

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2017053034301**

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

RE: Wells Fargo Advisors, LLC (n/k/a Wells Fargo Clearing Services, LLC), Respondent
Member Firm
CRD No. 19616

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Wells Fargo Advisors, LLC (n/k/a Wells Fargo Clearing Services, LLC) ("Wells Fargo" 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 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, LLC was a FINRA member from 1987 until November 2016, when it merged with another broker-dealer and became Wells Fargo Clearing Services, LLC, a FINRA member.¹ Headquartered in St. Louis, Missouri, the Firm engages in a general securities business. As of November 2019, the Firm employed approximately 26,600 registered individuals in 6,269 branch offices.

RELEVANT DISCIPLINARY HISTORY

Respondent does not have any relevant disciplinary history with the Securities and Exchange Commission, any state securities regulators, FINRA, or any other self-regulatory organization.

¹ Wells Fargo Clearing Services, LLC, retains the CRD number of Wells Fargo Advisors, LLC.

OVERVIEW

Between March 2012 and March 2016 (the "Relevant Period"), Wells Fargo violated NASD Rule 3010(a) (for conduct prior to December 1, 2014) and FINRA Rules 3110(a) (for conduct on or after December 1, 2014) and 2010 by failing to reasonably supervise a former registered representative who excessively traded equity positions in three accounts belonging to a senior customer.

FACTS AND VIOLATIVE CONDUCT

Prior to December 1, 2014, NASD Rule 3010(a) required each member firm to "establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules." From December 1, 2014 through the end of the Relevant Period, FINRA Rule 3110(a) required each member firm to "establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules."

FINRA Rule 2010 requires FINRA member firms to observe high standards of commercial honor and just and equitable principles of trade. Conduct that violates NASD Rule 3010(a) or FINRA Rule 3110(a) also violates FINRA Rule 2010.

During the Relevant Period, a Firm registered representative excessively traded in three trust accounts. The accounts' trustee and beneficial owner, JZ, was 88 years old when the excessive trading commenced. The registered representative placed more than 2,000 trades in JZ's three accounts and JZ paid at least \$300,000 in commissions and other fees.

The Firm used a computer program to identify red flags of unsuitable trading using risk-based criteria including velocity, which the Firm defined as annualized commissions and fees, divided by the equity in the account.

The Firm's written supervisory procedures required the Firm to conduct customer interviews to address red flags in the event of inconsistencies in account activity, and when accounts were continually identified by the system for review, including specifically any account flagged for six consecutive months. The written supervisory procedures required that the customer interview include discussion of the "reason the account was selected for account review," the "client's investment profile," whether the customer regularly received account statements and understood them and the "[a]ccount[s] [p]erformance" including specific discussion of any realized or unrealized gains and losses.

The Firm's computer program flagged JZ's three accounts for high velocity a total of 40 times during the Relevant Period. However the Firm did not reasonably address these flags.

For example, between November 2013 and April 2014, the Firm's computer program flagged two of JZ's accounts for high velocity on a monthly basis for six consecutive months. However, the Firm did not contact JZ until May 2014. In May 2014, the Firm contacted JZ but did not say it was doing so because it detected high velocity in her account. The Firm also did not address JZ's investment profile or the account's performance, and did not make a reasonable inquiry to determine whether the transactions that resulted in the Firm's electronic alerts were recommended to JZ, or whether she understood the implications of the trading.

Between July 2014 and February 2015, the Firm's electronic system again flagged one of JZ's accounts for high velocity on five occasions. However, the Firm did not contact JZ about her account until July 2015. Again, the Firm did not inform JZ that the account was selected for review because of the velocity in the account. The Firm also did not address JZ's investment profile or the account's performance, and did not make a reasonable inquiry to determine whether the transactions that resulted in the Firm's electronic alerts were recommended to JZ, or whether she understood the implications of the trading.

In August 2015, one of JZ's accounts was again flagged for high velocity by the Firm's computer program. However, the Firm did not contact JZ to investigate the August 2015 flag for high velocity until April 2016.

Following its investigation, the Firm discharged the registered representative responsible for JZ's accounts on September 2, 2016.

Ultimately, the Firm paid \$1 million in restitution to JZ in settlement of a complaint that she filed regarding the activity in her accounts.

By virtue of the foregoing, Respondent violated NASD Rule 3010 (for conduct prior to December 1, 2014), FINRA Rule 3110 (for conduct on or after December 1, 2014) and FINRA Rule 2010.

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

- A censure; and
- A fine of \$175,000.

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 an inability to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

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

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 Chief Legal Officer, 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 record and may be considered in any future action brought by FINRA or any other regulator against Respondent;
2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
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 Firm, certifies that a person duly authorized to act on its 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 it has agreed to the AWC's 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 it to submit it.

Wells Fargo Clearing Services, LLC
Respondent

1/23/2020
Date

By: 
Print Name: Erik Kacand
Title: COO - WFA

Reviewed by:

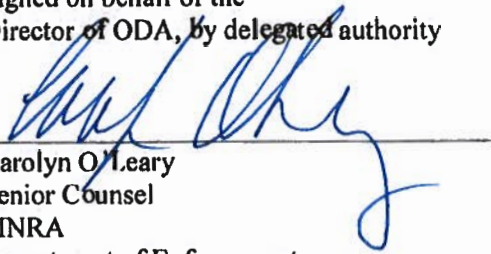


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Accepted by FINRA:

1/29/20
Date

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



Carolyn O'Leary
Senior Counsel
FINRA
Department of Enforcement
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