



8011-01p

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC -29881; 812-13987]

Wells Fargo Bank, N.A., et al.; Notice of Application and Temporary Order

December 9, 2011

Agency: Securities and Exchange Commission (“Commission”).

Action: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (“Act”).

Summary of Application: Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against Wells Fargo Bank, N.A. (“Wells Fargo Bank”) on December 9, 2011 by the United States District Court for the District of New Jersey (“Injunction”) until the Commission takes final action on an application for a permanent order. Applicants also have applied for a permanent order.

Applicants: Wells Fargo Bank, First International Advisors, LLC (“First International”), Metropolitan West Capital Management, LLC (“Metropolitan West”), Golden Capital Management, LLC (“Golden Capital”), Alternative Strategies Brokerage Services, Inc. (“Alternative Strategies Brokerage”), Alternative Strategies Group, Inc. (“Alternative Strategies”), Wells Fargo Funds Management, LLC (“WF Funds Management”), Wells Capital Management Incorporated (“Wells Capital Management”), Peregrine Capital Management, Inc. (“Peregrine”), Galliard Capital Management, Inc. (“Galliard”), Nelson Capital Management

(“Nelson”), and Wells Fargo Funds Distributor, LLC (“WF Funds Distributor”) (each an “Applicant” and collectively, the “Applicants”).¹

Filing Date: The application was filed on December 8, 2011 and two amendments were filed on December 9, 2011.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 3, 2012, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer’s interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission’s Secretary.

Addresses: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090; Applicants: Wells Fargo Bank, 101 North Phillips Avenue, Sioux Falls, SD 57104; First International, 30 Fenchurch Street, London, England, UK EC3M 3BD; Metropolitan West, 610 Newport Center Drive, Suite 1000, Newport Beach, CA 92660; Golden Capital, 5 Resource Square, Suite 400, 10715 David Taylor Drive, Charlotte, NC 28262; Alternative Strategies Brokerage, 401 South Tryon Street, Charlotte, NC 28288; Alternative Strategies, 401 South Tryon Street, TH3, Charlotte, NC 28288; WF Funds Management and WF Funds Distributor, 525 Market Street, 12th Floor, San Francisco, CA 94105; Wells Capital Management, 525 Market Street, 10th Floor, San Francisco, CA 94105; Peregrine, 800 LaSalle

¹ Applicants request that any relief granted pursuant to the application also apply to any existing company of which Wells Fargo Bank is or may become an affiliated person within the meaning of section 2(a)(3) of the Act (together with the Applicants, the “Covered Persons”).

Avenue, Suite 1850, Minneapolis, MN 55402; Galliard, 800 LaSalle Avenue, Suite 1100, Minneapolis, MN 55402; and Nelson, 1860 Embarcadero Road, #140, Palo Alto, CA 94303.

For Further Information Contact: Jean E. Minarick, Senior Counsel, at 202-551-6811 or Daniele Marchesani, Branch Chief, at 202-551-6821 (Division of Investment Management, Office of Investment Company Regulation).

Supplementary Information: The following is a temporary order and summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm>, or by calling (202) 551-8090.

Applicants' Representations:

1. Wells Fargo Bank is a national banking association. On March 20, 2010, Wachovia Bank, N.A. ("Wachovia Bank") merged with and into Wells Fargo Bank. Wells Fargo Bank is registered as an investment adviser under the Investment Advisers Act of 1940, as amended (the "Advisers Act") and serves as an investment adviser to a Fund (as defined below). No existing company of which Wells Fargo Bank is an affiliated person (other than the Applicants) currently serves as investment adviser, sub-adviser, or depositor of any registered investment company or business development company ("BDC") or principal underwriter for any registered open-end investment company, registered unit investment trust ("UIT"), or registered face amount certificate company, or investment adviser of any employees' securities company, as defined in section 2(a)(13) of the Act ("ESC") ("Fund Service Activities").

"Funds" refers to the registered investment companies, BDCs or ESCs for which a Covered Person provides Fund Service Activities. Wells Fargo & Company ("Wells Fargo") directly owns 37.51% of Wells Fargo Bank and indirectly owns the remainder. Through its direct and indirect subsidiaries, Wells Fargo, a registered financial holding company and bank holding

company under the Bank Holding Company Act of 1956, as amended, offers banking, brokerage, advisory and other financial services to institutional and individual customers worldwide. Wells Fargo also is the ultimate parent of the other Applicants, who, as direct or indirect subsidiaries of the same ultimate parent, are under common control with Wells Fargo Bank.

2. First International, Metropolitan West, Golden Capital, Alternative Strategies, WF Funds Management, Wells Capital Management, Peregrine, Galliard and Nelson are registered as investment advisers under the Advisers Act and serve as investment advisers or sub-advisers to various Funds. Alternative Strategies Brokerage and WF Funds Distributor are registered as broker-dealers under the Securities Exchange Act of 1934, as amended and each serves as principal underwriter to various Funds.

3. On December 9, 2011, the United States District Court for the District of New Jersey entered a judgment, which included the Injunction, against Wells Fargo Bank (“Judgment”) in a matter brought by the Commission.² The Commission alleged in the complaint (“Complaint”) that from at least 1997 through at least 2005, Wachovia Bank engaged in fraudulent practices and made misrepresentations and omissions in connection with bidding on and sale of municipal reinvestment instruments. The Complaint alleged that these fraudulent practices, misrepresentations, and omissions affected the prices of certain reinvestment instruments, deprived certain municipalities of a presumption that their reinvestment instruments were purchased at fair market value, and/or jeopardized the tax-exempt status of certain securities. Based on the alleged misconduct described above, the Complaint alleged that Wachovia Bank violated section 17(a) of the Securities Act of 1933. Without admitting or denying any of the allegations in the Complaint (other than those relating to the jurisdiction of

² U.S. Securities and Exchange Commission v. Wells Fargo Bank, N.A., Case No. 2:11-cv-07135-WJM-MF (D.N.J. Dec. 9, 2011).

the District Court over it and the subject matter, solely for purposes of this action), Wells Fargo Bank consented to the entry of the Injunction and other relief, including disgorgement and civil monetary penalties.

Applicants' Legal Analysis:

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security, or in connection with activities as an underwriter, broker or dealer, from acting, among other things, as an investment adviser or depositor of any registered investment company or BDC or a principal underwriter for any registered open-end investment company, registered UIT, or registered face-amount certificate company or as investment adviser of an ESC. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines “affiliated person” to include, among others, any person directly or indirectly controlling, controlled by, or under common control, with the other person. Applicants state that Wells Fargo Bank is an affiliated person of each of the other Applicants within the meaning of section 2(a)(3) of the Act. Applicants state that, as a result of the Injunction, they would be subject to the prohibitions of section 9(a) of the Act.

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) of the Act if it is established that these provisions, as applied to the Applicants, are unduly or disproportionately severe or that the conduct of the Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption. Applicants have filed an application pursuant to

section 9(c) seeking a temporary and permanent order exempting them and other Covered Persons from the disqualification provisions of section 9(a).

3. Applicants believe they meet the standard for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of the Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that the alleged conduct giving rise to the Injunction did not involve any of the Applicants engaging in Fund Service Activities. Applicants also state (i) none of the current or former directors, officers, or employees of the Applicants (other than Wells Fargo Bank) had any knowledge of, or had any involvement in, the conduct alleged in the Complaint to have constituted the violations that provided a basis for the Injunction; (ii) the personnel at Wells Fargo Bank who were involved in the conduct that constituted the violations that provided a basis for the Injunction have had no, and will not have any future, involvement in providing Fund Service Activities to the Funds on behalf of the Applicants or other Covered Persons; and (iii) because the personnel of the Applicants (other than Wells Fargo Bank) did not have any involvement in the alleged misconduct, shareholders of Funds that received Fund Service Activities from the Applicants were not affected any differently than if those Funds had received services from any other non-affiliated investment adviser, depositor or principal underwriter.

5. Applicants state that the inability of the Applicants to engage in Fund Service Activities would result in potentially severe financial hardships for the Funds they serve and the Funds' shareholders. Applicants state that they will distribute written materials, including an offer to meet in person to discuss the materials, to the boards of directors of the Funds (the "Boards"), including the directors who are not "interested persons," as defined in section

2(a)(19) of the Act, of such Funds, and their independent legal counsel as defined in rule 0-1(a)(6) under the Act, if any, describing the circumstances that led to the Injunction, any impact on the Funds, and the application. Applicants state that they will provide the Boards with the information concerning the Injunction and the application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Applicants also state that, if they were barred from providing Fund Service Activities to registered investment companies, BDCs and ESCs, the effect on their businesses and employees would be severe. Applicants state that they have committed substantial resources to establish an expertise in providing Fund Service Activities. Applicants further state that prohibiting them from providing Fund Service Activities would not only adversely affect their businesses, but would also adversely affect more than 1600 employees that are involved in those activities.

7. Applicants state that Applicants and certain other affiliated persons of the Applicants have previously received orders under section 9(c) of the Act, as the result of conduct that triggered section 9(a), as described in greater detail in the application.

Applicants' Condition:

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application

or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order:

The Commission has considered the matter and finds that the Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

IT IS HEREBY ORDERED, pursuant to section 9(c) of the Act, that Applicants and any other Covered Persons are granted a temporary exemption from the provisions of section 9(a), solely with respect to the Injunction, subject to the condition in the application, from December 9, 2011, until the Commission takes final action on their application for a permanent order.

By the Commission.

Elizabeth M. Murphy
Secretary

[FR Doc. 2011-32169 Filed 12/14/2011 at 8:45 am; Publication Date: 12/15/2011]