

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2008014350501**

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

RE: Wells Fargo Advisors, LLC, (CRD No. 19616) as successor to Wells Fargo Investments, LLC (CRD No. 10582), Respondent

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Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent 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 Respondent alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondent 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

This AWC relates to conduct at Wells Fargo Investments, LLC ("Wells Fargo Investments" or the "Firm") between January 1, 2007 and December 31, 2008 (the "relevant period"). Wells Fargo Investments had been registered as a broker-dealer since 1982 and was based in San Francisco, California. The Firm had approximately 2,326 active branches and 5,482 registered personnel.

On December 31, 2010, Wells Fargo Investments ceased doing business. Following the merger between the Wells Fargo & Company and Wachovia Corporation holding companies, substantially all of Wells Fargo Investments assets and liabilities were assigned to Wells Fargo Advisors, LLC (formerly known as Wachovia Securities, LLC). Wells Fargo Investments was not affiliated with Wells Fargo Advisors during the relevant period. Wells Fargo Advisors is named as the respondent in this matter as a successor to Wells Fargo Investments based on its assumption of the liabilities of Wells Fargo Investments.

RELEVANT DISCIPLINARY HISTORY

On December 15, 2011, FINRA found that Wells Fargo Investments violated NASD Rules 3010 and 2110, and FINRA Rule 2010, by failing to establish an effective supervisory system and written supervisory procedures reasonably designed to ensure that reverse convertible sales were suitable, and by failing to provide eligible customers with "breakpoint" and "rollover and exchange" discounts to which they were entitled on sales of unit investment trusts ("UITs.") FINRA also found that Wells Fargo Investments had insufficient systems and procedures in place for supervisors to effectively monitor customer accounts for potentially unsuitable sales and levels of concentration in reverse convertibles. FINRA also found that Wells Fargo Investments effected hundreds of unsuitable reverse convertible transactions in 21 customer accounts through a former registered representative, and that Wells Fargo Investments failed to supervise that representative. Wells Fargo Investments agreed to a censure, a \$2 million fine, and to provide remediation to customers who were sold reverse convertibles and UITs. *See* AWC No. 2008015651901.

On October 30, 2009, FINRA found that Wells Fargo Investments violated NASD Rules 3010 and 2110 by failing to establish and maintain an adequate supervisory system, including written supervisory procedures (WSPs), to supervise its sales of variable annuities, ensure proper variable annuity training for brokers and principals, and adequately investigate patterns of potentially unsuitable variable annuity sales. Wells Fargo Investments agreed to a censure and a \$275,000 fine. The Firm also agreed to retain an independent consultant to review the Firm's policies, systems, and procedures relating to the supervision of its variable annuities sales, and to adopt and implement the independent consultant's recommendations. *See* AWC No. 2005002244301.

OVERVIEW

Between January 1, 2007 and December 31, 2008, Wells Fargo Investments made unsuitable recommendations to customers to purchase floating rate loan funds. These unsuitable recommendations violated NASD Rules 2310 and 2110 and FINRA Rule 2010 and resulted in significant losses by hundreds of customers.

During the relevant period, Wells Fargo Investments also failed to establish and maintain a system for supervising sales of floating rate loan funds that was reasonably designed to achieve compliance with the suitability requirements of NASD and FINRA rules. Wells Fargo Investments did not have an adequate system or procedure to take into account investors' investment objectives, risk tolerances, and liquidity needs in light of the risks and features of floating rate loan funds. Even after Wells Fargo Investments' mutual fund product team raised concerns about the sales of floating rate loan funds, the Firm failed to take reasonable steps to ensure that its sales force was informed of those concerns and took them into account when recommending and selling floating rate loan funds to customers. By virtue of these supervisory failures, Wells Fargo Investments violated NASD Rules 3010 and 2110 and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

1. Characteristics of Floating Rate Funds

In general, floating rate loan funds¹ are characterized by relatively low interest rate risk but significant credit and liquidity risk. Floating rate loan funds are mutual funds that generally invest in secured senior loans extended by financial institutions to entities whose credit is in many cases rated below investment-grade, or "junk." The loans in which floating rate loan funds invest are sometimes called "leveraged" loans because companies that are extended these high-interest loans usually have a significant level of debt relative to equity. The interest rates on the loans adjust by a pre-determined spread over a reference rate, such as the London Interbank Offered Rate (LIBOR). The interest rates on the loans are adjusted periodically, typically at 30, 60, or 90-day intervals.

Some floating rate loan funds are subject to additional liquidity risk because they only permit redemptions during specified monthly or quarterly redemption windows. Typically, such funds offer to repurchase a certain percentage of their outstanding shares in a given redemption window. If the fund's investors try to redeem more shares than the fund offers to repurchase during a redemption window, the fund may repurchase customers' shares on a pro-rated basis.

2. Sales of Floating Rate Loan Funds by Wells Fargo Investments

Between January 1, 2007 and December 31, 2008, Wells Fargo Investments representatives solicited and sold billions of dollars of floating rate loan funds to customers. At times, floating rate loan funds constituted up to 16% of Wells Fargo Investments total mutual funds sales.

Individual registered representatives at Wells Fargo Investments were responsible for assessing the suitability of these transactions. Local or regional managers were responsible for conducting a supervisory review of the transactions, and typically did so by reviewing the daily trade blotter. Wells Fargo Investments did not have any other system or procedure to specifically identify transactions in floating rate loan funds that might be unsuitable in light of the client's risk tolerance, investment objective, other securities holdings, or concentration levels. In spite of the unique risks and features of these products, Wells Fargo Investments did not provide guidance or training to its registered representatives and their managers to assist them in assessing the suitability of floating rate funds for the Firm's customers. As a result, the Firm's registered representatives recommended numerous floating rate fund transactions that were not identified as potentially unsuitable when reviewed by the Firm.

In 2007, concerns were raised at Wells Fargo Investments about the risks presented to customers by floating rate loan funds and how floating rate funds were being sold at Wells Fargo Investments. At that time, Wells Fargo Investments also became aware that, as a percentage of its mutual fund sales, it sold substantially more floating rate loan funds than other brokerage firm competitors that were affiliated with major banks. In particular, in response to high sales of

¹ Floating rate loan funds are also sometimes referred to as "bank-loan funds," "senior loan funds," or "leveraged loan funds."

floating rate funds generally and increased volatility in the bank loan market in which floating rate loan funds invest in 2007, Wells Fargo Investments mutual fund product team conducted a review of the floating rate loan fund asset class. In August 2007, the product team reported its findings to senior management, highlighted the high volume of sales of floating rate loan funds at Wells Fargo Investments, and, as part of its analysis, relayed that it was concerned that "financial advisors are positioning these funds as an alternative to Bank CDs or money market funds instead of part of an overall diversification strategy." The product team also recommended that Wells Fargo Investments remind selling representatives that floating rate loan funds should be part of an overall asset allocation strategy and not sold as a high yielding alternative to money market funds. The team prepared a presentation summarizing its analysis and recommendations that included guidance regarding the characteristics of clients for whom floating rate loan funds may be suitable.

Despite the product team's recommendations and concerns, Wells Fargo Investments failed to distribute the information prepared by the product team to many of the registered representatives who sold floating rate loan funds, monitor the firm's sales of floating rate loan funds, or otherwise take action to ensure that the information and concerns of the product team were taken into account in connection with sales of floating rate loan funds to customers. Although Wells Fargo Investments provided the product team's presentation to some of its employees at the regional level, it failed to take steps to adequately distribute this information or otherwise ensure that this information was taken into account when assessing the suitability of floating rate loan funds for the Firm's customers.

3. Wells Fargo Investments Made Unsuitable Sales of Floating Rate Loan Funds in 2007 and 2008

Between January 1, 2007 and December 31, 2008, Wells Fargo Investments registered representatives made recommendations to customers to purchase floating rate loan funds that were unsuitable for those customers in light of their financial situations and needs. In particular, Wells Fargo Investments made numerous recommendations to customers whose risk tolerances and investment objectives were inconsistent with the risks and features of floating rate loan funds.

The floating rate loan funds sold by Wells Fargo Investments were subject to significant credit and liquidity risks. Accordingly, the funds were not typically suitable for investors with an investment objective of income and a conservative risk tolerance or those customers who were seeking to preserve principal, particularly when those customers' purchases constituted a large percentage of their investible assets or liquid net worth. Moreover, floating rate loan funds, particularly those with restrictive redemption policies, were not typically suitable for investors with short investment time horizons. In spite of these features of floating rate funds, Wells Fargo Investments recommended floating rate fund investments to hundreds of customers for whom the investment was unsuitable in light of the customers' financial situations, risk tolerances, and investment objectives.

Between 2007 and early 2009, the net asset value of the typical floating rate loan funds declined substantially. Since that time, the net asset value of the typical floating rate loan fund has partially recovered. However, many Wells Fargo Investments customers for whom a floating

rate loan fund was unsuitable sold their holdings in floating rate loan funds and incurred net losses at Wells Fargo Investments. 239 customers suffered losses in the total amount of \$1,962,000 as a result of unsuitable transactions in floating rate loan funds recommended by Wells Fargo Investments.

As described above, Wells Fargo Investments recommended investments in floating rate loan funds to customers when it did not have reasonable grounds for believing that the recommendations were suitable for the customers. As a result, Wells Fargo Investments violated of NASD Rules 2310 and 2110 and FINRA Rule 2010.

4. Wells Fargo Investments Failed to Reasonably Supervise its Sales of Floating Rate Loan Funds and to Establish an Adequate Supervisory System to Supervise Those Sales

Wells Fargo Investments failed to establish and maintain a system for supervising its sales of floating rate loan funds that was reasonably designed to achieve compliance with the suitability requirements of NASD and FINRA rules. Wells Fargo Investments sold billions of dollars of floating rate loan funds to its customers. Those sales were a significant part of the Firm's mutual fund business. By August 2007, floating rate loan funds constituted approximately 16% of Wells Fargo Investments total mutual funds sales.

Despite this, Wells Fargo Investments failed to provide sufficient guidance to registered representatives or supervisors to determine whether floating rate loan funds were suitable for the Firm's clients. The Firm also failed to adequately train its registered persons about the credit and liquidity risks associated with floating rate funds, or the customers for whom such funds would be suitable.

Wells Fargo Investments also failed to implement procedures reasonably designed to ensure that its sales of floating rate loan funds were suitable for its customers even after potential concerns were raised internally about those sales. As described above, a mutual fund product team conducted a review of floating rate loan funds in 2007 and recommended that the Firm remind selling representatives that the funds should be part of an overall asset allocation strategy and not sold as a high yielding alternative to money market funds. The team also prepared a presentation which included guidance regarding customers for whom floating rate loan funds might be suitable. However, Wells Fargo Investments failed to adequately distribute this information to registered representatives or take action to ensure that the product team's concerns were taken into account when floating rate loan fund purchases were recommended to customers.

As described above, Wells Fargo Investments failed to reasonably supervise sales of floating rate funds to customers and to implement an adequate supervisory system with respect to those sales. Wells Fargo Investments thus violated NASD Rules 3010 and 2110 and FINRA Rule 2010.

B. Respondent also consents to the imposition of the following sanctions:

1. a censure;
2. a fine in the amount of \$1,250,000; and
3. the payment of restitution to the customers listed on the attached Exhibit A in the amount of \$1,981,561.70.

A registered principal on behalf of Respondent firm shall submit satisfactory proof of payment of restitution or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted to Tom Kimbrell, Senior Counsel, FINRA, Department of Enforcement, 15200 Omega Drive, 3rd Floor, Rockville, MD 20850-3241 either by letter that identifies the Respondent and the case number or by e-mail from a work-related account of the registered principal of Respondent firm to EnforcementNotice@FINRA.org. This proof shall be provided to the FINRA staff member listed above no later than 120 days after acceptance of the AWC.

If for any reason Respondent cannot locate any customer identified in Exhibit A after reasonable and documented efforts within 120 days from the date the AWC is accepted, or such additional period agreed to by a FINRA staff member in writing, Respondent shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed property or abandoned property fund for the state in which the customer is last known to have resided. Respondent shall provide satisfactory proof of such action to the FINRA staff member identified above and in the manner described above, within 14 days of forwarding the undistributed restitution and interest to the appropriate state authority.

The imposition of a restitution order or any other monetary sanction herein, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies.

The Firm agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. The Firm has submitted an Election of Payment form showing the method by which the Firm proposes to pay the fine imposed.

The Firm specifically and voluntarily waives any right to claim that the Firm is unable to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

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

II.

WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Complaint issued specifying the allegations against me;

- B. To be notified of the 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, Respondent 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.

Respondent 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

Respondent 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 it; and
- C. If accepted:
 - 1. this AWC will become part of the Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against it;

2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about its 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. Respondent 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. Respondent 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 Respondent's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent 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.

The undersigned, on behalf of the Respondent certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that Respondent 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 the Respondent to submit it.

05/16/2013
Date (mm/dd/yyyy)

Wells Fargo Advisors LLC
Respondent

Wells Fargo Advisors, LLC, as successor to Wells Fargo Investments, LLC

By: Lisa A. Amador
Name: LISA A. AMADOR
Title: SVP/ COMPLIANCE MGR

Reviewed by:

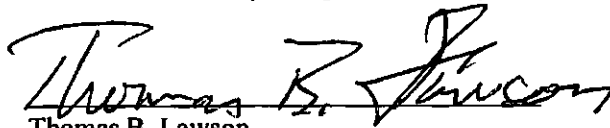


Sidley Austin LLP
787 Seventh Avenue
New York, NY 10019
Telephone: (212) 839-5300

Accepted by FINRA:

June 3, 2013
Date

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



Thomas B. Lawson
Vice President and Chief Counsel
FINRA Department of Enforcement
15200 Omega Drive
3rd Floor
Rockville, MD 20850-3241
Telephone: (301) 258-8551
Fax: (202) 721-6597