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Comptroller of the Currency  
Administrator of National Banks

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Large Bank Licensing  
250 E Street, SW  
Washington, DC 20219

**Conditional Approval #1018**  
**January 2012**

December 23, 2011

Michael Koonce  
Managing Counsel  
Wells Fargo Law Department  
J9201-210  
200 Berkeley Street  
Boston, MA 02116

**Subject:** Application by Wells Fargo Bank, N.A. to acquire Everkey Global Partners (GP), LLC and Everkey Global Focus (GP), LLC (the “GP Entities”) as operating subsidiaries and to hold limited equity interests in funds in connection with its investment management activities  
Control No: 2011-ML-08-0009

Dear Mr. Koonce:

This responds to the application filed by Wells Fargo Bank, N.A. (“WFBNA”), requesting approval to acquire the GP Entities. Based on our review of the application and based on the representations and commitments made by WFBNA, we find the application to be consistent with applicable law, regulation, and OCC precedent and accordingly the application is approved subject to the conditions described herein.

#### **A. Background**

WFBNA owns, as an operating subsidiary, Wells Capital Management Incorporated, a registered investment adviser (“WCMI”). WFBNA proposes to have WCMI acquire the GP Entities.<sup>1</sup>

WCMI provides investment advisory and investment management services to its clients, which include high net worth individuals and their related interests, under advisory agreements that provide for discretionary investment and reinvestment of clients’ funds. WCMI also establishes

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<sup>1</sup> The GP Entities were organized in Delaware.

and manages proprietary private investment funds in the form of limited partnerships and limited liability companies, in which its clients' funds are invested.

The GP Entities serve as general partners of private investment funds established in Delaware (each a "Fund" and collectively the "Funds")<sup>2</sup> that service institutional investors and high-net worth individuals. Each GP Entity is the investment manager for the Fund for which it is general partner. Through the GP Entities, WCMI will make nominal capital contributions to the Funds.<sup>3</sup> These capital contributions remain invested in those Funds.

WFBNA represents that its direct and indirect equity interests in the Funds will be limited and will be held only for so long as it provides, directly or indirectly, investment management services to the Funds. Other than the nominal initial investments, WFBNA will not make any additional out-of-pocket investments in the Funds or guarantee any liabilities of the Funds. In addition, the Funds will not be consolidated with WFBNA under GAAP.

The GP Entities also receive performance-based compensation for its investment management services in the form of profit allocations in the Funds.<sup>4</sup> These profit allocations will be withdrawn promptly after being allocated to the GP Entities' respective capital accounts. WFBNA represents that this type of performance compensation arrangement is intended to ensure that an investment manager earns its performance-based compensation based on the performance of the Fund over the same horizon as the Fund's investors, i.e., over the life of the Fund, not on a year-to-year basis. WFBNA believes structuring performance compensation in this manner will address investors' concerns that fund managers' interests be aligned as closely as possible with those of investors, and represents that private investment funds routinely structure the investment adviser or manager's performance compensation in this manner.<sup>5</sup>

## **B. Discussion**

The OCC's operating subsidiary regulation provides that "a national bank may conduct in an operating subsidiary activities that are permissible for a national bank to engage in directly either as part of, or incidental to, the business of banking, as determined by the OCC, or otherwise under other statutory authority."<sup>6</sup> The OCC has long held that a national bank may provide

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<sup>2</sup> Everkey Global Partners (GP), LLC is the general partner of Everkey Global Fund, LP, a Delaware limited partnership. Everkey Global Focus (GP), LLC is the general partner of Everkey Global Focus Fund, LP, a Delaware limited partnership. The Funds are feeder funds for master funds.

<sup>3</sup> WCMI will make a \$100,000 investment in Everkey Global Fund LP and an investment of no more than \$100,000 in Everkey Global Focus Fund LP. Everkey Global Fund LP has total equity of \$98.2 million. Everkey Global Focus Fund LP has total equity of \$6.3 million.

<sup>4</sup> The GP Entities may receive both administrative fees and performance-based compensation from the funds for their services. The administrative fee is typically a percentage of the assets of each fund. The performance-based compensation is typically a percentage of the profits of each fund above a certain hurdle rate.

<sup>5</sup> See, e.g., Conditional Approval No. 578 (Feb. 27, 2003).

<sup>6</sup> 12 C.F.R. § 5.34(e).

investment management services as part of the business of banking authorized under 12 U.S.C. § 24(Seventh) and pursuant to their fiduciary powers under 12 U.S.C. § 92a.<sup>7</sup>

More recently, the OCC has concluded that an operating subsidiary may hold limited equity interests in private investment funds for which it serves as investment manager and that it may structure the performance-based compensation it receives as profit allocations in advised funds provided certain conditions are present.<sup>8</sup> The OCC determined that holding such limited interests and structuring the payment of performance compensation in this manner are directly related to, and an integral part of, the subsidiary's activity of providing bank-permissible investment management and administrative services, and therefore were permissible as incidental to permissible investment management activities.

Consistent with the OCC's prior determinations, the GP Entities will be engaged in the authorized activities of acting as an investment manager to private investment funds and receiving compensation for such services in the form of fees and profit allocations in those funds.<sup>9</sup> The GP Entities' equity interests in the Funds will be limited and will be held only for so long as they are providing investment management services to the Funds. Accordingly, under the applicable legal framework and OCC precedent, the acquisition of the GP Entities as indirect operating subsidiaries of WFBNA and the GP Entities' holding of limited equity interests in the Funds they manage is permissible, subject to the conditions set forth below.

### **C. Conclusion**

Based on a review of the information you provided on behalf of WFBNA, including the representations and commitments made in connection with WFBNA's application, and for the reasons discussed above, we conclude that WFBNA may acquire the GP Entities as indirect operating subsidiaries and that they may engage in the investment management activities described, including holding limited interests in the Funds, subject to the following conditions:

- (a) WFBNA and its subsidiaries must adopt and implement policies and procedures to ensure that its indirect investments in the Funds are in compliance with applicable requirements of section 13 of the Bank Holding Company Act (as added by section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act) when it becomes effective on July 21, 2012, and any applicable implementing regulations thereunder.

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<sup>7</sup> See, e.g., Conditional Approval No. 842 (Mar. 13, 2008); Interpretive Letter No. 851 (Dec. 8, 1999); Interpretive Letter No. 871 (Oct. 14, 1999); Conditional Approval No. 164 (Dec. 9, 1994); Interpretive Letter No. 648 (May 4, 1994); Interpretive Letter No. 622 (Apr. 9, 1993); Interpretive Letter No. 403 (Dec. 9, 1987).

<sup>8</sup> See Conditional Approval No. 755 (Aug. 25, 2006).

<sup>9</sup> See, e.g., Conditional Approval No. 755 (Aug. 25, 2006); Conditional Approval No. 643 (June 16, 2004); Conditional Approval No. 578 (Feb. 27, 2003). The OCC has held that a national bank's operating subsidiary may act as general partner of a limited partnership. See, e.g., Conditional Approval No. 842 (Mar. 13, 2008); Corp. Decision No. 2000-07 (May 10, 2000); Conditional Approval No. 243 (May 9, 1997); Interpretive Letter No. 411 (Jan. 20, 1988).

- (b) WFBNA must adopt and implement an appropriate risk management process, acceptable to and within the timeframes set by WFBNA's examiner-in-charge, to monitor the described activities and any interests held by the GP Entities in the Funds. The risk management process must be comprehensive and must include:
  - (i) Adoption and implementation of a conflict of interest policy addressing all inherent conflicts associated with each GP Entity's activities and holdings of interests in the Funds;
  - (ii) Adoption and implementation of risk management policies and procedures for monitoring each GP Entity's activities and interests in the Funds and the risks associated with these interests, taking into account relevant factors noted in OCC guidance, including, e.g., OCC Banking Circular 277 (October 1993) & Supplemental Guidance 1 (January 1999) and Comptroller's Handbook: Risk Management of Financial Derivatives (January 1997).
  - (iii) Establishment of an appropriate governance structure to oversee WCMI's and the GP Entities' activities and interests in the Funds, including obtaining periodic reports from WCMI and the GP Entities on the investments in the Funds, including information on WCMI's and the GP Entities' risk management policies and procedures.
- (c) WFBNA, through WCMI or a GP Entity, may hold its interests in the Funds only when, and only for so long as, WCMI or the GP Entity provide investment management services to the Funds.
- (d) WFBNA, through WCMI, the GP Entities, and its other subsidiaries and affiliates as applicable, is subject to the restrictions and guidelines outlined in OCC Bulletin 2004-2, concerning the provision of financial support to investment funds managed by WFBNA, its subsidiaries, or its affiliates.
- (e) WFBNA must provide its examiner-in-charge ten days' notice before it receives, directly or indirectly, an interest in any fund in addition to the interests the GP Entities currently hold in the Funds.
- (f) WFBNA must ensure that it and its subsidiaries adopt and adhere to the following limits for its direct or indirect investments in the Funds and any new funds that contain bank-ineligible assets<sup>10</sup>:
  - (i) *Individual fund basis*—WFBNA's maximum aggregate direct or indirect investment in any fund it directly or indirectly advises may not exceed an amount equal to 2.5% of total equity in the fund.
  - (ii) *Aggregate funds basis*—WFBNA's maximum aggregate direct or indirect investment in all funds it directly or indirectly advises may not exceed an amount equal to 2.5% of WFBNA's total risk based capital.
- (g) WFBNA may not directly or indirectly invest in funds it directly or indirectly advises other than those that invest in securities and financial instruments. WFBNA may not directly or indirectly invest in any fund that directly holds real estate or tangible personal property.

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<sup>10</sup> These investments would include any capital contributions made by WCMI or a GP Entity and any performance-based profit allocation received by WCMI or a GP Entity that is retained in a Fund.

- (h) For GAAP accounting purposes pursuant to Accounting Standards Codification Topic 810—Consolidation, WFBNA will not consolidate the Funds.
- (i) The Funds, the Funds' master funds, and the master funds' direct or indirect feeder funds will be deemed affiliates of WFBNA and its subsidiaries and affiliates for purposes of sections 23A and 23B of the Federal Reserve Act.
- (j) WFBNA must cause the GP Entities to withdraw promptly any profit allocations that are allocated to the GP Entities' respective capital accounts in the Funds.

The conditions of this approval are conditions imposed in writing by the agency in connection with the granting of an application or other request within the meaning of 12 U.S.C. § 1818. As such, the conditions are enforceable under 12 U.S.C. § 1818.

This approval and the activities and communications by OCC employees in connection with the filing do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the United States, any agency or entity of the United States, or any officer or employee of the United States, and do not affect the ability of the OCC to exercise its supervisory, regulatory and examination authorities under applicable law and regulations. Our approval is based on the bank's representations, submissions, and information available to the OCC as of this date. The OCC may modify, suspend or rescind this approval if a material change in the information on which the OCC relied occurs prior to the date of the transaction to which this decision pertains. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

If you have any questions concerning this letter, please contact David Reilly at (202) 874-5060.

Sincerely,

*Stephen Lybarger*

Stephen Lybarger  
Deputy Comptroller, Licensing