



STATE OF NEW MEXICO
REGULATION AND LICENSING DEPARTMENT
SECURITIES DIVISION

In the matter of)
WELLS FARGO INVESTMENTS, LLC,)
Respondent.) **ORDER No. 11-11-996-004**

WHEREAS, prior to January 1, 2011, Wells Fargo Investments, LLC (now a part of Wells Fargo Advisors, LLC) (“WFI”)¹ was a broker-dealer registered in the state of New Mexico; and

WHEREAS, WFI’s activities regarding the marketing of auction rate securities have been the subject of coordinated investigations conducted by a multistate task force; and

WHEREAS, WFI has cooperated fully with regulators conducting the investigations by providing documentary evidence and other materials and by providing regulators with access to information relevant to their investigations; and

WHEREAS, on November 18, 2009, WFI and the multistate task force reached an agreement to resolve the investigations relating to WFI’s marketing of ARS to certain customers; and

WHEREAS, WFI agrees to make certain payments; and

WHEREAS, WFI elects to waive permanently any right to a hearing and appeal under Sections 58-13C-604 and 58-13C-609 of the New Mexico Uniform Securities Act NMSA 1978, §§ 58-13C-101 to -701 (2009) and Sections 58-13B-53 and 58-13B-56 of the New

¹ On January 1, 2011, Wells Fargo Investments, LLC transferred substantially all of its assets and liabilities to Wells Fargo Advisors, LLC, and Wells Fargo Investments, LLC no longer exists as a separate entity.

Mexico Securities Act of 1986 (1986, as amended through 2004), with respect to this Consent Order (the “Order”); and

WHEREAS, WFI admits the jurisdiction of the New Mexico Securities Division and consents to the entry of this Order by the Director of the New Mexico Securities Division; and

WHEREAS, Wells Fargo Securities, LLC (“WFS”), as successor to Wells Fargo Brokerage Services, LLC (“WFBS”), and Wells Fargo Institutional Securities, LLC (“WFIS”) have voluntarily agreed to purchase ARS from certain customers and to use best efforts to provide liquidity solutions for certain other customers; and

WHEREAS, WFI neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Order.

NOW, THEREFORE, the New Mexico Securities Division, as administrator of the New Mexico Uniform Securities Act, hereby enters this Order:

I.

FINDINGS OF FACT

Background

1. Auction Rate Securities (“ARS”) are long-term bonds issued by municipalities, corporations, and student loan companies, or perpetual equity instruments issued by closed-end mutual funds, with variable interest rates that reset through a bidding process known as a Dutch auction.

2. In a successful Dutch auction, ARS are auctioned at par and bids with successively higher rates are accepted by the auction agent for the issuer until all of the available securities are sold. All ARS are then purchased or sold at the lowest interest rate bid that will result in all ARS placed up for auction being sold. If there are not enough buy orders to purchase all the securities being sold at auction, a failed auction occurs. In the event of an auction failure, the issuer of the ARS pays a default interest rate until the next successful auction. Broker-dealers that served as dealers for the auctions sometimes placed “support bids” on their own behalf in order to prevent auction failures.

3. Beginning on or about February 13, 2008, there were not enough purchasers for ARS at many auctions. The broker-dealers that had previously supported the auctions for these securities ceased their practice of bidding to prevent auction failures. As a result, the ARS market experienced widespread failed auctions. ARS purchasers who wished to sell their ARS were forced to continue holding their positions.

Marketing of ARS by WFI

4. WFI marketed ARS to some of its customers, including individual customers, small businesses, and non-profit organizations. Since at least 2001, WFI offered Auction Rate Preferred Shares ("ARPS") through its fixed-income desk. In addition, beginning in 2006, WFI facilitated Auction Rate Debt Securities ("ARDS") trades for select customers. WFI did not underwrite ARS and did not serve as an auction manager or auction agent.

5. On February 14, 2008, WFI customers nationwide were holding approximately \$2.95 billion in ARS in 5,692 accounts.

6. WFI participated in sales of ARS to customers in the state of New Mexico. In New Mexico, approximately 58 WFI accounts held \$8,000,000 in ARS on February 14, 2008.

7. Because of the auction failures described above, certain WFI customers who were holding ARS on February 14, 2008, have been unable to sell their ARS at auction.

8. In connection with the marketing of ARS, WFI failed to adopt policies and procedures reasonably designed to ensure that its registered agents recommended ARS only to customers who had stated investment objectives that were consistent with their purchase of ARS. Some WFI registered agents recommended ARS to customers as a liquid, short-term investment. As a result, some WFI customers, who needed short-term access to funds, invested in ARS, even though ARS had long-term maturity dates, or in the case of ARPS, no maturity dates.

Failure to Supervise Agents Who Marketed ARS

9. WFI failed to provide adequate supervision and training to its registered agents in connection with the marketing of ARS. Some of WFI's registered agents were not

adequately educated about ARS products. WFI failed to provide timely and comprehensive sales and marketing literature regarding ARS and the mechanics of the auction process.

10. Some WFI registered agents believed that the ARS were safe and were not aware that auctions could fail and that money invested in ARS could become frozen. In part, this was because some WFI registered agents were not aware of significant aspects of the auction rate market.

11. WFI did not establish specific written supervisory procedures for the review of ARS transactions, nor did WFI train supervisory personnel on how to review ARS transactions.

II.

CONCLUSIONS OF LAW

12. The New Mexico Securities Division has jurisdiction over this matter pursuant to Section 58-13B-54 of the New Mexico Securities Act of 1986 (1986, as amended through 2004) and Section 58-13C-610 of the New Mexico Uniform Securities Act (2009).

13. For the reasons alleged in the Findings of Fact, above, WFI failed to supervise reasonably its registered agents in connection with the marketing of ARS to its customers. Such conduct in relation to ARS violates Section 58-13B-16(A)(2)(k) of the New Mexico Securities Act of 1986.

14. Entry of this order is in the public interest, appropriate for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the New Mexico Securities Act of 1986 and the New Mexico Uniform Securities Act.

III.

ORDER

On the basis of the Findings of Fact, Conclusions of Law, and WFI's consent to the entry of this Order, for the sole purpose of settling this matter prior to a hearing and without admitting or denying the Findings of Fact or Conclusions of Law,

IT IS HEREBY ORDERED:

1. This Order concludes the investigation by the New Mexico Securities Division and any other action that the New Mexico Securities Division could commence under applicable New Mexico law on behalf of New Mexico as it relates to WFI's marketing of ARS to customers.
2. This Order is entered into solely for the purpose of resolving the above referenced multistate investigation and is not intended to be used for any other purpose.
3. WFI shall cease and desist from violating the New Mexico Uniform Securities Act (2009).
4. Within ten days from the date of entry of this Order, WFI shall pay the sum of Eight thousand four hundred twenty-two dollars and eighteen cents (\$8,422.18) to the New Mexico Securities Division as a civil monetary penalty, which amount constitutes New Mexico's proportionate share of the multistate settlement amount of \$1,900,000.
5. The total amount paid to the New Mexico Securities Division pursuant to the foregoing paragraph shall remain at \$8,422.18 regardless of whether another state securities regulator determines not to accept WFI's state settlement offer.

IV.

Additional Considerations

1. In consideration for the settlement terms contained in this Order, the New Mexico Securities Division shall not seek additional penalties, and shall terminate its investigation with respect to WFI, WFS (as successor to WFBS), and WFIS regarding the marketing of ARS.
2. If payment is not made by WFI as required in this Order, or if WFI defaults in any of its other obligations set forth in this Order, the New Mexico Securities Division may send WFI a written notice of default and, if within ten (10) days after receiving the written

notice, WFI does not cure the default, the New Mexico Securities Division may move to enforce the Order before any competent administrative body and/or court of law.

3. This Order is not intended to indicate that WFI or any of its affiliates or current or former employees shall be subject to any disqualifications contained in the federal securities law, the rules and regulations thereunder, the rules and regulations of self-regulatory organizations or various states' securities laws, including any disqualifications from relying upon the registration exemptions or safe harbor provisions. In addition, this Order is not intended to form the basis for any such disqualifications.

4. Except as expressly provided in this Order, for any person or entity not a party to this Order, this Order does not limit or create any private rights or remedies against WFI, limit or create liability of WFI, or limit or create defenses of WFI to any claims. Unless applicable law provides otherwise, by entering into this Order, the New Mexico Securities Division does not waive any rights any departments, agencies, boards, commissions, authorities, political subdivisions and corporations of New Mexico other than the New Mexico Securities Division may have under applicable law, to the extent any such rights exist, to assert a claim, cause of action, or application for compensatory, nominal and/or punitive damages, administrative, civil, criminal, or injunctive relief against WFI in connection with the marketing of ARS by WFI.

5. This Order shall not disqualify WFI or any of its affiliates or current or former employees from any business that they otherwise are qualified or licensed to perform under applicable state law and this Order is not intended to form the basis for any disqualification.

6. This Order and any dispute related thereto shall be construed and enforced in accordance with, and governed by, the laws of New Mexico without regard to any choice of law principles.

7. WFI, through its execution of this Order, voluntarily waives its right to a hearing on this matter and to judicial review of this Order under Sections 58-13C-604 and 58-13C-609

of the New Mexico Uniform Securities Act (2009) and Sections 58-13B-53 and 58-13B-56 of the New Mexico Securities Act of 1986 (1986, as amended through 2004).

8. WFI enters into this Order voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the New Mexico Securities Division or any member, officer, employee, agent, or representative of the New Mexico Securities Division to induce WFI to enter into this Order.

9. This Order shall be binding upon WFI, its affiliates, successors and assigns with respect to all conduct subject to the provisions above and all future obligations, responsibilities, undertakings, commitments, limitations, restrictions, events, and conditions.

10. Nothing contained in this Order shall be deemed to be an admission of any liability, fault or wrongdoing. The Parties agree that this Order shall not be admissible in any hearing, action, or proceeding except to prove the existence of this Order or to enforce the Order's terms.

Dated this 18 day of February, 2016.





Alexis Lotero, Deputy Director
New Mexico Securities Division

CONSENT TO ENTRY OF ADMINISTRATIVE ORDER BY WELLS FARGO INVESTMENTS, LLC

WFI hereby acknowledges that it has been served with a copy of this Consent Order, has read the foregoing Order, is aware of its right to a hearing and appeal in this matter, and has waived the same.

WFI admits the jurisdiction of the New Mexico Securities Division, neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Order, and consents to entry of this Order by the New Mexico Securities Division as settlement of the issues contained in this Order.

WFI states that no promise of any kind or nature whatsoever was made to it to induce it to enter into this Order and that it has entered into this Order voluntarily.

James T. McHale represents that he/she is CCO of WFI and that, as such, has been authorized by WFI to enter into this Order for and on behalf of WFI.

DATED this 8th day of February, 2016.

WELLS FARGO INVESTMENTS, LLC

By: James T. McHale
Title: 2/8/16, Chief Compliance officer, Wells Fargo Advisors, LLC as successor to Wells Fargo Investments LLC

STATE OF Missouri
County of St. Louis

SUBSCRIBED AND SWORN TO before me this 8th day of February, 2016.

Joan M. Wilhelm
Notary Public

My commission expires:
Dec 28, 2018

