

1
2
3
4
5
6
7
8
9

**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION**

IN THE MATTER OF DETERMINING
whether there has been a violation
of the Securities Act of Washington by:

WELLS FARGO INVESTMENTS, LLC;
WELLS FARGO SECURITIES, LLC (AS
SUCCESSOR TO WELLS FARGO
BROKERAGE SERVICES, LLC);
WELLS FARGO INSTITUTIONAL
SECURITIES,

Respondents.

Order Number S-08-141-09-CO02

CONSENT ORDER

AS TO WELLS FARGO SECURITIES, LLC (AS
SUCCESSOR TO WELLS FARGO
BROKERAGE SERVICES, LLC) AND WELLS
FARGO INSTITUTIONAL SECURITIES, LLC

10
11
12
13
14
15
16
17
18
19
20
21
22

INTRODUCTION

WHEREAS, Wells Fargo Securities, LLC (“WFS”), successor to Wells Fargo Brokerage Services, LLC (“WFBS”), and Wells Fargo Institutional Securities, LLC (“WFIS”) are broker-dealers registered in the state of Washington; and

WHEREAS, WFBS’s and WFIS’s activities regarding the marketing of auction rate securities have been the subject of coordinated investigations conducted by a multi-state task-force; and

WHEREAS, the Securities Administrator of the Securities Division of the State of Washington Department of Financial Institutions issued a Statement of Charges and Notice of Intent to Enter Order to Cease and Desist, Offer Restitution, Impose Fines, Recover Costs, and Suspend Registrations (“Statement of Charges”) against Respondents Wells Fargo Investments, LLC (“WFI”), WFBS, and WFIS on November 20, 2008; and

WHEREAS, WFS (as successor to WFBS) and WFIS and the State of Washington have reached an agreement to resolve the pending Statement of Charges; and

23
24
25

CONSENT ORDER

1 WHEREAS, WFS (as successor to WFBS) and WFIS have voluntarily agreed to purchase ARS from
2 certain customers, as described in Section IV below, and to use best efforts to provide liquidity solutions
3 for certain other customers with more than \$10 million in investable assets; and

4 WHEREAS, WFS (as successor to WFBS) and WFIS agree to be jointly and severally liable, along
5 with WFI, for the payment of investigative costs of \$219,116; and

6 WHEREAS, WFS (as successor to WFBS) and WFIS agree to waive permanently any right to a
7 hearing and appeal under RCW 21.20.440 and RCW 34.05, with respect to this Consent Order (the
8 “Order”); and

9 WHEREAS, WFS (as successor to WFBS) and WFIS admit the jurisdiction of the Securities
10 Division of the State of Washington Department of Financial Institutions and consent to the entry of this
11 Order by the Securities Division of the State of Washington Department of Financial Institutions.

12 WHEREAS, WFS (as successor to WFBS) and WFIS neither admit nor deny the Findings of Fact
13 and Conclusions of Law contained in this Order.

14 NOW, THEREFORE, the Securities Division of the Department of Financial Institutions of the State
15 of Washington hereby enters this Order.

16 **I.**

17 **FINDINGS OF FACT**

18 Respondents

19 1. WFIS is a broker-dealer registered in the State of Washington. From August 14, 1991 to
20 November 6, 2009, WFBS was a registered broker-dealer in the State of Washington. In November
21 2009, WFBS merged with and was succeeded by Wells Fargo Securities, LLC. WFBS and WFIS
22 service primarily institutional clients.

1 Background

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

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

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

17 Marketing of ARS by WFBS and WFIS

18 5. WFBS and WFIS marketed ARS to customers, including corporations, banks, foundations,
19 money managers, other businesses, and some high net worth individuals. Some WFBS and WFIS
20 registered agents recommended ARS as short-term investments to certain customers who needed short-
21 term access to funds invested in ARS, even though ARS had long-term maturity dates, or in the case of
22 auction rate preferred shares, no maturity dates.

1 6. At the time of the auction failures, on or about February 29, 2008, 306 WFBS and WFIS
2 customers nationwide were holding approximately \$989 million in ARS. This included 26 Washington
3 customers that held approximately \$52.5 million in ARS.

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

6 Failure to Supervise Agents Who Marketed ARS

7 8. Although WFBS and WFIS provided informational materials and training to their registered
8 agents and had training and marketing materials on ARS available for registered agents on their internal
9 website, each failed to provide an adequate system of supervision for its salespersons in connection with
10 the offer and sale of ARS. WFBS and WFIS developed a product fact sheet on ARS for their registered
11 agents to use with customers which contained information on what would happen if there was
12 insufficient demand at auction. WFBS and WFIS, however, did not require training prior to allowing
13 registered agents to offer ARS to their customers and did not require registered agents to provide the fact
14 sheet to customers. Neither WFBS nor WFIS established specific written supervisory procedures for the
15 review of ARS transactions, nor did either train supervisory personnel on how to review ARS
16 transactions.

17
18 Based upon the above Findings of Fact, the following Conclusions of Law are made:

19 **II.**

20 **CONCLUSIONS OF LAW**

21 1. The Securities Division of the Department of Financial Institutions has jurisdiction over this
22 matter pursuant to the Securities Act of Washington, RCW 21.20.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IV.

Additional Considerations

1. WFS (as successor to WFBS) and WFIS have voluntarily agreed to purchase ARS from Eligible Investors as set forth in this Section IV, Paragraph 2 below.

2. "Eligible Investors," for the purposes of this Order as it relates to WFS (as successor to WFBS) and WFIS, shall mean the following:

a. Natural persons (including their IRA accounts, testamentary trust and estate accounts, custodian UGMA and UTMA accounts, and guardianship accounts) who purchased Eligible ARS;

b. Charities, endowments, or foundations with Internal Revenue Code Section 501(c)(3) status, or religious corporations or entities that purchased Eligible ARS; and

c. Trusts, corporate trusts, corporations, employee pension plan/ERISA and Taft Hartley Act plans, educational institutions, incorporated not for profit organizations, limited liability companies, limited partnerships, non public companies, partnerships, personal holding companies, unincorporated associations, governments or quasi government entities, which are beneficial owners of an account that purchased Eligible ARS, unless the value of the account exceeded \$10 million as of January 31, 2008 or the beneficial owner had disclosed to WFI, WFS (as successor to WFBS), WFBS or WFIS total investable assets in excess of \$10 million;

d. "Eligible Investors," for the purposes of this Order as it relates to WFS (as successor to WFBS) and WFIS, shall not include brokers, dealers, or banks acting as conduits for their customers. This provision shall not affect the rights of any beneficial owner of an account that otherwise would qualify as an Eligible Investor, as set forth in subparts a, b, or c of this Paragraph, above;

1 e. "Eligible Investors," for the purposes of this Order as it relates to WFS (as successor to
2 WFBS) and WFIS, shall not include any WFI, WFBS, or WFIS customers who have entered into a
3 settlement agreement with WFI, WFBS (or WFS as its successor), or WFIS prior to November 18,
4 2009, or who has received a final arbitration award against WFI, WFBS (or WFS as its successor), or
5 WFIS prior to November 18, 2009, with respect to their Eligible ARS holdings at WFI, WFBS (or
6 WFS as its successor), or WFIS.

7 f. "Eligible ARS," for purposes of this Order as it relates to WFS (as successor to WFBS) and
8 WFIS, shall mean ARS that were purchased for customers by WFBS or WFIS on or before February
9 13, 2008, and that have failed at auction at least once since February 13, 2008. Notwithstanding the
10 foregoing definition, Eligible ARS shall not include ARS that were purchased for customers by WFBS
11 or WFIS or entities acquired by WFBS's or WFIS's parent companies in accounts owned, managed or
12 advised by or through independent registered investment advisers.

13 3. WFS (as successor to WFBS) and WFIS have agreed to use their best efforts to provide
14 liquidity solutions to their customers who have investible assets above \$10 million. WFS (as successor
15 to WFBS) and WFIS shall endeavor to work with issuers and other interested parties, including
16 regulatory and governmental entities, to expeditiously and on a best efforts basis provide liquidity
17 solutions, such as facilitation of secondary market transactions and announced issuer redemptions of the
18 Eligible ARS purchased through WFBS and WFIS. Though WFS (as successor to WFBS) and WFIS
19 shall use their best efforts to offer opportunities to the institutional and other customers who are not
20 Eligible Investors to liquidate Eligible ARS, WFS (as successor to WFBS) and WFIS are under no
21 obligation to offer to purchase ARS from these customers.

1 4. In consideration for the settlement terms contained in this Order, the Securities Division of the
2 State of Washington Department of Financial Institutions shall not seek penalties against WFS (as
3 successor to WFBS) or WFIS, and shall terminate its investigation and enforcement action with respect
4 to WFBS and WFIS regarding the marketing of ARS. However, if the Securities Division of the State of
5 Washington Department of Financial Institutions determines that WFS (as successor to WFBS) and/or
6 WFIS fail to adhere to their voluntary agreement as described in Paragraphs 1 through 3 of this Section
7 IV, above, the Securities Division of the State of Washington Department of Financial Institutions may
8 reinstate its Statement of Charges against WFS (as successor to WFBS) and/or WFIS related to the
9 marketing of ARS by WFBS and/or WFIS.

10 5. If payment is not made by WFS (as successor to WFBS) or WFIS as required in this Order, the
11 Securities Division of the State of Washington Department of Financial Institutions may send WFS (as
12 successor to WFBS) and WFIS a written notice of default and, if within ten (10) days after receiving the
13 written notice, WFS (as successor to WFBS) and WFIS does not cure the default, the Securities Division
14 of the State of Washington Department of Financial Institutions may move to enforce the settlement
15 agreement before any competent administrative body and/or court of law.

16 6. This Order is not intended to indicate that WFS (as successor to WFBS) or WFIS, or any of
17 their affiliates or current or former employees shall be subject to any disqualifications contained in the
18 federal securities law, the rules and regulations thereunder, the rules and regulations of self-regulatory
19 organizations or various states' securities laws, including any disqualifications from relying upon the
20 registration exemptions or safe harbor provisions. In addition, this Order is not intended to form the
21 basis for any such disqualifications.

1 7. Except as expressly provided in this Order, for any person or entity not a party to this Order,
2 this Order does not limit or create any private rights or remedies against WFS (as successor to WFBS)
3 and WFIS, limit or create liability of WFS (as successor to WFBS) and WFIS, or limit or create defenses
4 of WFS (as successor to WFBS) and WFIS to any claims.

5 8. This Order shall not disqualify WFS (as successor to WFBS) or WFIS or any of their affiliates
6 or current or former employees from any business that they otherwise are qualified or licensed to
7 perform under applicable state law and this Order is not intended to form the basis for any
8 disqualification.

9 9. This Order and any dispute related thereto shall be construed and enforced in accordance with,
10 and governed by, the laws of Washington State without regard to any choice of law principles.

11 10. WFS (as successor to WFBS) and WFIS, through their execution of this Order, voluntarily
12 waive their right to a hearing on this matter and to judicial review of this Order under RCW 21.20.440
13 and RCW 34.05.

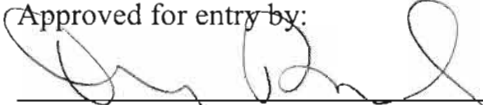
14 11. WFS (as successor to WFBS) and WFIS enter into this Order voluntarily and represent that no
15 threats, offers, promises, or inducements of any kind have been made by the Securities Division of the
16 State of Washington Department of Financial Institutions or any member, officer, employee, agent, or
17 representative of the Securities Division of the State of Washington Department of Financial Institutions
18 to induce WFS (as successor to WFBS) or WFIS to enter into this Order.

19 12. This Order shall be binding upon WFS (as successor to WFBS), WFIS, their affiliates,
20 successors and assigns with respect to all conduct subject to the provisions above and all future
21 obligations, responsibilities, undertakings, commitments, limitations, restrictions, events, and conditions.

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

4 SIGNED this 16th day of April, 2010.

5 Approved for entry by:

6 

7 DAVID POWELL, California Bar Association # 129781
8 Attorney for Respondents WFIS and Wells Fargo Securities, LLC (successor to WFBS)

9 Signed by:

10 WELLS FARGO SECURITIES, LLC (as successor to Wells Fargo Brokerage Services, LLC)

11 By: 

12 Title: EXECUTIVE VICE PRESIDENT

13 Signed by:

14 WELLS FARGO INSTITUTIONAL SECURITIES, LLC

15 By: 

16 Title: EXECUTIVE VICE PRESIDENT


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SIGNED and ENTERED this 22nd day of April, 2010.





SUZANNE SARASON
Chief of Enforcement

Presented by:


Jack McClellan
Enforcement Attorney

CONSENT ORDER