



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

August 14, 2012

Mr. Michael J. Diver  
Katten Muchin Rosenman LLP  
525 W. Monroe Street  
Chicago, IL 60661

Re: In the Matter of Wells Fargo Brokerage Services, LLC (C-07621)  
**Wells Fargo & Company – Waiver Request of Ineligible Issuer Status under Rule  
405 of the Securities Act**

Dear Mr. Diver:

This is in response to your letter dated August 13, 2012, written on behalf of Wells Fargo & Company (Company) and its subsidiary Wells Fargo Securities, LLC (f/k/a Wells Fargo Brokerage Services, 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 August 14, 2012, 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. Any different facts from those represented or non-compliance with the Order might require us to reach a different conclusion.

Sincerely,

/s/

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

August 13, 2012

**Via Electronic Mail**

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 Brokerage Services LLC n/k/a Wells Fargo Securities, LLC and Shawn Patrick McMurtry**

Dear Ms. Kosterlitz:

We are writing on behalf of our clients, Wells Fargo Securities, LLC (“Wells Fargo Securities”), the successor by merger to Wells Fargo Brokerage Services, LLC (“WFBS”), and Wells Fargo & Company (“Wells Fargo”). Wells Fargo Securities is a wholly-owned subsidiary of Everen Capital Corporation, which is a wholly-owned subsidiary of Wells Fargo. Wells Fargo Securities is the settling party in the above-referenced 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 WFBS (prior to its merger with and into Wells Fargo Securities) in connection with the sale of commercial paper to institutional investors. The conduct that is the subject of the Proceeding occurred in 2007, prior to the merger of WFBS with and into Wells Fargo Securities.

Wells Fargo is a financial services company and financial holding company, as defined in 12 C.F.R. § 225.81, the stock of which is publicly traded on the New York Stock Exchange. Wells Fargo qualifies as a “well-known seasoned issuer,” as defined in Rule 405 under the Securities Act of 1933, as amended (the “Securities Act”). Wells Fargo hereby requests 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 administrative and cease-and-desist order (the “Order”) that will be entered in the Proceeding, as described below. Wells Fargo requests that this determination be made effective upon entry of the Order. It is our understanding that the Division of Enforcement supports our request for such a determination.

## BACKGROUND

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The conduct of WFBS that is the subject of the Order involved the sale of highly-rated, short-term fixed income investments to certain institutional investors during 2007. Specifically, the Order alleges that WFBS and certain of its sales representatives recommended investments in non-proprietary asset-backed commercial paper programs to certain risk-averse institutional customers, including municipalities and nonprofit organizations. The Order alleges that, in violation of Sections 17(a)(2) and 17(a)(3) of the Securities Act, WFBS sales representatives failed to adequately review the investments and, therefore, neglected to disclose certain material facts associated with such asset-backed commercial paper programs to investors.

Wells Fargo Securities and the Division of Enforcement have reached an agreement to settle the Proceeding. Wells Fargo Securities, without admitting or denying the allegations in the Order, will submit to the Commission an Offer of Settlement in which it agrees to the imposition of a cease-and-desist order that censures Wells Fargo Securities, and requires the firm to disgorge \$65,000 and to pay a civil monetary penalty in the amount of \$6,500,000 plus prejudgment interest.

## 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 deemed to be 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.”<sup>1</sup>

An issuer is deemed to be an “ineligible issuer” under Rule 405 if, during the past three years, it or any entity that at the time was a subsidiary of such issuer “was made the subject of any judicial or administrative decree or order arising out of a governmental action” that, among other things, “[d]etermines that the person violated the anti-fraud provisions of the federal securities

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<sup>1</sup> If deemed to be an ineligible issuer under Rule 405, an issuer is disqualified from being considered a “well-known seasoned issuer,” and thereby prohibited from using an automatic shelf registration statement (*see* Rule 405) and is limited in 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, which would prevent the issuer and other offering participants from using free-writing prospectuses during registered offerings of its securities.

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laws.”<sup>2</sup> 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.”<sup>3</sup> The Commission has delegated authority to the Division of Corporation Finance to grant waivers from the ineligibility provisions of this definition.<sup>4</sup>

The Order may be deemed to be a “judicial or administrative order or decree” 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 deprive it from the benefit of automatic shelf registration and other streamlined registration process provisions for three years. This would be a significant detriment to Wells Fargo and its stockholders. Among other things, being considered an ineligible issuer would leave Wells Fargo at a significant competitive disadvantage to its peer firms and would impair its ability to access the capital markets without incurring significantly increased time and expense.

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 a governmental action. There is good cause in this case for the Commission to make such a determination with respect to the Order. Specifically, the disqualification of Wells Fargo from well-known seasoned issuer status is not warranted given the nature of the alleged conduct by WFBS at issue in the Proceeding. The alleged conduct, which dates back to 2007, does not relate to Wells Fargo’s or any of its subsidiaries’ disclosures in any of their filings with the Commission, nor does it allege fraud in connection with Wells Fargo’s or any of its subsidiaries’ offering of their own securities. Indeed, the conduct alleged in the Order occurred at a broker-dealer subsidiary of Wells Fargo that withdrew its broker-dealer registration several years ago and involves the sale of non-proprietary securities (*i.e.*, WFBS did not underwrite or engage in market-making activities with respect to the relevant asset-backed commercial paper programs). With these facts in mind, a disqualification of Wells Fargo from well-known seasoned issuer status under Rule 405 is unwarranted and would have an undue and disproportionately severe impact on Wells Fargo and its stockholders.

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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

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<sup>2</sup> See 17 C.F.R. § 230.405.

<sup>3</sup> *Id.*

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



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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 (312) 902-5671, or David Bohan at (312) 902-5566.

Sincerely,



Michael J. Diver

cc: Ms. Rebecca Goldman, U.S. Securities and Exchange Commission  
Ms. Sally J. Hewitt, U.S. Securities and Exchange Commission  
FOIA Office, U.S. Securities and Exchange Commission  
Mr. Charles S. Neal, Senior Counsel, Wells Fargo & Co.