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**By E-mail**

September 26, 2019

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

## GFI Securities LLC.

Dear Mr. Henseler:

We submit this letter on behalf of our client BGC Partners, Inc. ("BGC"), a reporting company with a class of securities registered under Section 12 of the Securities Exchange Act of 1934, in connection with the settlement of an administrative proceeding against GFI Securities LLC ("GFI"), an indirect BGC subsidiary.

BGC requests a determination by the Commission that, for good cause shown, BGC should not, as a result of the settlement, be deemed an "ineligible issuer" as defined in Rule 405 under the Securities Act of 1933 (the "Securities Act"). BGC requests that this determination be made by the Division of Corporate Finance, acting pursuant to its delegated authority, or the Commission itself, to be effective upon entry of the order in the above-referenced settled administrative proceeding (the "Order").

We believe that relief from the ineligible-issuer provisions is appropriate for the reasons set forth below, including that (i) the violative conduct described in the Order involved only a few low-level GFI employees, had no connection to BGC's role as an issuer of securities, and ended over three years ago; (ii) the Order states that the subsidiary's conduct was merely negligent, and does not find any criminal conduct or scienter; (iii) BGC has never before requested a waiver of any disqualification or been disqualified from ineligible-issuer status; (iv) the subsidiary has taken reasonable steps to enhance its policies and procedures to prevent a recurrence of the conduct; and (v) BGC's loss of its status as a Well-Known Seasoned Issuer ("WKSI") would harm shareholders by unfairly and needlessly interfering with the company's ability to raise capital efficiently.

## **Background**

Following discussions with the Division of Enforcement, GFI has submitted an offer of settlement pursuant to which it consents to the entry of the Order but neither admits nor denies any of the findings or violations described in the Order. In relevant part, the Order contains the

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following findings by the Commission: GFI is an interdealer securities broker with approximately thirty-five to forty desks in the United States. GFI publicly represented that it generally maintained anonymity of customer identities when brokering securities trades and communicating with potential counterparties. Consistent with its public statements, GFI had internal policies that generally required its registered representatives to maintain the confidentiality of customer information, including customer identities, but did not adequately inform and train its employees concerning these policies and did not appropriately enforce these policies. Consequently, notwithstanding its public representations and internal policies, registered representatives on GFI's equity derivatives desk disclosed customer identities to potential counterparties from January 2014 to June 2016. GFI's public statements on anonymity therefore constituted negligent misrepresentations of material facts in the offer of securities, in violation of Section 17(a)(2) of the Securities Act.

### **Discussion**

In 2005, the Commission revised the registration, communications, and offering procedures under the Securities Act.<sup>1</sup> As part of these reforms, the Commission created a category of issuer under Rule 405 known as the "ineligible issuer." Rule 405 defines "ineligible issuer" to include any issuer of securities with respect to which the following is true: "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 . . . administrative . . . order arising out of a governmental action that . . . requires that the person cease and desist from violating the anti-fraud provisions of the federal securities laws . . . ." The Order requires GFI to cease and desist from violating Section 17(a)(2) of the Securities Act, which is an anti-fraud provision. Because GFI is a subsidiary of BGC, the Order, absent a waiver, would cause BGC to become an ineligible issuer.

### **Reasons for Granting a Waiver**

Rule 405 authorizes the Commission to determine, "upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer." For the reasons explained below, we respectfully submit that good cause exists for the Commission to determine that it is not necessary that BGC be considered an ineligible issuer under Rule 405. Our views are outlined in accordance with the Revised Statement on Well-Known Seasoned Issuer Waivers issued by the Division of Corporation Finance on April 24, 2014.

### **Who Was Responsible for and What Was the Duration of the Conduct At Issue?**

The findings in the Order have nothing to do with BGC's ability to file reliable reports with the Commission. None of the findings underlying the Order pertains to activities undertaken by BGC, its executives, or other affiliates or subsidiaries in connection with BGC's

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

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role as an issuer of securities. Nor does the violative conduct pertain to BGC's filings with the Commission. Instead, the Order relates to the inadequacy of GFI's policies and procedures regarding the confidentiality of customer identities during a period ending over three years ago (January 2014 to June 2016). The Order does not find that any scienter or criminal conduct occurred.

No employees of GFI or BGC are named as respondents or charged with violating the securities laws in connection with the Order. The misrepresentations described in the Order were made by low-level employees on a single broker-dealer desk, not BGC officers or directors. No senior BGC officers were aware of or disregarded any warning signs or condoned any misconduct. As a result, the findings in the Order do not call into question the reliability of any of BGC's current or future disclosures as an issuer of securities.

### Remedial Steps Taken

BGC and GFI have fully cooperated with the Commission's inquiry into this matter. GFI responded to all document requests by the Staff and made GFI's employees available for investigative testimony.

GFI has also voluntarily taken substantial remedial steps to improve training and enforcement of its anonymity policy. The Order finds that GFI now distributes its anonymity policy to its registered representatives on an annual basis, and requires its registered representatives to certify that they received and reviewed the policy, to ensure that they are aware of the policy. GFI also continues to address the policy during annual compliance trainings. In addition, for approximately the last year-and-a-half, GFI's compliance staff has reviewed a weekly sampling of the recorded calls between equity derivatives desk registered representatives and their customers to confirm that its registered representatives are not disclosing customer identities.

### First Waiver Request

BGC has never before been found to be an ineligible issuer or received, or even had reason to request, a WKSI-related waiver. Accordingly, this is BGC's first request for a WKSI-related waiver.

### Impact if the Waiver is Denied

BGC's WKSI status is important to BGC, which is a leading global brokerage and financial technology company servicing global financial markets. It specializes in the brokerage of a broad range of products, including fixed income (rates and credit), FX, equities, energy and commodities, insurance, and futures and provides services including trade execution, broker-dealer services, clearing, trade compression, post-trade, information, and other back-office services to a broad range of financial and non-financial institutions. Loss of WKSI status could substantially prejudice BGC's ability to raise capital to invest in and expand these market services. Should BGC become an ineligible issuer, it would lose the ability to (i) offer additional securities of classes covered by a registration statement without filing a new registration

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statement, (ii) register additional classes of securities not covered by the registration statement by filing an immediately effective post-effective amendment, (iii) omit certain information from the prospectus, (iv) take advantage of pay-as-you go fees, (v) qualify a new indenture under the Trust Indenture Act of 1939, if needed, without filing or having the Commission declare effective a new registration statement, or (vi) use a free writing prospectus other than one that contains only a description of the terms of the offered securities or the offering itself.

BGC regularly relies on its WKSI status to offer securities under its automatic shelf registration statement. For BGC, the automatic shelf registration process provides a critical means of access to the capital markets in a timely and efficient manner, which is essential for funding the company's business and for maintaining adequate capital and liquidity. BGC, like other institutions, faces changing regulatory and market conditions with uncertainties. Without the ability to utilize an automatic shelf registration statement, BGC may be unable to react quickly to such changing requirements and conditions, which could lead to investor harm.

Most recently, on March 8, 2018, BGC filed an automatic shelf registration statement in connection with an offering of up to \$300 million shares of Class A common stock to raise money for general corporate purposes, including but not limited to business expansion, repayment of outstanding debt, monetary support for existing business and operations, repurchase of stock or purchase and redemption of partnership or other equity interests in its subsidiaries.

On August 7, 2017, BGC filed an automatic shelf registration statement with respect to a market making prospectus for the purpose of enabling Cantor Fitzgerald & Co to act as a market maker with respect to BGC Partners, Inc.'s 5.125% Senior Notes due 2021.

In addition, in the past five years, BGC has used its WKSI status to file automatic shelf registration statements:

- to allow its affiliate, Cantor Fitzgerald & Co., to make and offer sales of BGC bonds in ongoing market-making transactions;
- to register BGC shares pursuant to its Controlled Equity Offerings;
- to register BGC shares that were acquired in a private placement pursuant to the acquisition of GFI for resale by stockholders of Jersey Partners, Inc.; and
- to register shares for BGC's dividend reinvestment and stock purchase plan.

Denial of a waiver would result in a disproportionate hardship to BGC, since the violations described in the Order did not concern the company's financial disclosure, were not based on criminal conduct or scienter, occurred at a subsidiary, and have been fully remediated. Furthermore, if BGC were unable to avail itself of the automatic shelf registration and the other benefits available to a WKSI, it would put BGC at a disadvantage compared to other issuers. Applying ineligible issuer status to BGC would not be necessary to achieve the purpose of the Order and would be unduly severe.

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### Conclusion

Subjecting BGC to ineligible issuer status is not necessary or appropriate, is not in the public interest, and would disserve the Commission's mission to protect investors and promote capital formation. Accordingly, we respectfully request the Commission to determine that BGC should not be considered an ineligible issuer under Rule 405 as a result of the Order entered in this matter.

Very truly yours,



David L. Kornblau

cc (by e-mail):

Erin Wilson, Division of Corporate Finance  
Ann-Marie Preissler, Division of Enforcement, New York Regional Office