



DIVISION OF
CORPORATION FINANCE

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

April 7, 2011

Ms. Karen Patton Seymour
Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004

Re: In the Matter of Wells Fargo Securities, LLC (HO-10776)
**Wells Fargo & Company – Waiver Request of Ineligible Issuer Status under Rule
405 of the Securities Act**

Dear Ms. Seymour:

This is in response to your letter dated December 29, 2010, written on behalf of Wells Fargo & Company (Company) and its subsidiary Wells Fargo Securities, LLC (f/k/a Wachovia Capital Markets, LLC) (WFS) and constituting an application for relief from the Company being considered an “ineligible issuer” under Rule 405(1)(vi) of the Securities Act of 1933 (Securities Act). The Company requests relief from being considered an “ineligible issuer” under Rule 405, due to the entry on April 5, 2011, of a Commission Order (Order) pursuant to Section 8A of the Securities Act and Section 15(b) of the Securities Exchange Act of 1934, naming WFS as a respondent. The Order requires that among other things, WFS cease and desist from committing or causing any violations, and any future violations of Sections 17(a)(2) and (3) of the Securities Act.

Based on the facts and representations in your letter, and assuming the Company and WFS comply with the Order, the Commission, pursuant to delegated authority has determined that the Company has made a showing of good cause under Rule 405(2) and that the Company will not be considered an ineligible issuer by reason of the entry of the Order. Accordingly, the relief described above from the Company being an ineligible issuer under Rule 405 of the Securities Act is hereby granted, and the effectiveness of such relief is as of the date of the entry of the Order. Any different facts from those represented or non-compliance with the Order might require us to reach a different conclusion.

Sincerely,

Mary Kosterlitz
Chief, Office of Enforcement Liaison
Division of Corporation Finance

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December 29, 2010

By Hand

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

Re: In the Matter of Wells Fargo Securities, LLC (f/k/a Wachovia
Capital Markets, LLC) (File No. 3-[])

Dear Ms. Kosterlitz:

We are writing on behalf of our clients, Wells Fargo Securities, LLC (f/k/a Wachovia Capital Markets, LLC) ("Wells Fargo Securities") and Wells Fargo & Company ("Wells Fargo"). Wells Fargo Securities is an indirect, wholly owned subsidiary of Wells Fargo and the settling party in the above-captioned administrative proceeding (the "Proceeding") brought by the U.S. Securities and Exchange Commission (the "Commission"). The Proceeding relates to alleged violations of the federal securities laws by Wells Fargo Securities in connection with the offer and sale of collateralized debt obligations ("CDOs") backed by residential mortgage securities.

Wells Fargo is a financial services company and financial holding company, as defined in 12 C.F.R. § 225.81, that is publicly traded on the New York Stock Exchange. Wells Fargo qualifies as a well-known seasoned issuer. Wells Fargo hereby requests, pursuant to Rule 405 under the Securities Act of 1933 (the "Securities Act"), that the Division of Corporation Finance, on behalf of the Commission, determine that Wells Fargo shall not be considered an "ineligible issuer" as defined in Rule 405 as a result of the cease-and-desist order to be entered in the Proceeding, as described below. Wells Fargo requests that this determination be made effective upon entry of that order. It is our understanding that the Division of Enforcement supports our request for such a determination.

BACKGROUND

The conduct of Wells Fargo Securities alleged in the Order (defined below) involved the offer and sale of CDOs to qualified institutional buyers in reliance on the exemption from registration under the Securities Act provided by Rule 144A thereunder, to accredited investors within the meaning of Rule 501(a) under the Securities Act and to non-U.S. persons in reliance on the safe harbor from registration provided by Regulation S under the Securities Act. Specifically, the alleged conduct relates to a) the markup on the sale of the preferred shares of the Grand Avenue II CDO to customers of Wells Fargo Advisors, LLC; and b) the disclosure of the purchase of assets by the Longshore 3 CDO.

In connection with the Proceeding, Wells Fargo Securities and the Division of Enforcement have reached an agreement in principle to settle the Proceeding as described below, and Wells Fargo Securities has submitted to the Commission an offer of settlement in which, for the purpose of this Proceeding, it consents to the imposition of a cease-and-desist order (the "Order") without admitting or denying the matters set forth in the Order (except as to the jurisdiction of the Commission).

In the Order, the Commission will order Wells Fargo Securities to cease and desist from violating Section 17(a) of the Securities Act. The Order will also order Wells Fargo Securities to disgorge \$6,750,000 and to pay a civil penalty in the amount of \$4,450,000.

DISCUSSION

Under a number of Securities Act rules that became effective on December 1, 2005, a company that qualifies as a "well-known seasoned issuer" as defined in Rule 405 is eligible, among other things, to register securities for offer and sale under an "automatic shelf registration statement," as so defined, and to have the benefits of a streamlined registration process under the Securities Act. Companies that qualify as well-known seasoned issuers are entitled to conduct registered offerings more easily and with substantially fewer restrictions, which facilitates the raising of capital by these issuers. Pursuant to Rule 405, however, a company cannot qualify as a well-known seasoned issuer if it is an "ineligible issuer." Similarly, the Securities Act rules permit an issuer and other offering participants to communicate more freely during registered offerings by using free-writing prospectuses, but only if the issuer is not an "ineligible issuer."¹

¹ Being an ineligible issuer will disqualify an issuer under the definition of "well-known seasoned issuer," thereby preventing the issuer from using an automatic shelf registration statement (*see* Rule 405) and limiting its ability to communicate with the market prior to filing a registration statement (*see* Rule 163). In addition, being an ineligible issuer will disqualify an issuer, whether or not it is a well-known seasoned issuer, under Rules 164 and 433, thereby preventing the issuer and other offering participants from using free-writing prospectuses during registered offerings of its securities.

Rule 405 of the Securities Act makes an issuer an "ineligible issuer" if, during the past three years, the issuer or any entity that at the time was a subsidiary of the issuer "was made the subject of any judicial or administrative decree or order arising out of a governmental action" that, among other things, "(A) prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws" or "(B) requires that the person cease and desist from violating the anti-fraud provisions of the federal securities laws."² Rule 405 also authorizes the Commission to determine, "upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer."³ The Commission has delegated authority to the Division of Corporation Finance to grant waivers from any of the ineligibility provisions of this definition.⁴

The Order may be deemed to be an order arising out of government action of the kind that would result in Wells Fargo becoming an ineligible issuer for a period of three years after the Order is entered. This result would preclude Wells Fargo from qualifying as a well-known seasoned issuer and having the benefit of automatic shelf registration and other provisions of the new rules for three years. This would be a significant detriment for Wells Fargo. Being considered an ineligible issuer will preclude Wells Fargo from taking advantage of many of the benefits set forth in Rules 405 and 163 and will leave the company at a significant disadvantage to its peer firms and hinder necessary and periodic access to the capital markets through significantly increased time, labor and cost of such access. Consequently, automatic shelf registration and the other benefits available to a well-known seasoned issuer are significant for Wells Fargo.

As described above, Rule 405 authorizes the Commission to determine that a company shall not be an ineligible issuer, notwithstanding that the company becomes subject to an otherwise disqualifying order arising out of government action. Wells Fargo believes that there is good cause, in this case, for the Commission to make such a determination with respect to the Order on the following grounds:

The disqualification of Wells Fargo is not warranted given the nature of the alleged conduct described in the Order. The alleged conduct does not relate to Wells Fargo's disclosures in its own filings with the Commission, nor does it allege fraud in connection with Wells Fargo's offering of its own securities. The disqualification of Wells Fargo from the benefits of being a well-known seasoned issuer is unduly and disproportionately severe, given that the Commission staff has negotiated a settlement with Wells Fargo Securities and reached a satisfactory conclusion to this matter.

² See 17 C.F.R. § 230.405.

³ *Id.*

⁴ See 17 C.F.R. § 200.30-1. See also note 215 in Release No. 33-8591 (July 19, 2005).

* * * * *

In light of the foregoing, we believe that disqualification of Wells Fargo as an ineligible issuer is not necessary under the circumstances, either in the public interest or for the protection of investors, and that Wells Fargo has shown good cause for the requested relief to be granted. Accordingly, we respectfully request that the Division of Corporation Finance, on behalf of the Commission, pursuant to Rule 405, determine that it is not necessary under the circumstances that Wells Fargo be an "ineligible issuer" within the meaning of Rule 405 as a result of the Order.

If you have any questions regarding this request, please contact the undersigned at (212) 558-3196, Matthew Fitzwater at (212) 558-1632 or Christopher Viapiano at (202) 956-6985.

Sincerely,



Karen Patton Seymour

cc: Reid A. Muoio, Esq.
Jeffrey Leasure, Esq.
Brent Mitchell, Esq.
(U.S. Securities and Exchange Commission)

Barbara H. Wright, Esq.
(Wells Fargo Law Department)