

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-08-141-10-CO01

CONSENT ORDER AS TO
WELLS FARGO INVESTMENTS, LLC

INTRODUCTION

WHEREAS, Wells Fargo Investments, LLC ("WFI") is a broker-dealer registered in the State of Washington; 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, among other things, to purchase certain auction rate securities from customers and to make certain payments; and

CONSENT ORDER

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DEPARTMENT OF FINANCIAL INSTITUTIONS
Securities Division
PO Box 9033
Olympia, WA 98507-9033
360-902-8760

1 WHEREAS, WFI elects to waive permanently any right to a hearing and appeal under
2 RCW 21.20.440 and RCW 34.05 with respect to this Administrative Consent Order (the
3 “Order”); and

4 WHEREAS, WFI admits the jurisdiction of the Securities Division of the Washington
5 State Department of Financial Institutions and consents to the entry of this Order by the
6 Securities Division of the Washington State Department of Financial Institutions; and

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

9 NOW, THEREFORE, the Securities Division of the Washington State Department of
10 Financial Institutions, pursuant to the Securities Act of Washington, RCW 21.20, hereby enters
11 this order:

12 **I.**

13 **FINDINGS OF FACT**

14 **Background**

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

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

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

10 Marketing of ARS by WFI

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

16 5. On February 14, 2008, WFI customers nationwide were holding approximately
17 \$2.95 billion in ARS in 5,692 accounts.

18 6. WFI participated in sales of ARS to customers in the state of State of Washington.
19 In the State of Washington, approximately 578 WFI accounts held \$175 million in ARS on
20 February 14, 2008.

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

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

7 Failure to Supervise Agents Who Marketed ARS

8 9. WFI failed to provide adequate supervision and training to its registered agents in
9 connection with the marketing of ARS. Some of WFI's registered agents were not adequately
10 educated about ARS products. WFI failed to provide timely and comprehensive sales and
11 marketing literature regarding ARS and the mechanics of the auction process.

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

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

18 **II.**

19 **CONCLUSIONS OF LAW**

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

1 For the reasons alleged in the Findings of Fact, above, WFI failed to supervise
2 reasonably its registered agents in connection with the marketing of ARS to its customers. Such
3 conduct in relation to ARS violates RCW 21.20.110(1)(j).

4 The Securities Division of the Washington State Department of Financial Institutions
5 finds the following relief appropriate and in the public interest.

6 **III.**
7 **ORDER**

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

11 IT IS HEREBY ORDERED:

12 1. This Order concludes the investigation by the Securities Division of the
13 Washington State Department of Financial Institutions and any other action that the Securities
14 Division of the Washington State Department of Financial Institutions could commence under
15 applicable Washington State law on behalf of the State of Washington as it relates to WFI's
16 marketing of ARS to customers.

17 2. This Order is entered into solely for the purpose of resolving the above referenced
18 multistate investigation and is not intended to be used for any other purpose.

19 3. WFI shall cease and desist from violating the Securities Act of Washington and
20 shall comply with the Securities Act of Washington.
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1 4. Within ten (10) days after the entry of this Order, WFI shall pay the sum of
2 \$104,982.36 to the State of Washington as a civil monetary fine pursuant to RCW 21.20.110, to
3 be deposited in the Securities Prosecution Fund, RCW 43.320.115, which amount constitutes the
4 State of Washington's proportionate share of the multistate settlement amount of \$1,900,000.

5 5. The total amount paid to the State of Washington pursuant to the foregoing
6 paragraph shall remain at \$104,982.36 regardless of whether another state securities regulator
7 determines not to accept WFI's state settlement offer.

8 6. In addition to the payment required by Section III, Paragraph 4, WFI shall be
9 jointly and severally liable along with Wells Fargo Securities, LLC ("WFS"), as successor to Wells Fargo
10 Brokerage Services, LLC ("WFBS"), and Wells Fargo Institutional Securities, LLC ("WFIS") to pay the sum of
11 \$219,116 to the State of Washington within ten days after the entry of this Order, which amount
12 constitutes the State of Washington's actual fees and expenses incurred in connection with the
13 investigation into the marketing of ARS by WFI, WFBS, and WFIS prior to November 18, 2009.

14 7. WFI shall pay twenty five thousand dollars (\$25,000) to the North American
15 Securities Administrators Association ("NASAA") as consideration for financial assistance
16 provided by NASAA in connection with the multistate investigation.

17 8. WFI shall take certain measures with respect to current and former customers that
18 purchased "Eligible ARS," as defined and described in Paragraphs 9 through 16 of Section III,
19 below.

20 9. Eligible ARS. For the purposes of this Order as it relates to WFI, "Eligible ARS"
21 shall mean ARS that were purchased for customers by WFI on or before February 13, 2008, and
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1 that have failed at auction at least once since February 13, 2008. Notwithstanding the foregoing
2 definition, Eligible ARS shall not include ARS that were purchased for customers by WFI or
3 entities acquired by Wells Fargo's parent companies in accounts owned, managed or advised by
4 or through independent registered investment advisers.

5 10. Eligible Investor. For the purposes of this Order as it relates to WFI, "Eligible
6 Investor" shall mean:

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

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

13 c. Trusts, corporate trusts, corporations, employee pension plans/ERISA and
14 Taft Hartley Act plans, educational institutions, incorporated not for profit organizations,
15 limited liability companies, limited partnerships, non public companies, partnerships,
16 personal holding companies, unincorporated associations, government or quasi
17 government entities, which are the beneficial owners of an account that purchased
18 Eligible ARS.

19 d. "Eligible Investors," for the purposes of this Order as it relates to WFI,
20 shall not include brokers, dealers or banks acting as conduits for their customers. This
21 provision shall not affect the rights of any beneficial owner of an account that otherwise
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1 would qualify as an Eligible Investor, as set forth in Section III, Paragraph 10, subparts a,
2 b, or c, above.

3 e. "Eligible Investors," for the purposes of this Order as it relates to WFI,
4 shall not include any WFI customer who has entered into a settlement agreement with
5 WFI prior to November 18, 2009, or who has received a final arbitration award against
6 WFI prior to November 18, 2009, with respect to their Eligible ARS holdings at WFI.

7 11. Purchase Offer. WFI shall offer to purchase, at par plus accrued and unpaid
8 dividends/interest, from Eligible Investors their Eligible ARS that have failed at auction at least
9 once since February 13, 2008 (the "Purchase Offer"). WFI shall make the Purchase Offer and
10 purchase the Eligible ARS either as riskless principal or agent for one or more affiliated
11 companies, and not for its own account.

12 12. Notification and Buyback Procedures.

13 a. WFI shall undertake to identify and provide notice to Eligible Investors of
14 the relevant terms of this Order by no later than February 16, 2010. Said notice shall
15 explain what Eligible Investors must do to accept, in whole or in part, the Purchase Offer,
16 including how Eligible Investors may accept the Purchase Offer. WFI shall also provide
17 written notice of the relevant terms of this Order to any subsequently identified Eligible
18 Investors.
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20 b. Initial Offer Period
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1 i. WFI shall keep the Purchase Offer open for sixty (60) days after
2 mailing the notice required by Section III, Paragraph 12 a., above (“Initial Offer
3 Period”).

4 ii. Eligible Investors may accept the Purchase Offer by notifying WFI
5 as described in the Purchase Offer, at any time before midnight, Eastern Time, on
6 or before the last day of the Initial Offer Period. For those Eligible Investors who
7 accept the Purchase Offer within the Initial Offer Period, WFI shall purchase their
8 Eligible ARS by no later than five (5) business days following the expiration of
9 the Initial Offer Period (the “Initial Purchase Deadline”).

10 c. Second Offer Period

11 i. WFI shall undertake its best efforts to identify and provide a
12 second notice to all Eligible Investors who do not accept the Purchase Offer
13 within the Initial Offer Period. This second notice must satisfy the requirements
14 discussed in Section III, Paragraph 12 a., above, and be sent no later than thirty
15 (30) days after the Initial Purchase Deadline.

16 ii. WFI shall keep the Purchase Offer open for sixty (60) days after
17 mailing the second notice required by Section III, Paragraph c. i., above (“Second
18 Offer Period”).

19 iii. Eligible Investors may accept the Purchase Offer by notifying WFI
20 as described in the Purchase Offer, at any time before midnight, Eastern Time, on
21 or before the last day of the Second Offer Period. For those Eligible Investors
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1 who accept the Purchase Offer within the Second Offer Period, WFI shall
2 purchase their Eligible ARS by no later than five (5) business days following the
3 expiration of the Second Offer Period (the "Second Purchase Deadline").

4 d. An Eligible Investor may revoke the Eligible Investor's acceptance of
5 WFI's Purchase Offer at any time up until WFI purchases such Eligible Investor's
6 Eligible ARS or provides notice of WFI's intent to purchase such Eligible ARS.

7 e. WFI's obligation to those Eligible Investors who custodied their Eligible
8 ARS away from WFI as of November 18, 2009 shall be contingent on: (1) WFI receiving
9 reasonably satisfactory assurance from the financial institution currently holding the
10 Eligible Investor's Eligible ARS that the bidding rights associated with such Eligible
11 ARS will be transferred to WFI; and (2) transfer of the Eligible ARS back to WFI.

12 f. WFI shall use its best efforts to identify, contact and assist any Eligible
13 Investor who has transferred the Eligible ARS out of WFI's custody in returning such
14 ARS to WFI's custody, and shall not charge such Eligible Investor any fees relating to or
15 in connection with the return to WFI or custodianship by WFI of such Eligible ARS.
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17 13. Customer Assistance Line. WFI shall promptly establish a dedicated toll-free
18 telephone assistance line and e-mail address to provide information and to respond to questions
19 concerning the terms of this Order. WFI shall maintain the telephone assistance line and e-mail
20 address through at least the Second Purchase Deadline.

21 14. Relief for Eligible Investors Who Sold Below Par. No later than upon the
22 completion of the buyback (as described in Section III, Paragraph 12, above), WFI shall
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1 undertake its best efforts to identify and provide notice to, using the notice to Eligible Investors
2 referenced in Section III, Paragraph 12 above, Eligible Investors who sold Eligible ARS below
3 par between February 13, 2008 and November 18, 2009 (“Below Par Seller”) and, upon receipt
4 of satisfactory evidence of the sale, pay them the difference between par and the price at which
5 the Eligible Investor sold the Eligible ARS, plus interest thereon at the rate of seven-day LIBOR.

6 15. Consequential Damages Arbitration Process.

7 a. WFI shall consent to participate in a special arbitration process
8 (“Arbitration”) for the exclusive purpose of arbitrating any Eligible Investor’s
9 consequential damages claim arising from their inability to sell Eligible ARS. WFI shall
10 notify Eligible Investors of the terms of the Arbitration process through the notice
11 described in Section III, Paragraph 12 above.

12 b. The Arbitration shall be conducted under the auspices of FINRA, pursuant
13 to the NASD Code of Arbitration Procedures for Customer Disputes, eff. April 16, 2007.
14 WFI will pay all applicable forum and filing fees.

15 c. Eligible Investors who choose to pursue such claims in the Arbitration
16 shall bear the burden of proving that they suffered consequential damages and that such
17 damages were caused by their inability to access funds invested in Eligible ARS. In the
18 Arbitration, WFI shall be able to defend itself against such claims; provided, however,
19 that WFI shall not contest liability for the illiquidity of the underlying ARS position, and
20 provided further that, unlike the FINRA’s established special arbitration process, WFI
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1 shall be able to use as part of its defense an investor's decision not to borrow money from
2 WFI or its affiliates.

3 d. Eligible Investors who elect to use this special arbitration process provided
4 for herein shall not be eligible for punitive damages, or for any other type of damages
5 other than consequential damages.

6 e. Eligible Investors that elect to utilize FINRA's special arbitration process,
7 as set forth above, are limited to the remedies available in that process and may not bring
8 or pursue a claim relating to Eligible ARS in another forum.

9 16. Reimbursement of Negative Carry. In connection with the notices described in
10 Section III, Paragraphs 12 and 14 above, WFI shall inform Eligible Investors that, if they paid
11 more in interest on a loan through WFI or its affiliates secured by Eligible ARS than the
12 customer received in interest or dividends from the Eligible ARS during the time the loan was
13 outstanding ("Negative Carry"), then the Eligible Investor can provide WFI documentation
14 evidencing the amount of Negative Carry, and upon receipt of such documentation, WFI will
15 reimburse the Eligible Investor the amount of Negative Carry actually paid.
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17 IV.

18 Additional Considerations

19 1. In consideration for the settlement terms contained in this Order, the Securities
20 Division of the Washington State Department of Financial Institutions shall not seek additional
21 penalties, and shall terminate its investigation and enforcement action with respect to WFI
22 regarding the marketing of ARS.
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1 2. If payment is not made by WFI as required in this Order, or if WFI defaults in any
2 of its other obligations set forth in this Order, the Securities Division of the Washington State
3 Department of Financial Institutions may send WFI a written notice of default and, if within ten
4 (10) days after receiving the written notice, WFI does not cure the default, the Securities
5 Division of the Washington State Department of Financial Institutions may move to enforce the
6 Order before any competent administrative body and/or court of law.

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

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

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

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

9 7. WFI, through its execution of this Order, voluntarily waives its right to a hearing
10 on this matter and to judicial review of this Order under RCW 21.20.440 and RCW 34.05.

11 8. WFI enters into this Order voluntarily and represents that no threats, offers,
12 promises, or inducements of any kind have been made by the Securities Division of the
13 Washington State Department of Financial Institutions or any member, officer, employee, agent,
14 or representative of the Securities Division of the Washington State Department of Financial
15 Institutions to induce WFI to enter into this Order.

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

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

1 Dated this 22nd day of April, 2010.

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3
4 By:

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6 Suzanne Sarason
7 Chief of Enforcement



8 Presented by:

9 _____
10 Bridgett Fisher
11 Enforcement Attorney

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

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

17 WFI admits the jurisdiction of the Securities Division of the Washington State Department
18 of Financial Institutions, neither admits nor denies the Findings of Fact and Conclusions of Law
19 contained in this Order, and consents to entry of this Order by the Securities Division of the
20 Washington State Department of Financial Institutions as settlement of the issues contained in this
21 Order.

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

1 CHARLES W. DAGGS represents that he/she is CEO of WFI and
2 that, as such, has been authorized by WFI to enter into this Order for and on behalf of WFI.

3 DATED this 15 day of April, 2010.

4 WELLS FARGO INVESTMENTS, LLC

5
6 By: [Signature]
7
8 Title: CEO

9 STATE OF CALIFORNIA
10 County of SAN FRANCISCO

11 SUBSCRIBED AND SWORN TO before me this 15 day of APRIL,
12 2010.

13 [Signature]
14 Notary Public

14 My commission expires:

15 JAN 16, 2014

