UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10511 / June 25, 2018

SECURITIES EXCHANGE ACT OF 1934
Release No. 83508 / June 25, 2018

INVESTMENT ADVISERS ACT OF 1940
Release No. 4947 / June 25, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18556

In the Matter of

Wells Fargo Advisors, LLC

Respondent.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, AND SECTION 203(e) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act"), and Section 203(e) of the Investment Advisers Act of 1940 ("Advisers Act") against Wells Fargo Advisors, LLC ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and

Cease-and-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933, Section 15(b) of the Securities Exchange Act of 1934, and Section 203(e) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

Summary

1. From at least January 2009 through June 2013, certain registered representatives at Wells Fargo Advisors, LLC ("WFA") and its predecessor Wells Fargo Investments, LLC ("WFI")[2] improperly solicited customers to redeem their market-linked investments ("MLI") early and purchase new MLIs without adequate analysis or consideration of the substantial costs associated with such transactions.

2. An MLI is a fixed maturity financial product whose interest is determined by the performance of a reference asset or market measure such as an equity or commodity index over the term of the product. MLIs have limited liquidity and significant upfront fees, and accordingly WFA considered them to be products intended to be held to maturity and in 2011 implemented a policy prohibiting representatives from engaging in "short-term trading" or "flipping" of MLIs. Notwithstanding WFA's internal guidance and policy, and despite the adverse economic consequences to WFA customers, certain WFA representatives did not reasonably investigate or understand the significant costs of MLI exchanges. Nevertheless, they recommended to their customers that they redeem their MLIs early, typically to realize profits, and to use the proceeds from those redemptions to purchase new MLIs. Supervisors routinely approved the recommendations or the exchanges. This practice caused certain WFA customers to incur significant costs and impaired the customers' ability to achieve their investment objectives. As a consequence, WFA obtained commissions by means of recommendations that contained implied representations that WFA personnel had formed a reasonable basis for the recommendations when they had not, in fact, done so.

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[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

[2] In December 2008, WFI and Wachovia Securities, LLC became affiliated as a result of the merger between Wells Fargo & Company and Wachovia Corporation. In May 2009, Wachovia Securities was renamed Wells Fargo Advisors, LLC (WFA) and effective January 2011, WFI was integrated into WFA.

Respondent

3. **Wells Fargo Advisors, LLC** is a Delaware limited liability company with its principal place of business in St. Louis, Missouri. It is wholly owned by Wachovia Securities Financial Holdings, LLC, which is a wholly owned subsidiary of Wells Fargo & Company. WFA has been registered with the Commission as a broker-dealer since 1987 and as an investment adviser since 1990. WFA consists of the integrated legacy firms of WFI and Wachovia Securities, LLC ("Wachovia").[3] The integration of WFI and Wachovia was completed in January 2011. On November 11, 2016, First Clearing, LLC, a wholly-owned subsidiary of WFA, merged with and into WFA and was renamed Wells Fargo Clearing Services, LLC. Wells Fargo Clearing Services, LLC continues to operate under the trade name Wells Fargo Advisors.

Other Relevant Entities

4. **Wells Fargo Bank, N.A.** is ("WFB") is a wholly owned subsidiary of Wells Fargo & Company and is a nationally-chartered bank, incorporated in 1870, and headquartered in Sioux Falls, South Dakota.

5. **Wells Fargo & Company** ("WFC") is a Delaware corporation with its principal place of business in San Francisco, California. WFC is registered as a financial holding company and a bank holding company under the Bank Holding Company Act of 1956. WFC's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is traded on the New York Stock Exchange.

Market-Linked Investments Background

6. Beginning in 2002, WFA began offering MLIs to its customers. MLIs are structured financial products with a fixed maturity that are comprised of two components: (a) a certificate of deposit or a zero-coupon bond; and (b) an embedded derivative or combination of derivatives, typically options, providing synthetic exposure to the performance of an unrelated reference asset or market measure ("reference asset"). The reference asset can include, among other things, domestic or international equity indices such as the S&P 500 or an emerging markets index, commodity indices or baskets of commodities, baskets of currencies, or a combination of market indices.

7. WFA principally sold two types of MLIs: market-linked certificates of deposit ("MLCDs") and market-linked notes ("MLNs"). According to WFA product disclosures, the MLCDs sold by WFA were structured investments issued by WFB or in some cases a third-party issuer. In its product disclosures, WFA disclosed various costs imbedded in the prices at which

[3] WFI was registered with the Commission as a broker-dealer until March 28, 2011 and as an investment adviser until January 27, 2011. Wachovia was registered with the Commission as a broker-dealer and investment adviser until 2011, when it was succeeded by WFA.

investors purchased and sold MLCDs and cautioned investors that MLCDs should not be confused with a conventional certificate of deposit ("CD") that offers a fixed coupon to maturity. MLCDs provided investors with greater return potential, but were also exposed to market risk and could potentially earn no return. Investors in MLCDs were guaranteed to receive a return of their principal at maturity, which typically ranged from two to seven years from issuance, but the potential interest payment paid at maturity was variable and depended on the performance of the underlying reference asset. Most MLCDs sold by WFA in 2009 or later had no guaranteed interest and required appreciation in the value of the reference asset for the MLCD to provide any return to investors. WFA marketed the MLCDs as a means to gain market exposure to a variety of asset classes, including equities, commodities, currencies, or other dynamic or asset allocation strategies that may not otherwise have been available to the investor.

8. If held to maturity, MLCDs offered principal protection for the deposit amount, which was insured by the Federal Deposit Insurance Corporation ("FDIC") up to the applicable FDIC limits. If the MLCD was sold prior to maturity, however, the investor could receive considerably less than the amount initially invested. The return on the reference asset that was to be credited at maturity was uninsured and subject to WFB's or a third party issuer's credit risk as well as market risk.

9. The MLNs sold by WFA were similar in many respects to the MLCDs. The MLNs were unsecured debt issued by WFC or in some cases a third-party issuer. The MLNs had a fixed maturity, typically between two to seven years from issuance, at which point investors would receive their principal back plus accrued interest as determined by the performance of the reference asset. Like the MLCDs, most MLNs sold in 2009 or later did not have guaranteed interest and required appreciation of the reference asset before investors would earn interest. Some of the MLNs that WFA sold were 100% principal protected, meaning that even if the reference asset declined, investors were guaranteed to receive their full principal back at maturity. Others had partial principal protection, where investors were insulated from declines in the reference asset up to a certain threshold – such as declines up to 10% or 20% – before the principal became impaired.

Investment Purpose and Risks Associated with MLIs

10. The MLIs issued by WFB and WFC were structured by a Wells Fargo affiliate and were primarily distributed through WFA representatives. Investors in the MLNs received a prospectus and prospectus supplement that contained a product description, product terms and payout information, certain cost information, and risk disclosures. Investors in the MLCDs received an offering circular containing the same type of information.

11. The offering materials described the MLIs as investments that offered investors the ability to participate in the future appreciation of the underlying reference asset, while at the same time providing full or partial principal protection.

12. WFA representatives sold MLIs to their brokerage customers as an investment opportunity to take on some market exposure while keeping all or part of their principal protected. Some investors saw the products as an opportunity to achieve higher yields than were available in traditional investments such as CDs or bonds while remaining protected against loss. Some of WFA's customers expressed dissatisfaction with the low yields available in CDs and bonds and saw MLIs as a more attractive option. These investors traded the stability of guaranteed fixed returns available in CDs and bonds for the upside potential of higher investment returns should the reference asset increase in value. Certain customers relied on their WFA representatives to recommend which MLIs to invest in and at what time, and which reference asset classes to gain exposure to for purposes of generating return.

13. While the MLIs contained principal protection, there were risks associated with investing in the products. For example, many of the MLIs had the potential to provide no return or in some cases generate losses should the reference asset decline in value. The value of the MLIs could also fluctuate over the life of the product based on movements in the reference asset.

14. There were also limitations on the MLIs' principal protection. MLN investors' principal and interest were subject to WFC's credit risk. MLCD investors' principal was FDIC insured up to applicable FDIC limits, but WFA customers were subject to risk of loss of principal for amounts invested exceeding those limits. Moreover, the MLCDs' return on the reference asset was uninsured and subject to WFB's credit risk.

15. The MLIs also had significant liquidity risk. The principal and accrued interest were guaranteed only if the MLIs were held to maturity. If investors redeemed their MLIs before maturity, they could receive less than they would if they held to maturity, and potentially substantially less than their full principal amount. In fact, because of the costs imbedded into the price of the MLIs, the MLIs typically carried a value below par for some or all of their term. Furthermore, since there was no active unaffiliated secondary market for these MLIs, WFA customers who wished to redeem an MLI before maturity had to rely upon WFA and its affiliates to provide a market for redeeming their investments early and could only redeem at the price WFA or its affiliates were willing to pay to repurchase the MLIs. WFA and its affiliates made no assurances that investors would be able to redeem their MLIs early, but during the relevant period, they always provided a market for customers to redeem early.

16. According to WFA product disclosures, MLIs were not suitable for short-term trading due to their limited liquidity. WFA stated that purchasers of MLIs should be buy-and-hold investors and that the products were generally suitable only for customers who were able to hold the investments until maturity.

Costs Associated with Investing in MLIs

17. WFA customers typically incurred costs equal to approximately 5% to 6% of their principal amount when they purchased MLIs in the offering. These costs consisted of a selling commission of up to 3% paid to WFA, plus 2% to 3% of structuring and hedging costs received by WFA affiliates. The costs were imbedded into the price of the MLI rather than separately charged to the customer (the "markup"). As a result, a customer who purchased an MLI at a $100 par value would receive an MLI with a value between $94 and $95 as of the day of purchase.

18. There were additional costs associated with redeeming MLIs early. First, prior to September 2011, WFA representatives, with their supervisor's approval, could charge a sales commission on early redemptions. Second, the price at which WFA or its affiliates were willing to buy back the MLIs in the affiliated secondary market it provided for its customers was typically lower than the current valuation of the MLI (the "markdown"). On average, MLI repurchases were marked down between 2% and 3%.

Certain WFA Representatives' Practice of Soliciting Customers to Liquidate MLIs Early and Purchase New MLIs

19. From January 1, 2009 through August 31, 2012 (the "Relevant Period"), certain WFA representatives engaged in a sustained practice of soliciting customers across their customer base to: (i) purchase MLIs, usually issued by WFB or WFC; (ii) redeem these MLIs prior to maturity; and (iii) purchase new MLIs using the proceeds from the early redemption. In many cases, the solicited redemptions occurred as little as a year into the life of MLIs with multi-year terms.

20. A substantial number of the solicited MLI exchanges involved MLIs with identical or similar reference assets, such as moves from one MLI linked to the S&P 500 to another linked to the S&P 500 or the Dow Jones Industrial Average, at considerable expense to customers, as described below. The vast majority of early redemptions were executed at prices above par, resulting in profits to the customer, although there were also instances where the customer redeemed early at a loss.

21. When customers engaged in MLI exchanges, they incurred substantial costs that reduced their MLI returns and in certain instances reduced their upside potential in MLIs. Meanwhile, WFA and its affiliates profited from these MLI exchanges, as they applied markups and markdowns (which included commissions to WFA) to each leg of the exchange.

22. First, WFA or its affiliates typically marked down the early redemption price from the MLI's current valuation by approximately 2% to 3%. Therefore, WFA customers received less on the redemption than their MLI was currently worth based on valuations of the debt and option components of the investment. Second, customers were sometimes charged a sales commission on the redemption in addition to the markdown. Third, the customer incurred an additional 5% to 6% in costs through a markup on the new MLI. In total, the cost of the MLI exchanges typically resulted in a loss of investment value of 7% or more at the time of purchase of the new MLI.

23. By way of illustration, if a customer makes a $100 par value investment in an MLI, it would be worth $95 on the date of purchase after taking into account the markup by WFA's affiliate. If the reference asset appreciates significantly, it may correspond to an increase in the value of the MLI from $95 to $110. If WFA were to solicit its customer to engage in an MLI exchange at this point, a WFA affiliate would typically repurchase the investment from the customer at approximately $108 after a 2% markdown, resulting in a realized profit of 8%. If the customer then reinvests the $108 proceeds into a new MLI, the new MLI would be worth approximately 95% of par on the purchase date after costs, or $102.60. The customer exchanges an MLI valued at $110 for a similar product valued at $102.60, and more than 80% of the original MLI's growth in value is consumed by transaction costs. If a customer regularly makes such exchanges, the customer is left with minimal long-term returns net of the significant costs.

24. Certain WFA representatives frequently justified the MLI exchanges by claiming that customers were "locking in gains" on their original MLI investments. The rationale behind soliciting customers to redeem early was that customers could capture their gains to date (or most of their gains when considering the markdown) rather than risk a decline in the performance of the reference asset that could result in the customer receiving less at maturity. Certain WFA representatives further solicited customers to invest the early redemption proceeds in a new MLI that would have a higher principal amount that was either fully or partially protected. Certain WFA representatives had great success selling customers on a "lock in gains" strategy, as it appealed to customers' desire to protect their principal and avoid loss of gains in a market downturn.

25. However, in many instances, there was limited value in locking in gains. First, due to principal protection and the MLI's appreciation in value to date, the only amount reasonably at risk in the original MLI was the gain to date, which was a modest amount in many of the exchanges. Second, due to the markdown on early redemptions applied by WFA and its affiliates, the customer had to sacrifice a significant portion of the gain to lock in the remaining portion. If a customer redeems an MLI valued at $110 at $108, the customer must sacrifice 20% of the MLI's appreciation in value to date in order to lock in the remaining 80% of gains. Third, because the principal protection only applied if held to maturity, the new MLIs would be expected to outperform the original MLI in a down market only if the new MLI was held until maturity, which could be as long as seven years. The difference in annualized returns between a 5% to 10% decline in value on the original MLI compared to flat returns on the new MLI was often very small.

26. Fourth, in most instances, the original MLI had a higher expected return than the new MLI, due to the additional costs incurred and value lost in the MLI exchange. The original MLI stood to outperform the new MLI in the majority of market conditions, including in many cases when the reference asset declined in value. The risk that the original MLI would lose some or all of its gain, in these circumstances, was typically limited. In sum, in most instances, the MLI exchange surrendered the original MLI's more valuable return profile in order to protect against a low probability of a limited loss.

27. Certain WFA representatives engaged in a practice of repeatedly "locking in gains" for their customers across their MLI portfolios as the MLIs appreciated in value. In many cases, when the new MLI that the customer exchanged into appreciated from its original value of approximately $95 on a $100 par value investment to a gain position, the WFA representatives solicited the customer to engage in a second MLI exchange, which led to additional costs for the customer and further limited portfolio growth.

Certain WFA Representatives' Recurrent Use of MLI Exchanges

28. While the majority of WFA representatives that solicited customers to engage in MLI exchanges did so relatively infrequently, Representative A and Representative B engaged in a systematic practice of soliciting customers to engage in MLI exchanges on hundreds of occasions (the "Recurrent MLI Exchanges").[4]

29. Representative A solicited 1,167 MLI exchanges in 201 accounts between January 2009 and June 2012. These exchanges occurred in accounts of varying size, investment objective, and risk tolerance. Representative A frequently solicited customers to redeem multiple MLIs in the same customer account on the same date and use the proceeds to purchase several new MLIs. Representative A also frequently solicited customers to engage in identical MLI exchanges across multiple customer accounts on the same day. In some accounts, Representative A consistently solicited customers to engage in exchanges whenever MLIs in the account could be sold at a 5% or higher profit to the customers. Representative A's notes reflect that the reason for the exchanges was nearly always to lock in gains in the original MLI. During the relevant period, early liquidations in Representative A's customer accounts were done at an average realized profit of 6.6%, with the majority of early liquidations yielding realized profits of between 5% and 10% before considering the costs of reinvesting in new MLIs. Ninety of her MLI liquidations were executed at a loss to the customer. In total, Representative A's MLI exchanges generated $797,996 in commissions for WFA.

30. Representative A recommended that her customers lock in their gains to protect against future market downturns. However, the 5% to 10% realized gains exceeded the 5% to 6% costs of repurchasing a new MLI by only a small margin, leaving customers with nominal gains net of their reinvestment costs.[5] Because the customers incurred these additional costs repeatedly with each

[4] Based on the specific facts and circumstances described in the Order, including the practice of certain WFA representatives of soliciting the early redemption of MLCDs for purposes of reinvesting the proceeds in new MLCDs, and in reliance on WFA as the market, source of prices and expertise in maintaining the market for the MLCDs, the MLCDs sold by WFA pursuant to the strategy described in this Order were investment contracts, and therefore securities.

[5] As noted above, prior to September 2011, WFA representatives, with their supervisor's approval, could charge a sales commission on early redemptions. However, in consultation with her

exchange, it was very difficult for the customers to achieve the higher potential returns that attracted them to the products in the first place over more traditional fixed income products with lower yields. The "lock in gains" strategy yielded modest returns with higher volatility and risk than traditional CDs.

31. Furthermore, as discussed above, in many instances, an analysis of the original MLI at the time of the exchange would have revealed that the benefit of locking in gains was limited given the probability that the original MLI would pay out at least as much at maturity as it did at the time of redemption and given that only the gain portion of the original MLI was at risk.

32. The long-term effects of the "lock in gains" strategy were apparent in the accounts of Representative A's largest customer ("Customer A"). Nearly all of Customer A's assets were invested in WFB-issued MLCDs. Customer A invested in MLCDs instead of traditional fixed-rate CDs due to the low yields available on traditional CDs at the time and a desire to generate higher returns. From January 2009 to March 2012, Representative A solicited 110 MLI exchanges in Customer A's accounts. Customer A incurred approximately $900,000 in costs to execute these exchanges, including approximately $353,241 in commissions paid to WFA. From January 2009 through March 2012, Customer A's investment gains, net of the substantial costs incurred, were approximately $300,000, representing a 5% total return (1.5% annualized) with considerable volatility during the period.

33. Representative A never conducted an analysis of the effect the significant costs of MLI exchanges would have on her customers' ability to achieve their investment objectives. Nor did she analyze what market scenarios would be necessary for the original MLI's gain to be at risk and for the new MLI to outperform the original one, to determine whether the benefits of the MLI exchange warranted the costs.

34. Representative A's supervisors and regional compliance managers were aware of her MLI exchange activity and her "lock in gains" rationale and routinely approved her MLI exchanges without an understanding of the economics of the transactions and strategy. WFA compliance personnel were also aware of Representative A's use of MLIs, as she appeared at or near the top of several reports analyzing liquidation activity across the firm. However, WFA supervisors and compliance personnel failed to limit the practice. Representative A never received any guidance from her supervisors or WFA compliance regarding her practice of soliciting customers to engage in MLI exchanges.

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supervisor, Representative A did not charge a sales commission on early redemptions. Nevertheless, Representative A's customers still incurred substantial costs as a result of the MLI exchanges.

35. Similarly, from January 2009 through August 2012, Representative B solicited customers to engage in 294 MLI exchanges in 107 accounts. Representative B frequently encouraged his customers to "lock in gains" or "take realized profit" on their MLI investments and reinvest the proceeds into new MLIs. On average, Representative B's customers realized approximately 10% profit on their early redemptions prior to taking into consideration the cost of reinvesting in new MLIs. Representative B recommended MLI exchanges to customers with a variety of investment objectives and risk tolerances, and often made identical recommendations to multiple customers on the same day. In total, Representative B's MLI exchanges generated $132,381 in commissions for WFA.

36. Representative B did not fully understand all of the costs associated with MLI exchanges and he never evaluated the effect such costs would have on customers' ability to achieve their investment objectives. He also never analyzed under what market conditions the original MLI would decline in value or the new MLI would outperform the original MLI.

37. Representative B's supervisors and regional compliance managers were aware of his MLI exchange activity and routinely approved his transactions without analyzing or fully understanding the economics of the MLI exchanges. They failed to provide Representative B with any guidance with respect to his soliciting customers to engage in MLI exchanges.

<u>WFA's Awareness of and Monitoring of the Recurrent MLI Exchanges</u>

38. Prior to the integration of WFI and Wachovia in January 2011, WFI did not have a written policy expressly prohibiting or discouraging the practice of soliciting early liquidations of MLIs or MLI exchanges. However, as early as 2005, WFI compliance personnel were aware of the practice and took steps to curb the solicitation of early liquidations.

39. In a 2005 internal audit report, WFI compliance personnel identified a significant number of early MLI liquidations in WFI customer accounts. The internal audit found that, going back to 2002, 18% of the value of MLNs sold to WFI customers had been liquidated prior to their maturity, and that 42% of such early redemptions were followed by a purchase of a new MLI within 60 to 120 days of the early redemption. The audit report further stated that there may be a need to enhance monitoring of redemptions and assess the commission polices surrounding MLIs because the products were issued with the general expectation that they would be held until maturity.

40. As a result, in January 2006, WFI implemented a policy whereby the commission paid to a representative in connection with a customer's purchase of an MLI would be clawed back in whole or in part if the MLI was redeemed within one year of purchase. WFI representatives continued to solicit customers to engage in MLI exchanges, however, and the clawback policy did not provide any incentive to hold the MLIs past one year.

41. Following the December 2008 merger between WFI and Wachovia that led to the formation of WFA, WFI and Wachovia compliance personnel reviewed the procedures surrounding

liquidation of MLIs as part of a broader process of integrating the firms' policies. There was considerable discussion about the frequency of MLI exchanges in WFI customer accounts and what should be done about the practice.

42. In November 2009, WFI discontinued the clawback policy and implemented a new procedure that required its representatives to complete a form to get supervisory approval for all early liquidations of MLIs. The form required the representatives to indicate the reason for the liquidation, the use of proceeds, and the gain or loss on the investment.

43. Despite the implementation of the pre-approval process for early liquidations in 2009, certain WFI representatives continued to engage in MLI exchanges without meaningful supervision or guidance. Supervisors and compliance personnel assigned to assist supervisors of WFI representatives were not given any specific guidance or training on how to review the early liquidation forms or on how to evaluate whether early liquidations were appropriate. They also received minimal training on MLIs, and some of the individuals responsible for evaluating early liquidations did not fully understand the costs or economics involved in MLI exchanges. Supervisors and compliance personnel routinely approved liquidation requests and rarely, if ever, rejected such requests. Certain WFI representatives routinely obtained approval with superficial justifications such as "lock in gain."

44. In January 2011, after Wachovia's and WFI's systems were integrated, WFA discontinued the pre-approval process and instead relied on a centralized post-trade blotter review by WFA compliance personnel.

45. In 2011, WFA also issued a new policy on MLIs, which stated that: "[MLIs] are not short-term trading vehicles. Registered Associates may not encourage, facilitate or solicit short-term trading or flipping of [MLIs]. Encouraging, facilitating or soliciting short-term trading in [MLIs] may subject Associates to disciplinary action."

46. The 2011 policy also cautioned that "MLCDs are generally intended to be long-term holdings and are not intended for short-term trading otherwise known as 'flipping.' Registered Associates may not encourage, facilitate or solicit short-term trading or flipping of MLCDs. Encouraging, facilitating or soliciting short-term trading in MLCDs funds may subject Associates to disciplinary action."

47. WFA representatives were not given any further information or guidance on the definition of flipping or short-term trading or on when, if ever, an early MLI liquidation was appropriate under the policy. Despite the new policy, a significant number of MLI liquidations and exchanges continued to pass through compliance's post-trade review process.

48. Throughout 2011 and 2012, WFA compliance personnel continued to monitor liquidation activity across the firm and continued to observe a high number of MLI exchanges. As a

result of the high number of MLI liquidations, in September 2011, WFA implemented a new policy prohibiting its representatives from charging commissions on early liquidations, although the representatives could still earn commissions on the purchases of new MLIs that followed liquidation. In October 2012, WFA implemented a centralized electronic supervisory pre-approval process for all MLI liquidations and issued additional guidance regarding the appropriateness of early liquidations. Following this change, the number of MLI liquidations across the firm dropped precipitously.

WFA Earned Commissions From the Recurrent MLI Exchanges

49. Despite spending years monitoring MLI liquidations and exchanges and attempting to implement policies to limit the practice, WFA continued to improperly earn commissions from the Recurrent MLI Exchanges. A recommendation to a customer carries with it an implied representation that the broker-dealer has an adequate and reasonable basis for the recommendation. A recommendation also implies that a reasonable investigation has been made and that the recommendation rests on the conclusions derived from such investigation. The WFA representatives that recommended the Recurrent MLI Exchanges did not, however, have a reasonable basis to recommend that their customers engage in these exchanges as they did not investigate or understand the significant costs or economic viability of the exchanges. WFA supervisors and compliance personnel assisting those supervisors likewise did not have a sufficient understanding of the costs or economic viability of Recurrent MLI Exchanges to reasonably evaluate those recommendations.

50. Specifically, in connection with the commonly-used "lock in gains" rationale for engaging in MLI exchanges, WFA personnel did not investigate or consider: (i) the likelihood the new MLIs – many with similar terms and/or underlying reference assets as the original MLI – could overcome the MLI exchange costs of 7% or more and outperform the original MLIs; (ii) the fact that the MLI exchange left customers with a new MLI worth substantially less than the original MLI; or (iii) the effect frequent MLI exchange costs would have on customer portfolio growth. Representatives A and B did not understand and did not conduct a reasonable investigation to support their recommendations that their customers sell MLIs and use the proceeds to purchase similar MLIs, thereby incurring substantial costs, in order to protect against the risk of losing their gains. Similarly, WFA personnel who monitored and supervised Representatives A and B recommending these Recurrent MLI Exchanges did not engage in sufficient analyses to approve the recommendations.

Violations

51. As a result of the conduct described above, Respondent WFA willfully[6] violated Section 17(a)(2) of the Securities Act, which prohibits, directly or indirectly, in the offer or sale of

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[6] A willful violation of the securities laws means merely "'that the person charged with the duty knows what he is doing.'" *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "'also be aware

securities, obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

52. As a result of the conduct described above, Respondent WFA willfully violated Section 17(a)(3) of the Securities Act, which prohibits, directly or indirectly, in the offer or sale of securities, engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

Respondent's Remedial Efforts

In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Section 8A of the Securities Act, Section 15(b) of the Exchange Act, and Section 203(e) of the Advisers Act it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act.

B. Respondent is censured.

C. Respondent shall pay disgorgement, prejudgment interest, and a civil monetary penalty totaling $5,108,441.27 as follows:

(i) Respondent shall pay disgorgement of $930,377, which represents the commissions WFA earned on Representative A's and Representative B's Recurrent MLI Exchanges between January 1, 2009 and August 31, 2012, prejudgment interest thereon of $178,064.27, and a civil money penalty in the amount of $4,000,000, consistent with the provisions of this Subsection C.

(ii) Within 10 days of the entry of this Order, Respondent shall pay $2,579,926.27 of the amount ordered to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not

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that he is violating one of the Rules or Acts.'" *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

made, additional interest shall accrue pursuant to SEC Rule of Practice 600 or 31 U.S.C. § 3717. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying WFA as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Jeffrey A. Shank, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 175 West Jackson Blvd., Suite, 1450, Chicago, IL 60604.

(iii) Within 10 days of entry of this Order, Respondent shall deposit the remaining $2,528,515 (the "Distribution Fund"), which represents the total costs incurred by customers from Representative A's and Representative B's Recurrent MLI Exchanges between January 1, 2009 and August 31, 2012, into an escrow account acceptable to the Commission staff and Respondent shall provide the Commission staff with evidence of such deposit in a form acceptable to the Commission staff. If timely payment is not made, additional interest will accrue pursuant to SEC Rule of Practice 600 [17 C.F.R. § 201.600] or 31 U.S.C. § 3717.

(iv) Respondent shall be responsible for administering the Distribution Fund and may, at its own expense, hire a professional to assist it in the administration of the distribution. Respondent shall pay from the Distribution Fund to each customer account that incurred costs by Representative A's and Representative B's Recurrent MLI Exchanges between January 1, 2009 and August 31, 2012 (collectively, "affected customer accounts"), an amount representing the full amount of costs incurred by each customer account due to the Recurrent MLI Exchanges pursuant to a distribution calculation (the "Calculation") that will be submitted to, reviewed, and approved by the Commission staff in accordance with this Subsection C. Such calculation shall be subject to a *de minimis* threshold, as described in paragraph (v), below. No portion of the Distribution Fund shall be paid to any customer account in which Respondent, or any of its officers or directors, has a financial interest.

(v) Respondent shall, within 60 days from the date of this Order, submit a proposed Calculation to the Commission staff for its review and approval that identifies, at a minimum, (i) the name and number of each affected customer account, (ii) the exact amount of payment to be made from the Distribution Fund to each affected customer account, and (iii) the amount of any *de minimis* threshold to be applied. Respondent also shall provide to the Commission staff such additional information and supporting documentation as the Commission staff may request for the purpose of its review. In the event of one or more objections by the Commission staff to Respondent's proposed Calculation or any of its information or supporting documentation, Respondent shall submit a revised Calculation for the review and approval of the Commission staff or additional information or supporting documentation within 10 days of the date that Respondent is notified of the objection, which revised Calculation shall be subject to all of the provisions of this Subsection C.

(vi) Respondent shall complete the disbursement of all amounts payable to affected customer accounts within 90 days of the date that the Commission staff approves the Calculation, unless such time period is extended as provided in paragraph (xi) of this Subsection C.

(vii) If Respondent is unable to distribute or return any portion of the Distribution Fund for any reason, including an inability to locate an affected customer account or a beneficial owner in an affected customer account, the application of a *de minimis* threshold to certain accounts, or any factors beyond Respondent's control, Respondent shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury in accordance with Section 21F(g)(3) of the Securities Exchange Act of 1934, in accordance with the instructions in paragraph (ii) of Subsection C, after the final accounting provided for in paragraph (ix) of this Subsection C is submitted to the Commission staff.

(viii) Respondent shall be responsible for any and all tax compliance responsibilities associated with the Distribution Fund and may retain any professional services necessary. The costs and expenses of any such professional services shall be borne by Respondent and shall not be paid out of the Distribution Fund.

(ix) Within 150 days after Respondent completes the disbursement of all amounts payable to affected customer accounts, Respondent shall submit to the Commission staff, for Commission approval, a final accounting and certification of the disposition of the Distribution Fund, which final accounting and certification shall be in a format to be provided by the Commission staff. The final accounting and certification shall include, but not be limited to: (1) the amount paid to each payee; (2) the date of each payment; (3) the check number or other identifier of money transferred; (4) the amount of any returned payment and the date received; (5) a description of any effort to locate a prospective payee whose payment was returned or to whom payment was not made for any reason; (6) the total amount, if any, to be forwarded to the Commission for transfer to the United States Treasury; and (7) an affirmation that Respondent has made payments from the

Distribution Fund to affected customer accounts in accordance with the Calculation approved by the Commission staff. Respondent shall submit proof and supporting documentation of such payment (whether in the form of electronic payments or cancelled checks) in a form acceptable to the Commission staff under a cover letter that identifies Wells Fargo Advisors, LLC as Respondent and the file number of these proceedings to Jeffrey A. Shank, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 175 West Jackson Boulevard, Suite 1450, Chicago, Illinois 60604. Respondent shall provide any and all supporting documentation for the accounting and certification to the Commission staff upon request and shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.

(x) The Commission staff may extend any of the procedural dates set forth in this Subsection C for good cause shown. Deadlines for dates relating to the Distribution Fund shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

D. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the penalty, disgorgement, and prejudgment interest described in paragraphs C.i and C.iii above for distribution to affected customer accounts. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Brent J. Fields
Secretary