

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2016052124001**

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

RE: Wells Fargo Clearing Services, LLC (CRD No. 19616) and Wells Fargo Advisors
Financial Network, LLC (CRD No. 11025)
Member Firms

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondents Wells Fargo Clearing Services, LLC and Wells Fargo Advisors Financial Network, LLC submit 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 Respondents alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondents hereby accept and consent, 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 Clearing Services, LLC, which has its headquarters in St. Louis, Missouri, is the successor to several FINRA member firms, including Wells Fargo Advisors, LLC. Wells Fargo Clearing Services, LLC has approximately 25,900 registered individuals and approximately 6,230 branch offices.

Wells Fargo Advisors Financial Network, LLC, which also has its headquarters in St. Louis, Missouri and is under common control with Wells Fargo Clearing Services, LLC, has approximately 2,045 registered individuals and approximately 703 branch offices.

RELEVANT DISCIPLINARY HISTORY

On August 28, 2009, Wachovia Securities, LLC—which Wells Fargo Advisors, LLC had acquired in December 2008—executed an AWC through which it consented to findings that it violated NASD Rules 2110 and 3010 due to “supervisory failures regarding

variable annuity sales” and having “had an inadequate system in place that would detect undisclosed switches.”¹ The AWC required the firm to pay a fine of \$350,000.

OVERVIEW

From January 2011 through August 2016 (the “Relevant Period”), Wells Fargo Clearing Services, LLC and Wells Fargo Advisors Financial Network, LLC (together “Wells Fargo” or the “Firm”) failed to establish and maintain a supervisory system, and failed to enforce written supervisory procedures (“WSPs”), that were reasonably designed to achieve compliance with FINRA’s suitability rule as it pertains to switches from variable annuities to investment company products. Based on the foregoing, Wells Fargo violated NASD Rule 3010 (for conduct before December 1, 2014), FINRA Rule 3110 (for conduct on or after December 1, 2014), and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

FINRA Rule 3110(a) and its predecessor, NASD Rule 3010(a), require that FINRA member firms establish and maintain a system to supervise the activities of each associated person that is “reasonably designed to achieve compliance with applicable securities laws and regulations.” FINRA Rule 3110(b) and its predecessor, NASD Rule 3010(b), require that FINRA member firms establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are “reasonably designed to achieve compliance with the applicable securities laws and regulations, and with applicable FINRA rules.” A violation of NASD Rule 3010 or FINRA Rule 3110 also constitutes a violation of FINRA Rule 2010.

FINRA Rule 2111 and its predecessor, NASD Rule 2310, require FINRA member firms and their associated persons to have a reasonable basis to believe that a recommended securities transaction is suitable for the customer, based on the information obtained through the reasonable diligence of the member firm or associated person.

Recommendations to liquidate, replace, or surrender variable annuities must be suitable and based on the customer’s financial needs and investment objectives. A firm’s review of the suitability of such transactions must include, among other things, consideration of surrender fees and the fees and expenses associated with the new product being recommended.²

During the Relevant Period, several of Wells Fargo’s registered representatives recommended that customers surrender more than 50,000 variable annuities with a principal value of more than \$5 billion. The WSPs in effect during that period required that “qualified supervisors” review the suitability of any product “switch” by considering

¹ *Wachovia Securities, LLC*, Case No. 2005002169202 (AWC 2009) (signed by “Wachovia Securities, LLC n/k/a Wells Fargo Advisors, LLC.”)

² *See, e.g.*, Notice to Members 07-06 (February 2007).

the comparative costs associated with the new and existing investments, and the comparative features and benefits of both investments. The Firm defined a “switch” as “the sale of an investment company product or insurance product that is followed by a purchase of an investment company product or insurance product.”³ The WSPs for both Respondent Firms also required that they “automatically send switch letters to clients based on alerts generated by [their] supervisory system[s], unless withheld by the qualified supervisor.”

In spite of the WSPs’ directive that supervisors review the suitability of product switches, Wells Fargo failed to ensure that such reviews happened when its representatives recommended that customers switch from a variable annuity to an investment company product. Notwithstanding the reference in the WSPs to switch “alerts generated by the firm’s supervisory system,” there was no switch alert during the Relevant Period to identify switches from variable annuities to investment company products and therefore the Firm did not send switch letters. Indeed, the Firm did not obtain from variable annuity issuers data sufficient to review the suitability of variable annuity surrenders and subsequent switches, including surrender fees.

During the Relevant Period, Wells Fargo’s registered representatives recommended at least 101 potentially unsuitable switches involving the sale of a variable annuity to purchase investment company products. For example, a former representative of the firm, Representative A, recommended that a customer liquidate a variable annuity with a surrender value of \$126,681—which caused the customer to pay a surrender fee of \$5,070—and then use the proceeds to purchase class A mutual funds with upfront sales charges totaling \$5,531. In addition to causing the customer to incur \$10,601 in surrender fees and upfront sales charges, the recommended switch from the variable annuity to mutual funds resulted in the customer earning less annual income than she would have earned had she not sold the variable annuity. As another example, Representative A also recommended that another customer liquidate a variable annuity with a surrender value of \$180,500—which caused the customer to pay a surrender fee of \$6,458—and use the proceeds to purchase class A mutual funds and a Unit Investment Trust with upfront sales charges totaling \$7,579. In addition to causing the customer to incur \$14,037 in surrender fees and upfront sales charges, the recommended switch resulted in the customer earning less annual income than he would have earned had he not sold the variable annuity.

Because Wells Fargo did not have an alert to flag switches from variable annuities to investment company products prior to August 2016, no qualified supervisor reviewed the switches to determine if they were suitable and based on customers’ financial needs and investment objectives. Collectively, the potentially unsuitable switches caused customers to pay \$1,445,167.50 in unnecessary surrender fees (from surrendering the variable annuity) and upfront sales charges (associated with the purchase of the investment company product).

³ For present purposes, an example of an “investment company product” is a mutual fund or a Unit Investment Trust, and an example of an “insurance product” is a variable annuity.

Following Wells Fargo's discovery of the deficiencies in its supervision of switches involving variable annuities, the Firm in August 2016 took several steps to improve its supervision of such transactions, including developing a switch alert to identify when the proceeds from a variable annuity liquidation are used to purchase an investment company product.

As a result of the foregoing, Wells Fargo violated NASD Rule 3010 (for conduct before December 1, 2014), FINRA Rule 3110 (for conduct on or after December 1, 2014), and FINRA Rule 2010.

B. Respondents also consent to the imposition of the following sanctions:

For Wells Fargo Clearing Services, LLC,

- a censure;
- a fine of \$625,000; and
- restitution to the customers listed on Attachment A, in the total amount of \$1,355,499.19, plus interest as described further below.

For Wells Fargo Advisors Financial Network, LLC:

- a censure;
- a fine of \$50,000; and
- restitution to the customers listed on Attachment B, in the total amount of \$89,668.31, plus interest as described further below.

Respondents agree to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. Respondents have submitted an Election of Payment form showing the method by which they propose to pay the fine imposed.

Respondents specifically and voluntarily waive any right to claim an inability to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

Restitution is ordered to be paid to the customers listed on Attachment A and Attachment B hereto in the total amount of \$1,445,167.50, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), from August 31, 2016 until the date this AWC is accepted by the National Adjudicatory Council (NAC).

A registered principal on behalf of each of the Respondent Firms shall submit satisfactory proof of payment of restitution and pre-judgment interest (separately specifying the date and amount of each paid to each customer listed on Attachment A and Attachment B) or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted by email to EnforcementNotice@FINRA.org from a work-related account

of the registered principals of Respondent Firms. The email must identify the Respondents and the case number and include a copy of the check, money order or other method of payment. This proof shall be provided by email to EnforcementNotice@FINRA.org no later than 180 days after acceptance of the AWC.

If for any reason Respondents cannot locate any customer identified in Attachment A or Attachment B after reasonable and documented efforts within 180 days from the date the AWC is accepted, or such additional period agreed to by a FINRA staff member in writing, Respondents shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed property or abandoned property fund for the state in which the customer is last known to have resided. Respondents shall provide satisfactory proof of such action to the FINRA staff member identified above and in the manner described above, within 14 calendar days of forwarding the undistributed restitution and interest to the appropriate state authority.

The imposition of a restitution order or any other monetary sanction herein, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies.

Restitution payments to customers shall be preceded or accompanied by a letter, not unacceptable to FINRA staff, describing the reason for the payment and the fact that the payment is being made pursuant to a settlement with FINRA and as a term of this AWC.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

Respondents specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against them;
- 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, Respondents specifically and voluntarily waive 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.

Respondents further specifically and voluntarily waive 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

Respondents understand 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 Respondents; and
- C. If accepted:
 - 1. this AWC will become part of Respondents' permanent disciplinary record and may be considered in any future action brought by FINRA or any other regulator against Respondents;
 - 2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 - 4. Respondents 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. Respondents 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 Respondents': (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. Respondents may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondents understand that they 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 each of the Respondent Firms, 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 the AWC's 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 it to submit it.

August 27, 2020

Date

Wells Fargo Clearing Services, LLC
Respondent

By: Jim Hays

Print Name: Jim Hays

Title: CEO Wells Fargo Advisors

August 21, 2020

Date

Wells Fargo Advisors Financial Network, LLC
Respondent

By: Kent Christian

Print Name: Kent Christian

Title: President

Reviewed by:

Shea Hicks

Dennis J. Capriglione, Esq., and
Shea O'Brien Hicks, Esq.
Counsel for Respondents Wells Fargo Clearing Services, LLC
and Wells Fargo Advisors Financial Network, LLC
Wells Fargo Legal Department
1 North Jefferson Ave.
St. Louis, MO 63103

Accepted by FINRA:
September 1, 2020

Date

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

Michael Newman

Michael Newman
Senior Counsel
FINRA
Department of Enforcement
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