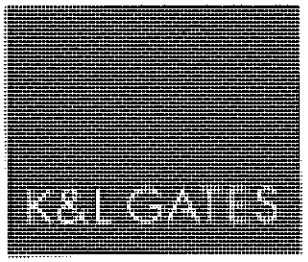

March 21, 2019

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By E-mail

Paul Cellupica, Esq.
Deputy Director and Chief Counsel
Division of Investment Management
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: *Securities and Exchange Commission v. R.I. Commerce Corp. (f/k/a R.I. Econ. Dev. Corp.), et al.*, Case No. 1:16-cv-107-M-PAS (D.R.I.) – Request for Relief under Rule 206(4)-3 under the Investment Advisers Act of 1940

Dear Mr. Cellupica:

This letter is submitted on behalf of our client, Wells Fargo Securities, LLC ("WFS"), in connection with the settlement of the above-captioned civil injunctive action ("Action") brought by the U.S. Securities and Exchange Commission ("Commission") in the U.S. District Court for the District of Rhode Island ("District Court"). Pursuant to the terms of the settlement, a judgment will be entered by the District Court in the Action against WFS ("Final Judgment"). WFS seeks the assurance of the Staff of the Division of Investment Management (the "Staff") that it will not recommend any enforcement action to the Commission under Section 206(4) of the Investment Advisers Act of 1940, as amended (the "Advisers Act") or Rule 206(4)-3 thereunder (the "Rule") if an investment adviser required to be registered pursuant to Section 203 of the Advisers Act directly or indirectly pays to WFS or any person through whom WFS directly or indirectly conducts its solicitation activities a cash solicitation fee pursuant to the Rule, notwithstanding the existence of the Final Judgment, which would otherwise preclude an investment adviser from making such a payment.

WFS is an indirect wholly-owned subsidiary of Wells Fargo & Company, a registered financial holding company and bank holding company. WFS is a broker-dealer registered under the Securities Exchange Act of 1934 ("Exchange Act") as well as a municipal securities broker and a municipal securities dealer subject to the rules of the Municipal Securities Rulemaking Board ("MSRB"). Historically, WFS has engaged in cash solicitation activities from time to time that are subject to the Rule.

The Final Judgment permanently enjoins WFS from violating Section 17(a)(2) of the Securities Act of 1933 ("Securities Act"), Section 15B(c)(1) of the Exchange Act, and MSRB Rule G-17. Although the Final Judgment does not itself relate to cash solicitation activities, the District Court's entrance of the Final Judgment may operate to limit the ability of WFS and its associated persons to receive cash solicitation fees. The Rule prohibits an investment adviser that is required to be registered under the Advisers Act from paying such fees to any solicitor that "is subject to an order, judgment or decree described in Section 203(e)(4) of the [Advisers]

Act." Section 203(e)(4), in relevant part, provides that the Commission, by order, shall take certain actions against "any investment adviser . . . or any person associated with such investment adviser," if such investment adviser or associated person thereof has been:

> permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction, including any foreign court of competent jurisdiction, from acting as an investment adviser, underwriter, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, transfer agent, credit rating agency, foreign person performing a function substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent statute or regulation, or as an affiliated person or employee of any investment company, bank, insurance company, foreign entity substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent statute or regulation, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security.

Accordingly, the Final Judgment against WFS — enjoining it from violating Section 17(a)(2) of the Securities Act, Section 15B(c)(1) of the Exchange Act, and MSRB Rule G-17, which may be deemed to be in connection with its activities as an underwriter, broker, dealer, or municipal securities dealer, or in connection with the purchase or sale of securities — could cause WFS to be disqualified under the Rule. As a result, absent no-action or other relief, WFS and any person through whom WFS directly or indirectly conducts its solicitation activities may be unable to receive cash payments, directly or indirectly, from advisers required to be registered for the solicitation of advisory clients.

BACKGROUND

The Commission filed a complaint in the Action on March 7, 2016 ("Original Complaint") and an amended complaint on October 28, 2016 ("Amended Complaint," and together with the Original Complaint, the "Complaint").[1] Since the filing of the Complaint, the Staff of the Division of Enforcement has engaged in settlement discussions with WFS. As a result of such discussions, WFS submitted an executed "Consent of Defendant Wells Fargo Securities, LLC" ("Consent"). Pursuant to the Consent, solely for the purpose of proceedings brought by or on behalf of the Commission or in which the Commission is a party, WFS consented to the entry of the Final Judgment, without admitting or denying the allegations in the Complaint.

The Complaint alleges the following: WFS acted as lead placement agent in an offering of municipal bonds ("Offering") by the Rhode Island Economic Development Corporation

[1] The Complaint alleges that WFS knowingly (in addition to recklessly or negligently) violated the statutory and MSRB provisions referenced in the Complaint. The Complaint does not allege any scienter-based violations of the federal securities laws. The claims alleged in the Complaint (*i.e.*, violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act, Section 15B(c)(1) of the Exchange Act, and MSRB Rules G-17 and G-32) may be established by a showing of negligence.

("RIEDC"). The proceeds of the Offering were loaned to 38 Studios, LLC ("38 Studios"), an early-stage, pre-revenue videogame development company. As lead placement agent in the Offering, WFS knew or should have known about and should have disclosed in the private placement memorandum for the Offering (the "Offering Document") (i) 38 Studios' need for financing in addition to that provided by the Offering and (ii) the total compensation received by WFS in connection with the Offering and any related conflict of interest.2 WFS failed to include disclosure regarding these matters in the Offering Document ("Conduct"). As a result, the Offering Document was materially misleading, and WFS violated Sections 17(a)(2) and 17(a)(3) of the Securities Act, Section 15B(c)(1) of the Exchange Act, and MSRB Rules G-17 and G-32.[3] Although 38 Studios attempted to obtain the additional financing needed following the Offering, it was unable to do so and defaulted on its loan payments to the RIEDC in 2012.4

The District Court's entry of the Final Judgment in the Action permanently enjoins WFS from violating Section 17(a)(2) of the Securities Act, Section 15B(c)(1) of the Exchange Act, and MSRB Rule G-17.5 The Final Judgment also requires WFS to pay a civil monetary penalty in the amount of $812,500.

DISCUSSION

In the adopting release for 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."[6] We respectfully submit that the circumstances presented in this case are of the type 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

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2 According to the Complaint, the Offering Document failed to disclose approximately $400,000 of fees received by WFS as a result of meeting milestones with respect to the Offering.

3 The Complaint also alleges that an officer and employee of WFS who worked on the Offering and certain representatives of the RIEDC who worked on the Offering aided and abetted the violations by WFS.

4 Bondholders were paid the principal and interest on the bonds when those payments were due as a result of a capital reserve fund and decisions made by the Rhode Island General Assembly to appropriate funds to make those payments.

5 In connection with the submission of the Consent, the Commission dismissed the allegations related to Section 17(a)(3) and MSRB Rule G-32.

6 *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.

> 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 suspending the right of such person to be associated with an investment adviser.[7]

The Final Judgment does not bar, suspend, or limit WFS or any person currently associated with it from acting in any capacity under the federal securities laws. WFS 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 WFS or any person through whom WFS directly or indirectly conducts its solicitation activities for engaging in such activities under the Rule.

The Staff has previously granted numerous requests for no-action relief from the disqualification provisions of the Rule to entities or individuals disqualified from receiving cash solicitation fees pursuant to the Rule as a result of the entrance, by a court of competent jurisdiction, of an injunction as described in Section 203(e)(4) of the Advisers Act that prohibits, as relevant here, engaging in or continuing a conduct or practice in connection with the purchase or sale of a security.[8]

UNDERTAKINGS

In connection with this request, WFS undertakes that:

1. It, directly or indirectly, will conduct any cash solicitation arrangement entered into with any investment adviser required to be registered under Section 203 of the Advisers Act in compliance with the terms of the Rule as if WFS were not a disqualified person for purposes of the Rule by virtue of the Final Judgment;

2. The Final Judgment does not bar, suspend, or limit WFS or any person currently associated with WFS from acting in any capacity under the federal securities laws;

3. It has complied and will continue to comply with the terms of the Final Judgment, including, but not limited to, the Injunction and the payment of the civil monetary penalty; and

4. For ten (10) years from the date of the entry of the Final Judgment, WFS and any person through whom WFS directly or indirectly conducts its solicitation activities or any investment adviser with which it or any such person has a solicitation arrangement subject to the Rule will disclose the Final Judgment in a written document that is delivered to each person whom WFS or such

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[7] *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.

[8] *See, e.g.*, Stifel, Nicolaus & Company, Inc., SEC No-Action Letter (Dec. 6, 2016); F. Porter Stansberry, SEC No-Action Letter (pub. avail. Sept. 30, 2015); Royal Bank of Canada, SEC No-Action Letter (pub. avail. Dec. 19, 2014); Bank of America, N.A., SEC No-Action Letter (pub. avail. Nov. 25, 2014); and Citigroup Global Markets, Inc., SEC No-Action Letter (pub. avail. Aug. 6, 2014).

persons solicit (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, notwithstanding the Final Judgment, it will not recommend any enforcement action to the Commission if an investment adviser that is required to be registered with the Commission pays to WFS, or any person through whom WFS directly or indirectly conducts its solicitation activities a cash payment for the solicitation of advisory clients.

If you have any questions regarding this request, please contact the undersigned at (202) 778-9475.

Sincerely,

Stacy L. Fuller

cc: Charles S. Neal
Wells Fargo Law Department