Summary – SEC No Action Letter – Wells Fargo – 9/21/12 – Rule 206(4)-3 – Fee Payment Permitted to IA after judgment order re discriminatory lending.

The SEC will allow the fees to be paid and will not recommend enforcement action.

The letter does not state what Wells Fargo did specifically in exchange for the fees but they reference Rule 206(4)-3 which allows compensation to be given to a solicitor for soliciting investors to invest in a registered investment company, hedge fund, private equity fund etc.

However, the rule precludes payments to any solicitor that is subject to an order, judgment or decree.  Wells Fargo has a judgment against it with regards to the anti-discriminatory mortgage lending suit brought by the DOJ and the letter sought clarification on whether this judgment would allow Wells Fargo to continue receiving solicitation fees.

The SEC based its ruling on the fact that (1) the solicitation fee process be held in compliance with Rule 206(4)-3, (2) that the judgment did not bar or suspend Wells Fargo in any capacity under the federal laws, (3) Wells Fargo will comply with the judgment and (4) Wells Fargo will disclose the judgment to any persons they have a solicitation fee arrangement with.