

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 94768 / April 21, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-14982

In the Matter of	:	ORDER AUTHORIZING THE TRANSFER
	:	TO THE U.S. TREASURY OF THE
	:	REMAINING FUNDS AND ANY FUNDS
Wells Fargo Brokerage Services,	:	RETURNED TO THE FAIR FUND IN THE
LLC n/k/a Wells Fargo Securities,	:	FUTURE, DISCHARGING THE FUND
LLC and Shawn Patrick	:	ADMINISTRATOR, CANCELING THE
McMurtry,	:	ADMINISTRATOR'S BOND, AND
	:	TERMINATING THE FAIR FUND
Respondents.	:	

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 (the "Order")¹ against Wells Fargo Brokerage Services, LLC n/k/a Wells Fargo Securities, LLC and Shawn Patrick McMurtry (collectively, 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 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

¹ Securities Act Rel. No. 9349 (Aug. 14, 2012).

October 2007, the SIVs defaulted. When the SIVs defaulted, 12 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, so that the disgorgement, prejudgment interest and penalties paid by the Respondents (the "Fair Fund") could be distributed to harmed investors. The order provided that additional funds based upon allegations of violations arising from the same or substantially similar facts, could be ordered to be paid into the Fair Fund, and distributed pursuant to, the Plan. Wells Fargo 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

The Respondents paid a total of \$6,606,571.96 pursuant to the Order, comprising the Fair Fund.

On July 2, 2013, the Commission issued an order appointing Michael J. Liccar and Company LLC as the fund administrator of the Fair Fund and set the administrator's bond amount.²

On January 27, 2017, the Commission published a Notice of Proposed Plan of Distribution and Opportunity for Comment ("Notice"),³ pursuant to Rule 1103 of the Commission's Rules on Fair Fund and Disgorgement Plans ("Commission's Rules");⁴ and simultaneously posted the Proposed Plan of Distribution (the "Proposed Plan"). The Notice advised interested persons that they could obtain a copy of the Proposed Plan from the Commission's public website or by submitting a written request to Adriene Mixon, United States Securities and Exchange Commission, 444 South Flower Street, Suite 900, Los Angeles, CA 90071. The Notice also advised that all persons desiring to comment on the Proposed Plan could submit their comments, in writing, within 30 days of the Notice. The Commission received no comments on the Proposed Plan during the comment period.

On March 23, 2017, the Secretary, pursuant to delegated authority, issued an order approving the Proposed Plan,⁵ and posted the approved Plan of Distribution (the "Plan").

The Plan set forth a methodology for allocating the Net Fair Fund comprised of the \$6,606,571.96, plus interest, less taxes and BFS fees, to investors who incurred a net loss as calculated by the methodology used in the plan of allocation in the Plan. Under the Plan, any

² Order Appointing Fund Administrator and Setting Administrator's Bond Amount, Exchange Act Rel. No. 69917 (July 2, 2013).

³ Exchange Act Rel. No. 79888 (Jan. 27, 2017).

⁴ 17 C.F.R. § 201.1103.

⁵ See Order Approving Plan of Distribution, Exchange Act Rel. No. 80302 (Mar. 23, 2017).

remaining funds that are infeasible to return to investors are to be transferred to the U.S. Treasury and the Fair Fund terminated, subject to the Commission's approval of the Fund Administrator's final accounting.

As ordered by the Commission, the Fund Administrator distributed a total of \$6,604,693.16 from the Fair Fund, pursuant to the Plan.⁶ Of this amount \$6,604,693.16 was successfully disbursed and cashed by nine recipient investors (100%), eligible recipient investors being compensated for 13.85% of their losses.⁷

The Fair Fund paid state and federal taxes of \$2,300.00. The Fair Fund currently holds \$750.01, which is comprised of accumulated interest.

The Plan provides that the Fair Fund is eligible for termination and the Fund Administrator discharged after all of the following have occurred: (a) the final accounting has been submitted by the Fund Administrator for approval, and has been approved by the Commission; (b) all taxes, fees, and expenses have been paid; and (c) any amount remaining in the Fair Fund has been received by the Commission.

The Commission staff has confirmed that the Fund Administrator has completed the distribution process in accordance with the Commission's orders, that all taxes, fees, and expenses have been paid, and that all monies remaining in the Fair Fund have been received by the Commission.⁸ The final accounting, which was submitted to the Commission for approval, as required by Rule 1105(f) of the Commission's Rules, 17 C.F.R. § 201.1105(f), and as set forth in the Plan, has been approved.

⁶ Exchange Act Rel. No. 85384 (Mar. 21, 2019).

⁷ Three of the 12 identified affected investors had previously been compensated and thus were not deemed eligible for a distribution.

⁸ Respondents are responsible to pay all fees and expenses of the Fund Administrator and Tax Administrator pursuant to the Order.

Accordingly, it is ORDERED that:

- A. the Fair Fund's remaining funds that are infeasible to return to investors, and any funds returned to the Fair Fund in the future that are infeasible to return to investors, shall be transferred to the U.S. Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934, 15 U.S. Code § 78u-6(g)(3);
- B. the Fund Administrator, Michael J. Liccar and Company LLC, is discharged;
- C. the Fund Administrator's bond is canceled; and
- D. the Fair Fund is terminated.

By the Commission.

Vanessa A. Countryman
Secretary