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

DIVISION OF
CORPORATION FINANCE

April 6, 2018

Jennifer A. Zepralka, Esq.
WilmerHale
1875 Pennsylvania Avenue, NW
Washington, DC 20006

Re: In the Matter of PNC Investments LLC
The PNC Financial Services Group, Inc. – Waiver Request of Ineligible Issuer Status under Rule 405 of the Securities Act

Dear Ms. Zepralka:

This is in response to your letter dated April 4, 2018, written on behalf of The PNC Financial Services Group, Inc. ("PNC") and constituting an application for relief from PNC being considered an "ineligible issuer" under clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act of 1933 ("Securities Act"). PNC requests relief from being considered an ineligible issuer under Rule 405, due to the entry on April 6, 2018 of a Commission Order ("Order") pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against PNC Investments LLC ("PNCI"). The Order requires that, among other things, PNCI cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

Based on the facts and representations in your letter, and assuming PNCI complies with the Order, we have determined that PNC has made a showing of good cause under clause (2) of the definition of ineligible issuer in Rule 405 and that PNC will not be considered an ineligible issuer by reason of the entry of the Order. Accordingly, the relief described above from PNC being an ineligible issuer under Rule 405 of the Securities Act is hereby granted. Any different facts from those represented or failure to comply with the terms of the Order would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Sincerely,

/s/

Tim Henseler
Chief, Office of Enforcement Liaison
Division of Corporation Finance

April 4, 2018

Jennifer A. Zepralka

+1 202 663 6798 (t)
+1 202 663 6363 (f)
jennifer.zepralka@wilmerhale.com

BY ELECTRONIC MAIL AND FEDERAL EXPRESS

Mr. Tim Henseler
Office Chief, Office of Enforcement Liaison
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: In the Matter of PNC Investments LLC

Dear Mr. Henseler:

This letter is submitted on behalf of The PNC Financial Services Group, Inc. ("PNC"), in connection with the forthcoming entry of the above-captioned order instituting administrative and cease-and-desist proceedings (the "Order") by the Securities and Exchange Commission (the "Commission" or "SEC"), which is expected to resolve claims of the Commission against PNC Investments LLC ("PNCI") concerning improper mutual fund share class selection and billing practices.

Pursuant to Rule 405 promulgated under the Securities Act of 1933 (the "Securities Act"), PNC hereby requests that the Commission, or the Division of Corporation Finance acting pursuant to delegated authority, determine that for good cause shown it is not necessary under the circumstances that PNC be considered an "ineligible issuer" under Rule 405. PNC requests that this determination be effective upon the entry of the Order.

BACKGROUND

PNCI expects to enter into a settlement with the Commission, resulting in the issuance of the Order by the Commission. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, PNCI will consent to the entry of the Order without admitting or denying the findings in it (except the Commission's jurisdiction over it and the subject matter of these proceedings, which will be admitted). The Order will find that, as a result of the conduct described below, PNCI willfully violated Sections 206(2), 206(4) and 207 of the Investment Advisers Act of 1940 ("Advisers Act") and Rule 206(4)-7 thereunder. The Order will further find that the violations resulted from the following conduct of PNCI: (1) PNCI, without adequate disclosure of the associated conflicts of interest, invested advisory clients in mutual fund share classes with 12b-1 fees instead of available lower-cost share classes of the same funds without 12b-1 fees; (2) PNCI breached its duty to seek best execution for certain transactions by causing certain advisory clients to invest in fund share classes that charged 12b-1 fees when clients were otherwise

eligible for lower-cost share classes and by failing to disclose to its clients that best execution might not be sought for purchases of mutual funds with multiple available share classes; (3) PNCI did not disclose a conflict of interest regarding marketing support payments when investing its advisory clients in mutual fund share classes that charged 12b-1 fees; (4) PNCI improperly charged advisory fees to client accounts where the investment adviser representative departed the firm ("Orphaned Accounts") and where PNCI failed to assign a new investment adviser representative within thirty days; and (5) PNCI failed to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with its mutual fund share class selection practices and treatment of Orphaned Accounts.

The Order will require PNCI to cease and desist from committing or causing any violations and any future violations of Advisers Act Sections 206(2), 206(4), and 207 and Rule 206(4)-7; censure PNCI; and require PNCI to pay disgorgement of $5,234,856, prejudgment interest of $612,344 to compensate advisory clients that were affected by certain conduct detailed in the Order. PNCI will pay, in addition to the disgorgement and prejudgment interest described above, disgorgement of $497,144 and prejudgment interest of $63,426 to the Commission for the transfer to the general fund of the United States Treasury. Lastly, PNCI will pay a civil monetary penalty of $900,000.

DISCUSSION

In 2005, the Commission revised the registration, communications, and offering processes under the Securities Act.[1] As part of this offering reform, the Commission revised Securities Act Rule 405, creating a new category of issuer, the "well-known seasoned issuer" (or "WKSI"), and a new category of offering communication, the "free writing prospectus." A WKSI is eligible for important benefits under the Commission's rules that have changed the way corporate finance transactions for larger issuers are planned and structured, including the ability to "file-and-go" (*i.e.*, eligibility for automatically effective shelf registration statements) and "pay-as-you-go" (*i.e.*, the ability to pay filing fees as the issuer sells securities off the shelf). These rule changes have lessened the risk of regulatory delay in connection with capital formation without impacting the protection to investors. In addition, well-known seasoned issuers are provided with greater flexibility in terms of communications, including the ability to use free writing prospectuses in advance of filing a registration statement.

The Commission also created another category of issuer under Rule 405, the "ineligible issuer." An ineligible issuer is excluded from the category of "well-known seasoned issuer" and

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[1] *See* Securities Offering Reform, Securities Act Release No. 8591, Exchange Act Release No. 52,056, Investment Company Act Release No. 26,993, 70 Fed. Reg. 44,722, 44,790 (Aug. 3, 2005).

is ineligible to make communications by way of free writing prospectuses, except in limited circumstances.[2] As a result, an ineligible issuer that would otherwise be a WKSI does not have access to file-and-go or pay-as-you-go and cannot use certain types of free writing prospectuses.

Securities Act Rule 405 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."[3] The Commission has delegated the function of granting or denying such applications to the Division of Corporation Finance.[4]

PNC understands that the entry of the Order against its subsidiary, PNCI, would make PNC an ineligible issuer under Rule 405. As a result, PNC would not be able to qualify as a WKSI, and, therefore, would not have access to file-and-go and other reforms available to well-known seasoned issuers.

REASONS FOR GRANTING A WAIVER

Consistent with the framework outlined in the Division of Corporation Finance's Revised Statement on Well-Known Seasoned Issuer Waivers issued on April 24, 2014, PNC respectfully requests that the Commission determine that it is not necessary for PNC under the circumstances to be considered an ineligible issuer as a result of the entry of the Order. For the reasons described below, applying the ineligibility provisions to PNC would be disproportionately and unduly severe.

Nature of Conduct: Responsibility for and Duration of the Conduct

The conduct that will be described in the Order does not relate to PNC's role as an issuer of securities (or any disclosure related thereto) or any of its related filings with the Commission. Nor does it involve fraud in connection with PNC's offerings of its own securities. Rather, the conduct relates to PNCI's mutual fund share class selection and billing practices for advisory accounts. The conduct is not criminal in nature, nor does it involve any violations of the scienter-based anti-fraud provisions of the federal securities laws.

None of the individuals involved in the conduct described in the Order have been or will be responsible for, or have any influence over, the disclosures of PNC as an issuer of securities or any other filings of PNC with the Commission.

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2 *See* Securities Act Rules 164(e), 405 & 433, 17 C.F.R. §§ 230.164(e), 230.405 & 230.433.

3 Securities Act Rule 405, 17 C.F.R. § 230.405.

4 17 C.F.R. § 200.30-1(a)(10).

PNCI's conduct, related to improper mutual fund share class selection and billing practices from 2012 to 2016, does not call into question the reliability of PNC's current and future disclosure as an issuer of securities or its filings with the Commission; none of the conduct is related in any way to PNC's current or future disclosures as an issuer of securities or in its filings with the Commission. Importantly, only PNCI is being charged by the Commission. The disclosure policies and procedures applicable to PNCI are completely separate and distinct from the disclosure policies and procedures relating to the issuance of securities and filings applicable to PNC. The Order will not (i) question PNC's disclosures in filings with the Commission as an issuer of securities, (ii) state that PNC's disclosure controls and procedures as an issuer of securities were deficient, (iii) describe fraud in connection with securities offerings by PNC, (iv) state that members of the Board of Directors or senior management of PNC knew about the violations or (v) state that members of the Board of Directors or senior management of PNC ignored any warning signs or "red flags" regarding the violations.

Cooperation and Remedial Efforts

PNCI takes seriously its obligations under the securities laws and has cooperated extensively with the investigation into this matter by the Division of Enforcement.

While the conduct at issue in the Order occurred from 2012 to 2016, PNCI took steps to enhance its Form ADV disclosures relating to conflicts of interest relating to mutual fund share class selection in mid-2015, without prompting by the Commission or its Staff and prior to the institution of any investigation. In addition, as of December 2017, PNCI has converted all mutual fund holdings to available non-12b-1 fee share classes in its advisory programs, effectively eliminating any conflict of interest and lowering costs for its advisory clients. With respect to Orphaned Accounts, PNCI has implemented enhanced procedures designed to ensure prompt reassignment of Investment Adviser Representatives, or, alternatively, suppression of the client's advisory fees.

Prior Relief

As part of the Commission's Municipalities Continuing Disclosure Cooperation ("MCDC") Initiative with standardized settlement terms, PNC was among the group of firms that received waivers without submitting waiver request letters due to the unique nature of the MCDC Initiative.[5]

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[5] *See In the Matter of Certain Underwriters Participating in the Municipalities Continuing Disclosure Cooperation Initiative*, Securities Act Rel. No. 9956 (Sept. 30, 2015).

<u>Impact on Issuer</u>

The Order will direct PNCI to pay a significant penalty in addition to substantial disgorgement payments. As noted above, the conduct that will be addressed in the Order ceased in 2016. Applying ineligible issuer status to PNC is unnecessary to achieving the purpose of the Order. It would also be unduly and disproportionately severe, particularly in light of PNCI's cooperation and remedial efforts described above, and would impose a significant burden on PNC.

The WKSI shelf (as defined below) process with its provision for automatic effectiveness allows an issuer to register quickly a new class of hybrid securities that do not fit clearly within the categories of debt and equity securities that would customarily have been registered on a typical shelf. The WKSI shelf rules also allow access to the widest possible global investor base, as they permit the use of free writing prospectuses to provide tailored disclosure targeted at different categories of investors in different markets. PNC is a frequent issuer of securities that are registered with the Commission and offered and sold under its current Form S-3 registration statement (the "WKSI shelf"), which provides an important means of accessing capital and providing additional loss absorbing capacity and funding for PNC's global operations.

PNC issues a variety of securities that are registered under the WKSI shelf, including fixed and floating rate senior notes and depositary shares representing ownership interests in preferred stock. Specifically, since 2016, PNC has issued senior notes in aggregate amount of $1.325 billion and depositary shares with an aggregate offering price of $525 million off its WKSI shelf.

As an ineligible issuer, PNC would lose the flexibility to (i) offer additional securities of the classes covered by a registration statement without filing a new registration statement; (ii) register additional classes of securities not covered by the registration statement by filing a post-effective amendment, which becomes immediately effective; (iii) omit certain information from the prospectus; (iv) take advantage of the pay-as-you-go fees; or (v) qualify a new indenture under the Trust Indenture Act of 1939, as amended, should the need arise, without filing or having the Commission declare effective a new registration statement.

In addition, as an ineligible issuer, PNC would be unable to use free writing prospectuses ("FWP") other than ones that contain only a description of the terms of the securities in the offering or the offering itself. While historically PNC has mainly utilized only such term sheet FWPs, there have been seven instances over the years in which PNC used non-term sheet prospectuses to convey significant information to investors. A restriction on PNC's ability to use such materials would significantly curtail important channels of communication to investors.

Due to its Bank Holding Company ("BHC") status, PNC believes that maintenance of WKSI status is especially critical to conducting its business. PNC is regulated by the Board of Governors of the Federal Reserve System ("FRB") as a BHC, and its status as a WKSI is a significant factor in its capital and liquidity planning. As a BHC, PNC is subject to regulatory capital, liquidity and other requirements imposed by the FRB. These include, among other things, compliance with (i) minimum regulatory capital requirements, (ii) minimum regulatory liquidity requirements, including the liquidity coverage ratio, (iii) enhanced liquidity risk management requirements, including liquidity stress tests and a contingency funding plan, (iv) capital planning and stress testing requirements, and (vi) a requirement to serve as a source of financial strength of its insured depository institution subsidiary, PNC Bank, N.A. Since 2013, PNC has issued off the WKSI shelf and its prior WKSI shelf approximately $1.775 billion of regulatory capital securities which represents approximately 47% of all regulatory capital securities issued by PNC in that period.

Additionally, many of these FRB requirements may be changed by rule or order over time. For example, since 2010, PNC has become subject to the following FRB Rule changes which affected its capital and liquidity structure and the securities it issues off its WKSI shelf:

First, Basel III imposed several new or changed capital requirements including new and higher minimum regulatory capital requirements, a capital conservation buffer on top of minimum regulatory requirements; and new deductions from regulatory capital for certain items including mortgage servicing rights, significant investments in the common stock of unconsolidated financial institutions and certain deferred tax assets, among other things.

Second, Basel III introduced new liquidity requirements that have had the effect of altering the liquidity profile of the WKSI parent. In particular, the Liquidity Coverage Ratio ("LCR") requires PNC to maintain a ratio of high-quality liquid assets to net cash outflows over a hypothetical stress period. In order to continue to meet these stringent liquidity requirements, PNC has altered the composition of its obligations to better match the maturities of these assets by increasing the amount of senior, short-term funding.

Third, PNC is subject to periodic supervisory and company-run stress tests and a requirement to submit an annual capital plan to the FRB for approval. These requirements have the practical effect of increasing the amount of capital PNC is required to hold to ensure capital adequacy through a range of macroeconomic scenarios. The FRB first implemented supervisory stress testing in 2009 with its Supervisory Capital Assessment Program ("SCAP"). The FRB then formalized stress testing and capital planning requirements in 2011 with its Comprehensive Capital Analysis and Review ("CCAR") program. As part of these initiatives, the FRB uses loan-level data, planned capital distributions and other information provided by a covered BHC and projects its regulatory capital ratios under a number of hypothetical macroeconomic scenarios, including conditions that are more adverse than currently expected. These

hypothetical scenarios assume certain shocks to the broader U.S. economy, such as reduced employment, GDP, or asset prices, and then simulate the hypothetical performance of the company during those shocks. BHCs are required to maintain sufficient capital to sustain forecast losses even under these hypothetical scenarios over a 9-quarter planning horizon. Importantly, the FRB changes the parameters of these hypothetical scenarios every year. As a result, regulatory stress testing effectively imposes additional capital requirements which change from year to year.

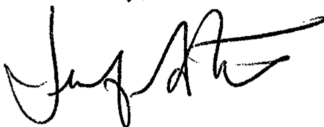
While many of these changes were the result of extensive policy debate in connection with the U.S.' implementation of the Basel III accord, the specific requirements may change considerably from year to year. Further, while the structure of these rules is not likely to change without extensive debate, regulators may feasibly implement changes within this structure by publishing notice of a proposed rulemaking. For example, regulators could adjust the risk-weights of particular assets, or ratchet up specific capital or liquidity requirements based on market or economic conditions. Further, they effectively do this each and every year when they published revised hypothetical scenarios for use with the CCAR.

In the event that PNC were to become subject to increased capital or other requirements, loss of WKSI status, among other things: (i) could impede PNC's ability to promptly and/or efficiently raise capital or liquidity as could become necessary; (ii) likely would materially and adversely affect PNC's ability to promptly and/or efficiently satisfy any prudential standards that the FRB and/or other regulators could impose; and (iii) could make it more difficult for PNC to promptly address the results of stress testing that may be required by the FRB, which might then result in the imposition of additional capital requirements.

In light of these considerations, subjecting PNC to ineligible issuer status is not necessary under the circumstances, either in the public interest or for the protection of investors, and good cause exists to determine that PNC should not be considered an ineligible issuer under Rule 405 as a result of the Order that will be entered in this matter. We respectfully request the Commission or the Division of Corporation Finance, pursuant to delegated authority, to make that determination.

Please contact me at the above-listed telephone number if you should have any questions regarding this request.

Sincerely,



Jennifer Zepralka