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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. 20549-7553

Re: In the Matter of BancWest Investment Services, Inc.

Dear Mr. Henseler:

We submit this letter on behalf of our client BancWest Investment Services, Inc. ("BWIS" or "Respondent") which is registered with the SEC as both a broker-dealer and an investment adviser, in connection with the settlement of the above-referenced administrative proceeding by the U.S. Securities and Exchange Commission ("SEC" or "Commission").

As a result of the above referenced administrative proceeding, BWIS will become disqualified for a period of time with regard to offerings pursuant to Rule 506 of Regulation D under the Securities Act of 1933, as amended (the "Securities Act") ("Rule 506" or "Regulation D"), if the Commission does not waive this disqualification when it issues its final order (the "Order"). Specifically, absent a waiver BWIS will be disqualified until such time that it satisfies an undertaking that it will be ordered to satisfy within 40 days of entry of the Order (the "Disqualification Period").

The Commission has the authority to waive the Rule 506 disqualification upon a showing of good cause that it is not necessary under the circumstances that an exemption be denied. BWIS respectfully requests, for the reasons described below, that the Commission (or the Director of the Division of Corporation Finance ("Division"), pursuant to the delegation of authority of the Commission) waive any disqualifications from relying on the exemptions under Rule 506 that will be applicable as a result of the entry of the Commission's Order against the Respondent. This is BWIS's first request for a waiver of the Regulation D exemption disqualification.

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1. Background

BWIS has engaged in settlement discussions with the staff of the Division of Enforcement (the "Division of Enforcement") and, as a result of these discussions, has submitted an offer of settlement pursuant to which BWIS has consented to the entry of the Order. Under the terms of the offer of settlement, BWIS neither admits nor denies any of the findings that will be in the Order, except as to jurisdiction and subject matter.

In the Order, the SEC states:

[The] proceedings arise out of breaches of fiduciary duty by BWIS, a dually-registered investment adviser and broker-dealer, in connection with its receipt of fees pursuant to Rule 12b-1 under the Investment Company Act of 1940 ("12b-1 fees"), as well as receipt of revenue sharing payments from BWIS' clearing broker. At times during the period March 2014 through December 2016 [(the "Relevant Period")], BWIS recommended a third-party model provider that used portfolios that, pursuant to BWIS' clearing agreement with its clearing broker, purchased, recommended, or held for BWIS advisory clients mutual fund share classes that charged 12b-1 and other fees instead of lower-cost share classes of the same funds that were available to clients. BWIS received 12b-1 and other fees in connection with these investments, but did not adequately disclose this conflict of interest in its Forms ADV or otherwise.

Furthermore, the Order states that BWIS "failed to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the [Investment Advisers Act of 1940, the "Advisers Act"] and the rules thereunder in connection with disclosure of conflicts of interest presented by its receipt of 12b-1 and other fees, and in connection with making recommendations of third-party model providers and model portfolios that chose mutual fund share classes for clients."

The Order will find that BWIS 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 Section 15(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Sections 203(e) and 203(k) of the Advisers Act, BWIS 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; (3) ordered to pay disgorgement of \$286,450, prejudgment interest of \$44,982 and a civil monetary penalty of \$75,000; and (4) ordered to comply with undertakings in the Order.

2. Discussion

Rule 506(d)(1) of Regulation D disqualifies an issuer and certain covered persons from relying on the exemptions from the Securities Act registration provided by Rule 506 of Regulation D when the issuer and/or such covered persons are, among other things, the subject of an SEC order entered pursuant to Section 15(b) of the Exchange Act or Section 203(e) of the Advisers Act that places limitations on the activities, functions or operations of such person.¹ The Order will be issued pursuant to Section 15(b) of the Exchange Act and Sections 203(e) and 203(k) of the Advisers Act. The Order contains undertakings including the requirement that BWIS notify affected investors of the settlement terms of the Order in a clear and conspicuous fashion and certify compliance with

¹ See Rule 506(d)(1)(iv)(B).

that requirement to the SEC. As referenced above, absent a waiver, due to the undertakings, the Order will result in a disqualification of BWIS under Rule 506 for the Disqualification Period.

BWIS has acted in the past as and is currently acting as a placement agent for issuers relying on Rule 506. As such, BWIS will be a covered person and without the requested waiver will not be able to continue to act as a placement agent for such issuers during the Disqualification Period. As previously noted, the Commission may waive the Regulation D disqualification upon a showing of good cause that it is not necessary under the circumstances that the exemptions be denied.

In its statement regarding Waivers of Disqualification under Regulation A and Rules 505 and 506 of Regulation D (the "Statement"),² the Division, in its evaluation of whether a party seeking a waiver of the Regulation D disqualification has shown good cause, considers the following factors:

- a) The nature of the violation or conviction and whether it involved the offer and sale of securities;
- b) Whether the conduct involved a criminal conviction or scienter-based violation, as opposed to a civil or administrative non-scienter-based violation;
- c) Who was responsible for, and what was the duration of, the misconduct;
- d) What remedial steps have been taken; and
- e) What the impact will be if the waiver request is denied.

The Statement also addresses the issuer's burden to show good cause. Notably, the Division states that where 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.

BWIS believes that it satisfies the requirements for establishing good cause under the factors discussed in the Statement. For these and the other reasons described in detail below, BWIS respectfully requests that the Commission (or the Director of the Division, pursuant to the delegation of authority of the Commission) waive any disqualification under Regulation D that could result when the Commission enters the Order.

a) The Violations Involved the Offer or Sale of Securities

The conduct described in the Order broadly involves the offer or sale of securities. As described in the Order, although BWIS did not itself offer or sell the securities at issue in the Order, it recommended the third party model provider that utilized mutual fund share classes that, pursuant to the clearing agreement between BWIS and BWIS's clearing broker, paid 12b-1 and service fees to BWIS when a lower-cost share class was available.

² <http://www.sec.gov/divisions/corpfin/guidance/disqualification-waivers.shtml> (Mar. 13, 2015).

b) The Conduct Described in the Order Does Not Involve Scierter-Based Fraud and Will Not Result in a Criminal Conviction

The Order will not state that BWIS engaged in any conduct resulting in a scierter-based violation of the federal securities laws. Rather, the stated violations of Section 206(2) and Section 206(4) of the Advisers Act are violations of non-scierter-based antifraud provisions.

There have been no criminal investigations or charges relating to the conduct described in the Order. Furthermore, the violations to be described in the Order will not give rise to or constitute a criminal conviction.

c) The Responsibility for the Violations Described in the Order

With respect to responsibility for the misconduct, the Division has stated that it would consider, among other factors, (i) if an individual committed the misconduct and such individual continues to exert influence on the operations of the entity seeking the waiver; (ii) whether the misconduct reflects more broadly on the entity as a whole; and (iii) if the tone at the top of the party seeking the waiver condoned, encouraged or did not address the misconduct, or actions or omissions by the party seeking the waiver.³

BWIS as an entity was responsible for the conduct in the Order as described above in the "Background" section. No executive officer, director, or control person was named or charged in the Order. Additionally, the conduct at issue in the Order is limited to BWIS's recommendation of one third party model provider, through its investment advisory platform, that third party model provider's mutual fund share class selection practices, and related inadequacies in BWIS disclosures and policies and related failures to disclose conflicts of interest. Furthermore, the conduct at issue is limited to only one of the five third party model providers that BWIS recommended through its investment advisory platform.

Additionally, once BWIS became aware of the third party model provider's share class selection practices, BWIS management promptly undertook remedial actions. The Order specifically provides that "[i]n determining to accept BWIS's [Offer of Settlement], the Commission considered other remedial acts promptly undertaken by [BWIS]." Such remedial measures, as described below, are fulsome and were undertaken by BWIS on its own initiative.

d) The Duration of the Violations Described in the Order

The Order states that BWIS's violations relating to mutual fund share class selection issues occurred during the Relevant Period--a two-year period, from March 2014 through December 2016.

e) Remedial Steps Taken and to Be Taken

BWIS has undertaken significant efforts, and continues to take steps, designed to ensure that the conduct described in the Order, and resulting violations, will not recur. BWIS notes the Order states that while BWIS did not self-report, even though it was eligible to do so pursuant to the SEC's Share Class Section Disclosure Initiative, BWIS undertook prompt remedial acts.

³ <http://www.sec.gov/divisions/corpfin/guidance/disqualification-waivers.shtml> (Mar. 13, 2015).

Since the Relevant Period, BWIS confirmed with the third party model provider at issue that it is to select and purchase the lowest-cost share class available to BWIS's clients. If the third party model provider is unable to select and purchase the lowest-cost share class available, the third party model provider shall promptly notify BWIS, so that BWIS can either work directly with the mutual fund company to seek access to the lowest-cost share class available or rebate to the investors the mutual fund 12b-1 and services fees that would cause BWIS to have a financial conflict of interest in recommending the third party model provider.⁴

BWIS has pursuant to its written policies and procedures revised its disclosure in its Form ADV Brochure to make clear that it rebates all mutual fund 12b-1 and service fees to clients. In addition, BWIS has implemented written policies and procedures to help ensure that the mutual fund 12b-1 and servicing fees it receives are rebated back to the appropriate BWIS account. Specifically, BWIS has established written policies and procedures for the investment advisory account set-up process that detail how each new investment advisory account shall be coded to have any associated mutual fund 12b-1 and service fees received by BWIS automatically credited back to the appropriate account. BWIS has also implemented a quarterly mutual fund 12b-1 and service fee rebate supervisory review process. Further, on a quarterly basis BWIS's Financial Reporting group reviews revenue reporting reports for mutual fund 12b-1 and service fees received by BWIS and confirms that any fees received in investment advisory accounts were rebated back to the appropriate investment advisory accounts.

Because BWIS no longer retains any mutual fund 12b-1 or service fees, has revised its disclosures as well as its policies and procedures, and has taken significant steps to evaluate whether clients are invested in the lowest-cost share class available, it believes it has addressed the issues that gave rise to the Order to ensure they do not recur. Additionally, as described in the Order, within 30 days of entry into the Order, BWIS will notify affected investors of the settlement terms, and within 40 days of entry into the Order, BWIS will provide the SEC Staff with confirmation that it has provided such notice.

f) Impact If the Waiver Is Denied

As a result of the Order, BWIS has 40 days to discharge certain undertakings. During BWIS's Disqualification Period it would be disqualified from acting as a placement agent for securities offerings relying on Regulation D, absent a waiver from disqualification. Disqualification of BWIS under Regulation D during the Disqualification Period would have an immediate adverse effect on BWIS and its clients, most significantly because BWIS is currently acting as one of at least three placement agents for an offering of limited partnership interests for a private equity fund that is being offered in reliance on Regulation D (the "August 2020 fund"). BWIS' marketing of the fund began in August 2020 and will continue for several months until the portion of the offering allocated to BWIS is completely subscribed (the "August 2020 fund offering").

⁴ In late 2016, after learning of the third party model provider's share class selection practices, BWIS instructed the third-party model provider to stop limiting its share class selection to funds on a list provided by BWIS's clearing broker and to use lower-cost share classes when available. Additionally, in the second quarter of 2017, BWIS commenced working with fund sponsors to gain access to lower cost share classes that did not assess 12b-1 fees and proactively converted client positions into those lower-cost shares. Finally, in February 2019, BWIS started rebating 12b-1 and revenue sharing fees in all account types to clients who paid those fees.

The August 2020 fund offering is the second offering of limited partnership interests in a private fund that BWIS has participated in. In September 2019, BWIS participated as placement agent for a Regulation D offering for the first time, acting as a placement agent for the same private fund and raising total commitments of approximately \$11 million (the "September 2019 fund offering"). For the August 2020 fund offering, BWIS expects to raise total commitments equal to or exceeding that of the September 2019 fund offering.⁵

Not being able to act as placement agent for the August 2020 fund offering and future private fund offerings during the Disqualification Period will impact BWIS's business and reputation.

The August 2020 fund offering is currently being offered in reliance on Regulation D, and cannot be made exclusively in reliance on Section 4(a)(2) of the Securities Act ("Section 4(a)(2)"). First, BWIS and the other at least two placement agents for this offering have agreed to participate in general solicitations, which are not permitted if an issuer is relying on Section 4(a)(2). BWIS is currently soliciting investors both in and beyond its current client base, based on the targeted investor population for this fund and therefore already is engaging in such general solicitations. Because the offering already is being actively marketed, BWIS would have to cease all activities in connection with the August 2020 fund offering if it were disqualified during the Disqualification Period, in order to avoid causing the August 2020 fund to lose its ability to rely on the Regulation D exemption. This would result in significant adverse impact on (1) the August 2020 fund and the August 2020 fund offering in progress, (2) BWIS's relationship with those investors it has solicited but could not sell to, and (3) BWIS's ability to obtain placement agent engagements with private issuers in the future.

Not being able to act as placement agent for the August 2020 fund offering and future private fund offerings during the Disqualification Period will also impact BWIS's current and prospective clients who would otherwise be eligible to participate in and benefit from investment in these offerings. BWIS desires to make available to its clients a full suite of offerings that include access to private equity and other alternative investments that enable clients invested in publicly-traded securities to diversify their holdings. If BWIS is unable to offer its clients the opportunity to participate in the August 2020 fund offering and future private fund offerings during the Disqualification Period, it is possible that future private funds will choose not to engage BWIS for placement agent services. This would have the effect of requiring BWIS's eligible clients wishing to invest in private fund offerings to identify other broker-dealers and open accounts with those broker-dealers solely for the purpose of achieving the portfolio diversification that BWIS would otherwise be able to offer through the August 2020 fund offering and other private fund offerings.

BWIS is a relatively small broker-dealer. It would lose this revenue stream and potentially the ability to compete for and/or retain large net worth clients who would like access to these types of offerings if it is unable to act as placement agent for Regulation D offerings during the Disqualification Period and is unable to grow its private placement business.

g) Disclosure in the Event a Waiver Is Granted

In the event that the Commission (or the Division, pursuant to delegated authority) grants the requested waiver, for a period of five years from the date of entry of the Order, BWIS will furnish

⁵ Two additional hedge fund offerings that will rely on Regulation D exemptions have been approved by BWIS' internal products committee although BWIS is not currently actively marketing these two funds.

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(or will cause to be furnished) to each purchaser purchasing through or from BWIS in a Regulation D offering that would otherwise be subject to the disqualification under Rule 506(d) as a result of the Order, a description in writing of the Order within a reasonable time prior to such sale.

3. Request for Waiver

For the foregoing reasons, BWIS respectfully submits that a disqualification is not necessary under the circumstances and that BWIS has shown that good cause exists for the relief requested.

We therefore respectfully request that the Commission (or the Director of the Division, pursuant to delegated authority) make a determination to waive, pursuant to Rule 506, the disqualification provisions under Rule 506 to the extent such disqualification provisions will be applicable as a result of the entry of the Order by the Commission.

If you have any questions regarding any of the foregoing, please do not hesitate to contact me at 202-739-5746 or Kira Schwartz at 202-739-5099.

Sincerely,



Amy Natterson Kroll