

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
No. 2013037820001**

TO: Department of Enforcement  
Financial Industry Regulatory Authority ("FINRA")

FROM: Wells Fargo Securities, LLC  
CRD No. 126292

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Wells Fargo Securities, LLC ("Wells Fargo" or the "Firm") 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 accepted, FINRA will not bring any future actions against Respondent alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. Wells Fargo hereby 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**

Wells Fargo has been a FINRA member since 2003 and is headquartered in Charlotte, North Carolina. The Firm is a full-service brokerage firm with almost 60 branches and more than 2,700 registered personnel. Among other things, it provides equity research, sales and trading services, and underwriting services.

**RELEVANT DISCIPLINARY HISTORY**

In 2009, NASD censured Wells Fargo and ordered it to pay a total of \$250,000 for violating NASD Rules 2711(h) and 2210(d)(1)(A) in connection with the Firm's failure to disclose both a financial and an actual, material conflict of interest by the research analyst authoring an equity research report.

**OVERVIEW**

In April 2010, Toys R Us ("TRU") and its private equity owners ("Sponsors") invited Wells Fargo and other broker-dealers to compete for a role in TRU's planned initial public offering (the "TRU IPO"). To win this investment banking business from TRU, Wells Fargo's equity research analyst participated in the Firm's solicitation efforts and Wells Fargo offered favorable

research coverage to TRU. Therefore, in the context of the TRU IPO, the Firm violated two separate provisions of NASD Rule 2711, the research analyst conflict of interest rule: 2711(c)(4), which prohibits research analysts from participating in efforts to solicit investment banking business; and 2711(e), which prohibits firms from directly or indirectly offering favorable research to obtain investment banking business.

Wells Fargo allowed its research analyst to participate in the Firm's solicitation efforts by making a presentation to TRU and its Sponsors during the "solicitation period" - *i.e.*, the period after a company has made known that it intends to proceed with a prospective investment banking services transaction, such as an IPO, and before the company has made a bona fide award of a mandate for the transaction. Before TRU awarded the TRU IPO business, it asked the equity research analysts from the firms competing for the business to make presentations to TRU's management and Sponsors. TRU provided specific topics for the analysts to address and put the firms on notice that, as part of the underwriter-selection process, it would consider each analyst's views of the company and whether the analyst's valuation was consistent with the firm's investment bankers' valuation. As described below, Wells Fargo's equity research analyst presented to TRU and its Sponsors on May 5, 2010, during the solicitation period, thereby participating in the Firm's efforts to solicit investment banking business from TRU.

Wells Fargo also offered favorable research to induce TRU to award the Firm its investment banking business. Following the analyst's presentation, TRU asked Wells Fargo to complete a template showing an "Equity Commitment Committee approv[ed]" valuation of TRU, which would include the analyst's views on TRU's valuation. TRU and its Sponsors asked the firms to complete the template and provide a Firm-wide valuation that the Firm, including its analyst, would be expected to support after TRU awarded the TRU IPO business, absent unexpected developments. Indeed, TRU told some firms that the purpose of the template was to prevent TRU from being "burned" by an analyst's decision to adopt a negative view of TRU after the company had awarded its investment banking business to the analyst's firm. Wells Fargo complied with TRU's request.

TRU and the Sponsors selected Wells Fargo as a passive bookrunner for the TRU IPO. TRU, however, eventually decided not to proceed with the offering.

### **FACTS AND VIOLATIVE CONDUCT**

#### **I. Wells Fargo Violated NASD Rule 2711(c)(4) by Allowing Its Research Analyst to Participate in the Solicitation of Investment Banking Business.**

NASD Rule 2711, the research analyst conflict of interest rule, is designed to insulate research analysts from a myriad of conflicts that could impair their impartiality. Taken together, the various provisions of the rule play a critical role in protecting analysts from improper influences and promoting their independent role providing research and analysis to investors. NASD Rule 2711(c)(4) is a key component of the rule that is designed to preclude analysts from participating in efforts to obtain investment banking business from issuers given that analysts typically initiate coverage of issuers when their firms play a role in bringing the issuer public.

NASD Rule 2711(c)(4) states at the outset that “[n]o research analyst may participate in efforts to solicit investment banking business.” The rule clarifies this broad prohibition by stating further that “no research analyst may, among other things, participate in any ‘pitches’ for investment banking business to prospective investment banking clients or have other communications with companies for the purpose of soliciting investment banking business.” Thus, the rule prohibits a research analyst from being part of the deal team seeking to win investment banking business.

Under NASD Rule 2711(c)(4), an analyst may communicate with an issuer during the solicitation period as part of the analyst’s due diligence efforts to gather information about the company, but may not communicate with the issuer in furtherance of soliciting a role for his investment bank in the underwriting. In the context of a meeting requested by an issuer during the solicitation period for the purpose of obtaining an analyst’s views as part of the underwriter selection process, as occurred in the TRU IPO, an analyst from a soliciting investment bank may not communicate to the issuer his views about the issuer or the issuer’s industry, such as his views about valuation or comparable companies.

In April 2010, TRU and the Sponsors notified several investment banking firms of their interest in bringing the company public through an initial public offering. On April 23, 2010, TRU telephoned several firms and invited them to bid for a role in the TRU IPO and scheduled a “bakeoff” with each firm’s investment bankers for April 30, 2010. TRU also notified the firms that, as part of the process of selecting underwriters, it wanted to hear the views of each firm’s analyst who would cover the company following the TRU IPO. Each firm understood that TRU would consider the firm’s analyst’s views in determining whether the firm would receive an underwriting role in the TRU IPO. TRU gave the firms a list of topics it wished the analysts to cover, including the retail industry outlook, valuation, and comparables. TRU scheduled meetings with the analysts for May 4 and May 5, 2010.

On May 4, 2010, TRU and the Sponsors met with the equity research analysts from the firms competing for the TRU IPO business and provided background and financial information on the company for purposes of the analysts’ due diligence.

On May 5, 2010, each firm’s analyst made a separate presentation to TRU and the Sponsors. Under the circumstances, the analysts’ presentations on May 5 constituted part of each firm’s pitch for the TRU IPO, and therefore violated NASD Rule 2711(c)(4). The presentations occurred during the solicitation period for the TRU IPO. TRU made clear to each firm that its analyst’s presentation would be a factor in TRU’s determination of whether the firm would be awarded a role in the IPO. Each analyst presentation was structured so that the analyst spoke and TRU management and Sponsors asked questions. These meetings were not designed to provide information to the analyst that the analyst could use to “vet” the proposed transaction.

From the outset, Wells Fargo understood that its analyst’s views could influence what underwriting role, if any, it received in the TRU IPO. Shortly after being invited to pitch to TRU and the Sponsors and before any of the pitch meetings took place, a Wells Fargo investment banker sent an email to a colleague stating that the “main points to emphasize in pitch include: sizing, valuation (P/E and EBITA multiples), research coverage (key), and distribution track record...” The morning of May 5, 2010, a member of the investment banking team spoke with a

contact at one of the Sponsors, and reported to the team that "today's research discussions are a key ingredient in their process."

The investment banking team was also involved in making sure the research analyst was able to meet with TRU management and Sponsors in person for the May 5 meeting, despite scheduling issues. In a May 4, 2010 email, a member of the investment banking team emailed TRU management, "did you get my voicemails yesterday? Thanks for working with us on scheduling [the research analyst]. Let me know if I can help."

Before the May 5 presentation, personnel from Wells Fargo Legal and Compliance reviewed, edited, and approved the research analyst's presentation. Based on the guidance provided by Legal and Compliance, the Wells Fargo analyst's presentation on May 5 did not address TRU specifically.

Immediately after the research analyst presentations on May 5, a member of the Wells Fargo investment banking team emailed his colleagues and senior Firm management to report that a contact at one of the Sponsors had informed him that TRU and the Sponsors "conducted analyst interviews today and will debrief this evening on the relative strengths of each research analyst. Over the upcoming weekend, they plan to evaluate each firm based on the multiple aspects of the bake-off process (capital commitment, strength of ECM platform, research analyst, etc). . . ." A member of the Wells Fargo team forwarded that email to another colleague, who responded, "Just curious -- did our analyst have any reaction to the interview? Is this approach standard practice?" The individual who had forwarded the email responded, "Not standard practice. Analyst and boss were upset about the request, particularly on such short notice. But he did it (4 pm today) and hopefully made a good presentation."

Additionally, Wells Fargo complied with TRU's request for a valuation that included the analyst's views.

As a result of the foregoing, Wells Fargo violated NASD Rule 2711(c)(4) and FINRA Rule 2010.

## **II. Wells Fargo Violated NASD Rule 2711(c) by Offering Favorable Research Coverage to Induce Receipt of TRU's Investment Banking Business.**

NASD Rule 2711 recognizes that a firm can create a conflict for an analyst and compromise the analyst's independence if it promises favorable research coverage in an effort to win investment banking business. Therefore, NASD Rule 2711 contains a broad prohibition against directly or indirectly offering favorable research: "No member may directly or indirectly offer favorable research, a specific rating, or a specific price target . . . to a company as consideration or inducement for the receipt of business or compensation." Accordingly, in the context of a solicitation period where the issuer has stated that it will consider an analyst's views as part of the underwriter selection process, a firm cannot indicate to a prospective investment banking client its analyst's positive views of the company or the company's prospects, even if honestly held, or the positive prospective valuation the analyst may give the company.

Under the circumstances of the TRU IPO, Wells Fargo offered favorable research coverage to induce receipt of investment banking business by completing and submitting to TRU, during the solicitation period, a valuation template requested by TRU and the Sponsors.

On May 6, 2010, TRU notified the firms that it would be sending a template to each firm to complete as part of the underwriter-selection process. TRU explained that, in order to be selected as an underwriter, each firm had to provide the requested valuation. TRU and the Sponsors wanted to ensure that, if a firm was selected as an underwriter, its analyst's views would be consistent with the valuation provided by its investment bankers.

Later that day, TRU sent the template to each of the firms along with a cover email. The template asked each firm to provide projected EBITDA and net income for 2010 and 2011, the corresponding valuation multiple for 2010 and 2011, and identify up to five comparable companies used for valuation. In the cover email accompanying the template, TRU wrote that, before selecting underwriters, it wanted each firm to provide (1) "Equity Commitment Committee approval of a definitive equity valuation range," and (2) "what company or companies you would choose for the purpose of determining comparative values, and why." TRU stated that if a firm was selected as an underwriter, the firm, including its analyst, would be expected to stand behind the valuation provided in the template. If the valuation changed, the firm would be expected to show that the change was "directly traceable to unexpected findings during due diligence or unexpected changes in exogenous factors." The templates were due on May 10, 2010.

Wells Fargo understood that TRU and the Sponsors wanted a final valuation that the entire Firm, including its analyst, would support if selected as an underwriter.

The Firm's investment bankers emailed the completed template to TRU along with a cover letter. Wells Fargo provided all of the information TRU had requested, stating in the cover letter that the valuation was an "institutional" valuation and that Wells Fargo was very interested in becoming an active bookrunner in the planned TRU IPO. For example, the letter stated,

Prior to and following our April 30<sup>th</sup> presentation, we have had several internal calls regarding our preliminary thoughts on positioning, the appropriate comparables and IPO valuation methodology. In addition, our current institutional views have been reviewed with the Chair of our Equity Commitment Committee and are reflected in the attached template.

The Wells Fargo investment bankers did not include anything in the template response that stated or suggested that it was solely the view of investment banking and did not represent the view of the Firm's research analyst. Further, the cover letter to the completed template specifically pointed to "firmwide coverage of the specialty retail, toy manufacturing and real estate sectors" as a key capability that would "make Wells Fargo the right partner to re-introduce the new, substantially improved Toys "R" Us to public equity investors." The email also attached a draft sales force presentation that set forth, among other things, investment highlights, questions investors may ask, and institutional shareholder analysis.

In connection with the Firm's outreach to TRU and the Sponsors following this submission, one banker wrote to his colleague that another member of the team "wants us to call [a contact at one of the Sponsors] to see if there is anything else we can do, and to reiterate our support in research even though [the research analyst] was not very open or forthcoming in his meeting last week...."

By providing TRU the unified valuation it sought, Wells Fargo indicated to TRU that post-IPO research coverage would be positive and aligned with investment banking.

Shortly thereafter, TRU and the Sponsors selected Wells Fargo as a passive bookrunner for the TRU IPO.

As a result of the foregoing, Wells Fargo violated NASD Rule 2711(e) and FINRA Rule 2010.

**III. Wells Fargo Violated NASD Rule 2711(i) Because It Failed to Implement Policies and Procedures Reasonably Designed to Prevent Violations of Rule 2711(h) in Connection with Analyst Public Appearances.**

NASD Rule 2711(h) requires FINRA member firms to ensure that potential conflicts and conflicts of interest are disclosed in connection with public appearances by research analysts. NASD Rule 2711(i) provides supervision requirements that specify a firm's obligations to develop effective policies and procedures to oversee research analyst conflicts of interest. Specifically, the rule states, "Each member subject to this rule must adopt and implement written supervisory procedures reasonably designed to ensure that the member and its employees comply with the provisions of this rule . . . ."

During the period from September 2009 to January 2012, Wells Fargo's supervisory policies and procedures did not require sufficient oversight of the disclosure of potential conflicts during public media appearances for its analysts by the media outlet involved. As a result, during at least three public media appearances by Wells Fargo analysts during that time, required disclosures of potential conflicts and conflicts of interest were not made by those media outlets.

Wells Fargo failed to establish, maintain and enforce reasonably adequate supervisory system and written supervisory procedures to ensure compliance with NASD Rule 2711(h). As a result of the foregoing, Wells Fargo violated NASD Rule 2711(i) and FINRA Rule 2010.

B. The Firm also consents to the imposition of the following sanctions:

- a censure; and
- a fine in the amount of \$4,000,000.

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

Wells Fargo 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

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

- A. To have a Complaint issued specifying the allegations against it;
- 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, Wells Fargo specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Legal Officer, 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.

Wells Fargo 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

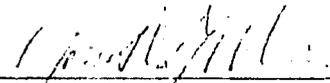
Wells Fargo understands that:

- 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 it; and
- C. If accepted:
  - 1. this AWC will become part of Wells Fargo's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the Firm;
  - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the Firm'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. Wells Fargo 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. Wells Fargo 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 the Firm's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. Wells Fargo may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The Firm 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 the Firm, 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; 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 the Firm to submit it.

Date: 12/5/14

Wells Fargo Securities, LLC

By:   
Jonathan G. Weiss  
President

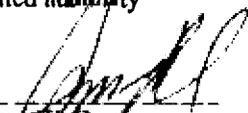
Reviewed by: )

  
Michael J. Missal  
K&L Gates LLP  
1601 K Street, N.W.  
Washington, D.C. 20006  
T: 202-778-9302  
*Counsel for Respondent*

Accepted by FINRA:

Date: 12/10/14

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

By:   
James E. Day  
Vice President and Chief Counsel  
FINRA Department of Enforcement  
15200 Omega Drive, Suite 300  
Rockville, MD 20850  
T: 301.258.8520  
F: 301.208.8090