

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

Securities Exchange Act of 1934
Release No. 73175 / September 22, 2014

Investment Advisers Act of 1940
Release No. 3928 / September 22, 2014

Administrative Proceeding
File No. 3-16153

In the Matter of

WELLS FARGO ADVISORS, LLC,

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTIONS 15(b) AND 21C OF THE
SECURITIES EXCHANGE ACT OF 1934,
AND SECTIONS 203(e) AND 203(k) OF
THE INVESTMENT ADVISERS ACT OF
1940, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS
AND 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 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Wells Fargo Advisors, LLC (“Wells Fargo Advisors” or “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. Wells Fargo Advisors admits the findings set forth in Sections III.B and C below, acknowledges that its conduct violated the federal securities laws, admits the Commission’s jurisdiction over it and the subject matter of these proceedings, and consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

A. Summary

The Commission has recognized that the requirement that a broker, dealer, or investment adviser implement and maintain policies and procedures that take into consideration the specific circumstances of its business "is critical" to effectively preventing the misuse of material nonpublic information. See *In re Gabelli & Co., Inc.*, Exchange Act Rel. No. 35057 (Dec. 8, 1994). Section 15(g) of the Exchange Act requires broker-dealers to establish, maintain, and enforce policies and procedures, consistent with the nature of their business, to prevent the misuse of material nonpublic information. Strong enforcement of the policies and procedures is just as important as their design. In enacting the requirement as part of the 1988 Insider Trading and Securities Fraud Enforcement Act, the House Committee on Energy and Commerce stated: "The requirements of these new statutory provisions reflect the Committee's belief that broker-dealers must not only adopt and disseminate written policies and procedures to prevent the misuse of material, nonpublic information, but also must vigilantly review, update, and enforce them." See H. Rep. No. 100-910 at 21-22 (1988). Section 204A of the Advisers Act provides a similar requirement for registered investment advisers.

Broker-dealers come into possession of material nonpublic information in a variety of ways. Sometimes a firm will obtain information in the course of its investment banking business. See, e.g., *In the Matter of Morgan Stanley & Co. Inc.*, Exchange Act Rel. No. 54047 (June 27, 2006). Other circumstances involve a broker-dealer's research operations. See, e.g., *In the Matter of Goldman, Sachs & Co.*, Exchange Act Rel. No. 48436 (Sept. 4, 2003). An additional potential source of nonpublic information is a broker-dealer's customers. Because of the variety of ways in which material nonpublic information can be obtained and potentially misused, a broker-dealer's efforts to monitor trading conducted by the firm, its registered representatives, and its customers are a critical part of complying with Section 15(g). See H. Rep. No. 100-910 at 21-22 (1988) ("the Committee expects that institutions subject to the requirements of this provision will . . . vigorously monitor[] and review[] trading for the account of the firm or of individuals.").

This case involves the failure of Wells Fargo Advisors, a dually-registered broker-dealer and investment adviser, to adequately establish, maintain, and enforce policies and procedures reasonably designed to prevent the misuse of material nonpublic information, specifically, the material nonpublic information obtained from its customers and its advisory clients. Wells Fargo Advisors is the third largest retail brokerage firm in the country, introducing over one million brokerage customer accounts to its affiliated clearing firm, First Clearing, LLC. Wells Fargo Advisors' policies and procedures to prevent the misuse of material nonpublic information were not reasonably designed to address the risk that its associated persons could obtain material nonpublic information from its customers and advisory clients even though the firm expressly

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.

identified that risk in multiple internal documents. This risk manifested itself in 2010 when one of Wells Fargo Advisors' registered representatives misappropriated information from one of his customers about Burger King Holdings, Inc. ("Burger King") securities, traded on the basis of that information, and tipped others including several of his Wells Fargo Advisors customers. Although a compliance group at Wells Fargo Advisors reviewed this trading after an acquisition announcement, information about the trading was not shared with senior managers or other compliance groups that were also aware of issues relating to the trading prior to the announcement.

One of the ways Wells Fargo Advisors sought to prevent the misuse of material nonpublic information received by registered representatives and advisory personnel from firm customers and advisory clients was by conducting "look back" reviews of trading in employee accounts and in customer and client accounts after market-moving announcements to detect whether trades may have been based on material nonpublic information. Other ways consisted of establishing and maintaining watch and restricted lists and conducting employee training on insider trading. Wells Fargo Advisors' policies and procedures with respect to conducting "look back" reviews were not reasonably designed because the Retail Control Group ("RCG"), a unit in the firm's compliance department, was designated as having primary, if not sole, responsibility for conducting the look back reviews even though other departments within the firm often had relevant information. No other units had a designated role or were mentioned in the firm's policies and procedures. The manner in which the policies and procedures were designed affected the Burger King review. Multiple units within the firm received indications suggesting that the registered representative was misusing material nonpublic information obtained from a customer to trade in Burger King securities. Because of a lack of assigned responsibility or coordination, each of these units failed to: (a) recognize the significance of those indications; (b) properly consider them; and (c) elevate those indications within their own group or communicate with other groups responsible for conducting surveillance. As a result, the way in which the policies and procedures were designed caused Wells Fargo Advisors not to recognize several red flags that its representative was engaging in insider trading in Burger King securities.

In addition to the inadequate design of the policies and procedures, Wells Fargo Advisors did not effectively maintain and enforce them. Wells Fargo Advisors' failure to implement the policies and procedures occurred in myriad ways. For example, although the policies and procedures required the RCG to contact the branch manager if an employee's trading raised red flags, sometimes the RCG contacted the branch manager and other times, such as the Burger King review, it did not. Additionally, although the policies and procedures required "daily review to identify situations when profit or avoidance of loss could most likely result from trading prior to the public release of information," for a ten month period the RCG failed to perform reviews in a timely manner of at least 40 instances of possible insider trading flagged for review.

During an investigation, Commission staff formally requested that Wells Fargo Advisors produce all documents relating to reviews of trading by the registered representative who traded in Burger King securities. When Wells Fargo Advisors produced documents in response to the staff's request, documents relating to the RCG review of the Burger King trading were not produced. Wells Fargo Advisors unreasonably delayed for six months producing documents

relating to the RCG review without any explanation why they were not produced previously. When the documents were produced, the firm failed to produce an accurate record of the review as it existed at the time of the staff's request. Instead, the firm produced a document that had been altered by an employee after the Commission staff issued its follow up request. When questions arose surrounding the altered document, Wells Fargo Advisors placed the employee on administrative leave and eventually terminated this employee.

As a result, Wells Fargo Advisors violated Sections 15(g), 17(a), and 17(b) of the Exchange Act and Rule 17a-4(j) thereunder and Sections 204(a) and 204A of the Advisers Act.

B. Respondent

1. **Wells Fargo Advisors** is a Delaware limited liability corporation 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. Wells Fargo Advisors has been registered with the Commission as a broker-dealer since 1987 and as an investment adviser since 1990. Wells Fargo Advisors provides securities brokerage, investment advisory, and other financial services to 1.1 million customers and advisory clients, the majority of whom are individuals. Wells Fargo Advisors has 18,900 registered representatives and advisory personnel.

C. Facts

1. *Wells Fargo Advisors' Policies and Procedures to Prevent the Misuse of Material Nonpublic Information*

2. Wells Fargo Advisors' business focuses on retail brokerage services. Through providing services to its customers and advisory clients who may be company insiders or have access to material nonpublic information, the firm recognized that certain customers and advisory clients, and the Wells Fargo Advisors registered representatives and advisory personnel who handle their accounts, can come into possession of such information.

3. Wells Fargo Advisors expressly recognized the risk its employees could obtain material nonpublic information from the firm's customers and advisory clients. This risk was noted in the policies and procedures that RCG established for conducting look back reviews, the guide for branch office managers, and the firm's internal compliance publications called "Sidebars."

4. From at least early 2009 to the present, Wells Fargo Advisors' policies and procedures recognized that its "[a]ssociates from time to time may encounter non-public information concerning **any** company or security (also known as inside information)." (Emphasis added). It also recognized that material nonpublic information included information that was not only "[g]enerated internally by the Firm" or "[r]eceived by the Firm as a result of a business or investment banking relationship," but also included such information that was "[o]btained from a client."

5. Wells Fargo Advisors' policies and procedures prohibited its registered representatives and advisory personnel from trading or soliciting others to trade on material

nonpublic information and from disclosing the information to others except when necessary, and required representatives and advisory personnel to inform their supervisor when faced with such information. Wells Fargo Advisors' policies and procedures outlined a process for the RCG, a unit in the firm's compliance department, to conduct look back reviews to identify potential insider trading situations. RCG personnel considered these look back reviews to be part of the firm's regulatory obligations.

6. The firm's policies and procedures for conducting look back reviews did not address how other units that shared in the responsibility for preventing the misuse of material nonpublic information could review and coordinate with one another about potential insider trading. For example, the policies and procedures did not mention the anti-money laundering ("AML") unit as having responsibility for detecting possible insider trading, despite the fact that senior compliance managers believed the AML group had such responsibility. The policies and procedures also did not mention the central supervision unit ("CSU"), which was responsible for ensuring that branch office personnel were not committing violations of the federal securities laws pursuant to authority delegated to the CSU by branch office supervisors. Although the CSU conducted daily reviews of trade blotters, trade alerts and emails, the CSU limited its focus to potential suitability and sales practice issues. The consequence of these weaknesses in the policies and procedures was that the different groups operated in silos and did not effectively coordinate their work and share information regarding possible insider trading.

2. Retail Control Group

7. In early 2009, a RCG compliance officer drafted Wells Fargo Advisors' policies and procedures governing how RCG was to conduct look back reviews. RCG management approved them and the firm's chief compliance officer for retail compliance certified them. Wells Fargo Advisors intended the policies and procedures to provide a "road map" for the reviews and to ensure they were performed consistently.

8. After Wells Fargo Advisors adopted the policies and procedures, it did not adequately evaluate them to determine their effectiveness. In addition, since their adoption, the only significant update Wells Fargo Advisors made to the policies and procedures was to include a requirement in 2010 for RCG to obtain options trading data. Moreover, it took RCG a year from when it identified an issue with obtaining options trading data before it updated the policies and procedures.

9. Between 2009 through at least April 2013, RCG conducted its reviews in an inconsistent manner and often without regard to RCG's policies and procedures for such reviews. RCG closed the vast majority of reviews during this time period with "no findings." During this period, a single RCG compliance officer was responsible for conducting the look back reviews of trading in over one million customer and client accounts.

a. Wells Fargo Advisors' Inadequate Policies and Procedures

10. Wells Fargo Advisors' policies and procedures for conducting look back reviews stated:

Description[:] Identify select situations and review trading where there is the potential to profit or avoid losses by trading on insider information. For purposes of this review, insider information[] is defined as material, non-public information that would be important to an investor in making a decision to buy, sell or hold a security. Information would be material if its disclosure were reasonably certain to have a substantial effect on the market price of the security.

Frequency: Daily review to identify situations when profit or avoidance of loss could most likely result from trading prior to the public release of confidential information. Review of trading activity would occur when those situations have been identified.

11. The RCG manually identified market-moving events from news stories as part of the daily identification of situations meriting review. In identifying such situations, the operating procedures listed seven examples of news announcements that traditionally cause price movements: “Mergers and Acquisitions;” “FDA approval of a new drug;” “Discovery of new energy resources (such as oil);” “Financial problems – bankruptcy, inability to make bond or dividend payments;” “Fraud;” “Earnings announcements higher or lower than expected;” and “Changes in key personnel.” The procedures then continued by stating “although [the reviewer] also consider[s] other parameters (jump in volume, intense media coverage, intense public interest, Firm relationships) when identifying situations for review, a security with a price movement of 25% and/or \$10 should always receive considered [sic].” The procedures did not provide additional guidance on this topic.

12. The policies and procedures directed a RCG compliance officer to “print the news stories for the file” once a situation for review was identified. There were no other requirements to document work performed on trading reviews. Once a reviewer identified a situation, the policies and procedures required a RCG compliance officer to obtain a report showing the largest stock positions firm-wide and to obtain a report showing stock transactions 10 days before the market-moving event. The policies and procedures required “further review” by the RCG if the compliance officer found: (a) profits or losses avoided greater than \$5,000, or (b) trading by an “insider,” or (c) trades in any accounts in the same branch as an insider.

13. The only direction regarding the “further review” consisted of a requirement that RCG “perform a further review” of the account owner and trading history to “identify any indications” of insider trading. The policies and procedures then set out examples, without any discussion, of the following so-called “red flags” to look for: (a) relationship between the account owner and the company or industry; (b) account owner’s trading history and/or “out of character trading”; (c) physical location of the account owner and the company; and (d) relationship between Wells Fargo Advisors and the issuer.

14. If any red flags existed, the policies and procedures required RCG to contact the branch to interview the branch manager and the registered representative and advisory personnel to inquire about the red flags. The procedures stated that if the RCG compliance officer’s interviews with the branch and the registered representative or advisory personnel provided a “sufficient explanation for the basis of the trade, the review may be documented . . . and closed.” If the explanation was “insufficient,” the compliance officer was obligated to escalate the review to the RCG manager. The procedures did not provide additional guidance on this topic.

15. The compliance officer responsible for the RCG review created a spreadsheet to note the reasons for closing look back reviews, with many notations consisting of a statement of “no findings.” In certain instances the log contained additional information about the reasons for closing the reviews and in other instances it did not. The manner in which the compliance officer chose to document trading reviews made it nearly impossible for managers of the firm to determine to what extent the compliance officer followed Wells Fargo Advisors’ policies and procedures when conducting the reviews, if at all.

b. Wells Fargo Advisors Failed to Maintain Adequately Its Policies and Procedures

16. Wells Fargo Advisors’ policies and procedures did not address how to consider options trading as part of the look back reviews for at least one year. In April 2009, RCG personnel realized they could not obtain options trading data from the same source that generated the equities trading reports that RCG analyzed for look back reviews. Even though the RCG reviewer raised this issue with her manager, Wells Fargo Advisors did not update its policies and procedures to require reviews of options trading until July 2010. By that time, the RCG reviewer had undertaken at least 65 reviews, only sometimes obtaining options trading data.

c. Wells Fargo Advisors Failed to Enforce Adequately Its Policies and Procedures

17. Between 2009 through at least April 2013, Wells Fargo Advisors did not enforce adequately its policies and procedures in the following ways:

- a. The procedures required: “Daily review to identify situations when profit or avoidance of loss could most likely result from trading prior to the public release of confidential information. Review of trading activity would occur when those situations have been identified.” The procedures for daily reviews were not adequately designed to ensure enforcement, and as of April 2013, at least 40 reviews that had been identified had not been performed, some for as long as 10 months.
- b. The procedures required the reviewer to print news stories for the file, but this requirement was not consistently met. RCG management viewed the printing of news stories for the file to be important, but the procedures were not adequately designed to ensure enforcement.
- c. The procedures required the reviewer to contact the branch if any red flags were found, but this requirement was not enforced. In some instances, the RCG reviewer found “red flags” as set forth in the procedures and decided they were worthy of follow up with registered representatives or advisory personnel, branch managers, or both, as the procedures required. In other instances, she saw “red flags” as set forth in the procedures and dismissed them as being unimportant because she believed the existence of red flags under the policies and procedures was not critical as it would depend on the situation and what the red flag was. The RCG manager shared the

mindset that follow up on red flags “depends on the situation.” As a result, although the procedures required contact with the branch when a red flag existed, RCG personnel did not enforce it.

d. RCG’s Review of Trading in Burger King Securities

i. The Underlying Securities Law Violations

18. Waldyr Da Silva Prado Neto (“Prado”) was a registered representative and associated person of Wells Fargo Advisors in a branch office in Miami. In September 2012, the Commission charged Prado with committing insider trading in the securities of Burger King in advance of the September 2, 2010 announcement that 3G Capital Partners Ltd. (“3G Capital”), a private equity firm, would acquire Burger King and take it private (the “Announcement”).² The Commission alleged that Prado, who held Series 7 and 65 registrations and while an employee of Wells Fargo Advisors, misappropriated information about the acquisition from one of his brokerage customers who invested in the private equity fund 3G Capital used to acquire Burger King. The Commission alleged that Prado traded Burger King securities through his personal Wells Fargo Advisors brokerage account and that Prado tipped several of his other brokerage customers, including at least three tippees who traded Burger King securities through their Wells Fargo Advisors accounts. The Commission alleged that Prado and his tippees reaped profits of over \$2 million in total from their Burger King trades, which included trading through Wells Fargo Advisors and another firm.

ii. RCG’s Burger King Review

19. Beginning on September 2, 2010, the RCG compliance officer conducted a look back review of trading in Burger King securities at Wells Fargo Advisors before the Announcement, including trading by Prado and three of his customers. She determined that:

- a. Prado and his customers represented the top four positions in Burger King securities firm-wide;
- b. Prado and his customers bought Burger King securities within 10 days before the Announcement, including on the same days;
- c. The profits by Prado and his customers were at least \$5,000;
- d. Both Prado and Burger King were located in Miami; and

² *SEC v. Waldyr Da Silva Prado Neto*, Civil Action No. 12-CIV-7094, Litigation Release No. 22486 (Sept. 21, 2012). Prado was permanently enjoined from committing future violations on January 7, 2014. Litigation Release No. 22905 (Jan. 14, 2014). Based on the court’s entry of the permanent injunction, administrative proceedings were instituted against Prado. Exchange Act Release No. 71379 (Jan. 23, 2014). The Initial Decision barring Prado from the securities industry was issued on May 20, 2014. Initial Decision Release No. 600 (May 20, 2014). The Initial Decision became final on July 1, 2014. Exchange Act Release No. 72513 (July 1, 2014). Prado was criminally charged with conspiracy to commit securities fraud, securities fraud, and fraud in connection with a tender offer in *USA v. Waldyr Prado, et al.*, SDNY Case No. 13MAG2201 (Sept. 13, 2013).

- e. Prado, his customers, and the company acquiring Burger King were all Brazilian.

20. The compliance officer determined at the time of her review that each of these factors did not constitute “red flags” set forth in the policies and procedures that required follow up with Prado and his branch manager. She did not contact the branch. Instead of taking any further steps, such as escalating the matter to her manager, the compliance officer determined there was no suspicious trading by Prado and his customers, and she closed the review with “no findings.”

21. The policies and procedures in effect at the time required news articles to be printed for the file. The compliance officer’s file did not contain printouts of any such articles.

22. Because the compliance officer closed the Burger King trading review with no findings, her supervisors within the compliance department were unaware that she conducted a review of trading at Wells Fargo Advisors in Burger King securities including trading by Prado and his customers. The supervisors did not become aware of that fact until September 2012, after the Commission charged Prado with insider trading. Immediately after the Commission charged Prado with insider trading in September 2012 and the existence of the closed Burger King review came to light, the RCG manager notified her own manager that she would begin reviewing all of the compliance officer’s reviews.

e. No Communication by the RCG About Suspected Insider Trading

23. At the time the compliance officer conducted the Burger King trading review, unbeknownst to her, employees in the CSU had reviewed concentration alerts in Burger King securities generated for Prado’s account and the account of one of his customers. Wells Fargo Advisors’ policies and procedures did not address how units with relevant information at the firm could coordinate. The effect of the failure of CSU and RCG to coordinate their efforts caused Wells Fargo Advisors not to recognize red flags that its representative was engaging in insider trading in Burger King securities.

3. The AML Group

24. The AML group considered suspected insider trading to be an “unusual activity” under applicable AML statutes and regulations and, as a consequence, a senior manager at the firm believed all employees should have had “an awareness of insider trading as an issue.” An internal form used by AML personnel to track their reviews listed “insider trading” among several potential categories to check that included other concerns such as “forgery,” “wire fraud,” and “fictitious trading.” The AML group had no policies and procedures addressing how it could coordinate with other units within the firm including the RCG.

25. In late September 2010, the AML group examined a \$50 million wire transfer request by Prado’s customer to make his private equity investment in the Burger King acquisition. During this AML review, Prado provided to the AML reviewer copies of the offering documents dated before the public announcement concerning his customer’s investment in the private equity fund, which was later used to acquire Burger King. The AML group, which already knew that Burger King was the subject of an acquisition by 3G Capital announced

earlier in September 2010, learned from Prado that his customer was an investor in the Burger King acquisition through 3G Capital. Despite these facts, AML personnel did not question how Prado obtained the offering documents or consider whether Prado or his customers possessed or misused material nonpublic information.

4. *The Central Supervision Unit*

26. As a matter of practice the CSU reviewed trade data that showed whether a customer account was concentrated in a particular security and, in that instance, the firm's internal systems generated a security concentration alert, which could have been an indicator of possible insider trading. The CSU did not have policies and procedures to coordinate with the units that investigate suspected insider trading such as the RCG and the AML group.

27. On August 27, 2010, five business days before the Announcement, a CSU regional branch supervisor for Prado's branch reviewed an alert generated in the account of one of Prado's customers which showed that 45% of the account was concentrated in Burger King securities. This supervisor was not aware at the time that this customer, two other customers of Prado, and Prado himself held the four largest positions in Burger King securities firm-wide at that time.

28. On September 2, 2010, the day of the Announcement, a different CSU regional branch supervisor for Prado's branch, reviewed an alert generated in Prado's account which showed that 47% of his account was concentrated in Burger King securities. At that time, this supervisor was not aware that Prado held the largest position and three of his customers held the next three largest positions in Burger King securities within Wells Fargo Advisors firm wide; that the RCG was reviewing trading in Burger King securities at the same time; or that another CSU supervisor reviewed a concentration alert in Burger King securities for one of Prado's customers a week earlier.

29. Under guidance promulgated by Wells Fargo Advisors for CSU operations, the CSU employees exercised their discretion to close the alerts with no action and that decision was not reviewed by a supervisor.

5. *Wells Fargo Advisors Unreasonably Delayed the Production of Certain Documents and Produced an Altered Document to the Commission Staff That Was Altered By an Employee*

30. In July 2012, the Commission staff requested, among other things, that Wells Fargo Advisors produce all documents related to compliance reviews relating to Prado. Wells Fargo Advisors produced documents in response to this request, but the production did not contain any documents relating to the RCG's September 2010 review of the trading in Burger King, even though that review directly related to trading in Burger King by Prado and his customers. In January 2013, after a follow up request from the Commission staff, Wells Fargo Advisors, for the first time, produced documents relating to the RCG's review of Prado's Burger King trades including the reviewer's files and an excerpt of the log of the look back reviews she performed in response to this request.

31. The Commission staff took the testimony of a compliance officer in March 2013. After the compliance officer's testimony, Wells Fargo Advisors produced evidence indicating that a portion of the documents produced to the Commission staff in January 2013 had been altered by the compliance officer in December 2012 prior to production. The following sentences were added to the trading review log: "Rumors of acquisition by a private equity group had been circulating for several weeks prior to the announcement. The stock price was up 15% on 9/1/12 [sic], the day prior to the announcement."

D. Violations

32. As a result of the conduct described above, Wells Fargo Advisors willfully violated Section 15(g) of the Exchange Act, which requires every registered broker or dealer to "establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such broker's or dealer's business, to prevent the misuse in violation of ... [the Exchange Act] or the rules or regulations thereunder, of material nonpublic information by such broker or dealer or any person associated with such broker or dealer."

33. As a result of the conduct described above, Wells Fargo Advisors willfully violated Section 204A of the Advisers Act, which requires every registered investment adviser to "establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such investment adviser's business, to prevent the misuse in violation of ... [the Advisers Act or the Exchange Act] or the rules or regulations thereunder, of material nonpublic information by such investment adviser or any person associated with such investment adviser."

34. As a result of the conduct described above, Wells Fargo Advisors willfully violated Section 17(b) of the Exchange Act, which provides that all records of a broker-dealer are subject to examination by the Commission. Wells Fargo Advisors also willfully violated Section 17(a) of the Exchange Act and Rule 17a-4(j) thereunder, which require broker-dealers to "furnish promptly to a representative of the Commission legible, true, complete and current copies of those records...subject to examination under Section 17(b) of the [Exchange] Act." Wells Fargo Advisors' late production of documents, and production of an altered document, violated these provisions.

35. As a result of the conduct described above, Wells Fargo Advisors willfully violated Section 204(a) of the Advisers Act, which provides that all records of an investment adviser are subject to examination by the Commission. Wells Fargo Advisors' late production of documents, and production of an altered document, rather than the document as it existed when requested, constituted a violation of this provision.

E. Undertakings

36. Independent Compliance Consultant. Wells Fargo Advisors undertakes to retain an Independent Compliance Consultant ("Independent Consultant") as follows:

- a. Wells Fargo Advisors shall retain, within 30 days of the date of this Order, at its expense, an Independent Consultant not unacceptable to the Commission's staff, to conduct a review of: (1) Wells Fargo Advisors'

supervisory, compliance, and other policies and procedures under Section 15(g) of the Exchange Act and Section 204A of the Advisers Act; and (2) the making, keeping and preserving required books and records by Wells Fargo Advisors' RCG. Wells Fargo Advisors shall cooperate fully with the Independent Consultant and shall provide the Independent Consultant with access to its files, books, records, and personnel as reasonably requested for the review;

- b. Wells Fargo Advisors shall provide to the Commission staff, within thirty (30) days of retaining the Independent Consultant, a copy of an engagement letter detailing the Independent Consultant's responsibilities, which shall include the reviews to be made by the Independent Consultant as described in this Order.
- c. Wells Fargo Advisors shall require that, within forty-five (45) days from the end of the Independent Consultant's Review, which in no event will be more than 150 days after the date of the Independent Consultant's retention, the Independent Consultant shall submit a written and dated report of its findings to Wells Fargo Advisors and to the Commission staff (the "Report"). Wells Fargo Advisors shall require that each Report include a description of the review performed, the names of the individuals who performed the review, the conclusions reached, the Independent Consultant's recommendations for changes in or improvements to Wells Fargo Advisors' policies and procedures and a procedure for implementing the recommended changes in or improvements to Wells Fargo Advisors' policies and procedures.
- d. Wells Fargo Advisors shall adopt all recommendations contained in each Report within sixty (60) days of the applicable Report; provided, however, that within forty-five (45) days after the date of the applicable Report, Wells Fargo Advisors shall in writing advise the Independent Consultant and the Commission staff of any recommendations that Wells Fargo Advisors considers to be unduly burdensome, impractical, or inappropriate. With respect to any recommendation that Wells Fargo Advisors considers unduly burdensome, impractical or inappropriate, Wells Fargo Advisors need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose.
- e. As to any recommendation with respect to Wells Fargo Advisors' policies and procedures on which Wells Fargo Advisors and the Independent Consultant do not agree, Wells Fargo Advisors and the Independent Consultant shall attempt in good faith to reach an agreement within sixty (60) days after the date of the applicable Report. Within fifteen (15) days after the conclusion of the discussion and evaluation by Wells Fargo Advisors and the Independent Consultant, Wells Fargo Advisors shall require that the Independent Consultant inform Wells Fargo Advisors and

the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Wells Fargo Advisors considers to be unduly burdensome, impractical, or inappropriate. Wells Fargo Advisors shall abide by the determinations of the Independent Consultant and, within sixty (60) days after final agreement between Wells Fargo Advisors and the Independent Consultant or final determination by the Independent Consultant, whichever occurs first, Wells Fargo Advisors shall adopt and implement all of the recommendations that the Independent Consultant deems appropriate.

- f. Within ninety (90) days of Wells Fargo Advisors' adoption of all of the recommendations in a Report that the Independent Consultant deems appropriate, as determined pursuant to the procedures set forth herein, Wells Fargo Advisors shall certify in writing to the Independent Consultant and the Commission staff that Wells Fargo Advisors has adopted and implemented all of the Independent Consultant's recommendations in the applicable Report. Unless otherwise directed by the Commission staff, all Reports, certifications, and other documents required to be provided to the Commission staff shall be sent to Diana Tani, Assistant Regional Director, Market Abuse Unit, Los Angeles Regional Office, Securities and Exchange Commission, 444 S. Flower St., Suite 900, Los Angeles, California, 90071, or such other address as the Commission staff may provide.
- g. Wells Fargo Advisors shall cooperate fully with the Independent Consultant and shall provide the Independent Consultant with access to such of its files, books, records, and personnel as are reasonably requested by the Independent Consultant for review.
- h. To ensure the independence of the Independent Consultant, Wells Fargo Advisors: (1) shall not have the authority to terminate the Independent Consultant or substitute another independent compliance consultant for the initial Independent Consultant, without the prior written approval of the Commission staff; and (2) shall compensate the Independent Consultant and persons engaged to assist the Independent Consultant for services rendered pursuant to this Order at their reasonable and customary rates.
- i. Wells Fargo Advisors shall require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two (2) years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Wells Fargo Advisors, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. The agreement will also provide that the Independent Consultant will require that any firm with which the Independent Consultant is affiliated or of which the Independent Consultant is a member, and any person engaged to

assist the Independent Consultant in the performance of the Independent Consultant's duties under this Order shall not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Wells Fargo Advisors, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two (2) years after the engagement.

37. Recordkeeping. Wells Fargo Advisors shall preserve for a period of not less than six (6) years from the end of the fiscal year last used, the first two (2) years in an easily accessible place, any record of Wells Fargo Advisors' compliance with the undertakings set forth in this Order.

38. Deadlines. For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates 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.

39. Certifications of Compliance by Respondents. Wells Fargo Advisors shall certify, in writing, compliance with its undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Wells Fargo Advisors agrees to provide such evidence. The certification and supporting material shall be submitted to Diana Tani, Assistant Regional Director, Market Abuse Unit, Los Angeles Regional Office, Securities and Exchange Commission, 444 S. Flower St., Suite 900, Los Angeles, California, 90071, or such other address as the Commission staff may provide, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

IV.

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

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act and Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent Wells Fargo Advisors cease and desist from committing or causing any violations and any future violations of Sections 15(g), 17(a), and 17(b) of the Exchange Act and Rule 17a-4(j) promulgated thereunder and Sections 204A and 204(a) of the Advisers Act.

B. Respondent Wells Fargo Advisors is censured.

C. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$5,000,000 to the United States Treasury. 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 17

Payments by check or money order must be accompanied by a cover letter identifying Wells Fargo Advisors 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 Daniel Hawke, Chief, Market Abuse Unit, Division of Enforcement, Securities and Exchange Commission, One Penn Center, 1617 JFK Boulevard, Suite 520, Philadelphia, PA 19103.

D. Respondent shall comply with the undertakings enumerated in Section III, paragraphs 36-39, above.

By the Commission.

Brent J. Fields
Secretary