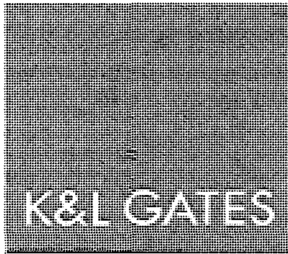


March 15, 2019

Stacy L. Fuller
stacy.fuller@klgates.com

T (202) 778-9475

BY EMAIL

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

Re: *Securities and Exchange Commission v. R.I. Commerce Corp. (f/k/a R.I. Econ. Dev. Corp.), et al.*, Case No. 1:16-cv-107-M-PAS (D.R.I.)

Dear Mr. Henseler,

This letter is submitted on behalf of our client, Wells Fargo Securities, LLC ("WFS"), in connection with the anticipated settlement of the above-captioned civil injunctive action ("Action") brought by the U.S. Securities and Exchange Commission ("Commission") in the U.S. District Court for the District of Rhode Island ("District Court"). Pursuant to the terms of the settlement, it is anticipated that a judgment will be entered by the District Court in the Action against WFS ("Final Judgment"). On behalf of WFS, we hereby respectfully request, pursuant to Rule 262(b)(2) of Regulation A and Rule 506(d)(2)(ii) of Regulation D, both under the Securities Act of 1933 ("Securities Act"), a waiver of any disqualification that will arise under Regulation A and Regulation D (collectively, the "Regulations") with respect to WFS and any of the issuers described below as a result of the entry of the Final Judgment.

I. Background

WFS is an indirect wholly-owned subsidiary of Wells Fargo & Company ("WFC"), a registered financial holding company and bank holding company. WFS is a broker-dealer registered under the Securities Exchange Act of 1934 ("Exchange Act") as well as a municipal securities broker and a municipal securities dealer subject to the rules of the Municipal Securities Rulemaking Board ("MSRB").

The Commission filed a complaint in the Action on March 7, 2016 ("Original Complaint") and an amended complaint on October 28, 2016 ("Amended Complaint," and

together with the Original Complaint, the "Complaint").[1] Since the filing of the Complaint, the staff of the Division of Enforcement has engaged in settlement discussions with WFS. As a result of such discussions, WFS anticipates submitting an executed "Consent of Defendant Wells Fargo Securities, LLC" ("Consent"). Pursuant to the Consent, solely for the purpose of proceedings brought by or on behalf of the Commission or in which the Commission is a party, WFS would consent to the entry of the Final Judgment, without admitting or denying the allegations in the Complaint.

The Complaint alleges the following: WFS acted as lead placement agent in an offering of municipal bonds ("Offering") by the Rhode Island Economic Development Corporation ("RIEDC"). The proceeds of the Offering went to 38 Studios, LLC ("38 Studios"), an early-stage, pre-revenue videogame development company. As lead placement agent in the Offering, WFS knew or should have known and disclosed in the private placement memorandum for the Offering (the "Offering Document") (i) 38 Studios' need for financing in addition to that provided by the Offering and (ii) the total compensation received by WFS in connection with the Offering and any related conflict of interest.[2] WFS failed to include disclosure regarding these matters in the Offering Document ("Conduct"). As a result, the Offering Document was materially misleading, and WFS violated Sections 17(a)(2) and 17(a)(3) of the Securities Act, Section 15B(c)(1) of the Exchange Act, and MSRB Rules G-17 and G-32.[3]

The District Court is expected to enter the Final Judgment in the Action permanently enjoining WFS from violating Section 17(a)(2) of the Securities Act, Section 15B(c)(1) of the Exchange Act and MSRB Rule G-17. The Final Judgment is also expected to require WFS to pay a civil monetary penalty in the amount of $812,500.

II. Discussion

WFS understands that, absent a waiver, the entry of the Final Judgment will disqualify it and certain other issuers from relying on the exemptions provided by the Regulations. Specifically, WFS understands that, should it be deemed to be an issuer, predecessor of an issuer, affiliated issuer, general partner or managing member of an issuer, beneficial owner of 20% or more of an issuer's outstanding voting securities, promoter of an issuer, a person that has been or will be paid remuneration for soliciting purchasers for an issuer, or if it acts in any other capacity

[1] The Complaint alleges that WFS knowingly (in addition to recklessly or negligently) violated the statutory and MSRB provisions referenced in the Complaint. The Complaint does not allege any scienter-based violations of the federal securities laws. The claims alleged in the Complaint (*i.e.,* violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act, Section 15B(c)(1) of the Exchange Act, and MSRB Rules G-17 and G-32) may be established by a showing of negligence.

[2] According to the Complaint, the Offering Document failed to disclose approximately $400,000 of fees received by WFS as a result of meeting milestones with respect to the Offering.

[3] The Complaint also alleges that an officer and employee of WFS who worked on the Offering ("Individual Defendant") and certain representatives of the RIEDC who worked on the Offering aided and abetted the violations by WFS.

described in Rule 262(a)(2) of Regulation A or Rule 506(d)(1)(ii) of Regulation D (each such capacity, a "Covered Person" with respect to an offering), then the offering would be prohibited from relying on the offering exemptions provided by, respectively, Regulation A and Regulation D.

The Commission has the authority to waive these disqualifications upon a showing of good cause that such disqualifications are not necessary under the circumstances.[4] The Commission has delegated this authority to the Division of Corporation Finance ("Division"),[5] but retains the authority to consider waiver requests and review actions taken pursuant to this delegated authority.

Pursuant to the framework outlined in the Division's "Waivers of Disqualification under Regulation A and Rules 505 and 506 of Regulation D" ("Policy Statement"), the following will be considered when evaluating requests for waivers:[6]

- The nature of the violation or conviction and whether it involved the offer and sale of securities;
- Whether the misconduct involved a criminal conviction or scienter-based violation, as opposed to a civil or administrative non-scienter-based violation;
- The party responsible for, and the duration of, the misconduct;
- What remedial steps were taken; and
- The impact on the requestor if the waiver request is denied.

As described further below, WFS respectfully requests that the Commission or the Division waive any disqualifying effects that the Final Judgment will have under the Regulations. For the reasons described below, WFS believes that there is good cause for granting the requested waiver, considering the factors set forth in the Policy Statement.

III. Reasons for Granting the Waiver

A. Although the Conduct Involved the Offer and Sale of Securities, It Was an Isolated Incident of Limited Duration

The Conduct alleged in the Complaint did relate to the offer or sale of securities, but only to a single, private offering of municipal securities.[7] The Conduct occurred over a short (five-

[4] *See* 17 C.F.R. §§ 230.262(b)(2); 230.506(d)(2)(ii).

[5] *See* 17 C.F.R. §§ 200.30-l(b); 200.30-l(c).

[6] *See* U.S. Securities and Exchange Commission, Division of Corporation Finance, Waivers of Disqualification under Regulation A and Rules 505 and 506 of Regulation D (updated Mar. 13, 2015).

month) period more than eight years ago. Since that time, WFS has served as underwriter or placement agent for, on average, approximately 14 securities offerings per year for governmental and not-for-profit clients without any allegations by the Commission or any other regulatory agency of material misstatements or omissions in offering documents. In short, the Conduct represented an isolated incident at WFS.

B. The Conduct is Not Criminal in Nature and Does Not Involve Scienter-Based Fraud

In the Policy Statement, the Division states that it will consider:

> whether the conduct involved a criminal conviction or scienter-based violation, as opposed to a civil or administrative non-scienter based violation. 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.[8]

Here, the Final Judgment does not result in a criminal conviction or enjoin WFS from violations of any scienter based anti-fraud provisions of the federal securities laws.

C. Unless the Individual Defendant is Exonerated, He Is Not and Will Not Be Involved In Any WFS Offerings that Rely on Regulation D or Regulation A

According to the Complaint, aside from the Individual Defendant, no directors, officers, senior management, or other employees of WFS participated in the Conduct or are named as defendants in the Action. Further, the Complaint does not allege that any other directors, officers, senior personnel, or employees of WFS directed or sanctioned the Conduct, or were even aware of (let alone ignored) any warning signs or "red flags" regarding potential misconduct at WFS in connection with the Offering. There is no evidence, and the Complaint does not allege, that the Conduct reflected a "tone at the top" of WFS that implicitly condoned or promoted such misconduct. In sum, out of the approximately 2,650 persons registered with WFS in 2010, the Individual Defendant is the sole employee alleged to have been involved in the Conduct. Unless and until a final judgment is entered as to the Individual Defendant in the Action, exonerating him from the allegations set forth in the Complaint, the Individual Defendant will not be involved or otherwise participate in any Regulation D or Regulation A offering conducted by WFS.[9]

---

[7] Although most offerings of municipal securities in which WFS acts as placement agent are conducted in reliance on Section 3(a)(2) or 3(a)(4) of the Securities Act, the Offering relied on Regulation D for an exemption from the registration requirements.

[8] *See* Policy Statement, *supra* note 6.

[9] If the Individual Defendant does not prevail in the ongoing litigation, the Regulations themselves would preclude him from serving as a Covered Person with respect to any offering in reliance thereon.

D. Remedial Steps Were, and Continue to Be, Undertaken

The Municipal Products Group at WFS ("MPG") has long recognized the importance of its regulatory obligations and, accordingly, has implemented a robust and comprehensive compliance program designed to ensure compliance with the rules and regulations relevant to WFS's activities as an underwriter and placement agent of municipal securities. For example in late 2010, after the Conduct occurred and the Offering was nearly completed, MPG Compliance implemented a number of enhancements to MPG's compliance policies and procedures,[10] including the creation and implementation of a "Negotiated Transaction Diligence Form."

The Negotiated Transaction Diligence Form was designed to and does provide MPG personnel with a clear list of steps to take to meet MPG's regulatory obligations as an underwriter and placement agent of municipal securities. The Negotiated Transaction Diligence Form requires, among other things, the person completing it to identify actual and potential material conflicts of interest between WFS, as a municipal securities underwriter, and its issuer-clients. In October 2010, the Negotiated Transaction Diligence Form was introduced to MPG's Public Finance Investment Banking Group ("MPG Banking Group"), which was involved with the Offering, for use with *new* transactions (*i.e.,* transactions commenced after that date). The Form was not completed for the Offering because, by October 2010, the Offering was nearly completed. It was not a new transaction. WFS believes that, if the Negotiated Transaction Diligence Form had been implemented prior to the Offering, certain Conduct would have been avoided because the total compensation paid to WFS in connection with the Offering would likely have been identified on the Form as a potential conflict of interest between WFS and the RIEDC and considered for disclosure in the Offering Document.

Further, WFS believes that other compliance enhancements made subsequent to the Offering directly reduce the likelihood of a recurrence of the Conduct. In this regard WFS notes that in mid-2012, well after the Offering was completed, the MPG created a specialized group, known as the "Regulatory Diligence Group" ("RDG").[11] The RDG supports the MPG Banking Group with respect to compliance and regulatory matters arising in connection with new, negotiated offerings of municipal securities. A member of the RDG is assigned to each transaction in which WFS acts as underwriter or placement agent, and serves as an integral part of the deal team for the transaction. Had the RDG existed at the time of the Offering, it would have been integrally involved with the Offering on behalf of the MPG and, as a team of

---

[10] As the SEC staff knows, compliance enhancements are continuously considered and made by registrants.

[11] Among other things, the RDG seeks to ensure compliance by MPG bankers with the following types of regulatory requirements: continuing disclosure agreement compliance reviews; municipal advisor exemption documentation; conflict of interest disclosure requirements and similar offering document disclosure requirements; MSRB Rule G-37 underwriting eligibility; posting requirements for the Electronic Municipal Market Access portal under MSRB Rule G-34; certain issuer and underwriting syndicate disclosure requirements under MSRB Rule G-11; blue sky law determinations; document retention under MSRB Rules G-8 and G-9; quarterly reporting requirements under MSRB Rule G-37; and, beginning in late 2012 per MSRB Notice 2012-25 (as described further herein), certain issuer disclosure requirements under MSRB Rule G-17.

regulatory specialists, it would have materially mitigated the potential for certain Conduct described in the Complaint.

Further, were the Offering to occur today, the Conduct would likely be avoided because MSRB regulatory changes that require municipal securities underwriters to identify conflicts of interest and disclose them to issuer-clients have led to additional enhancements to the MPG offering process. More specifically, the MSRB issued MSRB Notice 2012-25 (the "MSRB Notice"). The MSRB Notice provided the municipal securities industry with new interpretive guidance regarding MSRB Rule G-17. Specifically, the MSRB Notice interpreted Rule G-17, as relevant here, to require that underwriters make written disclosure to their issuer-clients at the time of their engagement regarding (i) the underwriter's role in the offering, (ii) the underwriter's compensation in the offering, including any conflict of interest that may exist due to the contingent nature of such compensation or size of the offering, and (iii) other material conflicts of interest faced by the underwriter in connection with the offering, such as due to the existence of payments to and/or from third parties and/or affiliates.[12] As a result of the MSRB Notice, underwriters, including WFS, began to send issuer-clients "G-17 Letters" to satisfy the new disclosure requirements. The RDG is responsible for compliance by the MPG with the G-17 Letter requirement. To this end, the RDG collaborates with the MPG Banking Group to identify actual and potential material conflicts of interest that may require disclosure in G-17 Letters. Thus, if the Offering were to occur today, the RDG would work directly with the MPG Banking Group to identify conflicts of interest for disclosure to the RIEDC in the G-17 Letter, and as discussed below, it would be customary for the G-17 Letter to be reviewed by those responsible for drafting the Offering Document. Furthermore, the RDG would review the Offering Document to confirm that any material conflicts of interest identified in the G-17 Letter were included in the Offering Document. In this respect, the development of the G-17 Letter would directly and materially mitigate the potential for the Offering Document to omit disclosure about material conflicts of interest.

WFS believes that the RDG's preparation of G-17 Letters should be effective at avoiding the Conduct going forward due to the thorough due diligence process followed by the RDG to prepare G-17 Letters and the enhanced due diligence training received by MPG bankers, which enables them to better understand and contribute to such process. In this regard WFS notes that the G-17 Letter preparation process begins with MPG bankers identifying actual and potential material conflicts of interest for disclosure in response to a G-17 Conflict of Interest Questionnaire ("G-17 COIQ") required by the RDG.[13] The G-17 COIQ requires MPG bankers to answer a series of questions about the transaction. In completing the G-17 COIQ, one of the tools used by MPG bankers is an internal database (called the MPG Conflict of Interest

---

[12] *See* MSRB Notice 2012-25 (May 7, 2012), *available at* http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2012/2012-25.aspx.

[13] The G-17 COIQ was developed by MPG Compliance for the purpose of identifying actual or potential material conflicts of interest required to be disclosed pursuant to the MSRB Notice.

Resource [14]) that allows them to identify potential conflicts of interest that may require disclosure. In the event that a conflict of interest is identified, the RDG, in conjunction with MPG Compliance and MPG Legal, determines the appropriate disclosures to include in the G-17 Letter.

WFS is confident that MPG bankers understand the importance of the due diligence process because, since the time of the Offering, WFS has begun to provide additional training to MPG bankers regarding such matters. More specifically, since the time of the Offering, MPG Compliance and MPG Legal have retained outside counsel to assist with the development and periodic updating of a transactional due diligence training module for negotiated municipal securities underwriting transactions. All investment banking and underwriting syndicate personnel within the MPG must complete the module annually. The module educates them on the due diligence process. In this respect, the module explains what due diligence is, how the due diligence process works, why it is important and what to consider when conducting due diligence for a transaction. The module emphasizes, among other things, the importance of reviewing the offering document for a transaction in light of the facts and circumstances known. In the case of the Offering, WFS believes that MPG bankers, as a result of the training module and heightened sensitivity to the types of disclosures at issue in the Complaint, would be significantly more likely to identify material conflicts of interest and other facts potentially requiring disclosure in the Offering Document.

Further, as noted above, members of the working group for a transaction (*e.g.*, issuer, bond counsel, underwriter, underwriter's counsel) review the G-17 Letter to determine whether the conflicts of interest disclosed therein may be material to investors in the offering and should be disclosed in the offering document. Given all of the above-described remedial measures and process enhancements effected by WFS, including implementation of the Negotiated Transaction Diligence Form, creation of the RDG, review of the G-17 Letter by various members of the transaction working group (including issuer's counsel and underwriter's counsel), and annually-required due diligence training, WFS believes that, if the Offering occurred today, it is likely that the compensation-related disclosure deficiencies alleged in the Complaint would be identified and disclosed in the G-17 Letter. Also, any conflict of interest presented by the RIEDC's broader relationship with WFS would be identified and disclosed in the G-17 Letter. As a result, the working group would assess these conflicts of interest for appropriate disclosure in the Offering Document. Furthermore, in light of the annually-required due diligence training and heightened sensitivity to the types of disclosures at issue in the Complaint, WFS believes that all the information that may be material to investors would be disclosed in the Offering Document. Under such circumstances, WFS believes that the Conduct described in the Complaint (*i.e.*, material omissions from the Offering Document) would be avoided.

[14] The MPG Conflict of Interest Resource is compiled from quarterly attestations, which are submitted by personnel in the Government & Institutional Banking Group, of which the MPG was formerly a part. The quarterly attestations, among other things, report and make broadly available throughout the platform information regarding potential conflicts of interest between MPG and issuer-clients.

In sum, taken together, WFS believes that the remedial measures described above directly mitigate the potential for the Conduct described in the Complaint to recur.

E. Prior Relief to Affiliates and Their Predecessors-in-Interest

Certain of WFS's affiliates have previously been granted waivers from the disqualification provisions of Regulation D and/or Regulation A in the following instances:

- *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 by WFC and Wells Fargo Bank, N.A.'s Municipal Products Group with the Commission in connection with the due diligence conducted on certain municipal securities offerings.

- *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 WFS affiliate is the successor-in-interest were previously granted waivers from the disqualification provisions of Regulation D and/or Regulation A 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 Conduct described in the Complaint. Further, none of the prior waivers was granted in connection with settlements directly involving WFS. In fact, 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 WFS nor any of its affiliates exercised control. Applying the disqualification to WFS would be disproportionately and unduly severe, given the absence of any relevant nexus whatsoever between the prior waivers above and the Conduct described in the Complaint.

F. Impact on Issuer and Third Parties if Waiver Were Denied

The disqualification of WFS from serving as a Covered Person with respect to offerings in reliance on the registration exemptions in Regulation A and Regulation D would have a material adverse impact on certain businesses within WFS and on the third parties that retain WFS in connection with private placements of securities ("issuer-clients").

The ability of WFS to participate in private placement transactions is an integral part of its business strategy. In fact, several divisions of WFS currently operate a line of business in which WFS serves as, or evaluates serving as, a placement agent and/or promoter for private offerings of securities. For example, the Equity Capital Markets and High Grade Debt Capital Markets divisions within WFS work with corporate clients to conduct private placements of equity and debt securities being issued by the client. The MPG provides similar services to municipal clients of WFS, assisting them with private placements of municipal debt securities. The Asset-Backed Finance division within WFS works with corporate clients to structure, offer and place asset-backed securities, and the Equity Derivatives division assists corporate, institutional and high net worth clients with structuring, purchasing and selling bespoke derivatives. Where appropriate, WFS reviews with issuer-clients the various offering exemptions available for contemplated private placements and, when directed by the issuer-

client, conducts offerings in reliance on the Regulations.[15] To the extent that WFS were disqualified to serve as a Covered Person in Regulation offerings, there would be important adverse impacts on both WFS and the issuer-clients of WFS.[16]

Most importantly, with respect to WFS's issuer-clients, a disqualification of WFS under Regulation D would place an unnecessary and unfair burden on issuer-clients. To the extent that any issuer-client engages WFS to act as placement agent for a private placement in reliance on Regulation D at or near the time of disqualification, the issuer-client might be required to delay, modify, or even abandon its offering, and investors in such offerings would be required to find alternative investments or contend with the delay of, or additional restrictions on, the offering. The other alternative for WFS's issuer-clients would be to identify a suitable replacement firm to step into the role of WFS as placement agent. This alternative also comes with significant risks and opportunity costs for the issuer-client, however. First, and most importantly, WFS's distribution network may be particularly appealing and useful to its issuer-clients. They may not be able to find an alternative investment bank with similar distribution capabilities. As a result, even if they are able to work with a WFS competitor to conduct a private placement, it may be less successful or unsuccessful, and they may fail to raise the capital that they need. Second, it may take issuer-clients time to identify an alternative investment bank with an appetite for the proposed offering and, during such time, market movements may occur that materially disadvantage the issuer-client. Again, the end result may be that the issuer-client gets to the market late or fails to complete its private placement. In each of these scenarios, these third parties would be unnecessarily harmed by the disqualification of WFS. Under the circumstances, including that the Offering at issue in the Action occurred almost nine years ago

---

[15] Offerings that do not rely on Rule 506 for an exemption from registration may rely on Section 4(a)(2) of the Securities Act or another valid exemption, and municipal offerings may rely on Section 3(a)(2) or 3(a)(4) of the Securities Act.

[16] For example, WFS estimates that during the past three years its Equity Capital Markets division privately placed approximately $2.3 billion of securities of issuer-clients, and approximately 10% of such private placements involving six separate rounds of financing (for between $200 million and $260 million) were conducted in reliance on Regulation D. WFS used a three-year "look-back" for purposes of determining the usage of Regulation D by its issuer-clients for a variety of reasons. Most importantly, any Regulation D disqualification would pertain for five years; and in WFS's experience, its usage of Regulation D on behalf of issuer-clients has increased during the last three years. Further, it is trending upward given the emerging importance of pre-IPO technology company issuer-clients who favor the usage of Regulation D for private placements, and the increasing overall business of WFS's Equity Capital Markets division. Accordingly, WFS does not believe that incorporating statistics from four to five years ago would accurately represent the level of Regulation D activities it is likely to engage in over the next five-year period, which would be the period of disqualification. In this regard, WFS represents that its investment banking business and, in particular, its Equity Capital Markets division are currently doing a larger volume of transactions on a year-over-year basis, including private placement transactions, than they did three to five years ago, resulting in more issuer-clients needing access to Regulation D. In fact, at present, the Equity Capital Markets division is actively engaged in negotiations with issuer-clients to conduct four private placement transactions, all of which may (and one of which is currently expected to) be conducted in reliance on Regulation D. Given this expansion, WFS believes that its issuer-clients' past usage of Regulation D likely understates their future appetite for Regulation D offerings.

and WFS has undertaken substantial remedial measures, WFS does not believe that imposing these harms on its issuer-clients is necessary or appropriate.

Further, with respect to WFS, a disqualification would cause WFS significant reputational harm and put WFS at a key competitive disadvantage relative to peer firms that could offer issuer-clients the ability to conduct private placements in reliance on any exemption for which they are eligible, including Rule 506. Certain market segments favor the use of Rule 506 in certain private offerings because it provides a safe harbor for an exempt offering. Were WFS unable to offer issuer-clients access to Regulation D as part of the full range of registration exemptions, such issuer-clients and potential issuer-clients would likely choose to work with other firms. Even issuer-clients who do not typically rely on or intend to rely on Regulation D may decline to work with WFS in order to preserve maximum flexibility in structuring its offering. This could occur because it can be unclear at the outset of an engagement whether an offering will proceed in reliance on Rule 506 or on another exemption from registration. This would negatively impact WFS's current and future private placement activities and include the possibility that WFS employees with an expertise in private placements may potentially seek employment elsewhere – and take issuer-clients and talent with them.

Further, the disqualification from Regulation D triggered by entry of the Final Judgment would continue for five years. This lengthy period would exacerbate the adverse impact on WFS and its issuer-clients. The negative impact on issuer-clients would be immeasurable as they would be deprived of access to the Regulation for their offerings. Issuer-clients expect full-service investment banks, such as WFS, to be able to execute offerings in reliance on Rule 506 of Regulation D. Further, because WFS would not, during the five-year period, be able to serve as a Covered Person with respect to a Rule 506 offering, WFS's reputation and competitive standing and the issuer-clients it retained would be irreparably harmed.

In addition, in the future, WFS expects issuer-clients increasingly to consider the usage of Regulation A for exempt offerings. Although WFS's issuer-clients have not historically relied on Regulation A, given the increase to $50 million in the amount of capital that can be raised under Regulation A,[17] WFS believes that issuer-clients are increasingly likely to consider utilizing this exemption.[18] As Regulation A+ becomes a more accepted and prevalent way to raise capital, disqualification could have a substantial impact on WFS and its issuer-clients.

Given the limited scope, duration, and nature of the Conduct described in the Complaint, WFS believes that the adverse collateral consequences of disqualification on its issuer-clients and its business would be disproportionate and unduly severe. For these reasons, disqualifying

---

[17] The amendments to Regulation A were effective June 19, 2015. As a result of such amendments, Regulation A is now occasionally referred to as "Regulation A+."

[18] Over the last three years, approximately one-third of WFS Equity Capital Markets' private placement transactions have been for less than $50 million. Further, at present, the Equity Capital Markets division is actively engaged in negotiations with issuer-clients to conduct three transactions for $50 million or less, all of which may (but are not currently expected to) rely on Regulation A.

offerings in which WFS is a Covered Person from relying on the Regulations is not necessary or appropriate.

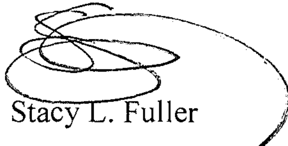
G. Disclosure to Investors of Written Description of Final Judgment

In the event that the Commission or the Division grants the requested waiver, for a period of five years from the date of the Final Judgment, WFS will furnish (or cause to be furnished), a reasonable time prior to sale, to each purchaser in an offering under Regulation A or Regulation D which would otherwise be subject to disqualification under Rule 262(a)(2) or Rule 506(d)(1)(ii) as a result of the Final Judgment, a description in writing of the Final Judgment.

IV. Request for Waiver

For the foregoing reasons, WFS respectfully submits that any disqualification from reliance on the offering exemptions under Regulation A and Regulation D effectuated by the Final Judgment is not necessary under the circumstances and that WFS has shown that good cause exists for the relief requested. Accordingly, WFS respectfully requests that the Commission or the Division, pursuant to Rule 262(b)(2) of Regulation A and Rule 506(d)(2)(ii) of Regulation D, waive any disqualification under Regulation A and Regulation D to the extent applicable as a result of the entry of the Final Judgment.

Regards,



Stacy L. Fuller

cc: Charles S. Neal
Wells Fargo Law Department