



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

December 9, 2011

Ms. Karen Patton Seymour
Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004

Re: In the Matter of Certain GIC Brokers (P-01118)
**Wells Fargo & Company – Waiver Request of Ineligible Issuer Status under Rule 405 of
the Securities Act**

Dear Ms. Seymour:

This is in response to your letter dated December 5, 2011, written on behalf of Wells Fargo & Company (Company) and its subsidiary Wells Fargo Bank, N.A., successor by merger to Wachovia Bank, N.A. (Wells Fargo Bank), and constituting an application for relief from the Company being considered an “ineligible issuer” under Rule 405(1)(vi) of the Securities Act of 1933 (Securities Act). On December 8, 2011, the Commission filed a civil injunctive complaint (Complaint), in the United States District Court for New Jersey, against Wells Fargo Bank. The complaint alleges that Wells Fargo Bank violated Section 17(a) of the Securities Act. Wells Fargo Bank filed a consent in which it agreed, without admitting or denying the allegations of the Complaint, to the entry of a Final Judgment against it. Among other things, the Final Judgment, as entered on December 9, 2011, provides for a permanent injunction from committing future violations of Section 17(a) of the Securities Act.

Based on the facts and representations in your letter, and assuming the Company and Wells Fargo Bank comply with the Final Judgment, the Commission, pursuant to delegated authority, has determined that the Company has made a showing of good cause under Rule 405(2) and that the Company will not be considered an ineligible issuer by reason of the entry of the Final Judgment. Accordingly, the relief described above from the Company being an ineligible issuer under Rule 405 of the Securities Act is hereby granted, and the effectiveness of such relief is as of the date of the entry of the Final Judgment. Any different facts from those represented or non-compliance with the Final Judgment might require us to reach a different conclusion.

Sincerely,

A handwritten signature in cursive script that reads "Mary Kosterlitz".

Mary Kosterlitz
Chief, Office of Enforcement Liaison
Division of Corporation Finance

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December 5, 2011

By Hand and Via E-mail

Mary Kosterlitz, Esq.
Chief of the Office of Enforcement Liaison
Division of Corporation Finance
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.,
(D.N.J.)*

Dear Ms. Kosterlitz:

We are writing on behalf of our clients, Wells Fargo Bank, N.A., successor by merger to Wachovia Bank, N.A. (“Wells Fargo Bank”), and Wells Fargo & Company (“Wells Fargo”). Wells Fargo Bank is a wholly owned subsidiary of Wells Fargo 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 is a financial services company and financial holding company, as defined in 12 C.F.R. § 225.81, that is publicly traded on the New York Stock Exchange. Wells Fargo qualifies as a well-known seasoned issuer. Wells Fargo hereby requests, pursuant to Rule 405 under the Securities Act of 1933 (the “Securities Act”), that the Division of Corporation Finance, on behalf of the Commission, determine that Wells Fargo shall not be considered an “ineligible issuer” as defined in Rule 405 as a result of the injunction to be entered in the Final Judgment, as described below. Wells Fargo requests that this determination be made effective upon entry of that Final Judgment. It is our understanding that the Division of Enforcement supports our request for such a determination.

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. Specifically, the alleged conduct relates to a) the provision of deliberately non-winning bids for 29 transactions; and b) the rigging of 29 transactions for Wachovia Bank to win. These transactions are identified in Exhibit A hereto.¹

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 will submit to the Commission (no later than December 7, 2011) a Consent in which, for the purpose of this Action, it consents to the imposition of a Final Judgment (the "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 will be enjoined from violating Section 17(a) of the Securities Act. The Final Judgment will also order Wells Fargo Bank to disgorge \$21,078,591 and to pay a civil penalty in the amount of \$25,000,000.

DISCUSSION

Under a number of Securities Act rules that became effective on December 1, 2005, a company that qualifies as a "well-known seasoned issuer" as defined in Rule 405 is eligible, among other things, to register securities for offer and sale under an "automatic shelf registration statement," as so defined, and to have the benefits of a streamlined registration process under the Securities Act. Companies that qualify as well-known seasoned issuers are entitled to conduct registered offerings more easily and with substantially fewer restrictions, which facilitates the raising of capital by these issuers. Pursuant to Rule 405, however, a company cannot qualify as a well-known seasoned issuer if it is an "ineligible issuer." Similarly, the Securities Act rules permit an issuer and other offering participants to communicate more freely during registered offerings by using free-writing prospectuses, but only if the issuer is not an "ineligible issuer."²

¹ The Dallas QZAB transaction (bid August 22, 2002) is not a part of Wachovia Bank's settlement with the Commission.

² Being an ineligible issuer will disqualify an issuer under the definition of "well-known seasoned issuer," thereby preventing the issuer from using an automatic shelf registration statement (*see* Rule 405) and limiting its ability to communicate with the market prior to filing a registration statement (*see* Rule 163). In addition, being an ineligible issuer will disqualify an issuer, whether or not it is a well-known seasoned issuer, under Rules 164 and 433, thereby preventing the issuer and other offering participants from using free-writing prospectuses during registered offerings of its securities.

Rule 405 of the Securities Act makes an issuer an “ineligible issuer” if, during the past three years, the issuer or any entity that at the time was a subsidiary of the issuer “was made the subject of any judicial or administrative decree or order arising out of a governmental action” that, among other things, “prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws.”³ Rule 405 also authorizes the Commission to determine, “upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer.”⁴ The Commission has delegated authority to the Division of Corporation Finance to grant waivers from any of the ineligibility provisions of this definition.⁵

The Final Judgment may be deemed to be an order arising out of government action of the kind that would result in Wells Fargo becoming an ineligible issuer for a period of three years after the Final Judgment is entered. This result would preclude Wells Fargo from qualifying as a well-known seasoned issuer and having the benefit of automatic shelf registration and other provisions of the new rules for three years. This would be a significant detriment for Wells Fargo. Being considered an ineligible issuer would preclude Wells Fargo from taking advantage of many of the benefits set forth in Rules 405 and 163 and would leave the company at a significant disadvantage to its peer firms and hinder necessary and periodic access to the capital markets through significantly increased time, labor and cost of such access. Consequently, automatic shelf registration and the other benefits available to a well-known seasoned issuer are significant for Wells Fargo.

As described above, Rule 405 authorizes the Commission to determine that a company shall not be an ineligible issuer, notwithstanding that the company becomes subject to an otherwise disqualifying order arising out of government action. Wells Fargo believes that there is good cause, in this case, for the Commission to make such a determination with respect to the Order on the following grounds:

The disqualification of Wells Fargo is not warranted given the nature of the alleged conduct described in the Complaint. The alleged conduct does not relate to Wells Fargo’s or any of its subsidiaries’ disclosures in their own filings with the Commission, nor does it allege fraud in connection with Wells Fargo’s or any of its subsidiaries’ offering of their own securities. The disqualification of Wells Fargo from the benefits of being a well-known seasoned issuer is unduly and disproportionately severe, given that the Commission staff has negotiated a settlement with Wells Fargo Bank and reached a satisfactory conclusion to this matter.

* * * * *

³ See 17 C.F.R. § 230.405.

⁴ *Id.*

⁵ See 17 C.F.R. § 200.30-1. See also note 215 in Release No. 33-8591 (July 19, 2005).

In light of the foregoing, we believe that disqualification of Wells Fargo as an ineligible issuer is not necessary under the circumstances, either in the public interest or for the protection of investors, and that Wells Fargo has shown good cause for the requested relief to be granted. Accordingly, we respectfully request that the Division of Corporation Finance, on behalf of the Commission, pursuant to Rule 405, determine that it is not necessary under the circumstances that Wells Fargo be an "ineligible issuer" within the meaning of Rule 405 as a result of 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,



Karen Patton Seymour

cc: John W. Madison, Esq.
(U.S. Securities and Exchange Commission)

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

Douglas R. Edwards
(Wells Fargo Law Department)