

STATE OF ALABAMA
ALABAMA SECURITIES COMMISSION

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3 In the matter of)
4 WELLS FARGO INVESTMENTS, LLC,) ADMINISTRATIVE CONSENT ORDER
5 Respondent) NO. CO-2010-0055

6 WHEREAS, Wells Fargo Investments, LLC (“WFI”) is a broker-dealer registered in the state
7 of Alabama; and

8 WHEREAS, WFI’s activities regarding the marketing of auction rate securities have been the
9 subject of coordinated investigations conducted by a multistate task force; and

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

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

15 WHEREAS, WFI agrees, among other things, to purchase certain auction rate securities from
16 customers and to make certain payments; and

17 WHEREAS, WFI elects to waive permanently any right to a hearing and appeal under Section
18 8-6-25, Code of Alabama 1975, with respect to this Administrative Consent Order (the “Order”);
19 and

20 WHEREAS, WFI admits the jurisdiction of Alabama Securities Commission (“Commission”)
21 and consents to the entry of this Order by the Commission; and

22 WHEREAS, Wells Fargo Securities, LLC (“WFS”), as successor to Wells Fargo Brokerage
23 Services, LLC (“WFBS”), and Wells Fargo Institutional Securities, LLC (“WFIS”) have
24 voluntarily agreed to purchase ARS from certain customers, as described in Section IV below, and
25 to use best efforts to provide liquidity solutions for certain other customers; and
26

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

3 NOW, THEREFORE, the Commission, as administrator of Title 8, Chapter 6, Code of
4 Alabama 1975, the Alabama Securities Act (“Act”), hereby enters this order:

5 **I.**

6 **FINDINGS OF FACT**

7 Background

8 1. Auction Rate Securities (“ARS”) are long-term bonds issued by municipalities,
9 corporations, and student loan companies, or perpetual equity instruments issued by closed-end
10 mutual funds, with variable interest rates that reset through a bidding process known as a Dutch
11 auction.

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

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

Marketing of ARS by WFI

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

11 7. In connection with the marketing of ARS, WFI failed to adopt policies and
12 procedures reasonably designed to ensure that its registered agents recommended ARS only to
13 customers who had stated investment objectives that were consistent with their purchase of ARS.
14 Some WFI registered agents recommended ARS to customers as a liquid, short-term investment.
15 As a result, some WFI customers, who needed short-term access to funds, invested in ARS, even
16 though ARS had long-term maturity dates, or in the case of ARPS, no maturity dates.

Failure to Supervise Agents Who Marketed ARS

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18 8. WFI failed to provide adequate supervision and training to its registered agents in
19 connection with the marketing of ARS. Some of WFI's registered agents were not adequately
20 educated about ARS products. WFI failed to provide timely and comprehensive sales and
21 marketing literature regarding ARS and the mechanics of the auction process.

22 9. Some WFI registered agents believed that the ARS were safe and were not aware
23 that auctions could fail and that money invested in ARS could become frozen. In part, this was
24 because some WFI registered agents were not aware of significant aspects of the auction rate
25 market.

26

1 10. WFI did not establish specific written supervisory procedures for the review of ARS
2 transactions, nor did WFI train supervisory personnel on how to review ARS transactions.

3 **II.**

4 **CONCLUSIONS OF LAW**

5 The Commission has jurisdiction over this matter pursuant to the Section 8-6-3 Code of
6 Alabama 1975.

7 The Commission finds the following relief appropriate and in the public interest.

8 **III.**

9 **ORDER**

10 On the basis of the Findings of Fact, Conclusions of Law, and WFI's consent to the entry of
11 this Order, for the sole purpose of settling this matter prior to a hearing and without admitting or
12 denying the Findings of Fact or Conclusions of Law,

13 IT IS HEREBY ORDERED:

14 1. This Order concludes the investigation by the Commission and any other action that
15 the Commission could commence under applicable Alabama law on behalf of Alabama as it relates
16 to WFI's marketing of ARS to customers.

17 2. This Order is entered into solely for the purpose of resolving the above referenced
18 multistate investigation and is not intended to be used for any other purpose.

19 3. Within ten (10) days from the entry of this Order, WFI shall pay the sum of
20 \$3,800.00 to the Alabama Securities Commission as partial reimbursement for the Commission's
21 cost for investigating this matter, which amount constitutes Alabama's proportionate share of the
22 multistate settlement amount of \$1,900,000.

23 4. The total amount paid pursuant to Commission pursuant to the foregoing paragraph
24 shall remain at \$3,800.00 regardless of whether another state securities regulator determines not to
25 accept WFI's state settlement offer.
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1 5. WFI shall take certain measures with respect to current and former customers that
2 purchased “Eligible ARS,” as defined and described in Paragraphs 6 through 13 of Section III,
3 below.

4 6. Eligible ARS. For purposes of this Order as it relates to WFI, “Eligible ARS” shall
5 mean ARS that were purchased for customers by WFI on or before February 13, 2008, and that
6 have failed at auction at least once since February 13, 2008. Notwithstanding the foregoing
7 definition, Eligible ARS shall not include ARS that were purchased for customers by WFI or
8 entities acquired by Wells Fargo’s parent companies in accounts owned, managed, or advised by or
9 through independent registered investment advisers.

10 7. Eligible Investor. For the purposes of this Order as it relates to WFI, “Eligible
11 Investor” shall mean:

12 a. Natural persons (including their IRA accounts, testamentary trust and estate
13 accounts, custodian UGMA and UTMA accounts, and guardianship accounts) who
14 purchased Eligible ARS;

15 b. Charities, endowments, or foundations with Internal Revenue Code Section
16 501(c)(3) status, or religious corporations or entities, that purchased Eligible ARS; and

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

22 d. “Eligible Investors,” for the purposes of this Order as it relates to WFI, shall
23 not include brokers, dealers, or banks acting as conduits for their customers. This provision
24 shall not affect the rights of any beneficial owner of an account that otherwise would
25 qualify as an Eligible Investor, as set forth in Section III, Paragraph 7, subparts a, b, or c,
26 above.

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

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

10 9. Notification and Buyback Procedures.

11 a. WFI shall undertake to identify and provide notice to Eligible Investors of
12 the relevant terms of this Order by no later than February 16, 2010. Said notice shall
13 explain what Eligible Investors must do to accept, in whole or in part, the Purchase Offer,
14 including how Eligible Investors may accept the Purchase Offer. WFI shall also provide
15 written notice of the relevant terms of this Order to any subsequently identified Eligible
16 Investors.

17 b. Initial Offer Period

18 i. WFI shall keep the Purchase Offer open for sixty (60) days after
19 mailing the notice required by Section III, Paragraph 9a, above ("Initial Offer
20 Period").

21 ii. Eligible Investors may accept the Purchase Offer by notifying WFI
22 as described in the Purchase Offer, at any time before midnight, Eastern Time, on or
23 before the last day of the Initial Offer Period. For those Eligible Investors who
24 accept the Purchase Offer within the Initial Offer Period, WFI shall purchase their
25 Eligible ARS by no later than five (5) business days following the expiration of the
26 Initial Offer Period (the "Initial Purchase Deadline").

1 c. Second Offer Period

2 i. WFI shall undertake its best efforts to identify and provide a second
3 notice to all Eligible Investors who do not accept the Purchase Offer within the
4 Initial Offer Period. This second notice must satisfy the requirements discussed in
5 Section III, Paragraph 9a, above, and be sent no later than thirty (30) days after the
6 Initial Purchase Deadline.

7 ii. WFI shall keep the Purchase Offer open for sixty (60) days after
8 mailing the second notice required by Section III, Paragraph 9c.i, above (“Second
9 Offer Period”).

10 iii. Eligible Investors may accept the Purchase Offer by notifying WFI
11 as described in the Purchase Offer, at any time before midnight, Eastern Time, on or
12 before the last day of the Second Offer Period. For those Eligible Investors who
13 accept the Purchase Offer within the Second Offer Period, WFI shall purchase their
14 Eligible ARS by no later than five (5) business days following the expiration of the
15 Second Offer Period (the “Second Purchase Deadline”).

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

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

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

3 10. Customer Assistance Line. WFI shall promptly establish a dedicated toll-free
4 telephone assistance line and e-mail address to provide information and to respond to questions
5 concerning the terms of this Order. WFI shall maintain the telephone assistance line and e-mail
6 address through at least the Second Purchase Deadline.

7 11. Relief for Eligible Investors Who Sold Below Par. No later than upon the
8 completion of the buyback (as described in Section III, Paragraph 9, above), WFI shall undertake
9 its best efforts to identify and provide notice to, using the notice to Eligible Investors referenced in
10 Section III, Paragraph 9 above, Eligible Investors who sold Eligible ARS below par between
11 February 13, 2008 and November 18, 2009 ("Below Par Seller") and, upon receipt of satisfactory
12 evidence of the sale, pay them the difference between par and the price at which the Eligible
13 Investor sold the Eligible ARS, plus interest thereon at the rate of seven-day LIBOR.

14 12. Consequential Damages Arbitration Process.

15 a. WFI shall consent to participate in a special arbitration process
16 ("Arbitration") for the exclusive purpose of arbitrating any Eligible Investor's
17 consequential damages claim arising from their inability to sell Eligible ARS. WFI shall
18 notify Eligible Investors of the terms of the Arbitration process through the notice described
19 in Section III, Paragraph 9 above.

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

23 c. Eligible Investors who choose to pursue such claims in the Arbitration shall
24 bear the burden of proving that they suffered consequential damages and that such damages
25 were caused by their inability to access funds invested in Eligible ARS. In the Arbitration,
26 WFI shall be able to defend itself against such claims; provided, however, that WFI shall

1 not contest liability for the illiquidity of the underlying ARS position, and provided further
2 that, unlike the FINRA's established special arbitration process, WFI shall be able to use as
3 part of its defense an investor's decision not to borrow money from WFI or its affiliates.

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

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

10 13. Reimbursement of Negative Carry. In connection with the notices described in
11 Section III, Paragraphs 9 and 11 above, WFI shall inform Eligible Investors that, if they paid more
12 in interest on a loan through WFI or its affiliates secured by Eligible ARS than the customer
13 received in interest or dividends from the Eligible ARS during the time the loan was outstanding
14 ("Negative Carry"), then the Eligible Investor can provide WFI documentation evidencing the
15 amount of Negative Carry, and upon receipt of such documentation, WFI will reimburse the
16 Eligible Investor the amount of Negative Carry actually paid.

17 **IV.**

18 **Additional Considerations**

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

21 2. "Eligible Investors," for the purposes of this Order as it relates to WFS (as successor
22 to WFBS) and WFIS, shall mean the following:

23 a. Natural persons (including their IRA accounts, testamentary trust and estate
24 accounts, custodian UGMA and UTMA accounts, and guardianship accounts) who
25 purchased Eligible ARS;

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1 b. Charities, endowments, or foundations with Internal Revenue Code Section
2 501(c)(3) status, or religious corporations or entities that purchased Eligible ARS; and

3 c. Trusts, corporate trusts, corporations, employee pension plan/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, governments or quasi
7 government entities, which are the beneficial owners of an account that purchased Eligible
8 ARS, unless the value of the account exceeded \$10 million as of January 31, 2008 or the
9 beneficial owner had disclosed to WFI, WFS (as successor to WFBS), WFBS or WFIS total
10 investable assets in excess of \$10 million;

11 d. "Eligible Investors," for the purposes of this Order as it relates to WFS (as
12 successor to WFBS) and WFIS, shall not include brokers, dealers, or banks acting as
13 conduits for their customers. This provision shall not affect the rights of any beneficial
14 owner of an account that otherwise would qualify as an Eligible Investor, as set forth in
15 subparts a, b, or c of this Paragraph, above;

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

22 f. "Eligible ARS," for purposes of this Order as it relates to WFS (as successor
23 to WFBS) and WFIS, shall mean ARS that were purchased at WFBS or WFIS on or before
24 February 13, 2008, and that have failed at auction at least once since February 13, 2008.
25 Notwithstanding the foregoing definition, Eligible ARS shall not include ARS that were
26 purchased at WFBS or WFIS or entities acquired by WFBS's or WFIS's parent companies

1 in accounts owned, managed or advised by or through independent registered investment
2 advisers.

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

12 4. In consideration for the settlement terms contained in this Order, the Commission
13 shall not seek additional penalties, and shall terminate its investigation and enforcement action with
14 respect to WFI, WFS (as successor to WFBS), and WFIS regarding the marketing of ARS.
15 However, if the Commission determines that WFS (as successor to WFBS) and WFIS have failed
16 to adhere to their voluntary agreement as described above, the Commission may initiate
17 investigation and take enforcement action related to the marketing of ARS by WFS (as successor to
18 WFBS) and WFIS.

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

24 6. This Order is not intended to indicate that WFI or any of its affiliates or current or
25 former employees shall be subject to any disqualifications contained in the federal securities law,
26 the rules and regulations thereunder, the rules and regulations of self-regulatory organizations or

1 various states' securities laws, including any disqualifications from relying upon the registration
2 exemptions or safe harbor provisions. In addition, this Order is not intended to form the basis for
3 any such disqualifications.

4 7. Except as expressly provided in this Order, for any person or entity not a party to
5 this Order, this Order does not limit or create any private rights or remedies against WFI, limit or
6 create liability of WFI, or limit or create defenses of WFI to any claims. Unless applicable law
7 provides otherwise, by entering into this Order, the Commission does not waive any rights any
8 departments, agencies, boards, commissions, authorities, political subdivisions and corporations of
9 Alabama other than the Commission may have under applicable law, to the extent any such rights
10 exist, to assert a claim, cause of action, or application for compensatory, nominal and/or punitive
11 damages, administrative, civil, criminal, or injunctive relief against WFI in connection with the
12 marketing of ARS by WFI.

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

16 9. This Order and any dispute related thereto shall be construed and enforced in
17 accordance with, and governed by, the laws of Alabama without regard to any choice of law
18 principles.

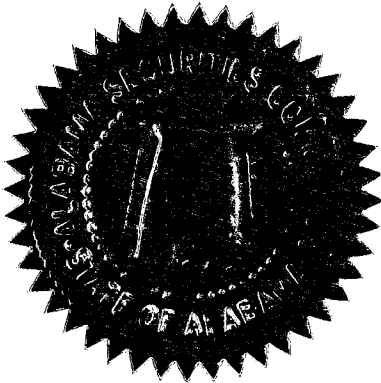
19 10. WFI, through its execution of this Order, voluntarily waives its right to a hearing on
20 this matter and to judicial review of this Order under Section 8-6-25 Code of Alabama 1975.

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

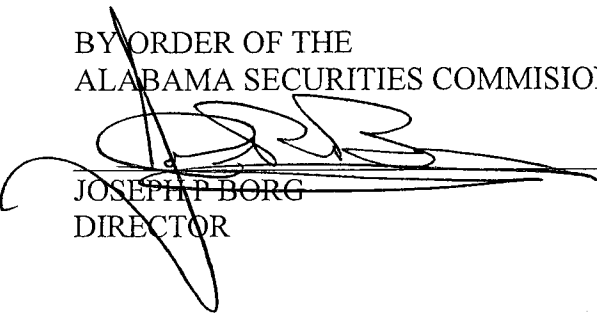
24 12. This Order shall be binding upon WFI, its affiliates, successors and assigns with
25 respect to all conduct subject to the provisions above and all future obligations, responsibilities,
26 undertakings, commitments, limitations, restrictions, events, and conditions.

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

4 Dated this 9TH day of NOVEMBER, 2010.



BY ORDER OF THE
ALABAMA SECURITIES COMMISSION



JOSEPH P BORG
DIRECTOR

1
2 **CONSENT TO ENTRY OF ADMINISTRATIVE ORDER BY WELLS FARGO**
3 **INVESTMENTS, LLC**

4 WFI hereby acknowledges that it has been served with a copy of this Consent Order, has read
5 the foregoing Order, is aware of its right to a hearing and appeal in this matter, and has waived the
6 same.

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

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

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

14 DATED this 27 day of October, 2010.

15 WELLS FARGO INVESTMENTS, LLC

16
17 By: Lisa Amador
18 Title: Chief Compliance Officer

19
20 STATE OF California
21 County of San Francisco

22 SUBSCRIBED AND SWORN TO before me this 27th day of October, 2010.

23 Jose Delgado
24 Notary Public

25 My commission expires:

26 Nov 17, 2010

