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February 20, 2020

BY ELECTRONIC MAIL AND FEDERAL EXPRESS

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

Re: In the Matter of *Wells Fargo & Company*

Dear Mr. Henseler,

This letter is submitted on behalf of our client, Wells Fargo & Company (the "*Applicant*," "*WFC,*" or the "*Company*" and, together with its subsidiaries, "*Wells Fargo*"), in connection with a cease-and-desist order to be entered against the Applicant pursuant to Section 8A of the Securities Act of 1933, as amended (the "*Securities Act*"), and Sections 15(b) and 21C of the Securities Exchange Act of 1934, as amended (the "*Exchange Act*" and, such cease-and-desist order, the "*Order*"). On behalf of Wells Fargo, we hereby respectfully request, pursuant to Rule 506(d)(2)(ii) under the Securities Act, a waiver of any disqualifications that will arise as a result of the Order under Regulation D with respect to Wells Fargo and any of the issuers described below.

Wells Fargo is a diversified, community-based financial services company with $1.93 trillion in assets that provides banking, investment, and mortgage products and services, as well as consumer and commercial finance, to approximately 70 million customers through its operations in 32 countries and territories. The Applicant is a listed NYSE company and a financial holding company under applicable banking law.

BACKGROUND

The Applicant expects to enter into a settlement with the Securities and Exchange Commission (the "*Commission*" or "*SEC*") in February 2020, which is expected to result in the Commission's issuance of the Order. The Applicant will consent to the entry of the Order, which will find that WFC violated Section 10(b) of the Exchange Act and

Rule 10b-5 thereunder by misleading investors regarding the core strategy of its "Community Bank" operating segment, its largest business unit.

Pursuant to the Order, the Applicant must (i) cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and (ii) pay a civil money penalty of $500 million.

The Applicant also will enter into a deferred prosecution agreement[1] with the Criminal Division of the U.S. Department of Justice (the "*DOJ*") and a settlement agreement with the Civil Division of the DOJ related to the misconduct and will pay a monetary penalty of $2.5 billion.

DISCUSSION

The Applicant understands that the Order, if entered, would disqualify it and certain other issuers from relying on the exemptions provided by Regulation D absent the waiver requested here. Specifically, the Applicant understands that, as the beneficial owner of 20 percent or more of an issuer's outstanding voting equity securities or a person deemed to act in any other capacity described in Rule 506(d)(1) of Regulation D (a "*Covered Person*" with respect to an offering), the Applicant and other issuers of which the Applicant is the beneficial owner of 20 percent or more of its outstanding voting equity securities would be prohibited from relying upon these offering exemptions when issuing securities. The Commission has the authority to waive these disqualifications upon a showing of good cause that such disqualifications are not necessary under the circumstances.[2]

On March 13, 2015, the Division of Corporation Finance (the "*Division*") published guidelines setting forth the factors the Division will consider in determining whether to grant a waiver under Regulation D.[3] These factors include:

1. The nature of the violation;
2. Whether the violation involved the offer and sale of securities;

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1 Although the agreement with the DOJ is entitled as a deferred prosecution agreement, unlike a typical deferred prosecution agreement, there is no criminal charging instrument being filed, and no court will have to approve the agreement.

2 *See* 17 C.F.R. § 230.506(d)(2)(ii).

3 *See* SEC, Division of Corporation Finance, Waivers of Disqualification under Regulation A and Rules 505 and 506 of Regulation D, March 13, 2015, at https://www.sec.gov/divisions/corpfin/guidance/disqualification-waivers.shtml (last accessed June 17, 2019).

3. Whether the misconduct involved a criminal conviction or scienter-based violation, as opposed to a civil or administrative non-scienter-based violation;
4. Who was responsible for the misconduct;
5. What was the duration of the misconduct;
6. What remedial steps have been taken; and
7. What the impact will be if the waiver request is denied.

The Applicant believes it can show good cause that the disqualifications are not necessary under the balance of these factors. For the reasons set forth below, in particular the extensive remediation that has been done and the severe adverse impact if a waiver request is denied, Wells Fargo respectfully requests that the Commission waive any disqualifying effects that the Order may have under Rule 506.

1. <u>The nature of the violation</u>. The Order will find that the Applicant violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder as a result of fraud committed by Wells Fargo from 2012 through 2016, when it sold its securities while misleading investors regarding the core strategy of the Community Bank operating segment (the "*misconduct*"). Solely for the purposes of settling these proceedings, the Applicant consented to the entry of the Order.

2. <u>Whether the violation involved the offer and sale of securities</u>. The Order provides that the misconduct involved disclosures made by the Applicant in its Exchange Act reports and other disclosures to investors. Specifically, according to the Order, Wells Fargo published a Community Bank cross-sell metric in its annual reports and quarterly and annual filings with the Commission that purported to be the ratio of the number of accounts and products per retail bank household. During investor presentations and analyst conferences, Wells Fargo characterized its cross-selling strategy to investors as a key component of its financial success and routinely discussed its efforts to achieve cross-sell growth. From 2012 to 2016, according to the Order, Wells Fargo failed to disclose to investors that the Community Bank's sales model had caused unlawful and unethical sales practices misconduct that was at odds with its investor disclosures regarding needs-based selling and that the publicly reported cross-sell metric included significant numbers of unused or unauthorized accounts. According to the Order, by failing to disclose the extent to which the cross-sell metric was inflated by unused and unauthorized products, Wells Fargo sought not only to induce investors' continued reliance on the metric but also to avoid confronting the risk of reputational damage that might arise from public disclosure of the severity and extent of sales quality problems. Accordingly, the misconduct was committed in connection with the offer and sale of

securities and resulted in a violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

3. Whether the conduct involved a criminal conviction or scienter-based violation, as opposed to a civil or administrative non-scienter-based violation. In published guidelines, the Division states that "[w]here there is a criminal conviction or a scienter based violation involving the offer and sale of securities, the burden on the party seeking the waiver to show good cause that a waiver is justified would be significantly greater."

The Order provides that WFC violated Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder. These are scienter-based claims. The Order, however, relates only to civil causes of action. The DOJ has declined to bring criminal charges against WFC or any of its affiliates based on the same misconduct and neither of the DOJ settlements will find any securities law violations. As discussed in more detail below, the Applicant satisfies the higher burden to show good cause that is applicable to the scienter-based claims in the Order. Wells Fargo has taken comprehensive remedial actions to address the misconduct, including wholesale changes to its leadership, governance, processes and controls, and a reformed sales culture and environment. (*See infra* Item 6.) In addition, to date, Wells Fargo has compensated consumers and shareholders and paid fines to various regulatory and enforcement authorities in the amount of approximately $2.4 billion, not including the $500 million civil penalty assessed in this Order nor the additional $2.5 billion penalty in the settlements with DOJ, and its federal banking regulators—the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency (the "*OCC*"), and the Consumer Financial Protection Bureau (the "*CFPB*")—are providing rigorous oversight of the Company's remediation efforts.

4. Who was responsible for the misconduct. The Applicant accepts responsibility for its improper sales practices and for the misconduct of its employees that gave rise to the violation described in the Order. None of the Community Bank senior leaders described in the Order were members of the Board of Directors (the "*Board*") of the Applicant. Other than Executive A (the former Head of the Community Bank), none of the Community Bank senior leaders described in the Order were members of the Operating Committee (the senior-most management committee responsible for the conduct of the affairs of the Applicant) of the Applicant, and none were members of the Sarbanes Oxley Disclosure Committee (the "*SOX Disclosure Committee*") of the Applicant.[4] According to the Order, the responsible Community Bank leaders minimized

4 As discussed further below, the OCC has taken action against, among others, the former CEO, General Counsel, Chief Administrative Officer, Chief Risk Officer and Chief Auditor of WFBNA,

the scope of the sales practices problem when reporting to senior management and the Board.

Critically, the Community Bank senior leaders whose conduct is at issue are no longer employed by Wells Fargo. The three most senior leaders—the Head of the Community Bank (Executive A in the Order), the Community Bank Finance Officer, and the Community Bank Group Risk Officer—were terminated for cause. The Head of the Community Bank forfeited $67 million in outstanding compensation. The Finance and Risk Officers likewise forfeited millions of dollars in outstanding compensation. In addition, the OCC, the primary federal regulator of Wells Fargo Bank, N.A. ("*WFBNA*"), Wells Fargo's primary bank subsidiary, has charged the Head of the Community Bank, along with four other former executives of WFBNA, in connection with their roles in the Applicant's sales practices. With respect to the Head of the Community Bank, the OCC is seeking a $25 million civil money penalty and an order permanently prohibiting her from serving in various capacities at a U.S. financial institution.

The Chief Executive Officer of the Applicant during the relevant period—although not found by the Order to be responsible for the misconduct described in the Order—has also forfeited significant outstanding compensation ($69 million), reflecting his overall responsibility for the conduct of the affairs of the Applicant. Further, he entered into a settlement with the OCC with respect to his role in the Company's sales practices, requiring him to pay a $17.5 million civil money penalty and permanently prohibiting him from serving in various capacities at a U.S. financial institution.

5. What was the duration of the misconduct. The Order finds that the alleged securities law violations occurred over a period of approximately four years, beginning in 2012 and continuing through 2016. The Applicant notes that the misconduct described in the Order is not alleged to have continued after that point and remedial action, as described below, has been implemented to ensure that the misconduct does not arise again.

6. What remedial steps have been taken. The Wells Fargo of today is very different from the Wells Fargo in which the misconduct took place. To remediate the sales practices misconduct and the organizational structure that allowed the resultant disclosure violations to take place, Wells Fargo has made wholesale changes to leadership, governance, processes and controls, and reformed the sales culture and

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certain of whom did serve on these committees. The conduct that formed the basis of that action by the OCC, however, involved those employees' failure effectively to address sales misconduct at Wells Fargo despite their having received numerous indications as to the scope of that misconduct. The allegations in the OCC's action do not suggest that those employees had any involvement in the securities fraud violation that is the basis for the Order.

environment. Wells Fargo also has made substantial changes to its overall risk management and controls that work to improve the Company's culture of compliance, including with respect to its disclosure controls and procedures. In addition, Wells Fargo has paid significant compensation to consumers and shareholders, and its regulators are providing rigorous oversight of the remediation efforts.

Changes in Leadership

As noted above, every one of the senior-level employees closely connected to the sales practices misconduct and related breakdowns of risk management was terminated or has left Wells Fargo, including, within the Community Bank, the Head of the Community Bank, the Community Bank Finance and Risk Officers, and numerous area and regional presidents and district managers. In addition, WFC has made significant changes to its leadership composition since 2016, including the hiring of a new Chief Executive Officer, Chief Risk Officer, Chief Auditor, Chief Compliance Officer, Head of Human Resources, General Counsel, Head of Technology, Head of Strategic Execution and Operations, Head of Consumer Banking, Head of Regulatory Relations, and Vice Chairman of Public Affairs.

WFC and its Board also have undertaken historic compensation actions to hold executives accountable, resulting in over \$190 million in total compensation actions, among the largest in corporate history, including the forfeiture or clawback of approximately \$69 million from the former Chief Executive Officer and approximately \$67 million from the former Head of the Community Bank.

Changes in Governance

Much of the Board's membership has changed since the misconduct occurred, and Wells Fargo has refreshed the composition and structure of the Board to improve risk oversight. For example, the Board appointed a new Chair, separated the roles of Board Chair and Chief Executive Officer, and amended the Company's bylaws to require that the Board Chair be an independent director. Since 2016, eight of the Board's 13 independent directors (of the 14 member Board) have been newly appointed, resulting in a majority of new independent directors who have significant experience in financial services, risk management, human capital management, business operations and processes, and corporate responsibility. The Board also reconstituted several Board committees (including the Risk Committee) to include experience in key risk areas, appointed new independent directors to chair four of the seven standing committees, and amended Corporate Governance Guidelines and committee charters to enhance governance and oversight practices. The Company also created a new performance framework for senior executives, including leadership expectations and risk accountability.

Disclosure Controls and Procedures

In connection with the sales practices misconduct, Community Bank leadership misled those responsible for the Company's disclosure, which resulted in the publicly disclosed cross-sell metric including a large number of unused or unauthorized accounts. Accordingly, in light of the misconduct described in the Order and related prior settlements with various constituencies, including with its primary federal banking regulators, in 2016, Wells Fargo's management conducted a thorough review of the Company's disclosure controls and procedures ("*DC&P*") as part of its periodic assessment of DC&P as required by Section 302 of the Sarbanes Oxley Act of 2002 ("*SOX*"). In its report to the Audit and Examination Committee of the Board, the Company's management found that no team members with roles in financial reporting or with the ability to influence the financial reporting process had been identified as being involved in the sales practices misconduct. Further, through the evaluation of entity-level controls, the Company's management noted that several activities were undertaken or initiated in 2016 to strengthen the controls that affect the Company's operations and compliance objectives primarily related to managing reputational risk, including implementation by the Company's internal audit function of an enhanced sales practices coverage strategy.

While the Company believes its DC&P have proved effective, Wells Fargo has made substantial changes to its overall risk management and controls that work to improve the Company's culture of compliance, including with respect to its DC&P. Notably, in February 2016, Wells Fargo consolidated its decentralized financial reporting control monitoring functions into an Enterprise Control and Oversight function ("*EC&O*") housed within the Corporate Controller's office. EC&O has worked to enhance vigilance within Wells Fargo with respect to non-GAAP financial measures and material key performance indicators by applying a higher level of rigor to the review of these types of metrics.

Where a business line proposes to include a new non-GAAP financial measure or material key performance indicator in the Company's SEC periodic reports, EC&O engages with the business line to review such metrics and reinforce the Company's expectations with respect to DC&P and any related SOX reporting requirements. In addition, EC&O developed user guidance and provides educational sessions to onboard new senior leaders of the Company, including members of the Operating Committee and their direct reports, to inform them of the Company's DC&P expectations and SOX reporting requirements. EC&O has provided similar educational sessions and materials on DC&P and SOX reporting expectations to the Company's investor relations staff.

In order to continue to enhance the Company's DC&P effectiveness, the Company commits that before a new non-GAAP financial measure or material key performance indicator that is designed to demonstrate the effectiveness or success of a principal business unit is included in any Company document filed with or furnished to the Commission or the Company's annual report to shareholders, it will first be reviewed by EC&O to ensure it meets the Company's DC&P expectations and, after that review, will be presented to the SOX Disclosure Committee or another appropriate management committee.

While the misconduct that gave rise to the violations described in the Order did not involve Regulation D activities, in line with the significant changes in controls and culture outlined above, Wells Fargo would like to further ensure that the policies and procedures that govern its Regulation D activities meet high standards. To that end, within three months of the entry of the Order the Applicant will engage outside experienced securities counsel to conduct an assessment of the Regulation D policies and procedures of Wells Fargo and its "controlled" and "majority-owned subsidiaries" (as such terms are defined in Regulation S-X) that engage in Regulation D activities and recommend any necessary improvements thereto. The Applicant and the outside counsel may agree to scope out entities that may technically fall into this population but which are not generally subject to Wells Fargo's policies and procedures. Within two months of receipt of such recommendations, the Applicant will review the recommendations with such outside counsel and agree on a process for acceptance and implementation of the recommendations. All accepted recommendations will be implemented within a reasonable timeframe. One year from the date of the entry of the Order, on an agreed upon date, the Applicant will present to the Commission on its progress in implementing this undertaking.

Changes in Controls and Culture

Under the supervision of its federal banking regulators, Wells Fargo has undertaken significant remediation efforts regarding its risk management and controls. Notably, as part of its prior settlements with the OCC and the CFPB, Wells Fargo developed and continues to implement an enterprise-wide compliance risk management program ("*CRMP*") that includes, among other things, (1) a compliance risk framework that establishes the responsibility and accountability for respective front line units and independent compliance risk management; (2) a program to measure, aggregate, and limit regulatory compliance exposures on an ongoing basis independent from front line units commensurate with the risk profile of WFBNA; (3) a program to develop, attract, and retain talent and maintain appropriate staffing levels to fulfill respective roles in WFBNA's compliance risk management framework; (4) a program that establishes enterprise-wide policies and processes to ensure effective compliance governance and oversight for new products and services; (5) procedures for reporting and escalating significant compliance concerns to senior management and the Board; and (6) a comprehensive training program for front line, independent compliance risk, and audit staff that addresses relevant state and federal laws and regulations and impending publicly-announced changes to state and federal laws and regulations.

In addition, Wells Fargo was required to establish a staffing assessment that provides for allocation of adequate resources to implement the CRMP. Further, pursuant to these settlements, Wells Fargo established a Compliance Committee of the Board, comprised of a majority of independent directors, that is responsible for monitoring and overseeing the Company's compliance with the settlements and that provides quarterly written reports to the Board, the OCC, and the CFPB.

Wells Fargo believes that these and other organizational changes will help prevent the misconduct described in the Order from reoccurring in the future. In particular, control functions such as Risk, Compliance, and Human Resources that in the past reported to the head of their respective business units, *e.g.*, the Head of the Community Bank, now report directly to senior leaders at the enterprise level, *e.g.*, the Wells Fargo Chief Risk Officer. The lack of centralized reporting and management was identified by the Board during its independent review of Community Bank sales practices as one of the reasons that the misconduct occurred and persisted as long as it did. These changes should help ensure that accurate and complete information reaches Company leaders on a timely basis and thereby avoid the disclosure problems that occurred here.

In addition to these organizational changes, Wells Fargo has overhauled the organization and incentives in the Community Bank to prioritize customer service and risk management. For example, Wells Fargo has eliminated product sales goals and implemented a new incentive compensation plan that rewards employees based on customer relationships and experience rather than the number of products sold. In addition, with respect to customer and account controls, Wells Fargo has enhanced the processes around customer consent and experience (*e.g.*, automated confirmation statements for new account openings) and improved oversight and risk controls for branches (*e.g.*, developed a branch supervision program to provide analytics and daily oversight to proactively identify issues in branches).

Wells Fargo also has engaged in extensive efforts to address culture concerns, with the Chief Executive Officer and Head of Consumer Banking, along with other senior leaders, regularly holding town halls and listening sessions. Wells Fargo also conducts employee experience and exit surveys and has enhanced processes around reporting, research and escalation of allegations of misconduct, including the creation of a Conduct Management Office to oversee conduct risk and conduct management, the establishment of centralized teams for intake of employee allegations and disputes, and the improvement of the Company's EthicsLine program to strengthen the process by which employees report suspected unethical conduct.

With respect to its culture surrounding DC&P, Wells Fargo has worked to create a culture that emphasizes enhanced diligence of disclosures. For example, following the misconduct, the Company's then-Chief Executive Officer, Chief Financial Officer, and Principal Accounting Officer enhanced their focus and scrutiny of the Company's disclosures in order to ensure any new non-GAAP financial measure or material key performance indicator was reviewed by management.

Generally, Wells Fargo is a "flatter" structure than it was at the time of the misconduct, bringing the Company's leadership, including its Chief Executive Officer, closer to the operations of the business units. For example, throughout 2016, the Company worked to enhance coordination of its Corporate Risk functions with respect to sales practices risk, including Corporate Fraud Risk Management, which is a Corporate Risk function that escalates sales practices-related findings to the Company's Sales Practices Oversight team established to centralize and streamline information and communication regarding Wells Fargo's enterprise-wide management and monitoring of sales practices risk.

Wells Fargo also took steps to centralize, reinforce, and elaborate on the Company's commitment to high ethical standards, which covers all business and enterprise functions. The Company's Global Ethics & Integrity Office (the "*GEI*") sets the ethical standards for Wells Fargo, as well as the enterprise-wide requirements that Wells Fargo and its various business units must follow to manage ethics, business conduct, and conflicts of interest risk exposures. In addition, the GEI is responsible for ensuring that EthicsLine, the Company's whistleblower hotline, is monitored and in place and available to all team members as a medium for confidentially reporting illegal or unethical behavior or violations of laws, rules, or regulations.

Throughout 2016, the GEI was enhanced to expand coordination and integration of oversight across Wells Fargo's operations in order to enhance reporting, analytics and governance processes. Specifically, the GEI's advisory role was expanded through partnering with business unit stakeholders, implementing an allegations management database and launching new surveys to solicit feedback from team members regarding the Company's culture and commitment to ethics. In January 2017, GEI published a corporate standards document entitled *Speak Up, Investigative, and Nonretaliation Standards*, and simultaneously updated the *Wells Fargo Team Member Handbook* to incorporate the Company's Nonretaliation Policy. These updates helped strengthen the existing positions from the Company's Vision & Values and Code of Ethics and Business. In addition, in an effort to consolidate and integrate various functions, Wells Fargo announced organizational changes in January 2017 bringing the GEI, Sales Practices Oversight team and its Internal Investigations and Complaints Oversight functions together under its Office of Ethics, Oversight, and Integrity within its Corporate Risk group.

Customer Remediation

Wells Fargo has undertaken a comprehensive effort to identify potentially affected customers using account analysis, complaint analysis, and customer outreach. These efforts included a third-party account review by an independent consultant resulting in $7.4 million in refunded fees and interest for potentially unauthorized accounts, a historical complaint analysis resulting in an additional $8.8 million paid to customers, and a consumer class action settlement approved in June 2018 (*Jabbari* v. *Wells Fargo Bank, N.A.*) that provides for a total fund of $142 million (less fees and costs) to repay account fees and remediate credit score impact with any remaining funds to be distributed pro rata. Wells Fargo also instituted a programmatic approach to complaint management and remediation through a newly formed Rebuilding Trust Office that resulted in enhanced complaint intake, review, escalation and resolution protocols, including the creation of a Customer Remediation Center of Excellence.

Investor Remediation

In addition to its substantial customer remediation, Wells Fargo has entered into a settlement that will compensate injured shareholders. In December 2018, Wells Fargo received final court approval of an agreement to resolve a consolidated securities class action in the United States District Court for the Northern District of California (*Hefler* v. *Wells Fargo*) alleging certain misstatements and omissions in the Company's disclosures related to sales practices and its cross-sell disclosures. The settlement provides for $480 million (less fees and costs) in compensation to investors who purchased shares of WFC common stock after February 26, 2014 and held them through September 8, 2016.

Regulatory Settlements

Wells Fargo is dedicating substantial resources to further remediation required by five outstanding consent orders issued by its federal banking regulators relating to governance, sales practices, compliance risk management and consumer compliance. These supervisory orders require, among other things, the retention of independent consultants to assess the need for enhancements and review implementation of various remedial plans and programs, adherence to multiple plans and programs to enhance compliance risk management and overall governance (all subject to agency approval), unprecedented provisions mandating and directing ongoing customer remediation programs, and the payment of additional civil money penalties for any violations of the orders.

7. What the impact will be if the waiver request is denied.

A disqualification of the Applicant pursuant to Rule 506(d) would have an adverse impact on the Applicant and on the issuers described below for which the Applicant beneficially owns (or may, in the future, beneficially own) 20 percent or more of the issuer's voting equity securities and that engage in, or plan to continue to engage in, Regulation D offerings, as well as on investors in the affected offerings. Importantly, none of these issuers (including Wells Fargo funds and third-party funds and entities) nor their investors nor the related Wells Fargo businesses had any involvement in the misconduct. Accordingly, a disqualification of the Applicant as a result of the Order would be unfairly punitive to these parties.

WFC's Beneficial Ownership

Under Rule 13d-3 of the Exchange Act, the Applicant may be deemed to be the beneficial owner of securities owned by its subsidiaries or controlled affiliates. Beneficial ownership for purposes of Regulation D is interpreted the same way as under Rule 13d-3, which focuses on voting power and/or investment power, and includes both direct and indirect interests.[5]

As described in detail below, the Applicant is the beneficial owner of various private funds and portfolio companies in three different structures.

First, certain subsidiaries of the Applicant currently serve as the managing member of many private funds that engage in Regulation D offerings. As managing member, the subsidiary has full investment discretion over the assets of the private fund and, except for limited voting authority held by the non-managing members, has the voting discretion over the securities held by the fund. As a result, the subsidiary's managing member interest would be considered a voting equity security for purposes of determining beneficial ownership under Rule 13d-3, which, as described above, is the applicable test for purposes of Regulation D. As the sole managing member of a private fund, the Applicant's subsidiary would be deemed to be the beneficial owner of the fund's voting equity securities, which, for ease of reference, we refer to throughout this letter as "*Managing Member Beneficial Ownership*". As a result, the Applicant would be the beneficial owner of the underlying private fund which results in the private fund being disqualified from issuing additional securities in Regulation D offerings.

Second, the Applicant is deemed (or may be deemed in the future) to be the beneficial owner of the voting equity securities of a proprietary or third-party fund because the shares of such fund are held in a customer's account at WFBNA and

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5 *See* Securities Act Rules, Compliance and Disclosure Interpretations 260.29 and 260.30.

WFBNA retains investment discretion over such account and voting discretion over the securities held therein. As a result, WFBNA has beneficial ownership of these securities. In many cases, described in more detail below, WFBNA has beneficial ownership of 20% or more of the voting equity securities of a fund through its beneficial ownership of the securities of a number of clients, which, for ease of reference, we refer to throughout this letter as "*20% Account Beneficial Ownership*". This beneficial ownership is also attributed to WFC for purposes of Rule 13d-3. In many cases described further below, WFBNA (and therefore WFC) has 20% Account Beneficial Ownership in addition to Managing Member Beneficial Ownership of a fund.

Finally, certain subsidiaries of the Applicant own, or may own in the future, as principal 20 percent or more of the voting equity securities of a portfolio company or third-party fund. For ease of reference, we refer to this manner of ownership throughout this letter as "*20% Principal Beneficial Ownership*".

Accordingly, the Applicant's disqualification pursuant to Rule 506(d) would impact a number of private entities (both affiliated and unaffiliated) with which Wells Fargo is associated (as well as Wells Fargo itself and its customers), as described further below.

Private Fund Offerings

The 525 Market Street Funds

Wells Capital Management, Inc. ("*WCM*"), an indirect wholly owned subsidiary of the Applicant, serves as managing member to a number of proprietary funds, most of which are marketed under the "525 Market Street" label. The investors in these 525 Market Street funds are institutional investors, including pension plans, foundations, endowments and health care funds.

Currently, there are 25 of these funds and, since 2015, WCM has launched a number of new 525 Market Street funds. These funds invest in a mix of bonds, equities and index funds and offer, on a fund by fund basis, different investment strategies, including, among other strategies, broad fixed income equity, high yield bonds, emerging markets capital, small growth capital and U.S. and global volatility.

As managing member of these funds, WCM has voting and investment discretion over each fund. As a result, WCM has Managing Member Beneficial Ownership of the 525 Market Street funds. Accordingly, the Applicant would be deemed to be the beneficial owner (for purposes of Rule 13d-3) of 20 percent or more of the voting equity securities of the 525 Market Street funds, thereby disqualifying these funds from issuing securities in reliance on Regulation D.

A disqualification under Rule 506 would have the immediate negative effect of forcing Wells Fargo to halt all new offerings in these 525 Market Street funds. Most of these funds are currently engaged in continuous Rule 506 offerings, and some are in the early stages of formation and are not yet funded. The funds currently engaged in Rule 506 offerings have over a billion dollars of assets under management contributed by hundreds of investors.

Most importantly, a disqualification of WFC would have the immediate negative impact of preventing Wells Fargo clients from investing in the 525 Market Street funds and halt any planned or pending investments into these funds. This would likely have negative impacts on the relevant investors' tax planning and investment portfolio planning. Wells Fargo clients and other potential future investors in the 525 Market Street funds could be required to find alternative investments. Permitting such consequences to befall third parties (both Wells Fargo clients and unrelated third parties) and Wells Fargo businesses that had no involvement in the misconduct would be unfairly punitive for these investors.

Further, if all the 525 Market Street funds' offerings were to cease upon the disqualification of the Applicant because it could no longer create new funds that could offer securities in reliance on Rule 506, the Applicant would be precluded from developing this business. Revenues to Wells Fargo from the 525 Market Street funds, including management fees and performance fees, since 2016 were approximately $100 million.

The 525 Market Street funds are an important part of the going forward strategy for Wells Fargo Asset Management ("*WFAM*") to meet WFAM client needs. Specifically, they allow WFAM to deliver solutions in structures that institutional clients are accustomed to purchasing and do not have the additional costs included in traditional pooled vehicles, such as open-ended mutual funds. Further, the 525 Market Street funds allow WFAM to customize tailored offerings closely aligned with their clients' needs.

Going forward, WFAM expects that clients will continue to seek alternative sources of income, non-correlated returns and investments that benefit from longer investment horizons and corresponding reduced liquidity. Often, private funds, such as the 525 Market Street funds, provide the most efficient delivery vehicle to provide these strategies. Institutional clients sometime seek simplicity in a single security solution, such as the 525 Market Street funds. This is often the case for asset classes and investment strategies that would be complex or expensive if delivered in an institutional separate account, such as international equities that would require numerous trading arrangements to deliver local market securities or investment strategies that utilize derivatives.

WFII Private Fund Platforms

Wells Fargo Investment Institute, Inc. ("*WFII*"), an indirect wholly owned subsidiary of the Applicant and direct subsidiary of WFBNA, operates four private fund platforms. These platforms are organized as series limited liability companies, each series of which is a private fund with segregated assets and liabilities, and WFII serves as managing member of each limited liability company.[6] Each of the private fund series operates as a feeder fund in a master-feeder structure whereby it invests substantially all its assets in another fund, *i.e.*, the master fund. Each master fund into which a feeder fund invests is operated by a third party that is not affiliated with Wells Fargo. The feeder funds are privately placed in reliance on Regulation D.

Since 2015, WFII has launched a number of new feeder funds. Currently, WFII operates a large number feeder funds (about one-third of which are currently open) with billions of dollars in assets under management contributed by thousands of investors.

The master funds into which the feeder funds invest represent an array of fund strategies, including unaffiliated private capital funds, unaffiliated hedge funds and unaffiliated private companies.[7] Depending on the type of master fund in which the feeder fund is invested, the feeder fund's Regulation D offerings may be offered continuously (*e.g.*, hedge funds) or remain open for only a defined period of time, as negotiated between the feeder fund and master fund, during which time Regulation D offerings take place on a continuous basis (*e.g.*, private capital funds).

As managing member of the private fund platforms and each feeder fund, WFII has voting and investment discretion over each of the private fund platforms and their respective feeder funds. As a result, WFII has Managing Member Beneficial Ownership of the platforms and their feeder funds. Accordingly, the Applicant would be deemed to be the beneficial owner (for purposes of Rule 13d-3) of 20 percent or more of the voting equity securities of the feeder funds, thereby disqualifying the feeder funds from issuing securities in reliance on Regulation D.

As noted above, the feeder funds are privately placed in reliance on Regulation D, including, in many instances, into accounts at WFBNA for which WFBNA has

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6 A "series LLC" is equivalent to several separate LLCs housed within a single LLC. Its articles of formation and operating agreement allow it to segregate equity interests, assets, liabilities, and profits and losses within any number of independent series. However, because a series LLC is a single legal entity, no additional state formation filings are generally required to establish a new series.

7 The master funds issue their interests to the feeder funds pursuant to Regulation D, but such interests often are not voting equity securities, so generally the master funds would not be impacted by the disqualification of the feeder funds.

investment discretion over the account and voting discretion over securities held in such account. For a number of feeder funds, WFBNA clients, in the aggregate, hold 20 percent or more of such feeder fund's voting equity securities in such accounts.

As a result, WFBNA has 20% Account Beneficial Ownership of these feeder funds. Accordingly, in addition to having beneficial ownership of these funds as the result of WFII's Managing Member Beneficial Ownership, the Applicant would be deemed to be the beneficial owner (for purposes of Rule 13d-3) of 20 percent or more of the voting equity securities of these feeder funds, thereby disqualifying them from issuing securities in reliance on Regulation D.

A disqualification under Rule 506 would have the immediate negative effect of forcing Wells Fargo to halt all new offerings in its WFII private fund platforms. Each feeder fund invests in a single master fund, so providing access to new master funds requires the launch of new feeder funds. Further, the feeder funds that invest in private capital master funds are closed-end funds that are not open to new investors after their initial close. Of the existing feeder funds, approximately one-third are currently engaged in offerings in reliance on Rule 506 and some are in the early stages of formation and are not yet funded. The funds currently engaged in Rule 506 offerings have billions of dollars in assets under management contributed by thousands of investors. WFII anticipates launching additional feeder funds this year and beyond.

Most importantly, a disqualification of WFC would have the immediate negative impact of preventing Wells Fargo clients from investing in the feeder funds currently being offered in reliance on Rule 506 and halt any planned or pending investments into these funds. This would likely have negative impacts on the relevant investors' tax planning and investment portfolio planning.

In addition, third-party master funds in which the feeder funds are currently investing would be adversely impacted. The WFII private funds platform offer significantly lower investment minimums than those imposed by the master funds, providing clients the ability access institutional managers that they would not be able to invest with directly as a result of the significantly higher investment minimum requirement, and to allocate across multiple offerings to achieve the potential for increased diversification. Further, WFII pre-screens all master funds and their managers and performs ongoing due diligence on the master funds and their managers. WFII, based on its diligence and internal analysis, determines whether or not to include, exclude or remove master fund managers from the platform.

As a result, because investors would be prohibited from making additional contributions to the WFII feeder funds, these third-party master funds in which the feeder funds invest would be indirectly negatively affected by the unavailability of anticipated capital, which could cause liquidity issues. These WFII feeder funds are a Wells Fargo-branded suite of investment funds that are offered solely through Wells Fargo channels to Wells Fargo clients and customers. Thus, generally, Wells Fargo clients and other potential future investors in the funds described above could be required to find alternative investments. Permitting such consequences to befall third parties (both Wells Fargo clients and unrelated third-party master funds) and Wells Fargo businesses that had no involvement in the misconduct would be unfairly punitive for these investors.

It is important to stress that, as noted, the WFII private fund platforms business had no involvement in the misconduct. Further, the disclosure provided to WFII investors (*i.e.*, purchasers of the feeder fund securities) in the relevant private placement memorandum relates to the WFII platform and investment therein, not to WFC. As such, the disclosure issues related to the misconduct are not present in the Regulation D disclosure presented to WFII customers.

Further, if all the feeder funds' offerings were to cease upon the disqualification of the Applicant because it could no longer create new funds that could offer securities in reliance on Rule 506, the Applicant would be precluded from developing the WFII private fund platforms. Revenues to Wells Fargo from the WFII private fund platforms, including management fees and administrative fees, since 2016 were in excess of $85 million.

The DPIP Platform

WFII also operates a private equity fund platform ("*DPIP*"). Similar to the WFII private fund platforms described above, the DPIP platform is organized as a series limited liability company for which WFII serves as managing member. Like the WFII private fund platforms, each series of DPIP is its own private fund with segregated assets and liabilities. Investment opportunities for DPIP funds are typically sourced from Wells Fargo Securities, LLC ("*WFS*"), which, in its placement agent capacity, makes available to the DPIP platform investment opportunities, such as a WFS client's equity or debt. In the event that WFII decides to invest in such an opportunity, WFII will form a DPIP fund to make the investment, the shares of which fund will be placed with Wells Fargo clients in reliance on Regulation D. These clients are small start-up businesses, and the DPIP funds provide a way to connect to a greater potential pool of investors, who are typically high-net-worth clients.

The first DPIP fund was launched in 2017 and, since then, a number of DPIP funds have been launched in reliance on Rule 506, which have millions of dollars of assets under management contributed by hundreds of investors.

As managing member of the DPIP funds, WFII has voting and investment discretion over each DPIP fund. As a result, WFII has Managing Member Beneficial Ownership of the DPIP funds and, thus, the Applicant would be deemed to be the beneficial owner (for purposes of Rule 13d-3) of 20 percent or more of the voting equity securities of the DPIP funds, thereby disqualifying the DPIP funds from issuing additional securities in reliance on Regulation D.

A disqualification under Rule 506 would have the immediate negative effect of forcing Wells Fargo to halt all offerings of its DPIP funds. Each DPIP fund invests in a portfolio company, so providing access to new portfolio companies requires the launch of new feeder funds. The DPIP funds are closed-end funds that are not open to new investors after their initial close. However, DPIP funds will be presented with the option to make follow-on investments, through a Regulation D offering, in the portfolio company in which it originally invested. Currently, one DPIP fund is engaged in a continuous Rule 506 offering and WFII expects to launch multiple DPIP funds this year and in each calendar year going forward.

In addition, the small start-up businesses in which the DPIP funds are currently investing would be adversely impacted. Because investors would be prohibited from making additional contributions to the DPIP funds, the businesses in which the DPIP funds invest would be indirectly negatively affected by the unavailability of anticipated capital, which could cause liquidity issues.

Most importantly, a disqualification of WFC would have the immediate negative impact of preventing Wells Fargo clients from investing in the DPIP funds and halt any planned or pending investments into these funds. This would likely have negative impacts on the relevant investors' tax planning and investment portfolio planning. In addition, if existing DPIP funds are not permitted to participate in follow-on offerings, that could significantly dilute the feeder fund's investment and, thus, returns to these investors.

The DPIP funds are a Wells Fargo-branded suite of investment funds that are offered solely through Wells Fargo channels to Wells Fargo clients and customers. Thus, Wells Fargo clients and other potential future investors in the DPIP funds would be required to find alternative investments. Permitting such consequences to befall third parties (both Wells Fargo clients and unrelated third parties) and Wells Fargo businesses that had no involvement in the misconduct would be unfairly punitive for these investors.

Further, if all the DPIP funds' offerings were to cease upon the disqualification of the Applicant because it could no longer create new funds that could offer securities in reliance on Rule 506, the Applicant would be precluded from developing DPIP.

Revenues to Wells Fargo from the DPIP funds, including management fees and administrative fees, since launch in 2017 were in excess of $3 million.

Additional Impacts of Disqualification on Private Fund Offerings

In addition to the business line-specific impacts described above, disqualification under Rule 506 also would cause significant reputational harm to WFC and put it at a key competitive disadvantage relative to peer firms that could offer clients a broader range of investment opportunities and funding conducted in reliance on any exemption for which they are eligible, including Rule 506.

These private fund platforms are used as part of client portfolios in Wells Fargo's Wealth and Investment Management division ("*WIM*"), which had no involvement in the misconduct and whose clients expect to access a full suite of investments. Ceasing private fund offerings would cause WIM to be uncompetitive relative to its peers and reduce competitive options for investors. WIM clients are highly portable and, when they leave, their financial advisors (who are also highly portable) leave, creating additional potential negative impacts to WIM. In addition, numerous Wells Fargo employees could lose their jobs because their businesses would essentially come to a halt.

Failure to provide a competitive offering for five years will diminish the Wells Fargo WIM brand irreparably beyond the five year prohibition. The private fund businesses described above function by regularly creating new funds that are offered to investors. Investors purchase new funds as part of their ongoing portfolio management. Even funds in which investors have current investments regularly purchase new securities into the fund in reliance on Regulation D. Thus, even current fund investors would be impacted by the private fund platforms being unable to offer new funds in reliance on Regulation D.

In addition, these private funds are used in WIM to fulfill client diversification requirements by allocation to alternative investments as an asset class. This asset class is unique and clients may not be able to diversify their portfolios to other classes, such as traditional equity, fixed income or cash to replicate its exposure. As a result, the inability to offer such private funds could present potential issues for WIM in fulfilling its fiduciary duties to its clients.

In addition, certain market segments favor the use of Rule 506 in certain private offerings because it provides a safe harbor for an exempt offering. If WFC could not beneficially own 20 percent or more of a Regulation D issuer's voting equity securities, such clients would likely choose to work with other firms, resulting in a negative impact on WFC's current and future private placement activities and possibly result in WFC employees with an expertise in private placements seeking employment elsewhere.

In addition, a disqualification of WFC would effectively unwind a new private funds product that WFAM is about to launch. WFAM established a Private Strategies team in 2018 as a key strategic initiative to provide WFAM clients with critical solutions through enhanced exposure to the private markets. WFAM has dedicated a significant amount of resources over the last year to developing the infrastructure to support this initial fund and team.

As noted above, given the absence of involvement of these business lines in the misconduct, these impacts would be particularly harsh.

Wealth Management Activity

WFBNA conducts wealth management activities under its Wells Fargo Private Bank and Abbot Downing divisions that include investing client assets into third-party funds. As part of this service, WFBNA deposits the third-party fund securities into client accounts over which WFBNA exercises both investment and voting discretion on behalf of its wealth management clients. These funds are neither sponsored by any Wells Fargo affiliate nor otherwise controlled by any Wells Fargo affiliate.

Currently, WFBNA has 20% Account Beneficial Ownership of numerous third-party funds, the majority of which are currently engaged in continuous offerings and have millions of dollars of assets under management. In addition, WFBNA may have 20% Account Beneficial Ownership of additional third-party funds that are seeking to raise capital in the near term.

As a result of WFBNA's 20% Account Beneficial Ownership of these third-party funds, the Applicant would be deemed to be the beneficial owner (for purposes of Rule 13d-3) of 20 percent or more of the voting equity securities of these third-party funds, thereby disqualifying the third-party funds from issuing securities in reliance on Regulation D.

Disqualification under Rule 506 would have the immediate negative effect of preventing these wealth management clients from investing in third-party funds – although none of such clients or funds would have had any knowledge of or involvement in the misconduct – if the investment would result in WFC having 20 percent or more beneficial ownership of the fund's voting equity securities. This could result in these third-party funds forcibly redeeming certain client assets to avoid a disqualification, placing an unnecessary and unfair burden on these clients that could impact their tax planning and investment portfolio planning and could cause liquidity issues for the third-party funds. As a result, these clients and other potential future wealth management clients could be required to find alternative investments. Permitting such consequences to befall third-party investors and funds and Wells Fargo businesses that had no involvement in the misconduct would be unfairly punitive.

In addition, a disqualification could prompt some of WFBNA's wealth management clients to move their business to other firms that are not subject to a disqualification (including firms with Regulation D waivers) and that could provide exposure to these types of assets. Accordingly, Wells Fargo would be put at a competitive disadvantage in operating its wealth management business because these clients may prefer not to deal at all with a wealth manager that is subject to a disqualification, even if that disqualification would not impact the issuer.

Principal Investment Activity

In addition to the private fund offering and wealth management activities described above, Wells Fargo's records reflect ownership information for thousands of legal entities, a significant portion of which reflect ownership greater than 20 percent. Each of these entities could be prohibited from making future issuances of securities in reliance on Regulation D if the Applicant is disqualified. Wells Fargo has no management control over many of these entities. A disqualification would unfairly deny these third-party issuers the ability to consider a Regulation D offering in the future, despite their having no connection to the misconduct. Absent extensive additional due diligence, however, Wells Fargo is unable to provide specific information on these entities beyond what is provided below.

Subsidiaries of Wells Fargo – Wells Fargo Strategic Capital, Inc. and Wells Fargo Central Pacific Holdings, Inc. – have 20% Principal Beneficial Ownership, either directly or through managed funds, accounts and investment vehicles, of portfolio companies that are held for investment purposes and are not operationally part of Wells Fargo. These portfolio companies operate in different non-financial industries, such as construction and development, and Wells Fargo, as a regulatory matter, cannot be involved in the management of such organizations.

As a result of this 20% Principal Beneficial Ownership, the Applicant would be deemed to be the beneficial owner (for purposes of Rule 13d-3) of 20 percent or more of the voting equity securities of these portfolio companies, thereby disqualifying the portfolio companies from issuing securities in reliance on Regulation D, despite their having no connection to the misconduct.

Further, Wells Fargo subsidiaries have 20% Principal Beneficial Ownership of numerous public welfare investments, including unaffiliated small business investment companies ("*SBICs*"), representing billions of dollars in commitments by Wells Fargo.

Many of the public welfare investments are in affordable housing projects with third-party syndicators in funds that support development of affordable housing.

In addition, Wells Fargo has various potential public welfare investments in the pipeline, totaling hundreds of millions of dollars in invested capital, that are targeted to close this year, a number of which currently are anticipated to exceed 20 percent of the voting equity securities of the entities. Not only do these investments provide a critical source of funding to companies that offer invaluable benefits to the public, they are used to satisfy Wells Fargo's obligations under the Community Reinvestment Act to meet the credit needs of communities in which the Company does business, including low- and moderate-income neighborhoods.

As a result of its subsidiaries' 20% Principal Beneficial Ownership in these public welfare investment vehicles, the Applicant would be deemed to be the beneficial owner (for purposes of Rule 13d-3) of 20 percent or more of the voting equity securities of these entities, thereby disqualifying them from issuing securities in reliance on Regulation D, despite their having no connection to the misconduct.

If the Applicant is disqualified from Rule 506, each of these portfolio companies and public welfare vehicles also will be disqualified from relying on Rule 506 for future offerings. The Applicant does not actually control the operations of these companies, but rather is a passive investor. In addition, these entities may use an unaffiliated broker-dealer as placement agent when they conduct offerings. However, they would not in any event be able to rely on Rule 506, and would be required to either offer securities under an alternative exemption from registration or terminate their relationship with the Applicant or a covered affiliate. This would place a burden on such issuers, causing them to delay, restrict, or even abandon their offering activities or place the issuers in a difficult liquidity position if they are required to redeem the Wells Fargo-related interests. Investors in such offerings may face the burden of having to find alternative investments if such offerings are delayed, restricted, or abandoned as a result of the disqualification. Investors' returns may also be negatively impacted by the disqualification due to the issuer's impaired ability to raise capital.

Permitting such consequences to befall companies that have only a limited relationship with Wells Fargo and that had no involvement in the misconduct would be unfairly punitive for these companies. In addition, Wells Fargo would be put at a competitive disadvantage in making similar future investments because companies may prefer not to deal at all with an investor that is subject to a disqualification, even if that disqualification would not impact the issuer. Even companies that do not typically rely on or intend to rely on Regulation D may decline to work with Wells Fargo in order to preserve maximum flexibility in structuring an offering and not having to monitor Wells Fargo's ongoing holdings.

Alternatives to Rule 506

In all the private fund, wealth management and investment activities discussed above, there is no viable substitute if Rule 506 were to become unavailable. The parameters of exemptions under Section 4(a)(2), for example, are far less clear than those of Rule 506. Section 4(a)(2) is not well suited to offerings to relatively large numbers of investors or to continuous offerings and there is not an established market practice for private fund offerings under Section 4(a)(2). Further, in other Wells Fargo business lines that traditionally conduct offerings under Section 4(a)(2), such as structured products, it is not uncommon for a Wells Fargo affiliate to be make a representation that it is not a "bad actor" for purposes of Rule 506 in order to be permitted to engage in the Section 4(a)(2) offering.

Market practice favors (and in some cases requires) the use of Rule 506 because it provides issuers and market participants with the benefit of a safe harbor, so the Applicant's inability to participate in Rule 506 offerings could lead to the loss of numerous opportunities to offer private fund products to clients and deploy capital in third-party companies and public welfare investments. It bears noting, as well, that offerings conducted under Section 4(a)(2) do not have the benefit of Federal preemption of state registration requirements, which does apply to Rule 506 offerings. As a consequence, each Section 4(a)(2) offering would require an analysis of state Blue Sky laws and, in many instances, registration in multiple states, the requirements of which are impracticable for many of Wells Fargo's products and offerings.

<u>Prior Relief</u>

Certain of the Applicant's affiliates have previously been granted waivers from the disqualification provisions of Regulation D in the following instances:

- *In the Matter of Wells Fargo Securities, LLC* (March 20, 2019), related to the settlement by WFS with the Commission in connection with WFS acting as lead placement agent in a municipal bond offering.

- *In the Matter of Deutsche Bank Securities, Inc., RBC Capital Markets, LLC, Wells Fargo Clearing Services, LLC, and Wells Fargo Advisors Financial Network, LLC* (March 11, 2019), related to the settlement by Wells Fargo Clearing Services, LLC and Wells Fargo Advisors Financial Network, LLC with the Commission for disclosures related to the selection of mutual fund share classes for clients as part of the Commission's Share Class Selection Disclosure Initiative.

- *In the Matter of Certain Underwriters Participating in the Municipalities Continuing Disclosure Cooperation Initiative* (February 2, 2016), related to the settlement involving WFBNA's Municipal Products Group with the Commission in connection with the due diligence conducted on certain municipal securities offerings as part of the Commission's Municipalities Continuing Disclosure Cooperation Initiative.

- *In the Matter of Wells Fargo Advisors, LLC* (September 22, 2014), related to the settlement by Wells Fargo Advisors, LLC with the Commission in connection with the establishment, maintenance, and enforcement of written policies and procedures reasonably designed to prevent the misuse of material non-public information.

In addition, certain entities to which a WFC affiliate is the successor-in-interest were previously granted waivers from the disqualification provisions of Regulation D related to activities that occurred when such entities were subsidiaries of or were otherwise controlled by Wachovia Corporation:

- *SEC* v. *Wachovia Bank, N.A. (n/k/a Wells Fargo Bank, N.A.)* (December 9, 2011), related to the settlement by Wells Fargo Bank, N.A. (the successor by merger to Wachovia Bank, N.A.) with the Commission in connection with the bidding on and sale of municipal derivative transactions.

- *In the Matter of Evergreen Investment Management Company, LLC and Evergreen Investment Services, Inc.* (June 8, 2009), related to the settlement by Evergreen Investment Management Company, LLC and Evergreen Investment Services, Inc., by that time indirect subsidiaries of WFC, and the Commission in connection with certain transactions and disclosures related to the operation of a registered investment company.

- *SEC* v. *Wachovia Securities, LLC* (February 26, 2009), related to the settlement by Wachovia Securities, LLC, by that time an indirect subsidiary of WFC, with the Commission in connection with the sale of auction rate securities.

- *In the Matter of Wachovia Capital Markets, LLC* (May 31, 2006), related to the settlement by Wachovia Capital Markets, LLC with the Commission in connection with certain auction practices.

- *In the Matter of Wachovia Securities, Inc.* (February 12, 2004), related to the settlement by Wachovia Securities, Inc. with the Commission in connection with sales of mutual fund shares with selective breakpoint discounts.

With respect to each of the instances cited above, there is no relationship whatsoever between the conduct that was the subject of the above-referenced waivers and the misconduct described in the Order. Further, the majority of the waivers listed above arose out of activities that occurred when the relevant entities were subsidiaries of or were otherwise controlled by Wachovia Corporation, a wholly separate operating company over which, at the time of the underlying events in question, neither the Applicant nor any of its affiliates exercised control. Applying the disqualification to the Applicant would be disproportionately and unduly severe, given the absence of any relevant nexus whatsoever between the prior waivers above and the misconduct described in the Order.

* * *

In light of the grounds for relief discussed above, we believe that disqualification is not necessary under the circumstances and that the Applicant has shown good cause that relief should be granted. Accordingly, we respectfully urge the Commission, pursuant to Rule 506(d)(2)(ii) of Regulation D to waive any disqualification under Regulation D to the extent it may be applicable as a result of the entry of the Order.

For a period of five years from the date of the Order, Wells Fargo will furnish (or cause to be furnished) to each purchaser in an offering under Regulation D that would otherwise be subject to disqualification under Rule 506(d)(1)(v) as a result of the Order, a description in writing of the Order at a reasonable time prior to sale.

Please do not hesitate to call me at (212) 558-4000 if you have any questions.

Very truly yours,

Wendy M. Goldberg