

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

1285 AVENUE OF THE AMERICAS  
NEW YORK, NEW YORK 10019-6064

TELEPHONE (212) 373-3000  
FACSIMILE (212) 757-3990

LLOYD K. GARRISON (1946-1991)  
RANDOLPH E. PAUL (1946-1956)  
SIMON H. RIFKIND (1950-1995)  
LOUIS S. WEISS (1927-1950)  
JOHN F. WHARTON (1927-1977)

2001 K STREET, NW  
WASHINGTON, DC 20006-1047  
TELEPHONE (202) 223-7300  
FACSIMILE (202) 223-7420

FUKOKU SEIMEI BUILDING  
2-2 UCHISAIWAICHO 2-CHOME  
CHIYODA-KU, TOKYO 100-0011, JAPAN  
TELEPHONE (81-3) 3597-8101  
FACSIMILE (81-3) 3597-8120

UNIT 3601, FORTUNE PLAZA OFFICE TOWER A  
NO. 7 DONG SANHUAN ZHONGLU  
CHAO YANG DISTRICT  
BEIJING 100020  
PEOPLE'S REPUBLIC OF CHINA  
TELEPHONE (86-10) 5828-6300  
FACSIMILE (86-10) 6530-9070/9080

WRITER'S DIRECT DIAL NUMBER  
212-373-3124

WRITER'S DIRECT FACSIMILE  
212-492-0124

WRITER'S DIRECT E-MAIL ADDRESS  
dhuntington@paulweiss.com

12TH FLOOR, HONG KONG CLUB BUILDING  
3A CHATER ROAD, CENTRAL  
HONG KONG  
TELEPHONE (852) 2536-9933  
FACSIMILE (852) 2536-9622

ALDER CASTLE  
10 NOBLE STREET  
LONDON EC2V 7JU, U.K.  
TELEPHONE (44 20) 7367 1600  
FACSIMILE (44 20) 7367 1650

February 17, 2009

MATTHEW W. ABBOTT  
JOYCE H. ACOTT  
ALLAN J. ARFFA  
ROBERT A. ATKINS  
JOHN F. BAUGHMAN  
LYNN B. BAYARD  
DANIEL J. BELLER  
MITCHELL L. BERG  
MARK S. BERGMAN  
BRUCE BIRENBOIM  
H. CHRISTOPHER BOEHNING  
ANGELO BONVINO  
HENK BRANDS  
JAMES L. BROCHIN  
RICHARD J. BRONSTEIN  
DAVID W. BROWN  
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JEANETTE K. CHAN  
YVONNE Y. F. CHAN  
LEWIS R. CLAYTON  
JAY COHEN  
KELLEY A. CORNISH  
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LESLIE GORDON FAGEN  
MARC FALCONE  
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ROBERTO FINZI  
PETER E. FISCH  
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PAUL D. GINSBERG  
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MICHELE HIRSHMAN  
JOYCE S. HUANG  
MEREDITH J. KANE  
ROBERTA A. KAPLAN  
BRAD S. KARP  
JOHN C. KENNEDY  
ALAN W. KORNBERG  
DANIEL J. KRAMER  
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DANIEL J. LEFFELL  
XIAOYU GREG LIU  
JEFFREY D. MARELL  
JULIA TARTER MASON  
MARCO V. MASOTTI  
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DAVID W. MAYO  
TOBY S. MYERSON  
JOHN E. NATHAN  
CATHERINE NYARADY  
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KELLEY D. PARKER  
ROBERT P. PARKER\*  
MARC E. PERLMUTTER  
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CAREY R. RAMOS  
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WALTER G. RICCIARDI  
WALTER RIEMAN  
RICHARD A. ROSEN  
ANDREW N. ROSENBERG  
PETER J. ROTHENBERG  
JACQUELINE P. RUBIN  
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JEFFREY D. SAFERSTEIN  
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DALE M. SARRO  
TERRY E. SCHIMEK  
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STEPHEN J. SHIMSHAK  
DAVID R. SICULAR  
MOSES SILVERMAN  
STEVEN SIMKIN  
JOSEPH J. SIMONS  
MARILYN SOBEL  
TARUN M. STEWART  
ERIC ALAN STONE  
AIDAN SYNNOTT  
ROBYN F. TARNOFFSKY  
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LIZA M. VELAZQUEZ  
MARIA T. VULLO  
LAWRENCE G. WEE  
THEODORE V. WELLS, JR.  
BETH A. WILKINSON  
STEVEN J. WILLIAMS  
LAWRENCE I. WITDORCHIC  
JORDAN E. YARETT  
KAYE N. YOSHINO  
TONG YU  
TRACEY A. ZACCONE  
T. ROBERT ZOCHOWSKI, JR.

\*NOT ADMITTED TO THE NEW YORK BAR

**FIRST CLASS MAIL AND EMAIL**

Douglas J. Scheidt, Esq.  
Associate Director and Chief Counsel  
Division of Investment Management  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Re: In the Matter of Auction Rate Securities Liquidity, Wachovia Securities, LLC  
(File No. C-7471); Securities and Exchange Commission v. Wachovia  
Securities, LLC (N.D.Ill. 2009) – Request for Relief under Rule 206(4)-3  
under the Investment Adviser Act of 1940

Dear Mr. Scheidt:

We submit this letter on behalf of our client Wachovia Securities, LLC (the “Settling Firm”) in connection with a settlement between the Settling Firm and the Securities and Exchange Commission (the “Commission”) in the above referenced civil proceeding relating to the Settling Firm’s sale of auction rate securities to its customers.

The Settling Firm is an indirect subsidiary of Wells Fargo & Company (“Wells Fargo”).<sup>1</sup> Through its direct and indirect subsidiaries, Wells Fargo offers banking,

<sup>1</sup> The Settling Firm is a subsidiary of Wachovia Securities Financial Holdings, LLC (“WSFH”), a joint venture between Wells Fargo (as a result of its merger with Wachovia Corporation) and Prudential Financial, Inc. (“Prudential”). Prudential’s precise indirect ownership interest in WSFH, taking into account, among other things, Wachovia Corporation’s 2007 acquisition of A.G. Edwards, Inc., is in the process of being determined. We request that any relief granted apply to Prudential and its affiliates to the extent that Prudential and any of its affiliates are deemed associated persons of Wachovia Securities.

brokerage, advisory and other financial services to institutional and individual customers worldwide.

The Settling Firm is an investment adviser, registered under Section 203 of the Investment Advisers Act of 1940, as amended (the “Advisers Act”), and currently engages in cash solicitation activities that are subject to Rule 206(4)-3 under the Advisers Act (the “Rule”). The Settling Firm 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 pays the Settling Firm or any of its associated persons (as defined in Section 202(a)(17) of the Advisers Act) a cash payment, directly or indirectly, for the solicitation of advisory clients, notwithstanding the existence of the Final Judgment (as defined below). While the Final Judgment does not operate to prohibit or suspend the Settling Firm from acting as or being associated with an investment adviser (except as provided in Section 9(a) of the Investment Company Act of 1940, as amended (the “Investment Company Act”)),<sup>2</sup> and does not relate to solicitation activities on behalf of investment advisers, the Final Judgment may affect the ability of the Settling Firm to receive cash payments for such activities. The Staff in many other instances has granted no-action relief under the Rule under similar circumstances.

## BACKGROUND

The Settling Firm has engaged in settlement discussions with the staff of the Division of Enforcement in connection with the civil proceeding referenced above. As a result of these discussions, the Settling Firm has submitted an executed consent (the “Consent”). In the Consent, the Settling Firm has agreed to the entry of a judgment (the “Final Judgment”) in the United States District Court for the Northern District of Illinois relating to a complaint (the “Complaint”) filed by the Commission. Under the terms of

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<sup>2</sup> Under Section 9(a) of the Investment Company Act, the Settling Firm and its affiliated persons will, as a result of the Final Judgment, be 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. As of the date of this letter, the Settling Firm does not serve or act in any of the foregoing capacities. The Settling Firm and affiliated persons of the Settling Firm 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 the Settling Firm’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 the Settling Firm 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) of the Investment Company Act resulting from the Final Judgment.

the Consent, the Settling Firm will neither admit nor deny the allegations in the Complaint or the findings in the Final Judgment, except as to jurisdiction.

The Complaint alleges that the Settling Firm violated Section 15(c) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), by selling auction rate securities to its customers without adequately disclosing the risks involved in purchasing these securities. As a result of widespread auction failures beginning in February 2008, many customers who thought they had acquired liquid securities (equivalent to cash) were left with no market for their auction rate securities and no means of realizing the par value of their auction rate securities. The Final Judgment enjoins the Settling Firm from future violations of Section 15(c) of the Exchange Act and requires the Settling Firm to take certain other remedial measures.

### **EFFECT OF RULE 206(4)-3**

The Rule prohibits an investment adviser 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. The Final Judgment will cause the Settling Firm to be disqualified under the Rule, and accordingly, absent no-action relief, the Settling Firm would be unable to receive cash payments, directly or indirectly, for the solicitation of advisory clients.

### **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.”<sup>3</sup> We respectfully submit that the circumstances present in this case 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

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<sup>3</sup> 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, at note 10.

be the subject of a Commission order barring or suspending the right of such person to be associated with an investment adviser.<sup>4</sup>

The Final Judgment does not expressly bar, suspend, or limit the Settling Firm or any person currently associated with the Settling Firm from acting in any capacity under the federal securities laws. The Settling Firm has not been sanctioned for activities as an investment adviser or in respect of the solicitation of advisory clients. Accordingly, consistent with the Commission's reasoning, there does not appear to be any reason to prohibit a registered investment adviser from paying the Settling Firm 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 and self regulatory organization rules 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.<sup>5</sup>

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<sup>4</sup> 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.

<sup>5</sup> See, e.g., Barclays Bank PLC, SEC No-Action Letter (pub. avail. June 6, 2007); Emanuel J. Friedman and EJP Capital LLC, SEC No-Action Letter (pub. avail. Jan. 16, 2007); Ameriprise Financial Services Inc., SEC No-Action Letter (pub. avail. Apr. 5, 2006); Millennium Partners, L.P., et al, SEC No-Action Letter (pub. avail. Mar. 9, 2006); American International Group, Inc., SEC No-Action Letter (pub. avail. February 21, 2006); ING Bank N.V., SEC No-Action Letter (pub. avail. Aug. 31, 2005); CIBC Mellon Trust, SEC No-Action Letter (pub. avail. February 24, 2005); Goldman, Sachs & Co. Inc., SEC No-Action Letter (pub. avail. Feb. 23, 2005); Morgan Stanley & Co., Inc., SEC No-Action Letter (pub. avail. Feb. 4, 2005); American International Group, Inc. SEC No-Action Letter (pub. avail. Dec. 8, 2004); Deutsche Bank Securities Inc. SEC No-Action Letter (pub. avail. Sept. 24, 2004); Citigroup Global Markets Inc., f/k/a Salomon Smith Barney Inc. SEC No-Action Letter (pub. avail. Oct. 31, 2003); Dougherty & Company LLC, SEC No-Action Letter (pub. avail. July 3, 2003); 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); Prudential 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); In the Matter of Certain Market Making Activities on Nasdaq, SEC No-Action Letter (pub. avail. Jan. 11, 1999); Paine Webber, Inc., SEC No-Action Letter (pub. avail. Dec. 22, 1998); NationsBanc Investments, Inc., SEC No-Action Letter (pub. avail. May 6, 1998); Morgan Keegan & Co., Inc., SEC No-Action Letter (pub. avail. Jan. 9, 1998); Mitchell Hutchins Asset Management Inc. SEC No-Action Letter (pub. avail. Jan. 2, 1998); Merrill Lynch, Pierce, Fenner & Smith, Inc., SEC No-Action Letter (pub. avail. Aug. 7, 1997); Gruntal & Co., SEC No-Action Letter (pub. avail. July 17, 1996); Carnegie Asset

## REPRESENTATIONS

In connection with this request, the Settling Firm represents the following:

1. It 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 Rule 206(4)-3, except for the investment adviser's payment of cash solicitation fees to the Settling Firm, which is subject to the Final Judgment;
2. The Final Judgment does not expressly bar or suspend the Settling Firm or any person currently associated with the Settling Firm from acting in any capacity under the federal securities laws;
3. It will comply with the terms of the Final Judgment, including, but not limited to, complying with its undertaking to buy back eligible auction rate securities at par from eligible customers; and
4. For ten years from the date of the entry of the Final Judgment, the Settling Firm 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 the Settling Firm 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.

## CONCLUSION

We respectfully request the Staff to 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 the Settling Firm or any of its associated persons a cash payment for the solicitation of advisory clients, notwithstanding the Final Judgment.

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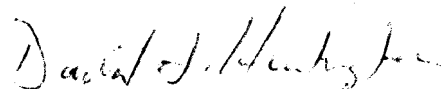
Management, SEC No-Action Letter (pub. avail. July 11, 1994); Salomon Brothers Inc., SEC No-Action Letter (pub. avail. Jan. 26, 1994); BT Securities Corporation, SEC No-Action Letter (pub. avail. Mar. 30, 1992); Kidder Peabody & Co. Inc., SEC No-Action Letter (Oct. 11, 1990); First City Capital Corp., SEC No-Action Letter (pub. avail. Feb. 9, 1990); RNC Capital Management Co., SEC No-Action Letter (pub. avail. Feb. 7, 1989); and Stein Roe & Farnham, Inc., SEC No-Action Letter (pub. avail. Aug. 25, 1988).

Douglas J. Scheidt, Esq.

Page 6

Please do not hesitate to call the undersigned at (212) 373-3124 regarding this request.

Sincerely,

A handwritten signature in black ink, appearing to read "David S. Huntington". The signature is written in a cursive style with a large initial "D".

David S. Huntington

Cc: Doug Kelly, Wachovia Securities, LLC  
David Hebner, Wachovia Securities, LLC  
C. David Messman, Wells Fargo & Company  
Kathryn Quirk, Prudential Financial, Inc.  
Kenneth J. Berman, Debevoise & Plimpton LLP