

RECEIVED
2009 JUL 23 P 6:36
REGISTRATION & DISCLOSURE

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2005002244301**

TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: Wells Fargo Investments, LLC
CRD # 10582

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Wells Fargo Investments, LLC ("WFI" or "the firm") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against the firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. WFI hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

WFI is a registered broker-dealer based in San Francisco, CA, and has been a FINRA member since 1982. The firm has 2,326 active branches and 5,482 registered personnel and provides a full range of brokerage services to its customers. The firm has no relevant prior disciplinary history.

OVERVIEW¹

WFI violated NASD Rule 3010 by failing to establish and maintain an adequate supervisory system, including written supervisory procedures (WSPs), to supervise its sales of variable annuities (VAs); ensure proper VA training for brokers and principals; and adequately investigate patterns of potentially unsuitable VA sales.

¹ Unless stated otherwise, the facts and violative conduct described herein relate to the Relevant Period, January 2004 through December 2007.

000061205 2009

FACTS AND VIOLATIVE CONDUCT

The majority of WFI brokers operated out of branch offices of Wells Fargo Bank and received referrals from bank personnel. Other brokers operated out of centralized offices that were not located in bank branches. The sale of VAs was a significant part of the firm's business.

The brokers are supervised by Regional Sales Managers (RSMs) who are located in Offices of Supervisory Jurisdiction (OSJs). Many RSMs delegated a portion of their transaction review and approval responsibilities to Branch Administrative Managers (BAMs), who reported to the RSMs.

WFI Had Inadequate Systems and Procedures to Supervise VA Sales

WFI's systems and procedures were not reasonably designed in that they failed to provide adequate guidance to principals to review VA transactions for suitability, failed to identify a number of potential problematic transactions, and failed to ensure adequate VA training for brokers and principals.

WFI's systems and procedures governing VA sales were not appropriately tailored to the firm's business. The firm failed to provide sufficient guidance in its WSPs to brokers and principals to determine the suitability of VA transactions. Prior to November 2004, WFI's WSPs provided merely that all VA sales be suitable without providing specific guidance to either brokers or principals on how to make such a suitability determination. The firm amended its WSPs in November 2004 to include a list of factors for brokers and principals to consider when recommending VAs such as the customer's investment time horizon, need for insurance, liquidity needs, ability to understand various charges and fees, need for retirement income, need for tax deferral, and whether the client had already taken advantage of other tax-qualified investments. ~~Although these procedures directed brokers and principals to examine and consider all~~ of these factors, the firm (i) failed to provide adequate guidance surrounding the factors and how they should be applied and considered in determining suitability, and (ii) failed to systematically capture information relating to all of the factors.² Accordingly, the firm's principals did not consistently have the means to assess these factors to determine the suitability of the transactions.

In September 2006, WFI amended its WSPs by, among other things, removing the list of factors to consider when recommending VAs, leaving its principals and brokers without any guidance on how to determine suitability in VA transactions.

² While FINRA might not require all of the factors identified below to be part of a suitability review of variable annuities in every case, once a firm has identified the factor as relevant to its supervisory review, it is required to have a system in place to implement it.

The firm also failed to establish and maintain a supervisory system reasonably designed to ensure adequate VA training for its brokers and supervisors. As a result, certain brokers and principals lacked a complete understanding of the VA products they sold. For example, certain brokers while recommending VAs to customers incorrectly described two common VA riders, the guaranteed minimum income benefit (GMIB) rider and *guaranteed minimum withdrawal benefit (GMWB) rider*, as offering principal protection when they did not.

Accordingly, WFI violated NASD Rules 3010 and 2110.

WFI Failed to Identify or Investigate Patterns of Questionable Sales

A firm's supervisory system needs to be tailored for its business. VA sales were a significant part of WFI's business and the firm should have had the ability to identify potentially problematic VA sales patterns so that the Firm's principals could investigate to determine whether the transactions were in fact suitable.

Despite requiring principals to identify patterns of potentially unsuitable transactions, the firm failed to provide them with the tools to conduct the necessary analysis. Patterns of VA sales that should have raised red flags included, for example, (i) instances in which brokers sold particular riders, including the GMIB rider, to all (or nearly all) of the customers who purchased certain VA carriers products, an approach by a broker that could indicate a failure to properly tailor recommendations to each customer's investment needs and situations; (ii) instances in which brokers sold VAs that included death benefit riders to customers who were ineligible to purchase them, which could indicate lack of understanding by the broker of the product or a misrepresentation of what the customer was being sold, and (iii) instances in which required documents, including annuity disclosure forms, were inaccurate, incomplete, or outdated which could signal failure by the broker to provide the proper disclosures to customers about the annuities they were purchasing.

Accordingly, WFI violated NASD Rules 3010 and 2110.

B. The firm consents to the imposition of the following sanctions:

1. Censure.
2. A fine of \$275,000.
3. In addition, WFI shall:
 - a. Retain, within 90 days of the date of Notice of Acceptance of this AWC, an Independent Consultant, not unacceptable to

FINRA staff, to conduct a comprehensive review of the adequacy of the firm's policies, systems and procedures, and training relating to the firm's supervision of variable annuity transactions.

- b. Exclusively bear all costs, including compensation and expenses, associated with the retention of the Independent Consultant.
- c. Cooperate with the Independent Consultant in all respects, including by providing staff support. WFI shall place no restrictions on the Independent Consultant's communications with FINRA staff and, upon request, shall make available to FINRA staff any and all communications between the Independent Consultant and the firm and documents reviewed by Independent Consultant in connection with its engagement. Once retained, WFI shall not terminate the relationship with the Independent Consultant without the FINRA staff's written approval. WFI shall not be in and shall not have an attorney-client relationship with the Independent Consultant and shall not seek to invoke the attorney-client privilege or other doctrine or privilege to prevent the Independent Consultant from transmitting any information, reports, or documents to FINRA.
- d. At the conclusion of the review, which shall be no more than 160 days after the date of Notice of Acceptance of this AWC, require the Independent Consultant to submit to the firm and FINRA staff a Written Report. The Written Report shall address, at a minimum: (i) the adequacy of the Firm's policies, systems, and procedures relating to VA sales and switches; and (ii) the Independent Consultant's recommendations for modifications, and additions to the firm's policies, systems, procedures and training; and
- e. Require the Independent Consultant to enter into a written agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any other employment, consultant, attorney-client, auditing or other professional relationship with WFI, or any of its present or former affiliates, directors, officers, employees or agents acting in their capacity as such. Any firm with which the Independent Consultant is affiliated in performing his or her duties pursuant to this AWC shall not, without prior written consent of the FINRA staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with WFI or any of its present or former affiliates, directors, officers, employees, or

agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

- f. Within 30 days after delivery of the Written Report, WFI shall adopt and implement the recommendations of the Independent Consultant or, if it determines that a recommendation is unduly burdensome or impractical, propose an alternative procedure to the Independent Consultant designed to achieve the same objective. The firm shall submit such proposed alternatives in writing simultaneously to the Independent Consultant and FINRA staff. Within 30 days of receipt of any proposed alternate procedure, the Independent Consultant shall: (i) reasonably evaluate the alternative procedure and determine whether it will achieve the same objective as the Consultant's original recommendation; and (ii) provide the firm with a written decision reflecting his or her determination. The firm will abide by the Consultant's ultimate determination with respect to any proposed alternative procedure and must adopt and implement all recommendations deemed appropriate by the Independent Consultant.
- g. Within 30 days after the issuance of the later of the Consultant's Written Report or written determination regarding alternative procedures (if any), WFI shall provide FINRA staff with a written implementation report, certified by an Officer of WFI, attesting to, containing documentation of, and setting forth the details of the firm's implementation of the Independent Consultant's recommendations.
- h. Upon written request showing good cause, FINRA staff may extend any of the procedural dates set forth above.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

WFI specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against WFI;
- B. To be notified of the Formal Complaint and have the opportunity to answer

the allegations in writing;

- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, WFI specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

WFI further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

WFI understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against WFI; and
- C. If accepted:
 - 1. this AWC will become part of WFI's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the firm;
 - 2. this AWC will be made available through FINRA's public disclosure

program in response to public inquiries about WFI's disciplinary record;

3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 4. WFI may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. WFI may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the firm's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. The firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The firm understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

WFI certifies that it has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that WFI has agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce WFI to submit it.

Wells Fargo Investments, LLC
Respondent

June 11, 2009

Date

By: Lisa A. Amador

Lisa A. Amador
Senior Vice President and Chief
Compliance Officer

Reviewed by:

Nader H. Salehi
Nader H. Salehi *for*
Counsel for Respondent
Bingham McCutchen LLP
399 Park Ave.
New York, NY 10022-4889
Phone: 212-705-7230

Accepted by FINRA:

7/23/09
Date

Signed on behalf of the
Director of ODA, by delegated authority

James E. Day
James E. Day
Chief Counsel and Associate Vice
President
FINRA Department of Enforcement
1801 K St., N.W., Suite 800
Washington, D.C. 20006
202-874-2917