

**COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE SECRETARY OF THE COMMONWEALTH
SECURITIES DIVISION
ONE ASHBURTON PLACE, ROOM 1701
BOSTON, MASSACHUSETTS 02108**

IN THE MATTER OF:)

WELLS FARGO CLEARING SERVICES, LLC,)

RESPONDENT.)

) Docket No. 2018-0090
)

CONSENT ORDER

This Consent Order (the “Order”) is entered into by the Massachusetts Securities Division of the Office of the Secretary of the Commonwealth (“Division”) and Wells Fargo Clearing Services, LLC (hereinafter “Wells Fargo” or “Respondent”) with respect to the investigation by the Registration, Inspections, Compliance and Examinations Section (the “RICE Section”) of the Division into whether Respondent violated Massachusetts Uniform Securities Act, MASS. GEN. LAWS ch. 110A (“Act”), and the corresponding regulations promulgated thereunder at 950 MASS. CODE REGS. 10.00 *et seq.* (“Regulations”). The RICE Section alleges Wells Fargo employed agents who were not, as required, registered in Massachusetts in violation of Section 201 of the Act.

On August 22, 2019, Wells Fargo submitted an Offer of Settlement (the “Offer”) to the Division. Solely for the purpose of this matter’s resolution, Respondent neither admits nor denies the Statement of Facts set forth in Section IV below and neither admits nor denies the Violations of Law set forth in Section V below, and consents to the entry of this Order by the Division, consistent with the language and terms of the Offer, settling the investigation thereby with prejudice.

I. JURISDICTION AND AUTHORITY

1. As provided for by the Act, the Division has jurisdiction over matters relating to securities pursuant to chapter 110A of Massachusetts General Laws.
2. This Offer is made in accordance with MASS. GEN. LAWS ch. 110A. Specifically, the acts and practices investigated took place in Massachusetts.

II. RELEVANT TIME PERIOD

3. Except as otherwise expressly stated, the conduct described herein occurred during the approximate time period of January 1, 2016 to June 28, 2018 (the “Relevant Time Period”).

III. RESPONDENT

4. Wells Fargo Clearing Services, LLC (“Wells Fargo”) is a broker-dealer with its main office location in St. Louis, Missouri. Wells Fargo has a Financial Industry Regulatory Authority (“FINRA”) Central Registration Depository (“CRD”) number of 19616. Wells Fargo has been registered as a broker dealer in Massachusetts since January 9, 1990. Wells Fargo has also been registered as an investment adviser with the SEC since October 5, 1990. On July 13, 2006 Wells Fargo withdrew its notice filing as a federal covered adviser in Massachusetts.

IV. STATEMENT OF FACTS

5. Wells Fargo has been registered as a broker dealer in Massachusetts since 1990.
6. At present Wells Fargo has over 9,400 agents registered in Massachusetts.

Failure to Timely Register or Maintain or Renew Registrations of Agents and Supervisors

7. During the Relevant Time Period, Wells Fargo’s supervisory policies and procedures stated in pertinent part:

Qualified Supervisors must be appropriately licensed and registered for their supervisory position with the Firm.

8. During the Relevant Time Period, 561 of Wells Fargo's agents had a lapse in Massachusetts registration for some period when the agent supervised an agent of record for one or more customers with Massachusetts addresses.

9. In January 2016, Wells Fargo was aware of Massachusetts' requirement that agents who supervise individuals registered in Massachusetts were also required to be registered. In late April 2016, Wells Fargo compiled data to determine the names of supervisors that were not in compliance with Wells Fargo's policies and procedures and/or Massachusetts registration requirements.

10. Wells Fargo's *State Registration Annual Renewal Policies and Procedures* were amended in October 2016 to include a specific provision that certain supervisors are required to be registered in Massachusetts if they have supervisory responsibilities for agents with registration in Massachusetts. Wells Fargo's amended policy stated in pertinent part:

... Massachusetts... require[s] managers to be registered if he or she has supervisory responsibilities for other associates with registrations in these states.

11. In addition to Wells Fargo's own policies and procedures on supervisor registration in Massachusetts, Wells Fargo was informed at least 159 times by the Division between January 1, 2017 and July 31, 2018 that certain supervisors must be registered as agents in Massachusetts pursuant to the definition of agent at 950 MASS. CODE REGS. 14.401.

Failure to Timely Renew Registrations

12. During the Relevant Time Period, Wells Fargo's policies and procedures stated in pertinent part:

Each state regulates securities activities and has specific securities registration requirements. Registered Associates are not permitted to transact business in a state unless he or she is registered in the state as:

- An Agent (Series 63); and
- If offering advisory products to clients, an Investment Adviser Representative (IAR) (Series 65).

Registered Associates are responsible for ensuring that they are properly registered in a specific state prior to soliciting prospects or transacting business with a client, including, but not limited to, the accepting of unsolicited orders from any client.

...

Each Registered Associate must be registered as an Agent in each state where:

- The Registered Associate: Has an assigned office; Uses a Temporary or Transient Office (i.e., secondary branch location, vacation home or remote location);
- Clients reside; and
- Potential clients reside, if soliciting or cold calling in that state.

13. During the Relevant Time Period, 1098 of Wells Fargo's agents had a lapse in Massachusetts registration for some period when the agent was an agent of record for one or more customers with Massachusetts addresses.

14. Massachusetts registrations expire every December 31st. Wells Fargo notified its agents of registration renewal deadlines, including through newsletters emailed on a weekly basis as the registration renewal period neared.

15. During renewal season, Wells Fargo's weekly newsletters contained "Complete Annual State Registration Renewals ..." notification ("Renewal Notice"), however the Renewal Notice was often embedded at the bottom of the emailed newsletters in boxes

with inconsistent labels from week to week and in sections not related to registration obligations.

16. Wells Fargo routinely paid the renewal fee if the agent had annualized revenue greater than \$1,000 in Massachusetts. Generally, Wells Fargo's agents whose annualized revenue was less than \$1,000 in Massachusetts were responsible for the registration renewal fee.

Wells Fargo Agents Relied Upon Their Assistants to Renew Registrations

17. In April 2018 Wells Fargo submitted a Form U4 to the CRD seeking registration of Agent 1 in Massachusetts. Agent 1 had previously been registered in Massachusetts during a portion of 2016 and all of 2017.

18. Wells Fargo and Agent 1 relied on Agent 1's assistant to renew his registration for 2018. Wells Fargo informed the Division that "[Wells Fargo] periodically communicates reminders to team members to renew registrations. [Agent 1's] assistant in error did not renew [Agent 1's] Massachusetts registration during an annual renewal process."

19. In June 2018, Wells Fargo submitted a Form U4 to the CRD seeking registration of Agent 2 in Massachusetts. Agent 2 had previously been registered during a portion of 2017.

20. Wells Fargo and Agent 2 relied on Agent 2's assistant to renew his registration for 2018. Agent 2 informed the Division that "[m]y registration was not renewed during the annual renewal process in error due to an oversight by my assistant."

V. VIOLATIONS OF LAW

A. Violations of MASS. GEN. LAWS ch. 110A, § 201(a)

21. Section 201(a) of the Act states:

It is unlawful for any person to transact business in this commonwealth as a broker-dealer or agent unless he is registered under this chapter.

MASS. GEN. LAWS ch. 110A, § 201(a)

22. The conduct of Respondent, as described above, constitutes a violation of MASS.

GEN. LAWS ch. 110A, § 201(a).

B. Violations of MASS. GEN. LAWS ch. 110A, § 201(b)

23. Section 201(b) of the Act provides:

It is unlawful for any broker-dealer or issuer to employ an agent unless the agent is registered. The registration of an agent is not effective during any period when he is not associated with a particular broker-dealer registered under this chapter or a particular issuer. When an agent begins or terminates a connection with a broker-dealer or issuer, or begins or terminates those activities which make him an agent, the agent as well as the broker-dealer or issuer shall promptly notify the secretary.

MASS. GEN. LAWS ch. 110A, § 201(b).

24. The conduct of Respondent, as described above, constitutes a violation of MASS.

GEN. LAWS ch. 110A, § 201(b).

C. Violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J)

25. Section 204(a)(2)(J) of the Act provides:

The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:-

(J) has failed reasonably to supervise agents, investment adviser representatives or other employees to assure compliance with this chapter;

MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J).

26. The conduct of Respondent, as described above, constitutes a violation of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J).

VI. ORDER

Wells Fargo consents to the entry of this Order.

IT IS HEREBY ORDERED THAT:

Respondent, in full settlement of these matters, neither admits nor denies the Statement of Facts set forth in Section V above and neither admits nor denies the Violations of Law set forth in Section VI above, and makes the following representations and agreed to the undertakings herein as part of this Order:

- A. Respondent shall permanently cease and desist from violations of MASS. GEN. LAWS ch. 110A, §§ 201(a), 201(b) and 204(a)(2)(J) in the Commonwealth;
- B. Respondent is censured by the Division;
- C. Respondent shall to seek registration of its employees and supervised persons who meet the definition of agent in Section 401(b) of the Act and Section 14.401 of the Regulations prior to employees conducting securities business in Massachusetts, in compliance with Section 201(b) of the Act;
- D. Respondent shall review and enhance its policies and procedures related to registering its agents in Massachusetts prior to an agent engaging in any of the following activities in Massachusetts or for Massachusetts residents: effecting or attempting to effect transactions in securities; soliciting transactions or new accounts; rendering advice concerning the purchase or sale of securities to customers; executing trades for customers; or supervising an individual that engages in any of the foregoing activities. To the extent policies and procedures

do not include methods for enforcement and compliance oversight relating to the registration of its agents, Respondent agrees to establish such procedures;

- E. Respondent shall provide, within 90 days of the entry this signed Order, a report to the Division detailing the process Respondent engaged in to enhance its policies and procedures pursuant to paragraph D, section VI, of this Order. The report will include, at a minimum, a description of the review performed, the conclusions reached, a summary of Respondent's changes, and the timeline in which Respondent will enact the changes;
- F. The summary of changes that Respondent plans to enact and the timeline in which Respondent will enact those changes pursuant to paragraph D, section VI, of the Order, shall not be unacceptable to the Division, provided that the Division will not unreasonably withhold its approval of those changes;
- G. If the changes and timeline are not unacceptable to the Division, Respondent will adopt all changes pursuant to the timeline provided in the report and provide certification within 45 days of the last change made pursuant to the timeline;
- H. Within five (5) business days of the entry of this signed Order, Respondent agrees to pay an administrative fine in the amount of \$450,000 (USD) to the Commonwealth of Massachusetts. Payment shall be: (1) made by United States postal money order, certified check, bank cashier's check, bank money order, or wire transfer; (2) made payable to the Commonwealth of Massachusetts; and (3) either hand-delivered or mailed to One Ashburton Place, Room 1701, Boston, Massachusetts 02108, or wired per Division instructions; and (4) submitted under cover letter or other documentation that identifies Respondent making the

payment and the docket number of the proceedings. Additionally, Respondent shall provide the Division with notice twenty-four (24) hours prior to the payment;

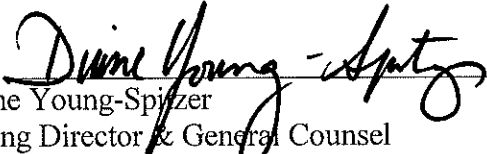
- I. Respondent shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal or local tax for any amounts that Respondent shall pay pursuant to the Division's Order;
- J. Respondent shall not seek or accept, directly or indirectly, reimbursement or indemnification, including, but not limited to, any payments made pursuant to any insurance policy, with regard to any amount that Respondent shall pay pursuant to the Division's Order;
- K. Upon the issuance of an Order, if Wells Fargo fails to comply with any of the terms set forth in the Order, the Division may institute an action to have this agreement declared null and void. Upon issuance of an appropriate order and after a fair hearing, the Division Section may institute an action against Respondent.
- L. For good cause shown, the Division may extend any of the procedural dates set forth above. Respondent agrees to make any requests for extensions of procedural dates set forth above in writing to the Division.

VII. NO DISQUALIFICATION

This Order waives any disqualification in the Massachusetts laws, or rules or regulations thereunder, including any disqualification from relying upon the registration exemptions or safe harbor provisions to which Respondent may be subject. This Order is not intended to be a final order based upon violations of the Act that prohibit fraudulent, manipulative, or deceptive conduct. This Order is not

intended to form the basis of any disqualifications under Section 3(a)(39) of the Securities Exchange Act of 1934; or Rules 504(b)(3) and 506(d)(1) of Regulation D, Rule 262(a) of Regulation A and Rule 503(a) of Regulation CF under the Securities Act of 1933. This Order is not intended to form the basis of disqualification under the FINRA rules prohibiting continuance in membership absent the filing of a MC-400A application or disqualification under SRO rules prohibiting continuance in membership. This Order is not intended to form a basis of a disqualification under Section 204(a)(2) of the Uniform Securities Act of 1956 or Section 412(d) of the Uniform Securities Act of 2002. Except in an action by the Division to enforce the obligations of this Order, any acts performed or documents executed in furtherance of this Order: (a) may not be deemed or used as an admission of, or evidence of, the validity of any alleged wrongdoing, liability, or lack of any wrongdoing or liability; or (b) may not be deemed or used as an admission of, or evidence of, any such alleged fault or omission of Respondent in any civil, criminal, arbitration, or administrative proceeding in any court, administrative agency, or tribunal.

BY ORDER OF:
WILLIAM FRANCIS GALVIN
SECRETARY OF THE COMMONWEALTH

By: 
Diane Young-Spitzer
Acting Director & General Counsel
Massachusetts Securities Division
One Ashburton Place, Room 1701
Boston, MA 02108

Date: August 26, 2019