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2 **STATE OF OREGON**
3 **DEPARTMENT OF CONSUMER AND BUSINESS SERVICES**
4 **DIVISION OF FINANCE AND CORPORATE SECURITIES**
5 **BEFORE THE DIRECTOR OF THE**
6 **DEPARTMENT OF CONSUMER AND BUSINESS SERVICES**

7 In the Matter of :

Case No. S-09-0023

8 **WELLS FARGO INVESTMENTS, LLC,**
9 **(CRD # 10582)**

Respondent.

ORDER TO CEASE AND DESIST,
ORDER ASSESSING CIVIL PENALTY,
AND
CONSENT TO ENTRY OF ORDER

10
11 WHEREAS, at times material herein, Wells Fargo Investments, LLC (now a part of
12 Wells Fargo Advisors, LLC) (“WFI”)¹ was a broker-dealer licensed in Oregon with the
13 Department of Consumer and Business Services (“DCBS”), Division of Finance and Corporate
14 Securities (“DFCS”); and

15 WHEREAS, WFI’s activities regarding the marketing of auction rate securities (“ARS”)
16 have been the subject of coordinated investigations conducted by a multistate task force; and

17 WHEREAS, WFI has cooperated fully with regulators conducting the investigations by
18 providing documentary evidence and other materials and by providing regulators with access to
19 information relevant to their investigations; and

20 WHEREAS, on November 18, 2009, WFI and the multistate task force reached an
21 agreement to resolve the investigations relating to WFI’s marketing of ARS to certain customers;
22 and

23 WHEREAS, WFI agrees, among other things, to purchase certain ARS from customers
24 and to make certain payments; and

25 _____
26 ¹ On January 1, 2011, Wells Fargo Investments, LLC transferred substantially all of its assets and liabilities to Wells Fargo Advisors, LLC, and Wells Fargo Investments, LLC no longer exists as a separate entity.

Division of Finance and Corporate Securities
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387



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1 WHEREAS, WFI elects to waive permanently any right to a hearing and appeal under
2 ORS 59.295, ORS 59.305, and ORS Chapter 183, with respect to this Order to Cease and Desist,
3 Order Assessing Civil Penalty, and Consent to Entry of Order (the “Order”); and

4 WHEREAS, WFI admits the jurisdiction of the Acting Director of DCBS (“the
5 Director”) and consents to the entry of this Order by the Director; and

6 WHEREAS, Wells Fargo Securities, LLC (“WFS”), as successor to Wells Fargo
7 Brokerage Services, LLC (“WFBS”), and Wells Fargo Institutional Securities, LLC (“WFIS”)
8 have voluntarily agreed to purchase ARS from certain customers, as described in Section IV
9 below, and to use best efforts to provide liquidity solutions for certain other customers; and

10 WHEREAS, WFI neither admits nor denies the Findings of Fact and Conclusions of Law
11 contained in this Order.

12 NOW, THEREFORE, the Director, as administrator of the Oregon Securities Law, ORS
13 Chapter 59, and Oregon Administrative Rules Chapter 441, hereby enters this Order:

14 **I.**

15 **FINDINGS OF FACT**

16 **Background**

17 1. Auction rate securities are long-term bonds issued by municipalities, corporations,
18 and student loan companies, or perpetual equity instruments issued by closed-end mutual funds,
19 with variable interest rates that reset through a bidding process known as a Dutch auction.

20 2. In a successful Dutch auction, ARS are auctioned at par and bids with
21 successively higher rates are accepted by the auction agent for the issuer until all of the available
22 securities are sold. All ARS are then purchased or sold at the lowest interest rate bid that will
23 result in all ARS placed up for auction being sold. If there are not enough buy orders to purchase
24 all the securities being sold at auction, a failed auction occurs. In the event of an auction failure,
25 the issuer of the ARS pays a default interest rate until the next successful auction. Broker-dealers
26 that served as dealers for the auctions sometimes placed “support bids” on their own behalf in



1 order to prevent auction failures.

2 3. Beginning on or about February 13, 2008, there were not enough purchasers for
3 ARS at many auctions. The broker-dealers that had previously supported the auctions for these
4 securities ceased their practice of bidding to prevent auction failures. As a result, the ARS
5 market experienced widespread failed auctions. ARS purchasers who wished to sell their ARS
6 were forced to continue holding their positions.

7 Marketing of ARS by WFI

8 4. WFI marketed ARS to some of its customers, including individual customers,
9 small businesses, and non-profit organizations. Since at least 2001, WFI offered Auction Rate
10 Preferred Shares (“ARPS”) through its fixed-income desk. In addition, beginning in 2006, WFI
11 facilitated Auction Rate Debt Securities (“ARDS”) trades for select customers. WFI did not
12 underwrite ARS and did not serve as an auction manager or auction agent.

13 5. On February 14, 2008, WFI customers nationwide were holding approximately
14 \$2.95 billion in ARS in 5,692 accounts.

15 6. WFI participated in sales of ARS to customers in Oregon. In Oregon,
16 approximately 156 WFI customer accounts held \$46,300,000.00 in ARS on February 14, 2008.

17 7. Because of the auction failures described above, certain WFI customers who were
18 holding ARS on February 14, 2008, have been unable to sell their ARS at auction.

19 8. In connection with the marketing of ARS, WFI failed to adopt policies and
20 procedures reasonably designed to ensure that its securities salespersons recommended ARS
21 only to customers who had stated investment objectives that were consistent with their purchase
22 of ARS. Some WFI securities salespersons recommended ARS to customers as a liquid, short-
23 term investment. As a result, some WFI customers, who needed short-term access to funds,
24 invested in ARS, even though ARS had long-term maturity dates, or in the case of ARPS, no
25 maturity dates.

26 Failure to Supervise Agents Who Marketed ARS



- 1 2. This Order is entered into solely for the purpose of resolving the above-
2 referenced multistate investigation and is not intended to be used for any other purpose.
- 3 3. WFI shall cease and desist from violating the ORS 59.205(13) and will comply
4 with the Oregon Securities Law.
- 5 4. Within ten (10) days from the entry of this Order, WFI shall pay a civil penalty of
6 \$30,550.85 (thirty thousand, five hundred fifty dollars and eighty-five cents) to DCBS, for the
7 General Fund of the State Treasury, pursuant to ORS 59.995(1). The civil penalty constitutes
8 Oregon’s proportionate share of the multistate settlement amount of \$1,900,000.
- 9 5. The total amount paid to DCBS pursuant to the foregoing paragraph shall remain
10 at \$30,550.85 (thirty thousand, five hundred fifty dollars and eighty-five cents) regardless of
11 whether another state securities regulator determines not to accept WFI’s state settlement offer.
- 12 6. WFI shall take certain measures with respect to current and former customers that
13 purchased “Eligible ARS,” as defined and described in Paragraphs 7 through 14 of this section,
14 below.
- 15 7. Eligible ARS. For purposes of this Order as it relates to WFI, “Eligible ARS”
16 shall mean ARS that were purchased for customers by WFI on or before February 13, 2008, and
17 that have failed at auction at least once since February 13, 2008. Notwithstanding the foregoing
18 definition, Eligible ARS shall not include ARS that were purchased for customers by WFI or
19 entities acquired by Wells Fargo’s parent companies in accounts owned, managed or advised by
20 or through independent registered investment advisers.
- 21 8. Eligible Investor. For the purposes of this Order as it relates to WFI, “Eligible
22 Investor” shall mean:
- 23 a. Natural persons (including their IRA accounts, testamentary trust and
24 estate accounts, custodian Uniform Gifts to Minors Act and Uniform Transfers to Minors
25 Act accounts, and guardianship accounts) who purchased Eligible ARS;
- 26 b. Charities, endowments, or foundations with Internal Revenue Code



1 Section 501(c)(3) status, or religious corporations or entities, that purchased Eligible
2 ARS; and

3 c. Trusts, corporate trusts, corporations, employee pension plans/ERISA and
4 Taft Hartley Act plans, educational institutions, incorporated not for profit organizations,
5 limited liability companies, limited partnerships, non public companies, partnerships,
6 personal holding companies, unincorporated associations, government or quasi
7 government entities, which are the beneficial owners of an account that purchased
8 Eligible ARS.

9 d. "Eligible Investors," for the purposes of this Order as it relates to WFI,
10 shall not include brokers, dealers or banks acting as conduits for their customers. This
11 provision shall not affect the rights of any beneficial owner of an account that otherwise
12 would qualify as an Eligible Investor, as set forth in Section III, Paragraph 8, subparts a,
13 b, or c, above.

14 e. "Eligible Investors," for the purposes of this Order as it relates to WFI,
15 shall not include any WFI customer who has entered into a settlement agreement with
16 WFI prior to November 18, 2009, or who has received a final arbitration award against
17 WFI prior to November 18, 2009, with respect to their Eligible ARS holdings at WFI.

18 9. Purchase Offer. WFI shall have offered to purchase, at par plus accrued and
19 unpaid dividends/interest, from Eligible Investors their Eligible ARS that have failed at auction
20 at least once since February 13, 2008 (the "Purchase Offer"). WFI shall have made the Purchase
21 Offer and purchase the Eligible ARS either as riskless principal or agent for one or more
22 affiliated companies, and not for its own account.

23 10. Notification and Buyback Procedures.

24 a. WFI shall have undertaken to identify and provide notice to Eligible
25 Investors of the relevant terms of this Order by no later than February 16, 2010. Said
26 notice shall have explained what Eligible Investors must do to accept, in whole or in part,



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the Purchase Offer, including how Eligible Investors may accept the Purchase Offer.
WFI shall have also provided written notice of the relevant terms of this Order to any
subsequently identified Eligible Investors.

b. Initial Offer Period

i. WFI shall have kept the Purchase Offer open for sixty (60) days
after mailing the notice required by Section III, Paragraph 10a, above (“Initial
Offer Period”).

ii. Eligible Investors may accept the Purchase Offer by notifying WFI
as described in the Purchase Offer, at any time before midnight, Eastern Time, on
or before the last day of the Initial Offer Period. For those Eligible Investors who
accepted the Purchase Offer within the Initial Offer Period, WFI shall have
purchased their Eligible ARS by no later than five (5) business days following the
expiration of the Initial Offer Period (the “Initial Purchase Deadline”).

c. Second Offer Period

i. WFI shall have undertaken its best efforts to identify and provide a
second notice to all Eligible Investors who do not accept the Purchase Offer
within the Initial Offer Period. This second notice must satisfy the requirements
discussed in Section III, Paragraph 10a, above, and be sent no later than thirty
(30) days after the Initial Purchase Deadline.

ii. WFI shall have kept the Purchase Offer open for sixty (60) days
after mailing the second notice required by Section III, Paragraph 10c.i, above
 (“Second Offer Period”).

iii. Eligible Investors may accept the Purchase Offer by notifying WFI
as described in the Purchase Offer, at any time before midnight, Eastern Time, on
or before the last day of the Second Offer Period. For those Eligible Investors
who accepted the Purchase Offer within the Second Offer Period, WFI shall have



1 purchased their Eligible ARS by no later than five (5) business days following the
2 expiration of the Second Offer Period (the “Second Purchase Deadline”).

3 d. An Eligible Investor may revoke the Eligible Investor’s acceptance of
4 WFI’s Purchase Offer at any time up until WFI purchases such Eligible Investor’s
5 Eligible ARS or provides notice of WFI’s intent to purchase such Eligible ARS.

6 e. WFI’s obligation to those Eligible Investors who custodied their Eligible
7 ARS away from WFI as of November 18, 2009 shall be contingent on: (1) WFI receiving
8 reasonably satisfactory assurance from the financial institution currently holding the
9 Eligible Investor’s Eligible ARS that the bidding rights associated with such Eligible
10 ARS will be transferred to WFI; and (2) transfer of the Eligible ARS back to WFI.

11 f. WFI shall use its best efforts to identify, contact and assist any Eligible
12 Investor who has transferred the Eligible ARS out of WFI’s custody in returning such
13 ARS to WFI’s custody, and shall not charge such Eligible Investor any fees relating to or
14 in connection with the return to WFI or custodianship by WFI of such Eligible ARS.

15 11. Customer Assistance Line. WFI shall have promptly established a dedicated toll-
16 free telephone assistance line and e-mail address to provide information and to respond to
17 questions concerning the terms of this Order. WFI shall have maintained the telephone
18 assistance line and e-mail address through at least the Second Purchase Deadline.

19 12. Relief for Eligible Investors Who Sold Below Par. No later than upon the
20 completion of the buyback (as described in Section III, Paragraph 10, above), WFI shall have
21 undertaken its best efforts to identify and provide notice to, using the notice to Eligible Investors
22 referenced in Section III, Paragraph 10 above, Eligible Investors who sold Eligible ARS below
23 par between February 13, 2008 and November 18, 2009 (“Below Par Seller”) and, upon receipt
24 of satisfactory evidence of the sale, paid them the difference between par and the price at which
25 the Eligible Investor sold the Eligible ARS, plus interest thereon at the rate of seven-day LIBOR.

26 13. Consequential Damages Arbitration Process.



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a. WFI shall consent to participate in a special arbitration process (“Arbitration”) for the exclusive purpose of arbitrating any Eligible Investor’s consequential damages claim arising from their inability to sell Eligible ARS. WFI shall have notified Eligible Investors of the terms of the Arbitration process through the notice described in Section III, Paragraph 10 above.

b. The Arbitration shall be conducted under the auspices of FINRA, pursuant to the NASD Code of Arbitration Procedures for Customer Disputes, eff. April 16, 2007. WFI will pay all applicable forum and filing fees.

c. Eligible Investors who choose to pursue such claims in the Arbitration shall bear the burden of proving that they suffered consequential damages and that such damages were caused by their inability to access funds invested in Eligible ARS. In the Arbitration, WFI shall be able to defend itself against such claims; provided, however, that WFI shall not contest liability for the illiquidity of the underlying ARS position, and provided further that, unlike the FINRA’s established special arbitration process, WFI shall be able to use as part of its defense an investor’s decision not to borrow money from WFI or its affiliates.

d. Eligible Investors who elect to use this special arbitration process provided for herein shall not be eligible for punitive damages, or for any other type of damages other than consequential damages.

e. Eligible Investors that elect to use FINRA’s special arbitration process, as set forth above, are limited to the remedies available in that process and may not bring or pursue a claim relating to Eligible ARS in another forum.

14. Reimbursement of Negative Carry. In connection with the notices described in Section III, Paragraphs 10 and 12 above, WFI shall have informed Eligible Investors that, if they paid more in interest on a loan through WFI or its affiliates secured by Eligible ARS than the customer received in interest or dividends from the Eligible ARS during the time the loan was

1 outstanding (“Negative Carry”), then the Eligible Investor can provide WFI documentation
2 evidencing the amount of Negative Carry, and upon receipt of such documentation, WFI will
3 reimburse the Eligible Investor the amount of Negative Carry actually paid.

4 **IV.**

5 **Additional Considerations**

6 1. WFS (as successor to WFBS) and WFIS have voluntarily agreed to purchase ARS
7 from Eligible Investors as set forth in this Section IV, Paragraph 2 below.

8 2. “Eligible Investors,” for the purposes of this Order as it relates to WFS (as
9 successor to WFBS) and WFIS, shall mean the following:

10 a. Natural persons (including their IRA accounts, testamentary trust and
11 estate accounts, custodian Uniform Gifts to Minors Act and Uniform Transfers to Minors
12 Act accounts, and guardianship accounts) who purchased Eligible ARS;

13 b. Charities, endowments, or foundations with Internal Revenue Code
14 Section 501(c)(3) status, or religious corporations or entities that purchased Eligible
15 ARS; and

16 c. Trusts, corporate trusts, corporations, employee pension plan/ERISA and
17 Taft Hartley Act plans, educational institutions, incorporated not for profit organizations,
18 limited liability companies, limited partnerships, non public companies, partnerships,
19 personal holding companies, unincorporated associations, governments or quasi
20 government entities, which are the beneficial owners of an account that purchased
21 Eligible ARS, unless the value of the account exceeded \$10 million as of January 31,
22 2008, or the beneficial owner had disclosed to WFI, WFS (as successor to WFBS),
23 WFBS or WFIS total investable assets in excess of \$10 million;

24 d. “Eligible Investors,” for the purposes of this Order as it relates to WFS (as
25 successor to WFBS) and WFIS, shall not include brokers, dealers, or banks acting as
26 conduits for their customers. This provision shall not affect the rights of any beneficial

Division of Finance and Corporate Securities
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Telephone: (503) 378-4387





1 owner of an account that otherwise would qualify as an Eligible Investor, as set forth in
2 subparts a, b, or c of this Paragraph, above;

3 e. "Eligible Investors," for the purposes of this Order as it relates to WFS (as
4 successor to WFBS) and WFIS, shall not include any WFI, WFBS, or WFIS customers
5 who have entered into a settlement agreement with WFI, WFBS (or WFS as its
6 successor), or WFIS prior to November 18, 2009, or who has received a final arbitration
7 award against WFI, WFBS (or WFS as its successor), or WFIS prior to November 18,
8 2009, with respect to their Eligible ARS holdings at WFI, WFBS (or WFS as its
9 successor), or WFIS.

10 f. "Eligible ARS," for purposes of this Order as it relates to WFS (as
11 successor to WFBS) and WFIS, shall mean ARS that were purchased at WFBS or WFIS
12 on or before February 13, 2008, and that have failed at auction at least once since
13 February 13, 2008. Notwithstanding the foregoing definition, Eligible ARS shall not
14 include ARS that were purchased at WFBS or WFIS or entities acquired by WFBS's or
15 WFIS's parent companies in accounts owned, managed or advised by or through
16 independent registered investment advisers.

17 3. WFS (as successor to WFBS) and WFIS have agreed to use their best efforts to
18 provide liquidity solutions to their customers who have investible assets above \$10 million.
19 WFS (as successor to WFBS) and WFIS shall endeavor to work with issuers and other interested
20 parties, including regulatory and governmental entities, to expeditiously and on a best efforts
21 basis provide liquidity solutions, such as facilitation of secondary market transactions and
22 announced issuer redemptions of the Eligible ARS purchased through WFBS and WFIS.
23 Though WFS (as successor to WFBS) and WFIS shall use their best efforts to offer opportunities
24 to the institutional and other customers who are not Eligible Investors to liquidate Eligible ARS,
25 WFS (as successor to WFBS) and WFIS are under no obligation to offer to purchase ARS from
26 these customers.



1 4. In consideration for the settlement terms contained in this Order, the Director
2 shall not seek additional penalties, and the Director and DFCS shall terminate their investigation
3 with respect to WFI, WFS (as successor to WFBS), and WFIS regarding the marketing of ARS.
4 However, if the Director determines that WFS (as successor to WFBS) and WFIS have failed to
5 adhere to their voluntary agreement as described above, the Director may initiate investigation
6 and take enforcement action related to the marketing of ARS by WFS (as successor to WFBS)
7 and WFIS.

8 5. If payment is not made by WFI as required in this Order, or if WFI defaults in any
9 of its other obligations set forth in this Order, the Director may send WFI a written notice of
10 default and, if within ten (10) days after receiving the written notice, WFI does not cure the
11 default, the Director may move to enforce the Order before any competent administrative body
12 and/or court of law.

13 6. This Order is not intended to indicate that WFI or any of its affiliates or current or
14 former employees shall be subject to any disqualifications contained in the federal securities law,
15 the rules and regulations thereunder, the rules and regulations of self-regulatory organizations or
16 various states' securities laws, including any disqualifications from relying upon the registration
17 exemptions or safe harbor provisions. In addition, this Order is not intended to form the basis for
18 any such disqualifications.

19 7. Except as expressly provided in this Order, for any person or entity not a party to
20 this Order, this Order does not limit or create any private rights or remedies against WFI, limit or
21 create liability of WFI, or limit or create defenses of WFI to any claims. Unless applicable law
22 provides otherwise, by entering into this Order, the Director does not waive any rights of any
23 departments, agencies, boards, commissions, authorities, political subdivisions and corporations
24 of Oregon other than the Director or DFCS may have under applicable law, to the extent any
25 such rights exist, to assert a claim, cause of action, or application for compensatory, nominal
26 and/or punitive damages, administrative, civil, criminal, or injunctive relief against WFI in



1 connection with the marketing of ARS by WFI.

2 8. This Order shall not disqualify WFI or any of its affiliates or current or former
3 employees from any business that they otherwise are qualified or licensed to perform under
4 applicable state law and this Order is not intended to form the basis for any disqualification.

5 9. This Order and any dispute related thereto shall be construed and enforced in
6 accordance with, and governed by, the laws of Oregon without regard to any choice of law
7 principles.

8 10. WFI, through its execution of this Order, voluntarily waives its right to a hearing
9 on this matter and to judicial review of this Order under ORS 59.295, ORS 59.305 and ORS
10 Chapter 183.

11 11. WFI enters into this Order voluntarily and represents that no threats, offers,
12 promises, or inducements of any kind have been made by the Director or any member, officer,
13 employee, agent, or representative of DCBS to induce WFI to enter into this Order.

14 12. This Order shall be binding upon WFI, its affiliates, successors and assigns with
15 respect to all conduct subject to the provisions above and all future obligations, responsibilities,
16 undertakings, commitments, limitations, restrictions, events, and conditions.

17 13. Nothing contained in this Order shall be deemed to be an admission of any
18 liability, fault or wrongdoing. The Parties agree that this Order shall not be admissible in any
19 hearing, action, or proceeding except to prove the existence of this Order or to enforce the
20 Order's terms.

21 Dated this 28th day of April, 2011.

23 SCOTT L. HARRA, Acting Director
Department of Consumer and Business Services

24 By: /s/ David Tatman
25 David C. Tatman, Administrator
26 Division of Finance and Corporate Securities

Division of Finance and Corporate Securities
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387



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CONSENT TO ENTRY OF ORDER BY WELLS FARGO INVESTMENTS, LLC

WFI hereby acknowledges that it has been served with a copy of this Order to Cease and Desist, Order Assessing Civil Penalty, and Consent to Entry of Order (the "Order"), has read the foregoing Order, is aware of its right to a hearing and appeal in this matter, and has waived the same.

WFI admits the jurisdiction of the Director, neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Order, and consents to entry of this Order by the Director as settlement of the issues contained in this Order.

WFI states that no promise of any kind or nature whatsoever was made to it to induce it to enter into this Order and that it has entered into this Order voluntarily.

Lisa Amador represents that he/she is CCO of WFI and that, as such, has been authorized by WFI to enter into this Order for and on behalf of WFI.

DATED this 14 day of April, 2011.

WELLS FARGO INVESTMENTS, LLC

By: /s/ Lisa Amador

Printed Name of Signator Lisa Amador

Title: Chief Compliance Officer

STATE OF California)

County of San Francisco)

SUBSCRIBED AND SWORN TO before me this 14 day of April, 2011.

/s/ Jose Delgadillo
Notary Public

My commission expires:

Nov. 17, 2014