

1 STATE OF ALASKA
2 DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
3 DIVISION OF BANKING AND SECURITIES

3 In the matter of)
4 WELLS FARGO INVESTMENTS, LLC,) ORDER NO: 10-17-S
5 Respondent.) ADMINISTRATIVE CONSENT ORDER
6)

7 WHEREAS, Wells Fargo Investments, LLC (“WFI”) is a broker-dealer registered with the
8 State of Alaska; and

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

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

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

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

19 WHEREAS, WFI elects to waive permanently any right to a hearing and appeal under the
20 Alaska Securities Act, Alaska Statutes (“AS”) 45.55, and the Administrative Procedures Act, AS
21 44.62, with respect to this Administrative Consent Order (the “Order”); and

22 WHEREAS, WFI admits the jurisdiction of the State of Alaska, Department of Commerce,
23 Community, and Economic Development, Division of Banking and Securities (the “Division”)
24 and consents to the entry of this Order by the Division; and

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

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

7 NOW, THEREFORE, the Division, as administrator of the Alaska Securities Act, hereby
8 enters this order:

9 I. FINDINGS OF FACT

10 Background

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

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

23 3. Beginning on or about February 13, 2008, there were not enough purchasers for
24 ARS at many auctions. The broker-dealers that had previously supported the auctions for these

1 securities ceased their practice of bidding to prevent auction failures. As a result, the ARS market
2 experienced widespread failed auctions. ARS purchasers who wished to sell their ARS were
3 forced to continue holding their positions.

4 Marketing of ARS by WFI

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

10 5. On February 14, 2008, WFI customers nationwide were holding approximately
11 \$2.95 billion in ARS in 5,692 accounts.

12 6. WFI participated in sales of ARS to customers in the state of Alaska. In Alaska,
13 approximately 32 WFI accounts held \$14,343.20 in ARS on February 14, 2008.

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

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

22 Failure to Supervise Agents Who Marketed ARS

23 9. WFI failed to provide adequate supervision and training to its registered agents in
24 connection with the marketing of ARS. Some of WFI’s registered agents were not adequately

1 educated about ARS products. WFI failed to provide timely and comprehensive sales and
2 marketing literature regarding ARS and the mechanics of the auction process.

3 10. Some WFI registered agents believed that the ARS were safe and were not aware
4 that auctions could fail and that money invested in ARS could become frozen. In part, this was
5 because some WFI registered agents were not aware of significant aspects of the auction rate
6 market.

7 11. WFI did not establish specific written supervisory procedures for the review of
8 ARS transactions, nor did WFI train supervisory personnel on how to review ARS transactions.

9 II. CONCLUSIONS OF LAW

10 The Division has jurisdiction over this matter pursuant to the Alaska Securities Act.

11 For the reasons alleged in the Findings of Fact, above, WFI failed to supervise
12 reasonably its registered agents in connection with the marketing of ARS to its customers. Such
13 conduct in relation to ARS violates AS 45.55.060(b)(1).

14 The Division finds the following relief appropriate and in the public interest.

15 III. ORDER

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

19 IT IS HEREBY ORDERED:

20 1. This Order concludes the investigation by the Division and any other action that the
21 Division could commence under applicable Alaska law on behalf of the State of Alaska as it
22 relates to WFI's marketing of ARS to customers.

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

1 3. WFI shall cease and desist from violating the Alaska Securities Act and will comply
2 with the Alaska Securities Act.

3 4. Within ten (10) days from the entry of this Order, WFI shall pay the sum of
4 Eighteen Thousand One Hundred Forty-Three Dollars and Twenty Cents (\$18,143.20) to the State
5 of Alaska, such amount to be restricted to the following specific use by the Division: promoting
6 investor education, investor protection, and compliance with the securities laws. This amount
7 constitutes Alaska's proportionate share of the multistate settlement amount of \$1,900,000.

8 5. The total amount paid to the Division pursuant to the foregoing paragraph shall
9 remain at \$18,143.20 regardless of whether another state securities regulator determines not to
10 accept WFI's state settlement offer.

11 6. WFI shall take certain measures with respect to current and former customers that
12 purchased "Eligible ARS," as defined and described in Paragraphs 8 through 15 of Section III,
13 below.

14 7. Eligible ARS. For purposes of this Order as it relates to WFI, "Eligible ARS" shall
15 mean ARS that were purchased for customers by WFI on or before February 13, 2008, and that
16 have failed at auction at least once since February 13, 2008. Notwithstanding the foregoing
17 definition, Eligible ARS shall not include ARS that were purchased for customers by WFI or
18 entities acquired by Wells Fargo's parent companies in accounts owned, managed or advised by or
19 through independent registered investment advisers.

20 8. Eligible Investor. For the purposes of this Order as it relates to WFI, "Eligible
21 Investor" shall mean:

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

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 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 government
7 entities, which are the beneficial owners of an account that purchased Eligible ARS.

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

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

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

22 10. Notification and Buyback Procedures.

23 a. WFI shall undertake to identify and provide notice to Eligible Investors of
24 the relevant terms of this Order by no later than February 16, 2010. Said notice shall

1 explain what Eligible Investors must do to accept, in whole or in part, the Purchase Offer,
2 including how Eligible Investors may accept the Purchase Offer. WFI shall also provide
3 written notice of the relevant terms of this Order to any subsequently identified Eligible
4 Investors.

5 b. Initial Offer Period

6 (i) WFI shall keep the Purchase Offer open for sixty (60) days after
7 mailing the notice required by Section III, Paragraph 11a, above (“Initial Offer
8 Period”).

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

15 c. Second Offer Period

16 (i) WFI shall undertake its best efforts to identify and provide a second
17 notice to all Eligible Investors who do not accept the Purchase Offer within the
18 Initial Offer Period. This second notice must satisfy the requirements discussed in
19 Section III, Paragraph 11a, above, and be sent no later than thirty (30) days after the
20 Initial Purchase Deadline.

21 (ii) WFI shall keep the Purchase Offer open for sixty (60) days after
22 mailing the second notice required by Section III, Paragraph 11c.i, above (“Second
23 Offer Period”).
24

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

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

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

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

19 11. Customer Assistance Line. WFI shall promptly establish a dedicated toll-free
20 telephone assistance line and e-mail address to provide information and to respond to questions
21 concerning the terms of this Order. WFI shall maintain the telephone assistance line and e-mail
22 address through at least the Second Purchase Deadline.

23 12. Relief for Eligible Investors Who Sold Below Par. No later than upon the
24 completion of the buyback (as described in Section III, Paragraph 11, above), WFI shall undertake

1 its best efforts to identify and provide notice to, using the notice to Eligible Investors referenced in
2 Section III, Paragraph 11 above, Eligible Investors who sold Eligible ARS below par between
3 February 13, 2008 and November 18, 2009 (“Below Par Seller”) and, upon receipt of satisfactory
4 evidence of the sale, pay them the difference between par and the price at which the Eligible
5 Investor sold the Eligible ARS, plus interest thereon at the rate of seven-day LIBOR.

6 13. Consequential Damages Arbitration Process.

7 a. WFI shall consent to participate in a special arbitration process
8 (“Arbitration”) for the exclusive purpose of arbitrating any Eligible Investor’s
9 consequential damages claim arising from their inability to sell Eligible ARS. WFI shall
10 notify Eligible Investors of the terms of the Arbitration process through the notice
11 described in Section III, Paragraph 11 above.

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

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

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

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

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

11 IV. ADDITIONAL CONSIDERATIONS

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

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

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

19 b. Charities, endowments, or foundations with Internal Revenue Code Section
20 501(c)(3) status, or religious corporations or entities that purchased Eligible ARS; and

21 c. Trusts, corporate trusts, corporations, employee pension plan/ERISA and
22 Taft Hartley Act plans, educational institutions, incorporated not for profit organizations,
23 limited liability companies, limited partnerships, non public companies, partnerships,
24 personal holding companies, unincorporated associations, governments or quasi

1 government entities, which are the beneficial owners of an account that purchased Eligible
2 ARS, unless the value of the account exceeded \$10 million as of January 31, 2008 or the
3 beneficial owner had disclosed to WFI, WFS (as successor to WFBS), WFBS or WFIS
4 total investable assets in excess of \$10 million;

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

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

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

23 3. WFS (as successor to WFBS) and WFIS have agreed to use their best efforts to
24 provide liquidity solutions to their customers who have investable assets above \$10 million. WFS

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

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

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

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

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

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

13 9. This Order and any dispute related thereto shall be construed and enforced in
14 accordance with, and governed by, the laws of Alaska without regard to any choice of law
15 principles.

16 10. WFI, through its execution of this Order, voluntarily waives its right to a hearing on
17 this matter and to judicial review of this Order under the Alaska Securities Act.

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

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

STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
DIVISION OF BANKING AND SECURITIES
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13. Nothing contained in this Order shall be deemed to be an admission of any liability, fault or wrongdoing. The Parties agree that this Order shall not be admissible in any hearing, action, or proceeding except to prove the existence of this Order or to enforce the Order's terms.

SO ORDERED this 4th day of November, 2010.

State of Alaska
Department of Commerce, Community, and
Economic Development
Division of Banking and Securities

/s/ Lorie L. Hovanec
By: Lorie L. Hovanec, Director

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

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

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

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

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

13 DATED this 28th day of October, 2010.

14 WELLS FARGO INVESTMENTS, LLC

15
16 By: /s/ Lisa Amador

17 Title: Chief Compliance Officer

18
19 SUBSCRIBED AND SWORN TO before me this 28th day of October, 2010.

20 /s/ Jose L. Delgadillo

21 Notary Public

22 My commission expires:

23 Nov 17, 2010