

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 102229 / January 17, 2025

INVESTMENT ADVISERS ACT OF 1940
Release No. 6827 / January 17, 2025

ADMINISTRATIVE PROCEEDING
File No. 3-22430

In the Matter of

**WELLS FARGO CLEARING
SERVICES, LLC, and
WELLS FARGO ADVISORS
FINANCIAL NETWORK,
LLC**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 203(e) AND
203(k) OF THE INVESTMENT ADVISERS
ACT OF 1940 AND SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934,
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 Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) and Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”), against Wells Fargo Clearing Services, LLC and Wells Fargo Advisors Financial Network, LLC (collectively, the “Respondents” or “Wells Fargo Advisors”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) 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 them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e) and 203(k) of the

Investment Advisers Act of 1940 and Section 15(b) of the Securities Exchange Act of 1934, 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 Respondents’ Offers, the Commission finds:

Summary

1. These proceedings arise out of registered investment advisers Wells Fargo Advisors’ failure to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder relating to its cash sweep program, specifically, its use of a bank deposit sweep program (“BDSP”). From at least 2019 through May 2024 (the “Relevant Period”), Wells Fargo Advisors offered the BDSP as the only cash sweep option for most advisory clients and received a significant financial benefit from advisory client cash in the BDSP. Wells Fargo Advisors disclosed to clients that it had a financial incentive to offer particular vehicles in its cash sweep program, including that Wells Fargo Advisors received financial benefits from advisory clients’ cash held in the BDSP. During the Relevant Period, Wells Fargo Advisors failed to adopt and implement reasonably designed policies and procedures (1) to consider the best interests of clients when evaluating and selecting which cash sweep program options to make available to clients, including during periods of rising interest rates, and (2) concerning the duties of Wells Fargo Advisors financial advisors in managing client cash in advisory accounts. As a result of this conduct, Wells Fargo Advisors willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder. Nevertheless, as described below, Wells Fargo Advisors later made improvements to its policies and procedures regarding the selection of cash sweep options for advisory clients and allocation of client cash.

Respondents

2. Wells Fargo Clearing Services, LLC (“Wells Fargo Clearing Services”), formerly known as Wells Fargo Advisors, LLC, is a Delaware limited liability company with its principal place of business in St. Louis, Missouri. It is a subsidiary and non-bank affiliate of Wells Fargo & Company and is a dual registrant that has been registered with the Commission as a broker-dealer since April 3, 1987, and an investment adviser since October 5, 1990. It is an affiliate of Wells Fargo Advisors Financial Network, LLC. In its Form ADV filed March 28, 2024, Wells Fargo Clearing Services reported that it had approximately \$558 billion in regulatory assets under management.

3. Wells Fargo Advisors Financial Network, LLC (“Wells Fargo Advisors Financial Network”) is a Delaware limited liability company with its principal place of business in St. Louis, Missouri. It is a subsidiary and non-bank affiliate of Wells Fargo & Company and is a dual registrant that has been registered with the Commission as a broker-dealer since January 28, 1983, and an investment adviser since April 3, 2000. It is an affiliate of Wells Fargo Clearing Services. In its Form ADV, filed March 28, 2024, Wells Fargo Advisors Financial Network reported that it had

approximately \$154 billion in regulatory assets under management. Wells Fargo Clearing Services and Wells Fargo Advisors Financial Network collectively provide advisory services under the brand name “Wells Fargo Advisors.”

Background

Wells Fargo Advisors’ FDIC- Insured Bank Deposit Sweep Program was the Only Cash Sweep Program Option for Most Advisory Clients During the Relevant Period

4. Wells Fargo Advisors offers advisory services through many advisory programs to its advisory clients, including discretionary accounts managed by Wells Fargo Advisors financial advisors, accounts managed by the client based upon advice from Wells Fargo Advisors, portfolios managed by Wells Fargo Advisors portfolio managers, and portfolios managed by third-party investment advisers.

5. For all advisory programs, Wells Fargo Advisors offers advisory clients a cash sweep program that allows clients to earn a return on uninvested cash balances in their accounts by automatically transferring the cash balances into a cash sweep product until the cash is invested or otherwise used to satisfy obligations. During the Relevant Period, the BDSP was the only cash sweep product option in most Wells Fargo Advisors advisory programs. Outside the cash sweep program, Wells Fargo Advisors also offers money market funds, treasuries and CDs, and other cash products for clients to invest their cash. Wells Fargo Advisors charges an advisory fee on cash held in the cash sweep program, as well as cash invested in these other options.

6. In the BDSP, Wells Fargo Advisors automatically sweeps advisory clients’ uninvested cash holdings into interest-bearing accounts subject to Federal Deposit Insurance Corporation (“FDIC”) insurance at one or more banks, including its affiliate Wells Fargo Bank, N.A. (“Wells Fargo Bank”). Specifically, Wells Fargo Advisors offers a Standard Bank Deposit Sweep Program, which provided for deposits with two or more affiliated banks, and the Expanded Bank Deposit Sweep, which provided for deposits at affiliated banks and unaffiliated banks.

7. Wells Fargo Advisors sets the interest rate offered in the BDSP. Wells Fargo Advisors’ BDSP typically offered lower yields than other cash alternatives, including cash sweep money market mutual fund options. The yield differential between Wells Fargo Advisors’ BDSP and other cash sweep alternatives varied; during the Relevant Period at times the differences were minimal and at times the differences exceeded 500 basis points.

8. Wells Fargo Advisors swept billions of dollars of client cash into its BDSP on a yearly basis between 2019 and 2023. In addition to earning advisory fees on BDSP assets, Wells Fargo Advisors benefits financially from its advisory clients’ cash balances held in the BDSP in other ways. Wells Fargo Clearing Services received direct payments from Wells Fargo Bank as well as payments from external banks. In addition, the business segment in which Wells Fargo Advisors operates reported to shareholders income credits related to BDSP balances, offset by yield paid to customers. Wells Fargo Advisors described the BDSP to clients in its Forms ADV

Part 2A and other documents, including that Wells Fargo Advisors received financial benefits from advisory clients' cash held in the BDSP.

Wells Fargo Advisors Failed to Adopt and Implement Reasonably Designed Written Policies and Procedures Concerning Its Cash Sweep Program

9. Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder require a registered investment adviser to adopt and implement written policies and procedures reasonably designed to prevent violations by the adviser and its supervised persons of the Advisers Act and the rules adopted thereunder. During the Relevant Period, Wells Fargo Advisors failed to adopt and implement written compliance policies and procedures reasonably designed to prevent violations by the adviser and its supervised persons of the Advisers Act and the rules adopted thereunder concerning its cash sweep program.

10. First, Wells Fargo Advisors failed to adopt and implement reasonably designed written policies and procedures to consider the best interests of clients when evaluating and selecting which cash sweep program options to make available to clients. Wells Fargo Advisors evaluated and selected the cash sweep program options and determined to place cash sweep assets for the majority of advisory clients in the FDIC-insured BDSP as a default option or only option. Wells Fargo Advisors lacked reasonably designed written policies and procedures designed to evaluate whether the cash sweep program option(s) selected were in the best interests of clients. While documents exist showing that individuals and a committee at Wells Fargo Advisors regularly considered what options should be provided to advisory clients in the cash sweep program, these documents generally do not reflect discussion of which options were in the clients' best interest, for example considering whether selecting a sweep option with higher yields similar to government money market funds would be in the best interests of clients.

11. Second, Wells Fargo Advisors failed to adopt and implement reasonably designed written policies and procedures concerning cash allocation, including the duties of the Wells Fargo Advisors' financial advisors in managing client cash in the client's best interest and reasonably designed policies relating to the amount of advisory client cash in the BDSP. While Wells Fargo Advisors generally required its financial advisors to manage all client assets according to a client's goals and objectives, it did not have a reasonably designed process to monitor whether financial advisors moved client cash held in the BDSP to other cash investment options if that was necessary to meet the client's goals, given that most advisory clients' uninvested cash defaulted into the BDSP. Moreover, during times of rising interest rates, for most of the Relevant Period, Wells Fargo Advisors had no policies or procedures that specifically required that its financial advisors evaluate whether an advisory client's cash should remain in the BDSP option or be deployed elsewhere, including to, where consistent with a client's investment profile, other cash management options.

12. Wells Fargo Advisors had policies concerning limits on the amount of cash that could be held in the BDSP. However, the limits were set at 25% for most of the Relevant Period, and only applied to certain advisory programs. These policies were not reasonably designed to monitor or regularly evaluate whether client cash was appropriately allocated on a timely basis according to a client's goals and objectives. In October 2023, Wells Fargo Advisors adopted a new

written policy that limited BDSP balances to 5% of a client's total assets for clients in client-directed and financial adviser-directed programs. The limit was raised back to 25% in June 2024 when Wells Fargo Advisors began offering a higher yield on the BDSP.

13. While Wells Fargo Advisors maintained a duty to provide advice on cash and charged an advisory fee on the cash in advisory accounts, Wells Fargo Advisors' disclosures were inconsistent and stated in certain materials that "it does not have any duty to monitor the Cash Sweep Vehicle for your account, or make recommendations about, or make changes to, the Cash Sweep Program that may be beneficial to you." This inconsistency made it even more important to have policies specifically addressing the allocation of cash within the BDSP.

Violations

14. As a result of the conduct described above, Wells Fargo Advisors willfully¹ violated Section 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder, which requires, among other things, that a registered investment adviser adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules promulgated thereunder.

Wells Fargo Advisors' Remedial Efforts and Cooperation

15. In determining to accept the Offers, the Commission considered remedial acts promptly undertaken by Wells Fargo Advisors and cooperation afforded the Commission staff. For example, Wells Fargo Advisors made improvements to its policies and procedures regarding the selection of cash sweep options for advisory clients and the allocation of client cash in advisory accounts consistent with their stated goals; and reevaluated the limits on the BDSP holdings. During the investigation, Wells Fargo Advisors also provided detailed narrative responses on numerous topics, which expedited the investigation.

IV.

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

¹ "Willfully," for purposes of imposing relief under Section 203(e) of the Advisers Act and Section 15(b) of the Exchange Act, "'means no more than 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 that he is violating one of the Rules or Acts." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term "willfully" for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has "willfully omit[ted]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

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

A. Wells Fargo Clearing Services and Wells Fargo Advisors Financial Network cease and desist from committing or causing any violations and any future violations of Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

B. Wells Fargo Clearing Services and Wells Fargo Advisors Financial Network are censured.

C. Wells Fargo Clearing Services shall, within 10 days of entry of this Order, pay a civil money penalty of \$28 million to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934. If timely payment is not made, additional interest shall accrue pursuant to 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 Wells Fargo Clearing Services 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 Kimberly Frederick, Assistant Director, Asset Management Unit, Securities and Exchange Commission, Byron G. Rogers Federal Building, 1961 Stout Street, Suite 1700, Denver, CO 80294-1961.

D. Wells Fargo Advisors Financial Network shall, within 10 days of entry of this Order, pay a civil money penalty of \$7 million to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934. If timely payment is not made, additional interest shall accrue pursuant to 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 Wells Fargo Advisors Financial Network 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 Kimberly Frederick, Assistant Director, Asset Management Unit, Securities and Exchange Commission, Byron G. Rogers Federal Building, 1961 Stout Street, Suite 1700, Denver, CO 80294-1961.

E. 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, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they 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 Respondents 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.

Vanessa A. Countryman
Secretary