have previously entered into agreements with AIGFP counterparties to terminate credit default swaps and other similar instruments ("CDS") written by AIGFP and to have ML III acquire the related multi-sector

collateralized debt obligations ("Multi-Sector CDOs"). On December 18, 2008 and December 22, 2008, ML III purchased \$16 billion in par amount of additional Multi-Sector CDOs, including approximately \$8.5 billion of Multi-Sector CDOs underlying 2a-7 Puts written by AIGFP.

The purchase of these Multi-Sector CDOs was funded with a net payment to counterparties of approximately \$6.7 billion and the surrender by AIGFP of approximately \$9.2 billion in collateral previously posted by AIGFP to CDS counterparties in respect of the terminated CDS."

Again, the aggregate payment to CDS counterparties is simply determined by adding up the payment streams specified in the 8-K as paid to them (both in the second paragraph above), namely "net payment to counterparties of approximately \$6.7 billion and the surrender by AIGFP of approximately \$9.2 billion in collateral previously posted" (\$6.7 billion + \$9.2 billion = \$15.9 billion).

The fact that this combined payment is close to par is again obvious in conjunction with the first paragraph which states that \$16 billion is the par amount of the purchased Multi-Sector CDOs.

ⁱⁱⁱ While the point is rather technical, the FRBNY also suggested the deletion of the sentence because it was not in fact precisely accurate that "counterparties received 100% of the par value." While the proposed sentence was close enough to work in many contexts (indeed, the FRBNY and many others have noted that the counterparties received essentially par value), the FRBNY sought to ensure, especially given the complexity of Maiden Lane III, the greatest possible precision in AIG's related securities filings.

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