

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. CE1050006

RE: Wells Fargo Investments, LLC, Respondent
Member Firm
(BD No. 10582)

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

Respondent understands that:

1. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by NASD's Department of Enforcement and National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;
2. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against it; and
3. If accepted:
 - a. this AWC will become part of Respondent's permanent disciplinary records and may be considered in any future actions brought by NASD or any other regulator against it;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about Respondent's disciplinary record;
 - c. NASD may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-2; and
 - d. 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 allegation in this AWC or create the impression that the AWC is without factual basis. Nothing in this provision affects Respondent's testimonial obligations or right to take legal or factual positions in litigation or other legal proceeding in which NASD is not a party.

Respondent also understands that its experience in the securities industry and disciplinary history may be factors that NASD will consider in deciding whether to accept this AWC. That experience and history are as follows:

Wells Fargo Investments, LLC is a full-service broker-dealer, has been an NASD member since 1982, and has no relevant prior disciplinary history.¹

I.

WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Formal Complaint issued specifying the allegations against it;
- 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 NAC and then to the U.S. Securities and Exchange Commission ("SEC") 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 Rule 9143 or the separation of functions prohibitions of 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.

¹Wells Fargo Investments, LLC is a wholly owned subsidiary of Wells Fargo & Company.

II.

ACCEPTANCE AND CONSENT

A. Findings

Respondent hereby accepts and consents without admitting or denying the allegations or findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NASD, or to which NASD 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 NASD:

1. This matter involves violations of NASD Rule 2830(k). NASD Rule 2830(k)(1) prohibits member firms from favoring or disfavoring the sale or distribution of mutual fund shares on the basis of brokerage commissions received by the firm. NASD Rule 2830(k)(3) prohibits member firms from arranging for a specific amount or percentage of brokerage commissions to be directed to the firm conditioned on the firm's sale of mutual fund shares. NASD Rule 2830(k)(6) prohibits member firms from recommending the purchase of mutual fund shares on the basis of brokerage commissions received or expected to be received by the firm from any source.
2. From January 2001 through December 31, 2003 (the "Relevant Period"), Wells Fargo Investments, LLC ("WFI") maintained a revenue sharing program in which participating mutual fund families paid a fee in return for enhanced exposure within WFI's mutual fund sales platform. Twelve mutual fund families participated in WFI's Preferred Partners revenue sharing program.²
3. During the Relevant Period, six fund families in WFI's Preferred Partners program paid all or part of their fees by directing approximately \$9,879,839 million in brokerage commissions to WFI. When it arranged for and accepted those commission payments, WFI violated NASD Conduct Rules 2830(k) and 2110.

WFI's Preferred Partners Program

4. WFI maintained a revenue sharing program called the Preferred Partner program. In return for revenue sharing payments, WFI provided Preferred Partners with enhanced exposure within WFI's sales platform and the following benefits, among others.

² The twelve Preferred Partners were AIM (2001 - 2003), Alliance (2001 - 2003), Delaware (2001 - 2002), Dreyfus Premier (2001 - 2002), Evergreen (2001 - 2003), Fidelity Advisor (2001 - 2003), Franklin Templeton (2001 - 2003), Hartford (2002 - 2003), MFS (2001 - 2003), Oppenheimer (2002 - 2003), Putnam (2001 - 2003) and Wells Fargo Funds (2001 - 2003).

Preferred Partner Funds were:

- listed on WFI's internal website, with product information and descriptions, hyperlinks to those funds' websites, and marketing materials;
- featured in WFI publications;
- given access to financial consultants;
- provided education and training to WFI's regional managers, financial consultants, and sales support personnel;
- allowed to participate in certain recognition events;
- permitted to host booths at annual conferences;
- sponsored and or participated in lunches, seminars, conference calls, and workshops for financial consultants and customers; and
- allowed to send prospecting letters to and participate in training for WFI customers.

The foregoing benefits were not available or, in some cases, as fully available, to non-participating mutual fund families.

WFI sold mutual funds offered by more than 250 fund families, but included only 12 fund families in its Preferred Partners program.

WFI's Preferred Partner Fees

5. All of the WFI Preferred Partners paid revenue sharing fees based on a percentage of assets held and/or sales executed by WFI.
6. WFI negotiated the terms of the fee formulas with each Preferred Partner, except Wells Fargo proprietary funds. The rates ranged from 2.5 to 15 basis points on assets under management and from 12.5 to 35 basis points on sales.
7. Wells Fargo proprietary funds did not pay a negotiated rate of revenue sharing fees. Instead, the investment advisor for the Wells Fargo proprietary funds allocated revenue net of certain expenses to the various Wells Fargo & Company affiliates, including WFI, based on their sales of Wells Fargo proprietary funds.
8. WFI agreed to accept revenue sharing fees from six Preferred Partners through directed brokerage.

WFI's Use of Directed Brokerage Commissions

9. During the Relevant period, six Preferred Partners (AIM, Franklin/Templeton, Hartford, MFS, Oppenheimer, and Putnam) paid WFI \$9,879,839 in revenue sharing payments by directing brokerage commissions for portfolio transactions to or for the benefit of WFI.
10. Mutual fund families generally use a variety of unaffiliated broker-dealers with institutional trading facilities to execute transactions in the portfolios of the mutual funds they distribute and manage. The selection of executing brokers is generally within the discretion of the mutual fund family advisor, subject to the requirement of obtaining best execution.
11. During the Relevant Period, the six Preferred Partners that paid all or part of their required revenue sharing fees by directing brokerage commissions for portfolio transactions to or for the benefit of WFI avoided using their own assets to pay the fees and instead used brokerage commissions, which are assets of the mutual funds.
12. WFI arranged for a Wells Fargo affiliate to execute fund portfolio transactions for these six Preferred Partners, and pay a portion of the commissions to WFI. WFI and the Preferred Partner agreed to credit the commission on such transactions against revenue sharing fees at a rate of approximately \$1.00 to \$1.30 in commissions per dollar of fees.
13. The Preferred Partners directed WFI or its affiliate to apply the commission for a specific portfolio transaction toward revenue sharing fees. When the Preferred Partner placed the order, the trading desk at the WFI affiliate deducted and retained a portion of the brokerage commission for its trade execution and overhead expenses, and paid the rest to WFI, even though WFI provided no services in connection with the trade. WFI credited its portion of the brokerage commission against the Preferred Partner's revenue sharing fees.
14. During the Relevant Period, WFI tracked cash payments and the directed brokerage commissions it received from Preferred Partners, and provided that information to its Preferred Partners.

Resulting Rule Violations

15. Conduct Rule 2830(k) is designed to prevent arrangements in which brokerage commissions, which are fund assets, are used to compensate member firms for selling fund shares. The rule is also designed to ensure that execution of portfolio transactions by brokerage firms is guided by the

principle of "best execution" and not by other considerations.³ The rule provides, in pertinent part:

(1) No member shall, directly or indirectly, favor or disfavor the sale or distribution of shares of any particular investment company or group of investment companies on the basis of brokerage commissions received or expected by such member from any source, including such investment company, or any covered account.

* * *

(3) No member shall ... request or arrange for the direction to any member of a specific amount or percentage of brokerage commissions conditioned upon that member's sale or promise of sales of shares of an investment company.

* * *

(6) No member shall, ... (B) recommend specific investment companies to sales personnel, or establish "recommended," "selected," or "preferred" lists of investment companies..., if such companies are recommended or selected on the basis of brokerage commissions received or expected from any source

16. As described above, during the Relevant Period, WFI arranged for and accepted approximately \$9,879,839 in directed brokerage commissions from mutual fund families as payment for participation in WFI's Preferred Partners program. These mutual fund families received a number of benefits by participating in the programs, which amounted to enhanced exposure within WFI's mutual fund sales platform. By arranging for and accepting brokerage commissions to pay for the fund families' participation in the programs, Respondents violated NASD Conduct Rules 2830(k) and 2110.

B. Sanctions

Wells Fargo Investments, LLC hereby accepts and consents to the following sanctions:

1. A censure; and
2. A fine of \$2,970,000.

³ Proposed Rule Change, file SR-NASD-2004-027, 2004 SEC LEXIS 2488 (Oct. 29, 2004); *Notice to Members* 84-40

III.**OTHER MATTERS**

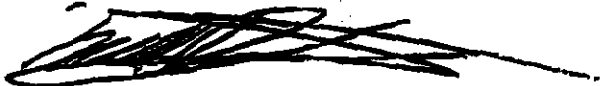
- A. Respondent understands that it may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by NASD, nor does it reflect the views of NASD or its staff.
- B. Respondent agrees to pay any monetary sanctions imposed on it pursuant to the terms of this AWC upon notice that this AWC has been accepted and that such payments are due and payable and have attached an Election of Payment form showing the method by which it proposes to pay any fine imposed.
- C. Respondent specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

The undersigned certify on behalf of Respondent that it they have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce them to submit it.

Wells Fargo Investments, Inc.

5-20-05

Date

By: 

Name: William P. Hayes

Title: Chief Compliance Officer

Reviewed by: 

Counsel for Firm

Accepted by NASD:

6/8/05

Date



Director and Chief Counsel
Department of Enforcement
Signed on behalf of the Director of ODA,
by delegated authority

CORRECTIVE ACTION STATEMENT

RE: Wells Fargo Investments, LLC, Respondent
Member Firm
(BD No. 10582)

This Corrective Action Statement is submitted by the Respondent. It does not constitute factual findings by NASD, nor does it reflect the views of NASD, or its staff.

Respondent Wells Fargo Investments, LLC ("WFI") states that:

1. The accompanying Letter of Acceptance, Waiver and Consent ("AWC") describes certain fees which WFI received in the form of directed brokerage commissions.
2. WFI ceased accepting such fees in the form of directed brokerage commissions in December 2003:
 - This was before the Securities and Exchange Commission issued its proposed rule prohibiting the use of brokerage commissions to finance distribution on February 24, 2004, and before that rule became effective on October 14, 2004. See 17 CFR Part 270, "Prohibition on the Use of Brokerage Commissions to Finance Distribution," Release No. IC-26391, File No. S7-09-04.
 - This was also before WFI received notification that the NASD was recommending the enforcement action that has resulted in the attached AWC.
3. WFI enhanced the disclosure of its revenue-sharing programs in documents that have been mailed to its mutual fund customers and posted on its website.

Respectfully submitted,

5-20-05

Date

Wells Fargo Investments, LLC

By: 

Its: Chief Compliance Officer