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

DIVISION OF
CORPORATION FINANCE

September 25, 2020

Laura S. Pruitt, Esq.
Jones Day
51 Pennsylvania Avenue NW
Washington, DC 20004

Re: **Hancock Whitney Corporation – Waiver Request of Ineligible Issuer Status under Rule 405 of the Securities Act of 1933**

Dear Ms. Pruitt:

This is in response to your letter dated September 24, 2020, written on behalf of Hancock Whitney Corporation ("HWC") and constituting an application for relief from HWC being considered an "ineligible issuer" under clause (1)(iv) of the definition of ineligible issuer in Rule 405 of the Securities Act of 1933 ("Securities Act"). HWC requests relief from being considered an ineligible issuer under Rule 405, due to the entry on September 25, 2020 of a Commission Order ("Order") pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Hancock Whitney Investment Services, Inc. ("HWIS"), a subsidiary of HWC. The Order requires that, among other things, HWIS cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

We have determined that HWC has made a showing of good cause under clause (2) of the definition of ineligible issuer in Rule 405 and that HWC will not be considered an ineligible issuer by reason of the entry of the Order. Accordingly, the relief described above from HWC being an ineligible issuer under Rule 405 of the Securities Act is hereby granted. Any different facts or circumstances from those represented in the letter or failure to comply with the terms of the Order would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Sincerely,

/s/

Tim Henseler
Chief, Office of Enforcement Liaison
Division of Corporation Finance

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September 24, 2020

VIA ELECTRONIC DELIVERY

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, DC 20549

Re: In the Matter of Hancock Whitney Investment Services, Inc.

Dear Mr. Henseler:

We are writing on behalf of Hancock Whitney Corporation ("HWC") and Hancock Whitney Investment Services, Inc. ("HWIS" or "the Company") in connection with HWIS's anticipated settlement with the United States Securities and Exchange Commission (the "SEC" or the "Commission") relating to the *Matter of Hancock Whitney Investment Services, Inc.* The settlement will result in an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order against HWIS.

HWC is a publicly traded company listed on the New York Stock Exchange and is a reporting company under Section 12(b) of the Exchange Act. It currently qualifies as a well-known seasoned issuer ("WKSI") as defined in Rule 405 of the Securities Act. HWIS is a wholly-owned nonbank subsidiary of HWC. HWIS is dually registered with the Commission as a broker-dealer and investment advisor.

We respectfully request a determination that HWC not be considered an ineligible issuer under Rule 405 of the Securities Act of 1933 (the "Securities Act") as a result of the entry of settlement and final judgment in this matter. We further request that this determination be effective upon the entry of settlement and final judgment.

Background

The Enforcement Staff has engaged in settlement discussions with HWIS in connection with the above-captioned matter. HWIS expects to submit an Offer of Settlement that will agree to the Order.

The Order will state that HWIS failed to adequately disclose in its Form ADV Part 2A the conflict of interest resulting from its receipt of 12b-1 fees. The Order also will find that HWIS failed to disclose its receipt of revenue sharing and cash sweep fees or the resulting conflict of interest in its Form ADV. The Order further states that HWIS violated its duty to seek best execution for those transactions by causing certain advisory clients to invest in more expensive share classes of mutual or money market funds that paid 12b-1 fees or resulted in revenue sharing payments when cheaper share classes of the same funds were available to the clients. In addition, the Order will state that HWIS failed to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with its mutual fund and money market fund share class selection practices.

The Order will find that HWIS willfully violated Sections 206(2) and 206(4) of the Advisers Act of 1940 (the "Advisers Act") and Rule 206(4)-7 thereunder.[1] Without admitting or denying the findings in the Order, except as to the Commission's jurisdiction over it and the subject matter of the proceeding, HWIS will consent to the issuance of the Order and to (i) cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisors Act and Rule 206(4)-7 thereunder, (ii) be censured, (iii) pay disgorgement of $1,651,686.29 and prejudgment interest of $286.105.79, and (iv) pay a civil monetary penalty of $400,000.

<u>Discussion</u>

As part of a 2005 reform, the Commission added WKSIs as a new category of issuer.[2] The Commission also created another category of issuer under Rule 405 – an "ineligible issuer."[3] An ineligible issuer is one whom, among other things, "[w]ithin the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), 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: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws; (B) Requires that the person cease and desist from violating the anti-fraud provisions of the federal securities laws; or (C) Determines that the person violated the anti-fraud provisions of the federal securities laws."[4] An ineligible issuer loses all of the benefits

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[1] A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F,2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Id.* (quoting *Gearhart &Otis, Inc., v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)). Proof of scienter is not required to establish a violation of Section 206(2) of the Advisers Act.

[2] Securities Offering Reform, 70 Fed. Reg. 44,722, 44,727 (Aug. 3, 2005).

[3] *Id*.

[4] Rule 405, 17 C.F.R. § 230.405(1)(vi).

received by WKSIs, including the ability to use an automatic shelf registration statement and free writing prospectuses, except in very limited circumstances.[5]

Without the relief requested hereunder, the entry of the Order against HWIS, which is a wholly-owned subsidiary of HWC, would make HWC an ineligible issuer for a period of three years. This would preclude HWC from qualifying as a WKSI and from utilizing the benefits associated with WKSI status, which would ultimately harm its investors.

The Commission has the authority under Rule 405 to determine "upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer."[6] The Commission has delegated its authority to make this determination to the Division of Corporate Finance (the "Division").[7]

In the Division's April 24, 2014 "Revised Statement on Well-Known Seasoned Issuer Waivers", the Division stated that it would consider the following factors in determining whether to grant a waiver:[8]

- The nature of the violation and whether it involved disclosure for which the issuer or any of its subsidiaries was responsible or calls into question the ability of the issuer to produce reliable disclosures currently and in the future.
- Whether the alleged misconduct involved a criminal conviction or scienter-based violation;[9]
- Who was responsible for the misconduct and what was the duration of the misconduct;
- What remedial steps the issuer took; and
- The impact to the issuer if the waiver request is denied.

For the reasons set forth below, we respectfully submit that there is good cause for the Commission to grant the waiver requested and determine that it is not necessary for the public

[5] *See* Securities Act Rules 164(e), 405 & 433, 17 C.F.R. §§ 230.164(e), 230.405 & 230.433.

[6] Rule 405, 17 C.F.R. § 230.405(2).

[7] 17 C.F.R. § 200.30-1(a)(10).

[8] Division of Corporation Finance, *Revised Statement on Well-Known Seasoned Issuer Waivers*, April 24 2014, available at https://www.sec.gov/divisions/corpfin/guidance/wksi-waivers-interp-031214.htm (hereinafter "Revised WKSI Statement").

[9] According to the Revised WKSI Statement, "[w]here there is a criminal conviction or a scienter based violation involving disclosure for which the issuer or any of its subsidiaries was responsible, the issuer's burden to show good cause that a waiver is justified would be significantly greater."

interest or the protection of investors that HWC be considered an ineligible issuer as a result of the Order.

(a) *Nature of the Violation: the Violation Does Not Cast Doubt on the Ability of the Issuer to Produce Reliable Disclosures to Investors*

The conduct described in the Order does not pertain to any activities undertaken by HWC in connection with its role as an issuer of securities (or any disclosure related thereto), its financial reporting, or any of its filings with the Commission. Likewise, the Order does not describe any weaknesses or violations associated with HWC's disclosures or other internal controls it maintained in connection with its role as an issuer, or its preparation and review of financial statements and Commission filings. Rather, the violations relate to a HWC subsidiary and the subsidiary's separate personnel, disclosures, and written policies and procedures. As discussed below, the conduct described in the Order involves HWIS's failure to adequately disclose in its Form ADV its mutual fund share class selection practices and its receipt of 12b-1 fees, revenue sharing fees, and cash sweep fees, the resulting conflict of interest and failure to achieve best execution for its clients, and its inadequate compliance policies and procedures relating thereto. The conduct addressed in the Order does not pertain to any activities in connection with HWC's role as an issuer of securities. Therefore, the conduct does not cast doubt on HWC's ability to produce reliable disclosures to investors.

(b) *The Order is Not Criminal in Nature and Does Not Involve Scienter-Based Fraud*

The Order does not involve a criminal conviction and does not find that HWC or HWIS acted with scienter or intent to defraud in any capacity. Rather, the conduct involves violations of Section 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 by HWC's subsidiary HWIS. The Order specifies that scienter is not required to establish a violation of Section 206(2) and the violation may rest on a finding of negligence. Likewise, Section 206(4) and Rule 206(4)-7 are not scienter-based. As such, HWC is not subject to the higher standard for showing good cause as articulated in the Revised WKSI Statement.

(c) *The Persons Responsible for the Misconduct and the Duration of the Misconduct*

Compliance with applicable laws and rules is of great importance to HWC and HWIS. While the misconduct happened at HWIS, the Commission has not charged any individuals associated with HWIS or HWC with violations in connection with the conduct underlying the Order, and we understand that no such charges are forthcoming. The personnel primarily responsible for the conduct are or were employed by HWIS, not HWC. Furthermore, turnover in HWIS's management occurred in May 2015 and March 2016, such that the management members primarily responsible for conduct underlying the Order are no longer with HWIS. In fact, HWIS hired a new Chief Compliance Officer in November 2015, who has since spearheaded a share class conversion and implemented a rebate tool to end the receipt of 12b-1 fees, revenue sharing and cash sweep fees, as described below. None of the individuals directly

responsible for HWIS's disclosures or procedures related to the share class selection and shareholder servicing fees issue described in the Order were senior officers of HWC. Likewise, none of the individuals directly responsible for HWIS's disclosures related to the share class selection issue described in the Order were responsible for HWC's disclosures or HWC's disclosure controls and procedures. In addition, none of those individuals has or had responsibility for, or any influence over, HWC as an issuer of securities or its filings with the Commission.

The conduct at issue in the Order occurred from January 2014 through May 2017, a period of three and a half (3.5) years, and ceased three (3) years ago.

(d) *Remedial Steps were Promptly Undertaken*

HWIS promptly and proactively took remedial steps to address the conduct at issue in the Order.

(i) HWIS undertook a share class conversion

On July 13, 2016, the SEC's Office of Compliance Inspections and Examinations ("OCIE") issued a Risk Alert addressing the Share Class Initiative, encouraging advisors "to reflect upon their own practices, policies, and procedures" and to make improvements where necessary. On July 22, 2016, less than ten days after OCIE issued the Risk Alert, HWIS compliance personnel held their first meeting in response to OCIE's guidance. While the Commission has never instituted a rule that prohibits the receipt of 12b-1 fees, HWIS decided that the best course of action following the Risk Alert was to institute a process to eliminate the receipt of 12b-1 fees altogether. At this time, HWIS began the process of conducting a share class conversion in order to ensure that mutual fund offerings within its managed program were the lowest cost share class available.

In the following month, HWIS sent letters to each mutual fund family within its managed account program with a request to provide the lowest cost share class for the funds being used in the HWIS program. In response to these letters, HWIS received information throughout the fall of 2016 regarding the lowest cost share classes available in each fund family. HWIS then used this information to work with National Financial Services, Inc. ("NFS"), HWIS's clearing broker, to prepare for the share class conversion.

The share class conversion began on January 17, 2017 and continued throughout early 2017. The specific goal of this conversion was to move all funds within the HWIS managed program to the cheapest possible share class for each fund in question, consistent with the tone of OCIE's Risk Alert.

(ii) HWIS changed its practices by implementing a 12b-1 rebate tool

While HWIS knew that its share class conversion program would significantly reduce its receipt of 12b-1 fees, revenue sharing fees, and cash sweep fees, HWIS wanted to eliminate its receipt of those fees with respect to advisory accounts altogether. HWIS ultimately decided that, moving forward, it would rebate all 12b-1 fees received from the managed account program, as well as revenue sharing payments and cash sweep fees, by using the 12b-1 rebate tool offered by NFS. HWIS began using the NFS 12b-1 rebate tool on June 13, 2017, which eliminated all 12b-1 fees, revenue sharing and cash sweep fees for pre-existing clients and automatically reimbursed 12b-1 fees for any new clients transferring advisory accounts that contained shares paying such fees. As such, implementation of the rebate tool completely eliminated all 12b-1 fees, as well as revenue sharing and cash sweep fees, for advisory accounts.

(iii) HWIS updated its Form ADV disclosure language

In its March 2018 annual Form ADV update, HWIS updated its disclosures to reflect the fully implemented changes to its receipt of 12b-1 fees, stating: "While HIS endeavors to invest Client funds into investments that that do not contain 12b-1 fees (distribution and marketing fees), there could be occasions where unintended 12b-1 fees are received by HIS. In such circumstances, these fees will be rebated back to the Client and deposited into the Client's account." This disclosure matched HWIS's practice since June 2017. In July 2020, HWIS further amended its disclosures to make clear that the NFS rebate tool adopted in June 2017 not only had precluded the receipt of 12b-1 fees but also had precluded the receipt of related revenue sharing and cash sweep fees. HWIS' current Form ADV provides the following disclosure: "HWIS endeavors to invest client funds into the cheapest share class available when constructing portfolios consisting of mutual funds, in an effort to avoid the receipt of 12b-1 fees (including any related revenue sharing payments and cash sweep fees). Nevertheless, there could be occasions where unintended 12b-1 and related fees are received by HWIS. In such circumstances, these fees will be rebated back to the client and deposited into the client's account."

HWIS has taken concrete steps to remediate the conduct at issue in the Order. The steps were designed to end HWIS's receipt of 12b-1 fees, revenue sharing fees, and cash sweep fees, return fees to advisory clients, and enhance HWIS's disclosures going forward. Furthermore, most of these remedial steps preceded the announcement of the SEC's Share Class Selection Disclosure Initiative, which was announced on February 12, 2018.

(e) *The Impact if the Waiver Request is Denied Would be Unduly Severe*

HWC relies on its WKSI status to offer securities under its automatic shelf registration statement. Most recently, HWC filed a WKSI automatic shelf registration statement on January 25, 2019, through which it conducted an offering totaling $172.5 million (inclusive of the underwriter's fully-exercised overallotment option). HWC previously filed WKSI automatic

shelf registration statements with the Commission on March 2, 2015, July 25, 2014, March 21, 2011, and October 19, 2009.

Losing its WKSI status would impose additional restrictions on HWC's use of such statements. Among other restrictions, HWC's registration statements would be subject to a review period upon filing. For HWC, the automatic shelf registration process provides an important means of access to capital markets in a timely manner, which is an important source of funding for its operations. HWC, like other institutions, faces changing regulatory and market conditions with uncertainties. Without the ability to use an automatic shelf registration statement, HWC may be unable to react quickly to changing requirements and market conditions. If HWC's registration statements were subject to a review period on filing, it could hamper HWC's ability to access the capital markets expeditiously as the need for additional capital and liquidity arises and when market conditions are most advantageous.

As an ineligible issuer, HWC would, among other things, lose the ability to:

- file automatic shelf registration statements to register, and subsequently offer, an indeterminate amount of securities;
- register additional classes of securities not covered by the registration statement by filing a post-effective amendment that becomes immediately effective;
- take advantage of the "pay-as-you-go" filing fee payment process; and
- qualify for a new indenture under the Trust Indenture Act of 1939, as amended, should the need arise, without filing or having the Commission declare effective a new registration statement.

HWC currently uses or expects to use each of these benefits to WKSI status over the next three years.

The loss of HWC's status as a WKSI would have an adverse impact on its ability to raise capital and conducts its operations, which in turn could potentially harm investors. This would be an unduly severe consequence for the non-scienter based violation of its subsidiary that is the subject of the Order.

Conclusion

We respectfully submit that the Commission should grant the request for this waiver because, among other things described above, (i) the Order does not find any disclosure or other violations by HWC; (ii) the Order does not find violations of scienter-based fraud or involve criminal conduct by HWC's subsidiary, HWIS; and (iii) HWIS has undertaken extensive

remedial actions. In light of these considerations, we respectfully submit that HWC has shown good cause that it is not necessary under the circumstances that it be considered an ineligible issuer. Accordingly, we request that the Commission make the determination that there is good cause to grant a waiver to HWC so that it will not be considered an ineligible issuer as a result of the Order.