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December 12, 2011

By Hand and Via E-mail

Douglas J. Scheidt, Esq.
Associate Director and Chief Counsel
Division of Investment Management
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: *SEC v. Wachovia Bank, N.A., n/k/a Wells Fargo Bank, N.A.,*
No. 11-cv-07135 (D.N.J.)

Dear Mr. Scheidt:

We are writing on behalf of our client, Wells Fargo Bank, N.A., successor by merger to Wachovia Bank, N.A. (“Wells Fargo Bank”), and the settling party in the above-captioned action (the “Action”) brought by the U.S. Securities and Exchange Commission (the “Commission”). The Action relates to alleged violations of the federal securities laws by Wachovia Bank (prior to its merger with and into Wells Fargo Bank) in connection with the bidding on and sale of municipal derivative transactions.

Wells Fargo Bank is registered as an investment adviser under Section 203 of the Investment Advisers Act of 1940, as amended (the “Advisers Act”), but it does not currently engage in cash solicitation activities that are subject to Rule 206(4)-3 (the “Rule”) under the Advisers Act. However, Wells Fargo Bank may engage in such activities in the future. Wells Fargo Bank seeks the assurance of the Staff of the Division of Investment Management (the “Staff”) that it would not recommend any enforcement action to the Commission under Section 206(4) of the Advisers Act, or the Rule, if an investment adviser that is required to be registered pursuant to Section 203 of the Advisers Act, pays Wells Fargo Bank, or any of its associated persons (as defined in Section 202(a)(17) of the Advisers Act), a cash solicitation fee, directly or indirectly, for the solicitation of advisory clients in accordance with the Rule, notwithstanding the

existence of the final judgment (the “Final Judgment”),¹ which is described below, that otherwise would preclude such an investment adviser from paying such a fee, directly or indirectly, to Wells Fargo Bank or certain related persons.

While the Final Judgment does not operate to prohibit or suspend Wells Fargo Bank or its associated persons from acting as, or being associated with, an investment adviser and does not relate to solicitation activities on behalf of any investment adviser, the Final Judgment may affect the ability of Wells Fargo Bank or its associated persons to receive such payments.² The Rule prohibits an investment adviser that is required to be registered under the Advisers Act from paying a cash fee to any solicitor that has been temporarily or permanently enjoined by an order, judgment, or decree of a court of competent jurisdiction from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security. Entry of the Final Judgment could cause Wells Fargo Bank or its associated persons to be disqualified under the Rule, and accordingly, absent no-action relief, Wells Fargo Bank or its associated persons may be unable to receive cash payments, directly or indirectly, from advisers registered or required to be registered for the solicitation of advisory clients.

BACKGROUND

The conduct of Wachovia Bank alleged in the Action involved the bidding on and sale of municipal derivative transactions to municipalities and other issuers of tax-exempt debt. The Commission alleges in the complaint (“Complaint”) that Wachovia Bank engaged in fraudulent practices, misrepresentations, and omissions that affected the prices of the reinvestment instruments, deprived the municipalities of a conclusive presumption that their reinvestment instruments were purchased at fair market value,

¹ *Securities and Exchange Commission v. Wachovia Bank, N.A., n/k/a Wells Fargo Bank, N.A.*, Case No. 11-cv-07135 (D.N.J.) (Final Judgment) (Dec. 9, 2011).

² Under Section 9(a) of the Investment Company Act of 1940 (“Investment Company Act”), Wells Fargo Bank and its affiliated persons are, as a result of the Final Judgment, prohibited from serving or acting as, among other things, an investment adviser or depositor of any registered investment company or principal underwriter for any registered open-end investment company or registered unit investment trust. Wells Fargo Bank and its affiliated persons who act in the capacities set forth in Section 9(a) of the Investment Company Act have filed an application under Section 9(c) of the Investment Company Act requesting the Commission to issue both temporary and permanent orders exempting them, and Wells Fargo Bank’s future affiliated persons should any of them serve or act in any of the capacities set forth in Section 9(a) in the future, from the restrictions of Section 9(a). The applicants believe that they meet the standards for exemptive relief under Section 9(c), and they expect that the Commission will issue a temporary order prior to or simultaneous with the Final Judgment, and a permanent order in due course thereafter. In no event will Wells Fargo Bank or any of its affiliated persons act in any capacity enumerated in Section 9(a) unless and until the Commission issues an order pursuant to Section 9(c) of the Investment Company Act exempting them from the prohibitions of Section 9(a) resulting from the Final Judgment. On December 9, 2011, the Commission issued a temporary order (SEC Release No. IC-29881) effective as of the date of the Final Judgment, and the applicants expect the Commission will issue a permanent order in due course thereafter.

and/or jeopardized the tax-exempt status of certain securities. Specifically, the Commission alleges that, from at least 1997 to at least 2005, certain Wachovia Bank employees conspired with bidding agents and other providers of municipal derivative transactions to rig at least 29 such transactions for Wachovia Bank to win; the Commission further alleges that certain Wachovia Bank employees provided at least 29 deliberately non-winning bids for municipal derivative transactions so as to facilitate the rigging of those transactions for other providers to win. Based on the alleged misconduct in the Complaint, Wachovia Bank allegedly violated Section 17(a) of the Securities Act.

In connection with the Action, Wells Fargo Bank and the Division of Enforcement have reached an agreement to settle the Action as described below, and Wells Fargo Bank submitted to the Commission an executed consent in which, for the purpose of this Action, it consents to the imposition of a Final Judgment, including imposition of an injunction, without admitting or denying the matters set forth in the Complaint (except as to the jurisdiction of the Commission).

In the Final Judgment, Wells Fargo Bank is enjoined from violating Section 17(a) of the Securities Act. The Final Judgment also orders Wells Fargo Bank to disgorge \$13,802,984, pay pre-judgment interest in the amount of \$7,275,607, and pay a civil penalty in the amount of \$25,000,000.

DISCUSSION

In the release adopting the Rule, the Commission stated that it “would entertain, and be prepared to grant in appropriate circumstances, requests for permission to engage as a solicitor a person subject to a statutory bar.”³ We respectfully submit that the circumstances present in this case are precisely the sort that warrant a grant of no-action relief.

The Rule’s proposing and adopting releases explain the Commission’s purpose in including the disqualification provisions in the Rule. The purpose was to prevent an investment adviser from hiring as a solicitor a person whom the adviser was not permitted to hire as an employee, thus doing indirectly what the adviser could not do directly. In the proposing release, the Commission stated that:

[b]ecause it would be inappropriate for an investment adviser to be permitted to employ indirectly, as a solicitor, someone whom it might not be able to hire as an employee, the Rule prohibits payment of a referral fee to someone who . . . has engaged in any of the conduct set forth in Section 203(e) of the [Advisers] Act . . . and therefore could be the subject of a Commission order barring or

³

See Requirements Governing Payments of Cash Referral Fees by Investment Advisers, Inv. Adv. Act Rel. No. 688 (July 12, 1979), 17 S.E.C. Docket (CCH) 1293, 1295.

suspending the right of such person to be associated with an investment adviser.⁴

The Final Judgment does not bar, suspend, or limit Wells Fargo Bank or any person currently associated with it from acting in any capacity under the federal securities laws.⁵ Wells Fargo Bank has not been sanctioned for activities relating to conduct as an investment adviser or relating to solicitation of advisory clients. The Final Judgment does not pertain to advisory activities. Accordingly, consistent with the Commission's reasoning, there does not appear to be any reason to prohibit an adviser from paying Wells Fargo Bank or its associated persons for engaging in solicitation activities under the Rule.

The Staff previously has granted numerous requests for no-action relief from the disqualification provisions of the Rule to individuals and entities found by the Commission to have violated a wide range of federal securities laws and rules thereunder or permanently enjoined by courts of competent jurisdiction from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security.⁶

UNDERTAKINGS

In connection with this request, Wells Fargo Bank undertakes:

1. To conduct any cash solicitation arrangement entered into with any adviser registered or required to be registered under Section 203 of

⁴ See Requirements Governing Payments of Cash Referral Fees by Investment Advisers, Inv. Adv. Act Rel. No. 615 (Feb. 2, 1978), 14 S.E.C. Docket (CCH) 89, 91.

⁵ See *supra* note 2.

⁶ See, e.g., J.P. Morgan Securities LLC, SEC No-Action Letter (pub. avail. June 29, 2011); UBS Financial Services Inc., SEC No-Action Letter (pub. avail. May 9, 2011); Citigroup Inc., SEC No-Action Letter (pub. avail. Oct. 22, 2010); Banc of America Investment Services, Inc., SEC No-Action Letter (pub. avail. June 10, 2009); Barclays Bank PLC, SEC No-Action Letter (pub. avail. June 6, 2007); Morgan Stanley & Co. Incorporated, SEC No-Action Letter (pub. avail. May 15, 2006); American International Group, Inc., SEC No-Action Letter (pub. avail. Feb 21, 2006); Goldman, Sachs & Co., SEC No-Action Letter (pub. avail. Feb. 23, 2005); Morgan Stanley & Co. Incorporated, SEC No-Action Letter (pub. avail. Feb. 4, 2005); Prime Advisors, Inc.; SEC No-Action Letter (pub. avail. Nov. 8, 2001); Legg Mason Wood Walker, Inc., SEC No-Action Letter (pub. avail. June 11, 2001); Dreyfus Corp., SEC No-Action Letter (pub. avail. March 9, 2001); UBS Securities Inc., SEC No-Action Letter (pub. avail. Feb. 7, 2001); Tucker Anthony Inc., SEC No-Action Letter (pub. avail. Dec. 21, 2000); J.B. Hanauer & Co., SEC No-Action Letter (pub. avail. Dec. 12, 2000); Founders Asset Management LLC, SEC No-Action Letter (pub. avail. Nov. 8, 2000); Credit Suisse First Boston Corp., SEC No-Action Letter (pub. avail. Aug. 24, 2000); Janney Montgomery Scott LLC, SEC No-Action Letter (pub. avail. July 18, 2000); Aeltus Investment Management, Inc., SEC No-Action Letter (pub. avail. July 17, 2000); William R. Hough & Co., SEC No-Action Letter (pub. avail. Apr. 13, 2000); In the Matter of Certain Municipal Bond Refundings, SEC No-Action Letter (pub. avail. Apr. 13, 2000).

the Advisers Act in compliance with the terms of Rule 206(4)-3, except for an investment adviser's payment of cash solicitation fees, directly or indirectly, to Wells Fargo Bank, which is subject to the Final Judgment;

2. To comply with the terms of the Final Judgment, including, but not limited to, the payment of disgorgement, pre-judgment interest, and the civil penalty; and
3. That for ten years from the date of the entry of the Final Judgment, Wells Fargo Bank or any investment adviser with which it has a solicitation arrangement subject to Rule 206(4)-3 will disclose the Final Judgment in a written document that is delivered to each person whom Wells Fargo Bank solicits (a) not less than 48 hours before the person enters into a written or oral investment advisory contract with the investment adviser or (b) at the time the person enters into such a contract, if the person has the right to terminate such contract without penalty within five business days after entering into the contract.

* * * * *

In light of the foregoing, we respectfully request that the Staff advise us that it will not recommend enforcement action to the Commission if an investment adviser that is required to be registered with the Commission pays Wells Fargo Bank, or any of its associated persons, a cash payment for the solicitation of advisory clients, notwithstanding the Final Judgment.

If you have any questions regarding this request, please contact the undersigned at (212) 558-3196, Matthew Fitzwater at (212) 558-1632 or Christopher Viapiano at (202) 956-6985.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen Patton Seymour". The signature is fluid and cursive, with the first name "Karen" being the most prominent.

Karen Patton Seymour

cc: Mark R. Zehner, Esq.
(U.S. Securities and Exchange Commission)

Nadya B. Roytblat, Esq.
(U.S. Securities and Exchange Commission)

Douglas R. Edwards
(Wells Fargo Law Department)