

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the Continued Membership
of

Wells Fargo Advisors, LLC

with

FINRA

Notice Pursuant to
Rule 19h-1
Securities Exchange Act
of 1934

SD-1798

October 2, 2014

I. Introduction

On September 4, 2009, Wells Fargo Advisors, LLC, f/k/a Wachovia Securities, LLC (“Wells Fargo” or “the Firm”), filed a Membership Continuance Application (“MC-400A” or “the Application”) with FINRA’s Department of Registration and Disclosure. The Application seeks to permit the Firm, a FINRA member firm subject to a statutory disqualification, to continue its membership with FINRA. A hearing was not held in this matter. Rather, pursuant to FINRA Rule 9523, FINRA’s Department of Member Regulation (“Member Regulation”) recommended that the Chair of the Statutory Disqualification Committee, acting on behalf of the National Adjudicatory Council, approve the Firm’s continued membership with FINRA pursuant to the terms and conditions set forth below.

For the reasons explained below, we approve the Firm’s Application.

II. The Statutorily Disqualifying Event Underlying the Application

The Firm filed the Application in connection with a statutorily disqualifying judgment entered by the United States District Court for the Northern District of Illinois, Eastern Division, on February 17, 2009 (the “Judgment”). The Judgment, among other things, permanently enjoined the Firm from violating Section 15(c)(1) of the Securities Exchange Act of 1934 (the “Exchange Act”) and was based on a complaint filed by the Commission alleging that in 2007 and 2008, the Firm misled customers regarding the nature and risks of auction-rate securities (“ARS”) that the Firm underwrote, marketed, and sold. The complaint further alleged that the Firm misrepresented to its customers that ARS were safe, highly liquid investments that were substitutes for cash or money-market instruments. The complaint also alleged that the Firm committed its own capital to support ARS auctions for which it served as the sole or lead broker-dealer to ensure that those auctions did not fail and, although the Firm knew that the risk of auction failures had materially increased, it continued to market ARS to its customers as highly liquid investments. Finally, the complaint alleged that when the Firm stopped supporting ARS auctions, many customers were left with illiquid ARS.

The Judgment, which the Firm consented to, required the Firm to comply with certain undertakings, including making offers to repurchase at par certain ARS from eligible customers and paying eligible customers who sold their ARS below par the difference between par and the sale price of the ARS. In connection with the Judgment, the Firm repurchased at par \$7.45 billion of ARS from customers. In June 2010, the Commission determined that the Firm had complied with the terms of the Judgment and that the Commission would not seek additional penalties against the Firm.¹

III. Background Information

The Firm has been a FINRA member since 1987. Member Regulation states that the Firm has approximately 7,100 branch offices, 824 of which are offices of supervisory jurisdiction. The Firm employs approximately 5,690 registered individuals and approximately 4,658 non-registered individuals.

The Firm has several past disciplinary infractions. Member Regulation has represented that, notwithstanding the Firm's disciplinary and regulatory history, it satisfies the standard for continued membership in FINRA. As discussed below, we agree.

A. Recent Routine Examinations

The 2014 FINRA cycle examination of the Firm will commence in the third quarter of 2014.

On December 16, 2013, as a result of the Firm's 2013 cycle examination, FINRA issued the Firm an Examination Report, which indicated that FINRA did not identify any exceptions.

On October 26, 2012, as a result of the Firm's 2012 cycle examination, FINRA issued the Firm a Cautionary Action. FINRA cited the Firm for the following violations: (1) failing to properly report customer complaints; (2) failing to establish an adequate system to regularly review the effectiveness of risk management controls and supervisory procedures; (3) failing to properly apply a haircut on certain foreign currency balances resulting in an inaccurate net capital computation; and (4) failing to file amendments to Uniform Applications for Securities Industry Registration or Transfer ("Forms U4") for certain customer complaints. The Firm stated that it had corrected or was in the process of addressing the deficiencies in the Cautionary Action.

¹ Member Regulation also represents that in connection with the Firm's misconduct related to ARS, the Firm executed settlement agreements with 49 state regulatory authorities, Puerto Rico, the United States Virgin Islands, and the District of Columbia. These settlements ranged from \$103,739 to \$50 million.

B. Recent Regulatory Actions

The following summarizes notable regulatory actions against the Firm during the past two years.²

In September 2013, the Firm entered into a Letter of Acceptance, Waiver, and Consent (“AWC”) with FINRA for violations of NASD Rules 3010 and 3012 and FINRA Rule 2010. Without admitting or denying the allegations, the Firm consented to findings that its supervisory control system failed to include a policy or procedure requiring a review to detect or prevent multiple transmittals of funds from multiple customers going to the same third-party accounts. The AWC also found that the Firm failed to establish, maintain and enforce a supervisory system that was reasonably designed to adequately review and monitor the transmittals of funds from the accounts of customers to third-party accounts and outside entities. FINRA censured the Firm and fined it \$150,000.

In June 2013, the Firm (as successor in liability for Wells Fargo Investments, LLC) entered into an AWC with FINRA for violations of NASD Rules 3010, 2310, and 2110 and FINRA Rule 2010. Without admitting or denying the allegations, the Firm consented to findings that Wells Fargo Investments, LLC’s registered representatives made recommendations to customers to purchase floating-rate loan funds that were unsuitable for those customers. The AWC also found that Wells Fargo Investments, LLC, failed to establish and maintain a system for supervising its sales of floating-rate loan funds that was reasonably designed to achieve compliance with the suitability requirements of NASD and FINRA rules. Further, Wells Fargo Investments, LLC, failed to provide sufficient guidance to registered representatives or supervisors to determine whether floating-rate loan funds were suitable for its clients or adequately train such registered persons regarding the risks associated with floating-rate funds. FINRA censured the Firm, fined it \$1.25 million, and ordered it to pay to customers \$1.98 million in restitution.

In May 2012, the Firm entered into an AWC with FINRA for violations of NASD Rules 3010, 2310, and 2110 and FINRA Rule 2010. Without admitting or denying the allegations, the Firm consented to findings that it failed to establish and maintain a supervisory system, including written procedures, reasonably designed to achieve compliance with NASD and FINRA rules in connection with the sale of non-traditional exchange-traded funds (“ETFs”). Additionally, certain of the Firm’s registered representatives made unsuitable recommendations of non-traditional ETFs to their customers. FINRA censured the Firm, and fined it and an affiliate, jointly and severally, \$2.1 million, and ordered them to pay \$641,489 in restitution to customers.

² We agree with Member Regulation’s focus on the Firm’s more recent regulatory actions that resulted in fines of \$100,000 or more, and discuss herein those matters occurring from May 2012 through August 2014.

IV. The Firm's Proposed Continued Membership with FINRA and Proposed Supervisory Plan

The Firm seeks to continue its membership with FINRA notwithstanding the Judgment. The Firm included a supervisory plan with the Application to address deficiencies relating to the underlying cause of the statutory disqualification. The plan discusses a number of measures that the Firm represents it has undertaken in connection with the events underlying the statutory disqualification.

Specifically, the plan sets forth the following general categories in which the Firm represents it has undertaken significant efforts to enhance its compliance and supervision: (1) steps taken with respect to ARS; (2) enhancing policies and procedures for its Product Committee; and (3) enhancing policies and procedures for its Deal Commitment Committee.

With respect to the Firm's ARS business, the Firm has created a comprehensive disclosure document that unified the separate auction practice disclosures of the Firm and A.G. Edwards & Sons, LLC,³ prohibited the purchase of ARS by retail customers, required all registered personnel to take and pass a training course with respect to cash-alternative investments to clarify that ARS are not cash alternatives, recategorized ARS as long-term bonds or preferred securities on customer statements, and recategorized ARS as long-term investments in all portfolio planning, asset allocation and performance reporting tools.

The Firm also represents that it has enhanced its policies and procedures for its Product Committee, which is responsible for reviewing products and services generally for fit and suitability of a product in the context of the Firm's strategic mission and goals, its distribution network, and its potential target client markets. The Product Committee's processes are designed to ensure all material risks have been identified and addressed, due diligence has been performed, the appropriate coordination and operational support can be established, the product's financial and economic projections are reasonable, and appropriate continuing reviews are conducted.

Further, the Firm represents that it has enhanced its policies and procedures for its Deal Commitment Committee, which is responsible for reviewing and approving specific individual product offerings of a product generally approved by the Product Committee. The Deal Commitment Committee's processes are designed to review and approve a specific offering to the Firm's customers and to ensure the appropriateness for retail distribution, as well as to establish reasonable basis suitability guidelines, minimum training requirements, the appropriateness of disclosures in marketing materials, and necessary operating or supervisory policies and procedures.

Member Regulation has represented that subsequent to any approval of the Firm's continued membership in FINRA notwithstanding its statutory disqualification, FINRA staff's first examination of the Firm will evaluate whether it has complied with the proposed plan as

³ Effective January 1, 2008, Wachovia Securities acquired the retail brokerage and financial advisory assets of A.G. Edwards & Sons, LLC.

described herein. After the Firm's initial examination, FINRA will determine whether to subject the plan to further review, considering (among other things) FINRA's overall risk-based assessment of the Firm.

V. Discussion

Member Regulation recommends approval of the Firm's request to continue its membership in FINRA. After carefully reviewing the entire record in this matter, we approve the Firm's Application, subject to the terms and conditions set forth below.

In evaluating an application like this, we assess whether the statutorily disqualified firm seeking to continue its membership in FINRA has demonstrated that its continued membership is consistent with the public interest and does not create an unreasonable risk of harm to the market or investors. *See* FINRA By-Laws, Art. III, Sec. (3)(d); *cf. Frank Kufrovich*, 55 S.E.C. 616, 624 (2002) (holding that FINRA "may deny an application by a firm for association with a statutorily-disqualified individual if it determines that employment under the proposed plan would not be consistent with the public interest and the protection of investors"). Factors that bear on our assessment include the nature and gravity of the statutorily disqualifying misconduct, the time elapsed since its occurrence, the restrictions imposed, and whether there has been any intervening misconduct.

We recognize that the Judgment involved serious violations of securities rules and regulations. The Commission found, however, that the Firm has fully complied with all of the terms of the Judgment, including the various undertakings required of it.⁴ The Firm also represents that it has very limited ARS business and shortly before entry of the Judgment, it ceased to permit any purchases of ARS by retail customers. Further, the Firm represents that it has taken significant steps to refine its processes and procedures relating to the disclosure and categorization of ARS. The plan sets forth provisions regarding, among other things, future sales of products to customers. Moreover, the Firm has established committees and procedures within the Firm to assess and evaluate the appropriateness of investment products.

We further find that although the Firm has disciplinary history, the record shows that it has taken corrective actions to address noted deficiencies. Further, none of the Firm's recent regulatory events relate to ARS, and FINRA's examinations of the Firm since entry of the

⁴ We have also considered that in connection with the Judgment, the Commission has granted the Firm and its affiliates waivers under the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Exchange Act, and the rules and regulations promulgated thereunder. Further, the liability related to the ARS business of Wachovia Securities was inherited by Wells Fargo as a result of a merger that occurred in 2008. Wells Fargo itself was never charged by the Commission for ARS violations. Finally, we note that the Commission has recently granted the applications of two other firms, Citigroup Global Markets, Inc. and RBC Capital Markets Corporation, to remain FINRA members notwithstanding their statutory disqualifications for misconduct that was nearly identical to the misconduct underlying the Judgment.

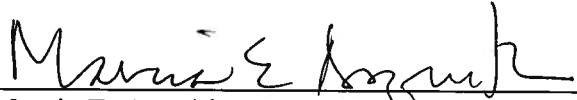
Judgment have not detected repeat violations in this area. We agree with Member Regulation that the Firm's disciplinary history should not prevent it from continuing as a FINRA member.

At this time, we are satisfied, based in part upon the Firm's representations concerning its compliance with the plan, Member Regulation's representations concerning FINRA's future monitoring of the Firm, and the record currently before us, that the Firm's continued membership in FINRA is consistent with the public interest and does not create an unreasonable risk of harm to the market or investors. Accordingly, we approve the Firm's Application to continue its membership in FINRA.

FINRA certifies that the Firm meets all qualification requirements and represents that it is registered with several other self-regulatory organizations, including BATS, NYSE AMEX, NYSE, CHX, NQX, NASDAQ OMX PHLX, NASDAQ OMX BX, DTC and NSCC, which concur with the Firm's continued membership as described herein. The Firm also represents that it employs a number of individuals who are subject to a statutory disqualification.

Accordingly, we approve the Firm's Application to continue its membership in FINRA as set forth herein. In conformity with the provisions of Exchange Act Rule 19h-1, the continued membership of the Firm will become effective within 30 days of the receipt of this notice by the Commission, unless otherwise notified by the Commission.

On Behalf of the National Adjudicatory Council,



Marcia E. Asquith
Senior Vice President and Corporate Secretary