

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 79888 / January 27, 2017**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-14982**

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<b>In the Matter of</b>	:	
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<b>Wells Fargo Brokerage Services,</b>	:	<b>NOTICE OF PROPOSED PLAN OF</b>
<b>LLC n/k/a Wells Fargo Securities,</b>	:	<b>DISTRIBUTION AND OPPORTUNITY</b>
<b>LLC and Shawn Patrick McMurtry</b>	:	<b>FOR COMMENT</b>
	:	
<b>Respondents.</b>	:	
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Notice is hereby given, pursuant to Rule 1103 of the United States Securities and Exchange Commission's ("Commission") Rules on Fair Fund and Disgorgement Plans, 17 C.F.R. § 201.1103, that the Division of Enforcement has submitted to the Commission a proposed Plan of Distribution (the "Plan") for the distribution of monies paid by Wells Fargo Brokerage Services, LLC n/k/a Wells Fargo Securities, LLC ("Wells Fargo") and Shawn Patrick McMurtry ("McMurtry") (collectively, the "Respondents") in the above-captioned matter.

On August 14, 2012, the Commission issued an 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 9(b) of the Investment Company Act of 1940, Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order")<sup>1</sup> against the Respondents. The Commission determined from January 1, 2007 through August 14, 2007, Wells Fargo recommended and sold asset backed commercial paper ("ABCP"), which was issued by one of the following three structured investment vehicle or "SIV" entities: (1) Rhinebridge PLC; (2) Mainsail II Ltd.; or (3) Golden Key Ltd. ("Golden Key") (collectively, the "SIVs") to certain institutional customers. Wells Fargo used registered representatives in the Wells Fargo's Institutional Brokerage and Sales Division, including McMurtry, to recommend and sell these ABCP's to customers.

The Order stated the Respondents willfully violated Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 when they recommended and sold ABCP to customers without obtaining sufficient information and understanding about the nature and risks of the ABCP. According to the Order, the Respondents did not review the private placement memoranda for the ABCP and the extensive risk disclosures in those documents. As a result, Respondents failed to: (1) have a reasonable basis for their recommendations, and (2) in connection with

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<sup>1</sup> Securities Act Rel. No. 9349 (Aug. 14, 2012).

their recommendations, disclose to customers the risks associated with the ABCP, including the nature and volatility of the ABCP's portfolio assets.

After missing payments to ABCP holders in August 2007 and October 2007, the SIVs defaulted. When the SIVs defaulted, ten (10) customers held ABCP with an approximate total face value of \$104.4 million that was issued by the SIVs.

The Commission ordered Wells Fargo to pay disgorgement of \$65,000 (representing its total commission in 2007 for the sale of ABCP's issued by the SIVs), prejudgment interest of \$16,571.96, and a civil money penalty of \$6,500,000 and McMurtry was ordered to pay a civil money penalty of \$25,000. The Order created a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, for the funds paid by the Respondents (the "Fair Fund"). If the Commission collects additional funds based upon allegations of violations arising from the same or substantially similar facts, the Commission may order that such amount be paid into the Fair Fund, and distributed pursuant to, the Plan. Wells Fargo has agreed to pay all reasonable costs and expenses of administering the Fair Fund, including all costs associated with the bond and all reasonable fees, costs, and expenses incurred by the Fund Administrator and the Tax Administrator, as well as all reasonable fees, costs and expenses of any persons engaged to assist the Fund Administrator and Tax Administrator, this does not include the payment of taxes.

## **OPPORTUNITY FOR COMMENT**

Pursuant to this Notice, all interested persons are advised that they may obtain a copy of the Plan from the Commission's public website at <http://www.sec.gov/litigation/fairfundlist.htm>. Interested persons may also obtain a written copy of the Plan by submitting a written request to Adriene Mixon, Assistant Chief Litigation Counsel, United States Securities and Exchange Commission, 444 South Flower Street, Suite 900, Los Angeles, CA 90071. All persons who desire to comment on the Plan may submit their comments, in writing, no later than thirty (30) days from the date of this Notice:

1. to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090;
2. by using the Commission's Internet comment form (<http://www.sec.gov/litigation/admin.shtml>); or
3. by sending an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov).

Comments submitted should include "Administrative Proceeding File No. 3-14982" in the subject line. Comments received will be publicly available. Persons should submit only information that they wish to make publicly available.

## **THE PLAN**

The Fair Fund is currently comprised of the disgorgement, prejudgment interest, and civil penalties totaling \$6,606,571.96 paid by the Respondents, plus any accumulated interest, less any federal, state, or local taxes. The Plan provides for distribution of the Fair Fund to the harmed parties, previously identified by Commission staff, who incurred a net loss. The Plan

proposes to calculate each harmed party's net loss by subtracting the amount of any prior recovery from each harmed party's principal investment.

By the Commission.

Brent J. Fields  
Secretary