

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20100229218**

**To: Department of Enforcement
Financial Industry Regulatory Authority (FINRA)**

**Re: Wells Fargo Advisors, LLC
CRD No. 19616**

RECEIVED
MAR 07 2011
FINRA District 4

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Wells Fargo Advisors, LLC (WFA) 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 FINRA accepts the AWC, it will not bring any future actions against WFA alleging violations based on the same factual findings described herein.

I. ACCEPTANCE AND CONSENT

- A. WFA 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

WFA has been a FINRA registered broker-dealer since July 1987.¹ WFA conducts a general securities business, with its principal office located in St. Louis, Missouri.

Relevant Disciplinary History

WFA has been the subject of two formal FINRA disciplinary actions that are relevant to this matter. In April 2009, WFA consented to the entry of an AWC with FINRA, without admitting or denying the findings contained in the AWC, by which FINRA imposed certain sanctions. Specifically, FINRA censured the Firm, fined it \$1,400,000, and required it to comply with certain undertakings. Relevant to this matter, the AWC found that from July 1, 2003 through December 31, 2004, the Firm failed to deliver prospectuses and product descriptions to customers who purchased any of nine different investment products. The firm's failure

¹Wachovia Securities, LLC purchased A.G. Edwards & Sons, Inc. in October 2007. The new entity was named "Wachovia Securities, LLC." On January 1, 2009, Wells Fargo & Co. purchased Wachovia Corporation, and Wachovia Securities, LLC became "Wells Fargo Advisors, LLC."

was in contravention of Section 5(b)(2) of the Securities Act of 1933, and WFA thereby violated NASD Conduct Rule 2110. The AWC also found that, during this same period, WFA did not have an adequate supervisory system and written procedures in place to ensure that customers who were purchasing certain investment products were receiving prospectuses, and therefore the firm violated NASD Conduct Rules 3010(a)-(b) and 2110. WFA was required, under the terms of the AWC, to: (1) adopt systems and procedures reasonably designed to comply with federal securities laws and regulatory requirements regarding prospectus delivery; and (2) provide a written certification by a Senior Officer of WFA that the Firm had adopted systems and procedures reasonably designed to comply with federal securities laws and regulatory requirements regarding prospectus delivery. WFA's Executive Vice President of WFA's Business Services Group signed an attestation on August 14, 2009, stating that WFA had adopted and implemented supervisory systems and procedures reasonably designed to achieve compliance with prospectus delivery requirements. *See* AWC No. 2007010181101.

In February 2009, WFA consented to the entry of an AWC, without admitting or denying the findings contained in the AWC, by which FINRA imposed certain sanctions. Specifically, FINRA censured the Firm and its affiliate, fined them \$1,100,000, and required them to comply with certain undertakings. Relevant to this matter, the AWC found that from June 2003 through October 2008, the firms failed to have policies and procedures in place to mail approximately 800,000 required notifications to customers, in violation of Section 17(a) of the Securities Exchange Act of 1934, Rules 17a-3 and 17a-4 thereunder, and NASD Conduct Rules 3110, 2110, and 3012(a). *See* AWC No. 2007009470901.

Overview

WFA failed to deliver prospectuses to WFA customers within three business days of their purchases in 934,074 mutual fund transactions between January 1, 2009 and December 31, 2009 (the "Relevant Period"). Consequently, WFA acted in contravention of Section 5(b)(2) of the Securities Act of 1933 (the "Securities Act"), and thereby violated FINRA Rule 2010. WFA also failed to timely file certain amendments to Uniform Applications for Securities Industry or Transfer ("Forms U4") and Uniform Termination Notices for Securities Industry Registration ("Forms U5") from July 1, 2008 to June 30, 2009. Consequently, WFA violated

Article V, Sections 2(c) and 3(b) of FINRA's By-Laws, FINRA Rule 2010, and NASD Conduct Rule 2110.

Facts and Violative Conduct

A. WFA Failed to Deliver Prospectuses to Customers on a Timely Basis

1. Prospectus Delivery Rules

During the Relevant Period, WFA was required to provide each of its customers who purchased a mutual fund a physical copy of a prospectus for that fund no later than three business days after the transaction. Section 5(b)(2) of the Securities Act prohibits the delivery of certain securities unless such delivery is accompanied by or preceded by a physical copy of a prospectus that meets the requirements of the Securities Act. The federal securities laws require the delivery of a prospectus to investors because it provides them with important disclosure information regarding the product being purchased. Rule 10b-10, promulgated under Section 10(b) of the Securities Exchange Act of 1934, requires a broker-dealer to provide to the customer, in writing, certain information "at or before completion of such transaction." Rule 15c6-1(a) provides that settlement of a securities transaction, which completes the transaction, is three business days, unless otherwise specified. Consequently, a broker-dealer must deliver a prospectus to a customer who has purchased a mutual fund no later than three business days after the transaction.

FINRA Rule 2010 requires that a member, in the conduct of its business, observe high standards of commercial honor and just and equitable principles of trade. The failure to timely deliver prospectuses to customers as required by Section 5(b)(2) of the Securities Act constitutes a violation of FINRA Rule 2010.

2. Role of the Service Provider

During the Relevant Period, WFA satisfied its prospectus delivery obligation by contracting with a third party service provider (the “service provider”) for the delivery of prospectuses, including mutual fund prospectuses. On a daily basis, the Firm forwarded to the service provider an electronic file containing a list of all transactions requiring customer delivery of a prospectus. The list included transactional information such as the identity and address of the customer, the product purchase date and the CUSIP number assigned to the product.

In response to the list, WFA received daily reports from the service provider identifying, among other things, all mutual fund transactions for which the service provider had been unable to deliver a prospectus to the WFA customer by settlement date (the “exceptions”). The reports were cumulative, so that an exception would continue to be identified on the reports until a prospectus had been delivered to the customer. The reports specifically identified the extent of the untimeliness for each prospectus that had not yet been delivered. The service provider also provided WFA with an explanation code for each exception identified in the reports. WFA's operations department was required on a daily basis to: review the reports, correct any issues identified as exceptions, and provide the updated information back to the service provider in order to ensure the service provider's delivery of the appropriate offering documents. WFA personnel had daily contact with the service provider's personnel to resolve exceptions on the reports, along with other issues relating to delivery of prospectuses.

3. WFA Violated FINRA Rule 2010 by Failing to Timely Deliver Prospectuses in Contravention of Section 5(b)(2) of the Securities Act

WFA violated FINRA Rule 2010 during the Relevant Period by failing to timely deliver, or ensuring that the service provider timely delivered, prospectuses to certain customers who purchased mutual funds. In 934,074 separate instances WFA customers who purchased mutual funds did not receive a prospectus within three business days of the transaction. Those customers received the prospectuses between one and 153 days late. Out of the 934,074 separate instances in which delivery was untimely, 47% were delivered within three days of settlement date, 69% were

delivered within seven days of settlement, and 94% were delivered within 14 days of settlement date.

The primary cause of the late deliveries was the failure of certain mutual fund companies to maintain adequate supplies of paper copies of prospectuses. As a result, for many purchases from these fund companies, neither the service provider nor WFA could obtain a prospectus to timely provide to the customer. WFA did not take steps to change the practices of those fund companies that did not keep adequate stocks of prospectuses either prior to, or during, the Relevant Period.

WFA also did not take remedial steps available to it to ensure that its customers were receiving prospectuses in a timely fashion. For instance, the service provider offered a “print on demand” (“POD”) service during the Relevant Period. POD allowed the service provider to obtain electronic copies of mutual fund prospectuses from those mutual fund companies that offered them, and to then print copies of the prospectuses and send them to WFA’s customers. With POD, even if the mutual fund company did not have adequate supplies of paper copies of prospectuses in stock, the service provider could print the electronically-available prospectus, and send it to the customer. WFA did not use this service extensively during the Relevant Period.

WFA had notice that its customers were not receiving prospectuses on a timely basis both before and during the Relevant Period. As described above, the reports provided by the service provider identified the extent of the untimeliness of each prospectus that had not yet been delivered. In almost all instances in which a WFA customer received a prospectus late, the daily reports provided by the service provider would have identified the transaction on a daily basis until the prospectus was delivered to the customer. Further, WFA operations personnel who reviewed these daily reports and updated information for the service provider would have had regular contact with the service provider to resolve issues relating to prospectuses that had not yet been delivered to Wells Fargo customers.

Further, the service provider met with WFA officials on a quarterly basis throughout the Relevant Period to provide statistical data regarding, among other things, mutual fund prospectus delivery. During these meetings, WFA received statistical data indicating that WFA’s customers were not timely receiving prospectuses in 4% to 9% of the mutual fund transactions conducted by WFA during this time.

WFA also itself created and analyzed data indicating that its customers were not receiving prospectuses on a timely basis. Both prior to and throughout the Relevant Period WFA's management supervisory group responsible for prospectus delivery conducted a monthly review identifying statistical information regarding prospectus delivery for, among other things, mutual funds. This data further showed that WFA's customers were not timely receiving mutual fund prospectuses.

Because of WFA's failure to timely deliver prospectuses to its customers who purchased mutual funds, these customers were not provided with important disclosure information about these products. Consequently, WFA acted in contravention of Section 5(b)(2) of the Securities Act, and thereby violated FINRA Rule 2010.

B. WFA Failed to Timely File Certain Amendments to Forms U4 and U5

Article V, Section 2(a) of FINRA's By-Laws provides that applications by any person for registration with FINRA shall be made by a process established by FINRA on a prescribed form signed by the applicant. Article V, Section 2(c) of FINRA's By-Laws further generally provides that every application for registration filed with FINRA shall be kept current at all times by supplementary amendments which must be filed within 30 days after learning of the facts or circumstances giving rise to the amendment.

Article V, Section 3(b) of FINRA's By-Laws provides that, in the event a broker-dealer learns of facts or circumstances causing any information set forth in a termination notice filed with FINRA to become inaccurate or incomplete, the broker-dealer must notify FINRA, within 30 days thereafter, of those facts or circumstances by means of an amendment to the termination notice.

From July 1, 2008 through June 30, 2009, WFA filed 147 late amendments to Forms U4, relating to customer complaints, arbitrations, civil litigation, regulatory matters and bankruptcies. This represented 8.1% of the 1,808 Form U4 amendments WFA was required to file during this period.

During this same period, WFA filed 40 late amendments to Forms U5, relating to customer complaints, arbitrations, and civil litigation. This represented 7.6% of the 522 Form U5 amendments WFA was required to file during this period.

Consequently, WFA violated Article V, Sections 2(c) and 3(b) of FINRA's By-Laws, FINRA Rule 2010, and NASD Conduct Rule 2110.

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

1. a censure;
2. a fine of \$1,000,000; and
3. WFA further undertakes to complete the following within 120 days of Notice of Acceptance of this AWC: (i) adopt and implement systems and procedures reasonably designed to achieve compliance with the federal securities laws and FINRA Rules applicable to filing, and timely filing, of Forms U4 and U5, and (ii) provide a written certification by a duly Authorized Senior Officer of WFA that the Firm has adopted and implemented supervisory systems and procedures reasonably designed to achieve compliance with the federal securities laws and FINRA Rules applicable to filing, and timely filing, of Forms U4 and U5.

WFA agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. WFA has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

WFA specifically and voluntarily waives any right to claim that it is unable 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

WFA specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against WFA;

- 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, WFA specifically and voluntarily waives any right to claim bias or prejudice 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.

WFA 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

WFA 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 WFA; and
- C. If accepted:
 - 1. this AWC will become part of WFA's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against WFA;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about WFA's disciplinary record;

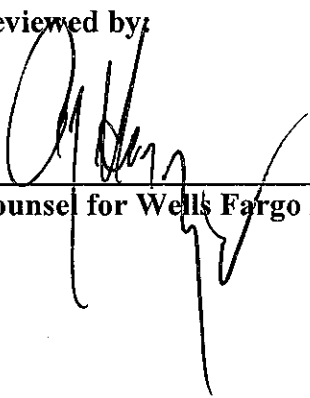
3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 4. WFA may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. WFA 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 WFA's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. WFA may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. WFA 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 WFA, 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 its 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 WFA to submit it.

WELLS FARGO ADVISORS, LLC

Date: 3/4/11

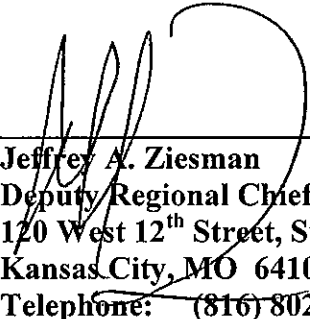
By: 
Ron Kessler, Executive Vice President

Reviewed by:

Counsel for Wells Fargo Advisors, LLC

Accepted by FINRA:

3-21-11
Date

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

By: 
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