UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5199 / March 11, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19102

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, 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") against Wells Fargo Clearing Services, LLC ("WFCS") and its affiliate Wells Fargo Advisors Financial Network, LLC ("WFAFN") (together, "Wells Fargo" or "Respondents").

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 it 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, 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[1] that

Summary

1. These proceedings arise out of breaches of fiduciary duty and inadequate disclosures by registered investment advisers Wells Fargo Clearing Services, LLC and Wells Fargo Advisors Financial Network, LLC in connection with mutual fund share class selection practices and the fees Respondents received pursuant to Rule 12b-1 under the Investment Company Act of 1940 ("12b-1 fees"). At times during the period January 1, 2014 to July 31, 2015 (the "Relevant Period"), Respondents purchased, recommended, or held for advisory clients mutual fund share classes that charged 12b-1 fees instead of lower-cost share classes of the same funds for which the clients were eligible. Respondents received 12b-1 fees in connection with these investments. Respondents failed to disclose in their Forms ADV or otherwise the conflicts of interest related to (a) their receipt of 12b-1 fees, and/or (b) their selection of mutual fund share classes that pay such fees. During the Relevant Period, Respondents received 12b-1 fees for advising clients to invest in or hold such mutual fund share classes.

2. Respondents self-reported to the Commission the violations discussed in this Order pursuant to the Division of Enforcement's (the "Division") Share Class Selection Disclosure Initiative ("SCSD Initiative").[2] Accordingly, this Order and Respondents' Offers are based on the information self-reported by Respondents.

Respondents

3. Respondent Wells Fargo Clearing Services, LLC, incorporated in Delaware and headquartered in St. Louis, Missouri, has been registered with the Commission as an investment adviser since October 5, 1990 and as a broker-dealer since April 3, 1987. In its Form ADV filed December 5, 2018, WFCS reported regulatory assets under management of approximately $473 billion.

4. Respondent Wells Fargo Advisors Financial Network, LLC, an affiliate of Wells Fargo Clearing Services, LLC, was incorporated in Delaware and headquartered in St. Louis, Missouri. WFAFN has been registered with the Commission as an investment adviser since April 3, 2000 and as a broker-dealer since January 28, 1983. In its Form ADV filed December 5, 2018, WFAFN reported regulatory assets under management of approximately $49 billion.

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

[2] See Div. of Enforcement, U.S. Sec. & Exch. Comm'n, Share Class Selection Disclosure Initiative, https://www.sec.gov/enforce/announcement/scsd-initiative (last modified Feb. 12, 2018).

Mutual Fund Share Class Selection

5. Mutual funds typically offer investors different types of shares or "share classes." Each share class represents an interest in the same portfolio of securities with the same investment objective. The primary difference among the share classes is the fee structure.

6. For example, some mutual fund share classes charge 12b-1 fees to cover fund distribution and sometimes shareholder service expenses. These recurring fees, which are included in a mutual fund's total annual fund operating expenses, vary by share class, but typically range from 25 to 100 basis points. They are deducted from the mutual fund's assets on an ongoing basis and paid to the fund's distributor or principal underwriter, which generally remits the 12b-1 fees to the broker-dealer that distributed or sold the shares.

7. Many mutual funds also offer share classes that do not charge 12b-1 fees (e.g., "Institutional Class" or "Class I" shares (collectively, "Class I shares")).[3] An investor who holds Class I shares of a mutual fund will usually pay lower total annual fund operating expenses over time – and thus will almost always earn higher returns – than one who holds a share class of the same fund that charges 12b-1 fees. Therefore, if a mutual fund offers a Class I share, and an investor is eligible to own it, it is often, though not always, better for the investor to purchase or hold the Class I share.

8. During the Relevant Period, Respondents advised clients to purchase or hold[4] mutual fund share classes that charged 12b-1 fees when lower-cost share classes of those same funds were available to those clients. Respondents received 12b-1 fees that they would not have collected had those clients been invested in the available lower-cost share classes.

Inadequate Disclosures Concerning Mutual Fund Investments

9. As investment advisers, Respondents were obligated to disclose all material facts to their clients, including any conflicts of interest between themselves and/or their associated persons and their clients that could affect the advisory relationship and how those conflicts could impact advice the Respondents provided their clients. Relevant to the issue herein, Respondents were required to give their clients sufficient information so that they could understand the conflicts of interest of the Respondents concerning their advice about investing in the different classes of mutual funds and have a basis on which they could consent to or reject such conflicted transactions.

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[3] Share classes that do not charge 12b-1 fees also go by a variety of other names in the mutual fund industry, such as "Class F2," "Class Y" and "Class Z" shares. As used in this Order, the term "Class I shares" refers generically to share classes that do not charge 12b-1 fees.

[4] In many cases, mutual funds permit certain advisory clients who hold shares in classes charging 12b-1 fees to convert those shares to Class I shares without cost or tax consequences to the client.

10. At times during the Relevant Period, Respondents did not disclose adequately to their clients either in their Forms ADV or otherwise their conflicts of interest related to (a) their receipt of 12b-1 fees, and/or (b) their selection of mutual fund share classes that pay such fees.

Violations

11. As a result of the conduct described above, Respondents willfully[5] violated Section 206(2) of the Advisers Act, which makes it unlawful for any investment adviser, directly or indirectly, to "engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client." Scienter is not required to establish a violation of Section 206(2), but rather may rest on a finding of negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180,194-95 (1963)).

12. As a result of the conduct described above, Respondents willfully violated Section 207 of the Advisers Act, which makes it "unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission . . . or willfully to omit to state in any such application or report any material fact which is required to be stated therein."

Self-Reporting

13. In determining to accept each Respondent's Offer, the Commission considered that Respondents self-reported their conduct to the Commission pursuant to the SCSD Initiative. In addition, the Commission acknowledges that Respondents have certified to the Commission staff that they have completed the undertakings identified in paragraphs 14.a, 14.b, and 14.c below.

Undertakings

14. Respondents have undertaken to:

a. Within 30 days of the entry of this Order, review and correct as necessary all relevant disclosure documents concerning mutual fund share class selection and 12b-1 fees.

b. Within 30 days of the entry of this Order, evaluate whether existing clients should be moved to a lower-cost share class and move clients as necessary.

c. Within 30 days of the entry of this Order, evaluate, update (if necessary), and review for the effectiveness of their implementation, Respondents' policies and procedures so that they are reasonably designed to prevent violations of the

[5] 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 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)).

Advisers Act in connection with disclosures regarding mutual fund share class selection.

d. Within 30 days of the entry of this Order, notify affected investors (*i.e.*, those former and current clients who, during the Relevant Period of inadequate disclosure, purchased or held 12b-1 fee paying share class mutual funds when a lower-cost share class of the same fund was available to the client) (hereinafter, "affected investors") of the settlement terms of this Order in a clear and conspicuous fashion.

e. Within 40 days of the entry of this Order, certify, in writing, compliance with the undertaking(s) ordered pursuant to Section IV.E., below. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The certification and supporting material shall be submitted to Jeremy Pendrey, Assistant Regional Director, U.S. Securities and Exchange Commission, San Francisco Regional Office, 44 Montgomery Street, Suite 2800, San Francisco, CA 94104-4802, or such other address as the Commission staff may provide, with a copy to the Office of Chief Counsel of the Division of Enforcement, Securities and Exchange Commission, 100 F. Street, NE, Washington, DC 20549.

f. For good cause shown, the Commission staff may extend any of the procedural dates relating to these 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 the last day.

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.

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

A. Respondents shall cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 207 of the Advisers Act.

B. Respondents are censured.

C. Respondents, jointly and severally, shall pay disgorgement and prejudgment interest to affected investors, totaling $17,363,847.29 as follows:

(i.) Respondents, jointly and severally, shall pay disgorgement of $15,037,298.87 and prejudgment interest of $2,326,548.42, consistent with the

provisions of this Subsection C and subject to the offset provisions of Subsection C.(vii) below.

(ii.) Within ten (10) days of the entry of this Order, Respondents shall deposit the full amount of the disgorgement and prejudgment interest (the "Distribution Fund"), less monies already distributed to investors, into an escrow account at a financial institution not unacceptable to the Commission staff and Respondents shall provide evidence of such deposit in a form acceptable to the Commission staff. If timely deposit is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 [17 C.F.R. § 201.600].

(iii.) Respondents shall be responsible for administering the Distribution Fund and may hire a professional acceptable to the Commission, at their own cost, to assist it in the administration of the distribution. The costs and expenses of administering the Distribution Fund, including any such professional services, shall be borne by Respondents and shall not be paid out of the Distribution Fund.

(iv.) Respondents shall distribute the amount of the Distribution Fund to each affected investor an amount representing: (a) the 12b-1 fees attributable to the affected investor during the Relevant Period; and (b) reasonable interest paid on such fees,[6] pursuant to a disbursement calculation (the "Calculation") that will be submitted to, reviewed, and approved by the Commission staff in accordance with this Subsection C. The Calculation shall be subject to a *de minimis* threshold. No portion of the Distribution Fund shall be paid to any affected investor account in which Respondents or their past or present officers or directors have a financial interest.

(v.) Respondents shall, within ninety (90) days of the entry of this Order, submit a Calculation to the Commission staff for review and approval. Respondents shall also 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 Respondents' proposed Calculation or any of its information or supporting documentation, Respondents shall submit a revised Calculation for the review and approval of the Commission staff or additional information or supporting documentation within ten (10) days of the date that Respondents are notified of the objection. The revised Calculation shall be subject to all of the provisions of this Subsection C.

(vi.) Respondents shall, within thirty (30) days of the written approval of the Calculation by the Commission staff, submit a payment file (the "Payment File") for review and acceptance by the Commission staff demonstrating the application of the

[6] Reasonable interest will be calculated at the Short-Term Applicable Federal Rate plus three percent (3%), compounded quarterly from the end of the year when Respondents received the 12b-1 fees to the date the Respondents completed their self-report pursuant to the SCSD Initiative.

methodology to each affected investor. The Payment File should identify, at a minimum: (1) the name of each affected investor, (2) the exact amount of the payment to be made from the Distribution Fund to each affected investor, and (3) the application of a *de minimis* threshold.

(vii.) Respondents shall disburse all amounts payable to affected investors within 90 days of the date the Commission staff accepts the Payment File unless such time period is extended as provided in Paragraph (x.) of this Subsection C. The amount Respondents pay to affected investors on or after February 12, 2018, up until the lapse of 90 days following the date of staff's acceptance of the Payment File for 12b-1 fees the Respondents received during the Relevant Period, will dollar for dollar offset the disgorgement payable to the Commission pursuant to this Subsection C, subject to approval by Commission staff. If, after Respondents' reasonable efforts to distribute the Distribution Fund pursuant to the approved Payment File, Respondents are unable to distribute any portion of the Distribution Fund for good cause, including factors beyond Respondents' control, Respondents 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 when the distribution of the funds is complete and before the final accounting provided for in Paragraph (ix.) below is submitted to Commission staff. Any such payment shall be made in accordance with Paragraph (xi.) below.

(viii.) A Distribution Fund is a Qualified Settlement Fund ("QSF") under Section 468B(g) of the Internal Revenue Code ("IRC"), 26 U.S.C. §§1.468B.1-1.468B.5. Respondents agree to be responsible for all tax compliance responsibilities associated with distribution of the Distribution Fund, including but not limited to tax obligations resulting from the Distribution Fund's status as a QSF and the Foreign Account Tax Compliance Act ("FATCA"), and may retain any professional services necessary. The costs and expenses of any such professional services shall be borne by Respondents and shall not be paid by the Distribution Fund.

(ix.) Within 150 days after Respondents complete the distribution of all amounts payable to the affected investors, Respondents shall submit to the Commission staff a final accounting and certification of the disposition of the Distribution Fund for Commission approval. The final accounting shall be in a format to be provided by the Commission staff. The final accounting and certification shall include: (1) the amount paid to each affected investor, with reasonable interest; (2) the date of each payment; (3) the check number or other identifier of money transferred to each affected investor; (4) the amount of any returned payment and the date received; (5) a description of any effort to locate an affected investor 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 Respondents have made payments from the Distribution Fund to affected investors in accordance with the Payment File approved by the

Commission staff. Respondents shall submit the final accounting and certification, together with proof and supporting documentation of such payment in a form acceptable to Commission staff, under a cover letter that identifies Wells Fargo Clearing Services, LLC and Wells Fargo Advisors Financial Network, LLC as the Respondents in these proceedings and the file number of these proceedings to Jeremy Pendrey, Assistant Regional Director, U.S. Securities and Exchange Commission, San Francisco Regional Office, 44 Montgomery Street, Suite 2800, San Francisco, CA 94104-4802, or such other address as the Commission staff may provide. Any and all supporting documentation for the accounting and certification shall be provided to the Commission staff upon request, and Respondents 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 Paragraphs (ii.) through (ix.) of this Subsection C for good cause shown. Deadlines for dates relating to the Distribution Fund shall be counted in calendar days, except if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

(xi.) Respondents' transfer of any undistributed funds to the Commission for transmittal to the United States Treasury must be made in one of the following ways:

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

(b) Respondents 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

(c) Respondents 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 Respondents as Respondents 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 Jeremy Pendrey, Assistant Regional Director, U.S. Securities and Exchange Commission, San Francisco Regional Office, 44 Montgomery Street, Suite 2800,

San Francisco, CA 94104-4802, or such other address as the Commission staff may provide.

D. Respondents acknowledge that the Commission is not imposing a civil penalty based upon Respondents' self-report in the SCSD Initiative. If at any time following the entry of this Order, the Division obtains information indicating that Respondents knowingly provided materially false or misleading information or materials to the Commission, or in a related proceeding, the Division may, at its sole discretion and with prior notice to the Respondents, petition the Commission to reopen this matter and seek an order directing that the Respondents pay a civil money penalty. Respondents may contest by way of defense in any resulting administrative proceeding whether it knowingly provided materially false or misleading information, but may not: (1) contest the findings in this Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

E. Respondents shall comply with the undertakings enumerated in Section III, paragraphs 14.d and 14.e above.

By the Commission.

Vanessa A. Countryman
Acting Secretary