

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2010022380001**

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

RE: Wells Fargo Advisors, LLC
CRD No. 19616

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Wells Fargo Advisors, LLC 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

Wells Fargo Advisors, formerly Wachovia Securities, has been a member firm since 1987. It is a full-service broker-dealer affiliate of Wells Fargo Bank. The firm is based in St. Louis, MO and maintains approximately 7,200 branch offices across the United States. Wells Fargo currently employs more than 25,600 registered representatives, 20,200 registered investment advisor representatives, and 4,500 non-registered persons.

RELEVANT DISCIPLINARY HISTORY

In November 2004, Respondent was censured, fined \$650,000, and suspended from registering new brokers for five business days by FINRA (then NASD) for failing to have supervisory systems and procedures in place reasonably designed to ensure that events reportable on Forms U4 and U5 were filed with FINRA in a timely manner. Between January 2002 and March 2004, the firm's failure to supervise resulted in 610 such late U4 and U5 filings. (AWC No. CAF040089)

In March 2011, Respondent was censured and fined \$1,000,000 for failing to have supervisory systems and procedures in place reasonably designed to ensure that events reportable on Forms U4 and U5 were filed with FINRA in a timely manner and that prospectuses were delivered to customers in a timely manner. Between July 2008 and June 2009, the firm's failure to supervise resulted in 197 such late U4 and U5 filings. (AWC No. 2010022921801).

OVERVIEW

Beginning in 2008, Wells Fargo Advisors (WFA) transferred customer debts from check and debit card overdrafts to individual registered representatives on certain occasions, resulting in the representatives' loaning money to those customers. WFA did so without determining whether the loans at issue met the conditions of FINRA Rule 3240(a) and NASD Rule 2370(a).¹ In certain instances, the loans did violate those provisions. As a result, WFA caused violations of NASD Rule 2370(a) and FINRA Rule 3240(a), thereby violating NASD Rule 2110 and FINRA Rule 2010.² WFA also failed to establish and maintain procedures reasonably designed to determine whether the loans by registered representatives in these instances complied with Rule 2370(a) and 3240(a). The firm thereby violated NASD Rules 3010 and 2110 and FINRA Rule 2010.

In addition, Respondent failed to update the Form U4 of a registered representative, and to file timely Rule 3070 reports, in response to allegations by two customers that the representative made unauthorized journal transfers of funds from their accounts. In addition, the firm failed to update the Form U4 of the registered representative in connection with the settlement of one of those complaints. By this conduct, Respondent violated Art. V, Sec. 2(c) of FINRA's By-Laws, and FINRA Rules 1122 and 2010.

FACTS AND VIOLATIVE CONDUCT

1. Wells Fargo caused violations of NASD Rule 2370 and FINRA Rule 3240

Respondent permitted certain customers to borrow money from the firm by withdrawing more funds than were available in the customers' accounts, through the use of, among other things, online payments, checks, and debit cards. The registered representatives assigned to the accounts, with the concurrence of the branch managers and the firm's Credit and Margin Department, determined whether to allow these types of withdrawals to go through. If the overdrafts were allowed to occur, the customers were responsible for satisfying the overdraft through a same day deposit of funds, wire transfer, or collateral or sale of securities. According to the firm's policy, if a customer did not satisfy an overdraft on the same day, the debit would not be honored. However, during the time period at issue, Respondent allowed exceptions to this policy on an occasional, though not frequent, basis and permitted overdrafts in situations where customers did not cover the debit on the same day, thereby loaning money to those customers. In those instances, in accordance with the firm's policies and procedures, if the overdraft was not repaid after a period of time (generally between 26 and 60 business days), the unsecured debit was charged against the registered representative's production.

Once an overdraft was charged against a registered representative's production, the registered representative could request that the debt be sent to collections, through the firm, for recovery from

¹ NASD Rule 2370 was superseded by FINRA Rule 3240 on June 14, 2010.

² NASD Rule 2110 was superseded by FINRA Rule 2010 on December 15, 2008. The firm violated NASD Rule 2110 for conduct before that date and FINRA Rule 2010 for conduct on or after that date.

the customer. Amounts recovered from the customer were paid to the registered representative, minus any collections expenses. By transferring responsibility for the loan to registered representatives and allowing registered representatives to obtain repayment from the customers, the firm caused registered representatives to loan money to customers.

As an example, a registered representative had a customer who maintained a cash brokerage account which he generally used for the receipt and disbursement of funds, and for debit card transactions and check writing. During at least 2008 through 2010 this customer sometimes overdrew his account and incurred large debits. The customer often satisfied those debits on the same day, but in instances when the customer did not do so, the registered representative requested that the firm continue to honor the customer's checks and debit card transactions at times when his account was overdrawn. In March 2009, the customer was allowed to continue writing checks and use his debit card while he had a large negative balance in his account. Respondent allowed this situation to continue because the customer was a source of referrals and because the registered representative handling the account would ultimately be charged, under the procedure described above, for the customer's overdrafts that were not paid after the prescribed periods of time.

In the above mentioned instances, Respondent caused loans to customers to be made by registered representatives that, in certain instances, violated NASD Rule 2370(a) and FINRA Rule 3240(a). By causing those violations, Respondent thereby violated NASD Rule 2110 and FINRA Rule 2010. Respondent also allowed the loans to occur without any system or procedure in place to determine whether the loans met the conditions of Rules 3240(a) and 2370(a). Respondent therefore failed to establish and maintain a supervisory system reasonably designed to achieve compliance with FINRA and NASD rules, and violated NASD Rule 3010, NASD Rule 2110, and FINRA Rule 2010.

2. Failure to report customer complaints

BM and DJ, two customers of a registered representative in a California branch office, alleged in writing that the registered representative had made journal transfers of funds to other customers without their authorization. BM's counsel sent a letter in July 2009 claiming that \$73,500 was "improperly transferred" from his account to the account of LM, another customer of the same representative.³ DJ submitted a complaint in March 2010 alleging that the registered representative had made an unauthorized journal transfer of \$10,000 from his account to the account of another customer, JR.⁴ Wells Fargo eventually settled DJ's complaint for \$16,500, representing a return of the original \$10,000, plus interest and attorney's fees.

Form U4 requires disclosure of whether, within the past 24 months, a registered person has been the subject of the settlement of any investment-related sales practice complaint for \$15,000 or more (Item 14I(2)), and disclosure of an investment-related, consumer-initiated, written complaint alleging involvement in a sales practice violation claiming compensatory damages of \$5,000 or more (Item 14I(3)). Notwithstanding this requirement, Respondent never reported either of these complaints on the registered representative's Form U4, and never disclosed the settlement of the second complaint for more than \$15,000. By failing to do so, Respondent violated Art. V, Sec. 2 of FINRA's By-Laws and FINRA Rules 1122 and 2010.

³ BM's complaint was resolved without a monetary settlement.

⁴ This rule was superseded by FINRA Rule 4530 on July 1, 2011.

In addition, NASD Rule 3070 required firms to report when the firm or an associated person “is the subject of any written customer complaint involving allegations of theft or misappropriation of funds or securities or of forgery” within ten days. BM’s complaint alleged misappropriation of funds, but was not reported by Respondent under NASD Rule 3070 until three and one-half months after it was received. DJ’s complaint also alleged misappropriation of funds, but was never reported. By failing to make these reports, Respondent violated NASD Rules 3070 and FINRA Rule 2110.

* * *

By virtue of the foregoing, Respondent violated Art. V, Sec. 2 of FINRA’s By-Laws; NASD Rules 2110, , 3010, and 3070; and FINRA Rules 1122, 2010.

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

1. a censure; and
2. a fine in the amount of \$50,000.

Respondent further undertakes and agrees to conduct a comprehensive review of its systems, policies and procedures pertaining to the extension of credit to customers by registered representatives discussed in this AWC to ensure that those policies and procedures are reasonably designed to achieve compliance with FINRA rules and the federal securities laws regarding borrowing money from, or lending money to, customers by registered representatives. Within 120 days of the issuance of a Notice of Acceptance of this AWC, an officer of Respondent shall certify in writing to FINRA’s Department of Enforcement that (i) the firm has engaged in the comprehensive review described above; and (ii) as of the date of the certification, the firm has in place policies and procedures to reasonably designed to address and correct the violations relating to supervision described in this AWC. The certification shall be accompanied by a description of the review undertaken by the firm pursuant to this undertaking and the changes to procedures, if any, adopted by Respondent. The Department of Enforcement may, upon a showing of good cause and at its sole discretion, extend the time for compliance with this provision.

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

Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Respondent has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

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

II.

WAIVER OF PROCEDURAL RIGHTS

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 it;

- 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 Respondent; and
- C. If accepted:
 - 1. this AWC will become part of Respondent’s permanent disciplinary records 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 Respondent’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. 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. It 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, certify that a person duly authorized to act on Respondent's behalf has read and understands all of the provisions of this AWC and has 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 Respondent to submit it.

3-22-13
Date

Kelly Metz
Wells Fargo Advisors, LLC
By [name]: Kelly Metz
[title]: Director of Operations

Accepted by FINRA:
Apr. 8, 2013
Date

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

Jonathan I. Golomb
Jonathan I. Golomb
Senior Special Counsel
FINRA Department of Enforcement
15200 Omega Drive
Rockville, MD 20850