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

DIVISION OF
CORPORATION FINANCE

June 1, 2020

Brian L. Rubin, Esq.
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700 Sixth Street, NW, Suite 700
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Re: **U.S. Bancorp – Waiver Request of Ineligible Issuer Status under Rule 405 of the Securities Act of 1933**

Dear Mr. Rubin:

This is in response to your letter dated June 1, 2020, written on behalf of U.S. Bancorp ("USB") and constituting an application for relief from USB being considered an "ineligible issuer" under clause (1)(iv) of the definition of ineligible issuer in Rule 405 of the Securities Act of 1933 ("Securities Act"). USB requests relief from being considered an ineligible issuer under Rule 405, due to the entry on June 1, 2020 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 U.S. Bancorp Investments, Inc. ("USBI"), a subsidiary of USB. The Order requires that, among other things, USBI 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.

We have determined that USB has made a showing of good cause under clause (2) of the definition of ineligible issuer in Rule 405 and that USB will not be considered an ineligible issuer by reason of the entry of the Order. Accordingly, the relief described above from USB being an ineligible issuer under Rule 405 of the Securities Act is hereby granted. Any different facts or circumstances from those represented in the letter 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

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June 1, 2020

VIA EMAIL

Timothy B. Henseler, Esq.
Chief, Office of Enforcement Liaison
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: In the Matter of U.S. Bancorp Investments, Inc.

Dear Mr. Henseler:

I submit this letter on behalf of my client U.S. Bancorp (USB) in connection with the settlement of the above-referenced administrative cease and desist proceedings by the U.S. Securities and Exchange Commission (SEC or Commission) against USB's registered investment adviser subsidiary, U.S. Bancorp Investments, Inc. (USBI).

USB is a financial holding company and a bank holding company under the Bank Holding Company Act of 1956. Additionally, USB is a "well-known seasoned issuer" (WKSI) as defined in Rule 405 of the Securities Act of 1933, as amended (Securities Act). USB and its subsidiaries provide a full range of financial services, including lending and depository services, cash management, capital markets, and trust and investment management services. USB and its subsidiaries also engage in credit card services, merchant and ATM processing, mortgage banking, insurance, brokerage and leasing. USB frequently accesses the capital markets and its common stock is actively traded on the New York Stock Exchange under the symbol "USB."

Pursuant to Rule 405 of the Securities Act, USB hereby respectfully requests that the Commission (or the Division of Corporation Finance (Division), pursuant to the delegation of authority of the Commission) determine that, for good cause shown and consistent with the framework outlined in the Division's Revised Statement on Well-Known Seasoned Issuer Waivers, issued on April 24, 2014 (the Revised Statement), it is not necessary under the circumstances that USB be considered an "ineligible issuer" and therefore, waive the disqualification that would result when the Commission enters an order (the Order) in the above-referenced administrative proceeding. USB requests that this determination be effective upon the entry of the Order against USBI in the above-referenced administrative proceeding.

I. Background

USBI is an indirect wholly-owned subsidiary of USB. USBI is dually registered with the SEC as a broker-dealer and as an investment adviser as well as a municipal securities broker and a municipal securities dealer subject to the rules of the Municipal Securities Rulemaking Board.

USBI has submitted an offer of settlement to the Staff of the Division of Enforcement (Division of Enforcement) pursuant to which USBI has consented to the Order. Under the terms of the offer of settlement, USBI has neither admitted nor denied any of the findings in the Order, except as to jurisdiction and subject matter.

The Order describes the violations of the Investment Advisers Act of 1940 (Advisers Act) that occurred from October 2012 to November 2017 that resulted from USBI purchasing, recommending, and holding for certain advisory clients mutual fund share classes that charged 12b-1 fees and shareholder service expenses instead of lower-cost share classes of the same funds which were available to the clients. USBI also violated its duty to seek best execution for transactions by causing certain advisory clients to invest in fund share classes that charged 12b-1 fees and shareholder servicing fees when share classes of the same funds that presented a more favorable value for these clients under the particular circumstances were available to the clients. The Order also described violations that resulted from USBI failing to adequately disclose the conflict of interest to its clients related to these fees and expenses.

The Order finds that USBI's conduct willfully violated Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder. Under the terms of the Order, pursuant to Sections 203(e) and 203(k) of the Advisers Act, USBI will be: (1) ordered to cease and desist from committing or causing any violation and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder; (2) censured; and (3) ordered to pay disgorgement of $13,977,908 to compensate past and present advisory clients that were affected by the 12b-1 fee and shareholder serving fee-related conduct, prejudgment interest of $2,014,533, and a civil monetary penalty of $2.4 million. USBI has offered to pay this disgorgement to affected clients. USBI will pay undisbursed funds directly to the Commission for transmittal to the United States Treasury to the extent USBI has been unable to process a rebate (because, for example, the client cannot be located or for similar reasons).

II. Discussion

Pursuant to Rule 405 of the Securities Act, an issuer will not be eligible to be a WKSI[1] if:

> (vi) Within 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 . . .
>
> > (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws;
> >
> > (B) Requires that the person cease and desist from violating the anti-fraud provisions of the federal securities laws; or
> >
> > (C) Determines that the person violated the anti-fraud provisions of the federal securities laws.[2]

Pursuant to Rule 405 and based on the actions by its subsidiary, USBI, USB would be deemed an ineligible issuer upon the entry of the Order, absent a waiver from the Commission. Rule 405 of the Securities Act 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]

In the April 24, 2014 Revised Statement, the Division identified five factors for determining good cause:

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[1] A WKSI is eligible to avail itself of significant reforms in the securities offering and communications processes that the Commission adopted in 2005. *See Securities Offering Reform*, Securities Act Release No. 8591 (July 19, 2005), 70 Fed. Reg. 44,722 (Aug. 3, 2005).
[2] *See* Rule 405 under the Securities Act (defining "ineligible issuer").
[3] *Id.*

1. The nature of the violation or conviction and whether it involved disclosure for which the issuer or any of its subsidiaries was responsible or calls into question the ability of the issuer to produce reliable disclosure currently and in the future;

2. Whether the conduct involved a criminal conviction or scienter-based violation, as opposed to civil or administrative non-scienter-based violation;

3. Who was responsible for, and the duration of, the misconduct;

4. What remedial steps the issuer took; and

5. What the impact would be if the waiver request is denied.

Where there is a criminal conviction or a scienter-based violation involving disclosure for which the issuer or any of its subsidiaries was responsible, the issuer's burden to show good cause that a waiver is justified is significantly greater.

The USBI matter did not involve any finding of scienter and, as explained below, USB believes it can satisfy the requirements for establishing good cause. Also, neither USB nor USBI has requested a waiver from the SEC in the past. For these and the other reasons described in detail below, USB respectfully requests that the Commission not identify USB as an ineligible issuer.

A. The Violations in the Order Do Not Pertain to any USB Disclosures, But They Involved a USB subsidiary.

The violations described in the Order do not relate to any disclosure that USB filed with the Commission, nor do they involve any intentional misconduct or intentional fraud by USB. Rather, the violations relate to a USB subsidiary and the subsidiary's separate personnel, disclosures, and policies and procedures. As discussed below, the conduct described in the Order involves USBI's breach of fiduciary duty and inadequate disclosures regarding its mutual fund share class selection practices and the 12b-1 fees and shareholder servicing fees that USBI received in connection with its investment adviser accounts. The conduct addressed in the Order does not pertain to any activities in connection with USB's role as an issuer of securities.

In addition, the violations described in the Order do not involve misstatements or omissions in USB's disclosure, nor do they call into question the reliability of USB's disclosures or its ability to produce reliable disclosure in the future. Moreover, the Order does not find any deficiencies in USB's disclosure controls and procedures or in its filings with the Commission during this time period. Therefore, the violations described in the Order do not call into question the ability of USB to provide reliable disclosure currently or in the future.

B. The Conduct Described in the Order Does Not Involve Scienter-Based Fraud and will not Result in a Criminal Conviction

The Order does not involve a criminal conviction or a scienter-based violation, and, as such, USB believes it can satisfy requirements for establishing good case under the factors discussed in the Revised Statement. As described in the Order, the violations, which occurred at a subsidiary level, are pursuant to Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, violations which can be established by a showing of negligence.

C. Responsibility for the Misconduct

While USB is ultimately responsible for USBI, all of the disclosures or omissions involved in the Order were by USBI to its investment adviser clients, and not by USB to its investors. Further, no USBI personnel had any role or influence over any public disclosures made by USB. None of

the individuals directly responsible for USBI's disclosures related to the share class selection and shareholder servicing fees issue described in the Order were senior officers of USB. None of the individuals directly responsible for USBI's disclosures related to the share class selection issue described in the Order were responsible for USB's disclosures or USB's disclosure controls and procedures.

USBI is an indirect subsidiary of USB. The conduct described in the Order did not involve USB, the issuer, and does not describe any allegations related to public disclosures of USB. USB senior level officials were unaware of the misconduct at USBI and there were no red flags suggesting misconduct. The violations did not involve any offerings by USB of its securities or disclosures related to USB and, as noted above, the violations described in the Order do not state that USB made any omissions or misrepresentations in USB's disclosure filings under the Exchange Act or in connection with an offering of USB securities. No current or former employees of USBI, USB, or their affiliates have been charged in this matter. The violations in the Order involved USBI's business practices as an investment advisory firm, share class selection, and its disclosures related to share class selection.

The Order finds that USBI purchased, recommended, or held for advisory clients mutual fund share classes that charged 12b-1 fees instead of lower-cost share classes of the same funds for which the clients were eligible. The Order further finds that USBI received 12b-1 fees and shareholder servicing fees in connection with these investments, and failed to adequately disclose in its Form ADV or otherwise the conflicts of interest related to the availability of lower cost share prices and its selection of mutual fund share classes that pay such fees. USBI's disclosures in its Form ADV Part 2 did not tie the potential conflicts of interest to its possible receipt of 12b-1 fees or shareholder servicing fees. In the Form ADV Part 2, the conflict disclosure was under the heading "Revenue Sharing" and it discussed particular products, but it did not discuss the share classes. USBI did not disclose adequately to its advisory clients the conflicts of interest related to (a) its receipt of 12b-1 fees and shareholder servicing fees, and (b) its selection of mutual fund share classes that paid such fees when share classes of the same funds were available. All personnel who were responsible for reviewing the Form ADV disclosures are registered with USBI and their duties are solely specific to USBI.

Nonetheless, while USBI disclosed its receipt of 12b-1 fees and shareholder servicing fees, the conflict of interest this created, and the risk that investment adviser representatives (IARs) might recommend funds on the basis that the funds paid these fees, the gravamen of the Order is that USBI failed to disclose the availability of lower cost share classes. USBI is ready to settle the Order on these terms.

The Order states that USBI's violations relating to share class selection occurred during an approximate five-year period, 2012 to 2017. Since then, USBI has undertaken significant efforts, and continues to take steps, designed to ensure that these problems will not recur, as discussed in the next section of this letter.

D. Remedial Steps Already Taken and to Be Taken

As described in the Order, the violations at issue were first identified in connection with an examination of USBI conducted by the Office of Compliance Inspections and Examinations (OCIE) in 2016 and 2017. In late 2017, certain issues were referred by OCIE to the Division of Enforcement for further investigation. Throughout this period, USBI worked to remedy OCIE-identified examination deficiencies relating to the receipt of 12b-1 fees, reporting on its work, progress and remedial measures to the Division of Enforcement staff. The Order states that USBI's violations relating to share class selection and the receipt of shareholder servicing fees occurred during an approximate five-year period, 2012 to 2017. Since that time, USBI has undertaken and will continue to undertake significant efforts to address the concerns articulated in the Order. In December 2017, USBI initiated the process of converting existing mutual fund investments in NTF Class A shares (or comparable classes) held by its advisory clients to the

lowest-cost available for the same funds on the Clearing Firm's platform, subject to eligibility restrictions imposed by the funds. Using these same criteria, USBI created a list of approved mutual funds, which it periodically reviews, for new purchases in advisory accounts. In addition, USBI periodically surveils mutual fund holdings to ensure that they are in the lowest-cost available share class, and where necessary, converts those holdings. In March 2018, USBI updated the language related to USBI's receipt of 12b-1 fees and shareholder servicing fees in its Form ADV and investment advisory agreements to reflect their treatment and any conflicts of interest the receipt of those fees present. Therefore, USBI addressed the issues reflected in the Order.

E. Denial of a Waiver Would Negatively Impact USB

In determining whether good cause has been shown, the staff will "assess whether the loss of WKSI status would be a disproportionate hardship in light of the nature of the issuer's conduct."[4] The Order did not involve the issuer – USB. We respectfully submit that the impact of USB being designated an ineligible issuer would be unduly disproportionate and severe.

USB is a large, multi-state financial institution that relies on automatic shelf registration statements to conduct its ordinary course business transactions. The loss of USB's status as an eligible issuer would directly impact USB's ability to raise capital and conduct its operations. Loss of WKSI status, therefore eliminating USB's ability to use the automatic shelf registration process, would significantly impact the ability of USB to quickly and effectively access the capital markets.

As mentioned, as an ineligible issuer, USB would, among other things, lose the ability to:

1. File automatic shelf registration statements to register an indeterminate amount of securities;

2. Offer additional securities of the classes covered by a registration statement without filing a new registration statement;

3. Allow USB to include certain information omitted from the registration statement at the time of effectiveness through the filing of prospectus supplements or incorporated Exchange Act reports; and

4. Take advantage of the "pay as you go" filing fee payment process.

USB files automatic shelf registration statements to register an indeterminate amount of securities every three years. USB also offers additional securities of the classes covered by a registration statement without filing a new registrations statement; this was last done in 2009. USB regularly issues a variety of securities that are registered under a Form S-3 Registration Statement ("WKSI Shelf"), including fixed and floating rate notes and depositary shares representing ownership interests in USB preferred stock. USB filed a WKSI Shelf on April 21, 2017, through which it conducted ten offerings totaling over $8.5 billion dollars in the aggregate. The WKSI Shelf provided USB with greater flexibility with respect to the amount of securities issued without having to refile to increase the amount, permitting it to offer the securities on a more opportunistic basis. USB subsequently filed a WKSI Shelf on March 11, 2020. Accordingly, WKSI status is important to USB's ability to meet both its capital and liquidity needs as well as the needs of investors.

Due to its Bank Holding Company (BHC) status, USB believes that maintenance of WKSI status is especially critical to conducting its business. USB 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

[4] *See* Revised Statement.

capital and liquidity planning. As a BHC, USB 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, and (iv) financial strength of its insured depository institution subsidiary, U.S. Bank National Association. Since April 2014, USB has issued off its current WKSI shelf and its prior WKSI shelf approximately $5.325 billion of regulatory capital securities in six offerings, which represents all of the regulatory capital securities issued by USB in that period. USB has conducted a total of 20 offerings of all types of securities off of the April 18, 2014 and April 21, 2017 registration statements.

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 requires USB to maintain a ratio of high-quality liquid assets to net cash outflows over a hypothetical stress period. To continue to meet these stringent liquidity requirements, USB has increased the amount of senior, long-term funding to better match the maturities of these assets.

Third, USB has become 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 USB 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.'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 publish revised hypothetical scenarios for use with the CCAR.

In the event that USB were to become subject to increased capital or other requirements, loss of WKSI status, among other things: (i) could impede USB's ability to promptly and/or efficiently raise capital or liquidity as could become necessary; (ii) could materially and adversely affect

USB'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 USB 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.

* * *

USB believes it has met its burden to show good cause under Rule 405 and the Revised Statement. The conduct that gave rise to the violations, and the facts and circumstances as they currently exist, do not affect its ability to produce reliable disclosure and therefore, it is not necessary under the circumstances that the issuer be considered an ineligible issuer.

III. Request for Waiver

For the foregoing reasons, USB respectfully submits that, based on the factors described above, it is not necessary under the circumstances for USB to be deemed an "ineligible issuer" and that good cause exists for the relief requested in this letter. Furthermore, because the conduct described in the Order does not relate to USB's ability to produce reliable disclosure as a WKSI, including with respect to offering securities, granting a waiver to USB in this instance would be consistent with the public interest and the protection of investors. Therefore, we respectfully request that the Commission (or the Division pursuant to delegated authority) make a determination that USB is granted a waiver from designation as an "ineligible issuer" at the time that the Order is issued by the Commission.

Please do not hesitate to contact me at (202) 383-0124 should you have any questions regarding this request.

Sincerely,

Brian L. Rubin

Brian L. Rubin

cc: SEC FOIA Office
Gail Van Horn, Esq., U.S. Bancorp Investments, Inc.
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