ADMINISTRATIVE PROCEEDING BEFORE THE
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SECURITIES COMMISSIONER OF SOUTH CAROLINA 3
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In the matter of:)
5) ADMINISTRATIVE CONSENT ORDER

File Number 10019

WELLS FARGO INVESTMENTS, LLC,)
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7 Respondent.)
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9 WHEREAS, Wells Fargo Investments, LLC ("WFI") is a broker-dealer registered in the State
10 of South Carolina; and
1 I WHEREAS, WFI's activities regarding the marketing of auction rate securities have been the
12 subject of coordinated investigations conducted by a multistate task force; and
13 WHEREAS, WFI has cooperated fully with regulators conducting the investigations by
I 4 providing documentary evidence and other materials and by providing regulators with access to 15 information relevant to their investigations; and
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WFI's marketing of ARS to certain customers; and
18 WHEREAS, WFI agrees, among other things, to purchase certain auction rate securities from
19 customers and to make certain payments; and
20 WHEREAS, WFI elects to waive permanently any right to a hearing and appeal under South
21 Carolina law with respect to this Administrative Consent Order (the "Order"); and
22 WHEREAS, WFJ admits the jurisdiction of the Securities Commissioner of the State of South
23 Carolina (the "Securities Commissioner") and consents to the entry of this Order by the Securities 24 Commissioner; and
25 WHEREAS, Wells Fargo Securities, LLC ("WFS"), as successor to Wells Fargo Brokerage
26 Services, LLC ("WFBS"), and Wells Fargo Institutional Securities, LLC ("WFIS") have

voluntarily agreed to purchase ARS from certain customers, as described in Section IV below, and
2 to use best efforts to provide liquidity solutions for certain other customers; and
3 WHEREAS, WFI neither admits nor denies the Findings of Fact and Conclusions of Law 4 contained in this Order;
5 NOW, THEREFORE, the Securities Commissioner, as administrator of the South Carolina 6 Unifonn Securities Act of2005 (the "Act"), hereby enters this Order:
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8 FINDINGS OF FACT

9 Background
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I. Auction Rate Securities ("ARS") are long-tenn bonds issued by municipalities,
corporations, and student loan companies, or perpetual equity instruments issued by closed-end mutual funds, with variable interest rates that reset through a bidding process known as a Dutch auction.

2. In a successful Dutch auction, ARS are auctioned at par and bids with successively
higher rates are accepted by the auction agent for the issuer until all of the available securities are sold. All ARS are then purchased or sold at the lowest interest rate bid that will result in all ARS placed up for auction being sold. If there are not enough buy orders to purchase all the securities being sold at auction, a failed auction occurs. In the event of an auction failure, the issuer of the ARS pays a default interest rate until the next successful auction. Broker-dealers that served as dealers for the auctions sometimes placed "support bids" on their own behalf in order to prevent auction failures.
3. Beginning on or about February 13, 2008, there were not enough purchasers for
ARS at many auctions. The broker-dealers that had previously supported the auctions for these securities ceased their practice of bidding to prevent auction failures. As a result, the ARS market experienced widespread failed auctions. ARS purchasers who wished to sell their ARS were forced to continue holding their positions.
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Marketing of ARS by WFI
2 4. WFI marketed ARS to some of its customers, including individual customers, small
3 businesses, and non-profit organizations. Since at least 2001, WFI offered Auction Rate Preferred 4 Shares ("ARPS") through its fixed-income desk. 1n addition, beginning in 2006, WFI facilitated 5 Auction Rate Debt Securities ("ARDS") trades for select customers. WFI did not underwrite ARS 6 and did not serve as an auction manager or auction agent.
7 5. On February 14, 2008, WFI customers nationwide were holding approximately
8 $2.95 billion in ARS in 5,692 accounts.
9 6. In the State of South Carolina, there were no WFI accounts holding ARS on
10 February 14, 2008.
11 7. Because of the auction failures described above, certain WFI customers who were
12 holding ARSon February 14, 2008, have been unable to sell their ARS at auction.
13 8. In connection with the marketing of ARS, WFI failed to adopt policies and
14 procedures reasonably designed to ensure that its registered agents recommended ARS only to 15 customers who had stated investment objectives that were consistent with their purchase of ARS. 16 Some WFJ registered agents recommended ARS to customers as a liquid, short-term investment. 17 As a result, some WFI customers who needed short-term access to funds invested in ARS, even 18 though ARS had long-term maturity dates, or in the case of ARPS, no maturity dates.
19 Failure to Supervise Agents Who Marketed ARS
20 9. WFI failed to provide adequate supervision and training to its registered agents in
21 connection with the marketing of ARS. Some of WFI's registered agents were not adequately 22 educated about ARS products. WFI failed to provide timely and comprehensive sales and 23 marketing literature regarding ARS and the mechanics of the auction process.
24 10. Some WFI registered agents believed that the ARS were safe and were not aware
25 that auctions could fail and that money invested in ARS could become frozen. In part, this was 26
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because some WFI registered agents were not aware of significant aspects of the auction rate
2 market.

3 11. WFI did not establish specific written supervisory procedures for the review of ARS
4 transactions, nor did WFI train supervisory personnel on how to review ARS transactions.
5 II.
6 CONCLUSIONS OF LAW

7 The Securities Commissioner has jurisdiction over this matter.
8 For the reasons alleged in the Findings of Fact, above, WFI failed to supervise
9 reasonably its registered agents in cormection with the marketing of ARS to its customers.
10 The Securities Commissioner finds the following relief appropriate and in the public
11 interest.
12 III.
13 ORDER

14 On the basis of the Findings of Fact, Conclusions of Law, and WFI's consent to the entry of
15 this Order, for the sole purpose of settling this matter prior to a hearing and without admitting or 16 denying the Findings of Fact or Conclusions of Law,
17 IT IS HEREBY ORDERED:
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I. This Order concludes the investigation by the Securities Commissioner and any
other action that the Securities Commissioner could commence under applicable South Carolina law on behalf of the State of South Carolina as it relates to WFI's marketing of ARS to customers.
2. This Order is entered into solely for the purpose of resolving the above referenced
multistate investigation and is not intended to be used for any other purpose.
3. Within ten (1 0) days from the entry of this Order, WFI shall pay the sum of three
thousand eight hundred dollars ($3,800.00) to the State of South Carolina, which amount constitutes the State of South Carolina's proportionate share of the multi state settlement amount of one million nine hundred thousand dollars ($1 ,900,000.00).

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4. The total amount paid to Securities Commissioner, pursuant to the foregoing
2 paragraph, shall remain at three thousand eight hundred dollars ($3,800.00) regardless of whdher 3 another state securities regulator determines not to accept WFI's state settlement offer.
4 5. In addition to the payment required by Section III, Paragraph 3, within ten (I 0) days
5 from the entry of this Order, WFI shall pay the sum of two hundred dollars ($200.00) to the 6 Securities Commissioner, which constitutes the State of South Carolina's actual fees and expenses 7 incurred in connection with an investigation into WFI's marketing of ARS prior to November 18, 8 2009.
9 6. WFI shall take certain measures with respect to current and former customers that
10 purchased "Eligible ARS," as defined and described in Paragraphs 7 through 14 of Section Ill, I 1 below.
I2 7. Eligible ARS. For purposes of this Order as it relates to WFI, "Eligible ARS" shall
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mean ARS that were purchased for customers by WFI on or before February 13, 2008, and that have failed at auction at least once since February 13, 2008. Notwithstanding the foregoing definition, Eligible ARS shall not include ARS that were purchased for customers by WFI or entities acquired by Wells Fargo's parent companies in accounts owned, managed or advised by or through independent registered investment advisers.
8. Eligible Investor. For the purposes of this Order as it relates to WFI, "Eligible
Investor" shall mean:
a. Natural persons (including their IRA accounts, testamentary trust and estate
accounts, custodian UGMA and UTMA accounts, and guardianship accounts) who purchased Eligible ARS;
b. Charities, endowments, or foundations with Internal Revenue Code Section
501(c)(3) status, or religious corporations or entities, that purchased Eligible ARS; and
c. Trusts, corporate trusts, corporations, employee pension plans/ERISA and
Taft Hartley Act plans, educational institutions, incorporated not for profit organizations, 5

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limited liability compames, limited partnerships, non public companies, partnerships, personal holding companies, unincorporated associations, government or quasi government entities, which are the beneficial owners of an account that purchased Eligible ARS.
d. "Eligible Investors," for the purposes of this Order as it relates to WFI, shall
not include brokers, dealers or banks acting as conduits for their customers. This provision shall not affect the rights of any beneficial owner of an account that otherwise would qualify as an Eligible Investor, as set forth in Section III, Paragraph 9, subparts a, b, or c, above.

e. "Eligible Investors," for the purposes of this Order as it relates to WFI, shall
not include any WFI customer who has entered into a settlement agreement with WFI prior
to November 18, 2009, or who has received a final arbitration award against WFI prior to November 18, 2009, with respect to their Eligible ARS holdings at WFI.
9. Purchase Offer. WFI shall offer to purchase, at par plus accrued and unpaid dividends/interest, from Eligible Investors their Eligible ARS that have failed at auction at least once since February I 3, 2008 (the "Purchase Offer"). WFI shall make the Purchase Offer and purchase the Eligible ARS either as riskless principal or agent for one or more affiliated companies, and not for its own account.
l 0. Notification and Buyback Procedures.
a. WFI shall undertake to identify and provide notice to Eligible Investors of
the relevant terms of this Order by no later than February 16, 2010. Said notice shall explain what Eligible Investors must do to accept, in whole or in part, the Purchase Offer, including how Eligible Investors may accept the Purchase Offer. WFI shall also provide written notice of the relevant terms of this Order to any subsequently identified Eligible Investors.

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b. Initial Offer Period.
1. WFI shall keep the Purchase Offer open for sixty (60) days after
mailing the notice required by Section III, Paragraph I Oa, above ("Initial Offer Period'').
n. 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 accept the Purchase Offer within the Initial Offer Period, WFI shall purchase 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.
1. WFI shall undertake 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 1 Oa, above, and be sent no later than thirty (30) days after the Initial Purchase Deadline.

n. WFI shall keep the Purchase Offer open for sixty (60) days after
mailing the second notice required by Section III, Paragraph lOc.i, above ("Second Offer Period").
111. 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 accept the Purchase Offer within the Second Offer Period, WFI shall purchase their Eligible ARS by no later than five (5) business days following the expiration of the Second Offer Period (the "Second Purchase Deadline").

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d. An Eligible Investor may revoke the Eligible Investor's acceptance of WFI's
2 Purchase Offer at any time up until WFI purchases such Eligible Investor's Eligible ARS or
3 provides notice of WFI's intent to purchase such Eligible ARS.
4 e. WFI's obligation to those Eligible Investors who custodied their Eligible
5 ARS away from WFI as of November 18, 2009 shall be contingent on: (l) WFl receiving
6 reasonably satisfactory assurance from the financial institution currently holding the
7 Eligible Investor's Eligible ARS that the bidding rights associated with such Eligible ARS
8 will be transferred to WFI; and (2) transfer of the Eligible ARS back to WFI.
9 f. WFI shall use its best efforts to identify, contact and assist any Eligible
10 Investor who has transferred the Eligible ARS out of WFI's custody in returning such ARS
II to WFI's custody, and shall not charge such Eligible Investor any fees relating to or in
12 connection with the return to WFI or custodianship by WFI of such Eligible ARS.
13 II. Customer Assistance Line. WFI shall promptly establish a dedicated toll-free
14 telephone assistance line and e-mail address to provide information and to respond to questions 15 concerning the terms of this Order. WFI shall maintain the telephone assistance line and e-mail 16 address through at least the Second Purchase Deadline.
17 12. Relief for Eligible Investors Who Sold Below Par. No later than upon the
18 completion of the buyback (as described in Section III, Paragraph 10, above), WFI shall undertake 19 its best efforts to identify and provide notice to, using the notice to Eligible Investors referenced in 20 Section Ill, Paragraph I 0 above, Eligible Investors who sold Eligible ARS below par between 21 February 13, 2008 and November 18, 2009 ("Below Par Seller") and, upon receipt of satisfactory 22 evidence of the sale, pay them the difference between par and the price at which the Eligible 23 Investor sold the Eligible ARS, plus interest thereon at the rate of seven-day LIBOR.
24 13. Consequential Damages Arbitration Process.
25 a. WFI shall consent to participate m a special arbitration process
26 ("Arbitration") for the exclusive purpose of arbitrating any Eligible Investor's
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consequential damages claim arising from their inability to sell Eligible ARS. WFI shall notify Eligible Investors of the terms of the Arbitration process through the notice described in Section III, Paragraph I 0 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 utilize 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 m Section Ill, Paragraphs 10 and 12 above, WFI shall inform 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 outstanding ("Negative Carry"), then · the Eligible Investor can provide WFI documentation evidencing the amount of Negative Carry, and upon receipt of such documentation, WFI will reimburse the Eligible Investor the amount of Negative Carry actually paid.
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IV.
Additional Considerations

I. WFS (as successor to WFBS) and WFIS have voluntarily agreed to purchase ARS from Eligible Investors as set forth in this Section IV, Paragraph 2 below.
2. ''Eligible Investors," for the purposes of this Order as it relates to WFS (as successor
to WFBS) and WFIS, shall mean the following:
a. Natural persons (including their LRA accounts, testamentary trust and estate
accounts, custodian UGMA and UTMA accounts, and guardianship accounts) who purchased Eligible ARS;
b. Charities, endowments, or foundations with Internal Revenue Code Section
501(c)(3) status, or religious corporations or entities that purchased Eligible ARS; and
c. Trusts, corporate trusts, corporations, employee pension plan/ERISA and
Taft Hartley Act plans, educational institutions, incorporated not for profit organizations, limited liability companies, limited partnerships, non public companies, partnerships, personal holding companies, unincorporated associations, govenunents or quasi government entities, which are the beneficial owners of an account that purchased Eligible ARS, unless the value of the account exceeded $10 million as of January 31, 2008 or the beneficial owner had disclosed to WFI, WFS (as successor to WFBS), WFBS or WFIS total investable assets in excess of $10 million;
d. "Eligible Investors,'' for the purposes of this Order as it relates to WFS (as
successor to WFBS) and WFIS, shall not include brokers, dealers, or banks acting as conduits for their customers. This provision shall not affect the rights of any beneficial owner of an account that otherwise would qualify as an Eligible Investor, as set forth in subparts a, b, or c of this Paragraph, above;
e. "Eligible Investors," tor the purposes of this Order as it relates to WFS (as
successor to WFBS) and WFIS, shall not include any WFI, WFBS, or WFIS customers who 10

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have entered into a settlement agreement with WFI, WFBS (or WFS as its successor), or WFIS prior to November 18, 2009, or who has received a final arbitration award against WFI, WFBS (or WFS as its successor), or WFIS prior to November 18, 2009, with respect to their Eligible ARS holdings at WFI, WFBS (or WFS as its successor), or WFIS.
f. "Eligible ARS," for purposes of this Order as it relates to WFS (as successor
to WFBS) and WFIS, shall mean ARS that were purchased at WFBS or WFIS on or before February 13, 2008, and that have failed at auction at least once since February 13, 2008. Notwithstanding the foregoing definition, Eligible ARS shall not include ARS that were purchased at WFBS or WFIS or entities acquired by WFBS's or WFIS's parent companies
in accounts owned, managed or advised by or through independent registered investment advisers.
3. WFS (as successor to WFBS) and WFIS have agreed to use their best efforts to provide liquidity solutions to their customers who have investible assets above $10 million. WFS (as successor to WFBS) and WFIS shall endeavor to work with issuers and other interested parties, including regulatory and governmental entities, to expeditiously and on a best efforts basis provide liquidity solutions, such as facilitation of secondary market transactions and announced issuer redemptions of the Eligible ARS purchased through WFBS and WFIS. Though WFS (as successor to WFBS) and WFIS shall use their best efforts to offer opportunities to the institutional and other customers who are not Eligible Investors to liquidate Eligible ARS, WFS (as successor to WFBS) and WFIS are under no obligation to offer to purchase ARS from these customers.
4. In consideration for the settlement terms contained in this Order, the Securities Commissioner shall not seek additional penalties, and shall terminate its investigation and any enforcement action that the Securities Commissioner could commence under applicable South Carolina Jaw on behalf of the State of South Carolina with respect to WFI, WFS (as successor to WFBS), and WFIS regarding the marketing of ARS. However, if the Securities Commissioner determines that WFS (as successor to WFBS) and WFIS have failed to adhere to their voluntary 11

agreement as described above, the Securities Commissioner may initiate investigation and take
2 enforcement action related to the marketing of ARS by WFS (as successor to WFBS) and WFIS.
3 5. If payment is not made by WFI as required in this Order, or if WFI defaults in any
4 of its other obligations set forth in this Order, the Securities Commissioner may send WFI a written 5 notice of default and, if within ten (I 0) days after receiving the written notice, WFI does not cure 6 the default, the Securities Commissioner may move to enforce the Order before any competent 7 administrative body and/or court of law.
8 6. This Order is not intended to indicate that WFI or any of its affiliates or current or
9 former employees shall be subject to any disqualifications contained in the federal securities law, 10 the rules and regulations thereunder, the rules and regulations of self-regulatory organizations or II various states' securities laws, including any disqualifications from relying upon the registration 12 exemptions or safe harbor provisions. In addition, this Order is not intended to form the basis for 13 any such disqualifications.
14 7. Except as expressly provided in this Order, for any person or entity not a party to
15 this Order, this Order does not limit or create any private rights or remedies against WFI, limit or 16 create liability of WFI, or limit or create defenses of WFI to any claims. Unless applicable law 17 provides otherwise, by entering into this Order, the Securities Commissioner does not waive any 18 rights any departments, agencies, boards, commissions, authorities, political subdivisions and 19 corporations of the State of South Carolina, other than the Securities Commissioner, may have 20 under applicable law, to the extent any such rights exist, to assert a claim, cause of action, or 21 application for compensatory, nominal and/or punitive damages, administrative, civil, criminal, or 22 injunctive relief against WFI in connection with the marketing of ARS by WFI.
23 8. This Order shall not disqualify WFI or any of its affiliates or current or former
24 employees from any business that they otherwise are qualified or licensed to perform under 25 applicable state law and this Order is not intended to form the basis for any disqualification.
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9. This Order and any dispute related thereto shall be construed and enforced in
2 accordance with, and governed by, the laws of the State of South Carolina without regard to any 3 choice of law principles.
4 10. WFI, through its execution of this Order, voluntarily waives its right to a hearing on
5 this matter and to judicial review of this Order under South Carolina law.
6 II. WFI enters into this Order voluntarily and represents that no threats, offers,
7 promises, or inducements of any kind have been made by the Securities Commissioner, or any 8 member, officer, employee, agent, or representative of the Securities Commissioner, to induce WFI 9 to enter into this Order.

10 12. This Order shall be binding upon WFI, its affiliates, successors and assigns with
II respect to all conduct subject to the provisions above and all future obligations, responsibilities, 12 undertakings, commitments, limitations, restrictions, events, and conditions.
13 13. Nothing contained in this Order shall be deemed to be an admission of any liability,
14 fault or wrongdoing. The Parties agree that this Order shall not be admissible in any hearing, 15 action, or proceeding except to prove the existence of this Order or to enforce the Order's terms. 16
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Datedthi~dayof ~0 .

BY ORDER OF THE SECURITIES COMMISSIONER

SECURITIES

~~~ COMMISSIONER
STATE OF SOUTH CAROUNA

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CONSENT TO ENTRY OF ADMINISTRATIVE ORDER BY WELLS FARGO INVESTMENTS, LLC

WFI hereby acknowledges that it has been served with a copy of this Consent 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 Securities Commissioner, neither admits nor denies the
Findings of Fact and Conclusions of Law contained in this Order, and consents to entry of this Order
by Securities Conunissioner 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
l 0 enter into this Order and that it has entered into this Order voluntarily.

I I LJ ~ ftrnq_ dJrf represents that he/she is CW of WFI and that,
12 as such, has been authorized by WFI to enter into this Order for and on behalf of WFL

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STATE OF GL£ry,),A')
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WELLS FARGO rNVESTMENTS, LLC

SUBSCRIBED AND SWORN TO before

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Notary Public
My commission expires:

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