FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2020066327501

TO: Department of Enforcement
Financial Industry Regulatory Authority (FINRA)

RE: Wells Fargo Clearing Services, LLC (Respondent)
Member Firm
CRD No. 19616

Wells Fargo Advisors Financial Network, LLC (Respondent)
Member Firm
CRD No. 11025

Pursuant to FINRA Rule 9216, Respondents Wells Fargo Clearing Services, LLC ("WFCS") and Wells Fargo Advisors Financial Network, LLC ("WFAFN") (collectively, the "Respondents" or the "firms") submit this Letter of Acceptance, Waiver, and Consent (AWC) for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against Respondents alleging violations based on the same factual findings described in this AWC.

I.

ACCEPTANCE AND CONSENT

A. Respondents hereby accept and consent, without admitting or denying the findings and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

Respondent WFCS, a FINRA member since July 1987, is headquartered in St. Louis, MO and engages in a general securities business. WFCS has approximately 22,000 registered representatives at approximately 5,700 branches. In November 2016, Wells Fargo Advisors, LLC merged with First Clearing, LLC to become WFCS.

Respondent WFAFN, a FINRA member since November 1983, is headquartered in St. Louis, MO and engages in a general securities business. WFAFN has approximately 1,300 registered representatives at approximately 500 branches.

In *Wells Fargo Advisors LLC, Wells Fargo Advisors Financial Network, LLC and First Clearing, LLC,* AWC 2016050274801 (December 2016), FINRA found that respondents violated various books and records retention requirements and related supervisory rules. Specifically, FINRA found that from 2003 to the date respondents executed the AWC, respondents failed to maintain approximately one million electronic brokerage records in

the required non-erasable and non-writable format, known as WORM format,[1] and failed to preserve various records, including at least 150,000 communications. Accordingly, FINRA found that respondents violated Section 17(a) of the Securities Exchange Act of 1934, Exchange Act Rule 17a-4, NASD Rules 3110, 3010, and 2110, and FINRA Rules 4511, 3110, and 2010. Respondents were fined $1.5 million, and were also required to "submit to FINRA a written plan of how Respondents will undertake to conduct a comprehensive review of the adequacy of the relevant policies and procedures (written and otherwise), including a description of remedial measures leading to full compliance, relating to the conduct addressed" in the December 2016 AWC.

On February 17, 2017, respondents submitted to FINRA the plan required by the December 2016 AWC. On June 19, 2017, respondents certified to FINRA that they had concluded their review of the relevant policies and procedures and had "adopted and implemented policies and procedures reasonably designed to achieve compliance with the applicable federal securities laws and FINRA rules" addressed in the December 2016 AWC.[2]

OVERVIEW

From 2003 to August 2020, the firms failed to store approximately 13 million records related to their customer identification program—an integral part of an anti-money laundering program—in the required WORM format. The firms first became aware of the issue in November 2016, prior to the execution of the December 2016 AWC, while efforts to remediate their books and records violations were underway, and before they provided to FINRA the certification pursuant to the December 2016 AWC. The firms did not advise FINRA of the issue when it was discovered, and failed to take steps to fix and remediate this deficiency, or report it to FINRA, for more than three years thereafter.

FACTS AND VIOLATIVE CONDUCT

This matter originated when the firms self-reported the issue to FINRA on April 13, 2020.

Broker-dealers are required to establish, document, and maintain a Customer Identification Program (CIP), including risk-based procedures for verifying the identity of its customers, pursuant to federal anti-money laundering regulations. A broker-dealer's CIP must include procedures for making and maintaining records of all information obtained in verifying a customer's identity, including a description of the methods and the results of any identity verification measures, and a description of the resolution of each substantive discrepancy discovered when verifying such information. As such, CIP records are an integral part of a broker-dealer's anti-money laundering program.

[1] The requirement that electronic business records must be stored in WORM format – which means "write once, read many" – is intended to prevent their alteration or destruction.

[2] For more information about the firm, including prior regulatory events, visit BrokerCheck® at www.finra.org/brokercheck.

Documents generated from a broker-dealer's CIP are required under 31 C.F.R. § 1023.220(a)(3)(ii) to be maintained pursuant to Exchange Act Rule 17a-4, including Exchange Act Rule 17a-4(f)(2)(ii)(A), which mandates that when a firm maintains records electronically, it must "[p]reserve the records exclusively in a non-rewritable, non-erasable," or WORM format.

FINRA Rule 4511 provides, in part, that each member "shall make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules…" and all "books and records required to be made pursuant to the FINRA rules shall be preserved in a format and media that complies with" Exchange Act Rule 17a-4.[3]

In November 2016, while the firms were taking remedial measures regarding the issues underlying the December 2016 AWC, firm personnel discovered that the firms were storing records related to the firms' CIP on a system that was not WORM-compliant. At a November 17, 2016 meeting, they advised an internal firm working group that addressed books and records requirements of this issue. The working group concluded that the issue should be escalated to determine if it needed to be reported to FINRA. The issue, however, was not escalated to the firms' working group that considered FINRA reporting obligations, and the firms did not report it to FINRA or remediate it at that time. The firms continued to store CIP records on the non-WORM compliant platform for more than three years.

In April 2019, the firms began reviewing whether certain ongoing projects would have an impact on CIP records. In connection with that review, in January 2020 the firms concluded that the firms were storing CIP records on a system that was not WORM-compliant. The firms self-reported the issue to FINRA in April 2020, and by August 2020 the firms migrated the relevant records to a WORM-compliant platform. Approximately 13 million CIP-related records,[4] pertaining to approximately 8.2 million customers, were stored on the non-WORM compliant platform from 2003 to August 2020, with approximately 4 million documents having been stored on the firms' non-WORM compliant platform after the firms discovered the issue in November 2016.

Therefore, from 2003 to August 2020, the firms violated Exchange Act Rule 17a-4(f)(2)(ii)(A), NASD Rules 3110 and 2110, and FINRA Rules 4511 and 2010.[5]

In addition, Exchange Act Rule 17-4(f)(3)(v) requires a broker-dealer to "have in place an audit system providing for accountability regarding inputting of records required to be maintained and preserved pursuant to [Exchange Act Rules 17a-3 and 17a-4] to electronic storage media and inputting of any changes made to every original and duplicate record maintained and preserved thereby." Exchange Act Rule 17a-4(f)(2)(i)

[3] FINRA Rule 4511 replaced NASD Rule 3110, effective December 5, 2011.
[4] Of the 13 million records, 1.3 million were those of WFAFN and 11.7 million were those of WFCS.
[5] FINRA Rule 2010 provides that a "member, in the conduct of its business shall observe high standards of commercial honor and just and equitable principles of trade." FINRA Rule 2010 replaced NASD Rule 2110, effective December 15, 2008.

requires a broker-dealer to "notify its examining authority … prior to employing electronic storage media" and "[i]f employing any electronic storage media other than optical disk technology … must notify its designated examining authority at least 90 days prior to employing such storage media."

The non-WORM compliant platform on which the CIP-related records were stored did not have the required audit system. The firms also failed to notify FINRA, its designated examining authority, at least 90 days prior to using the non-WORM compliant platform on which it stored the CIP-related records. Therefore, from 2003 to August 2020, the firms violated Exchange Act Rules 17a-4(f)(3)(v) and 17a-4(f)(2)(i), NASD Rules 3110 and 2110, and FINRA Rules 4511 and 2010.

SANCTIONS CONSIDERATIONS

In determining the appropriate sanctions in this matter, FINRA considered, among other factors, that the firms (i) identified the CIP-related WORM issue in November 2016 while they were finalizing the December 2016 AWC with FINRA, but did not advise FINRA of the issue at that time; and (ii) did not inform FINRA of the CIP-related WORM violation, or remediate it, for more than three years after its discovery.

B. Respondents also consent to the imposition of the following sanctions:

- a censure; and
- a $2,250,000 fine (to be paid jointly and severally).

Respondents agree to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Respondents have submitted an Election of Payment form showing the method by which they propose to pay the fine imposed.

Respondents specifically and voluntarily waive any right to claim an inability to pay, now or at any time after the execution of this AWC, the monetary sanction imposed in this matter.

The sanctions imposed in this AWC shall be effective on a date set by FINRA.

II.

WAIVER OF PROCEDURAL RIGHTS

Respondents specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

A. To have a complaint issued specifying the allegations against them;

B. To be notified of the complaint and have the opportunity to answer the allegations in writing;

C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made, and to have a written decision issued; and

D. To appeal any such decision to the National Adjudicatory Council (NAC) and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Respondents specifically and voluntarily waive any right to claim bias or prejudgment of the Chief Legal Officer, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

Respondents further specifically and voluntarily waive any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

Respondents understand that:

A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA), pursuant to FINRA Rule 9216;

B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondents; and

C. If accepted:

1. this AWC will become part of Respondents' permanent disciplinary record and may be considered in any future action brought by FINRA or any other regulator against Respondents;

2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;

3. FINRA may make a public announcement concerning this agreement and its subject matter in accordance with FINRA Rule 8313; and

4. Respondents may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Respondents may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects Respondents' testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

D. Respondents may attach a corrective action statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondents understand that they may not deny the charges or make any statement that is inconsistent with the AWC in this statement. This statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA.

The undersigned, on behalf of Respondents, certifies that a person duly authorized to act on Respondents' behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that Respondents have agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce Respondents to submit this AWC.

December 3, 2021 — Jim Hays

Date

Wells Fargo Clearing Services, LLC
Respondent

Print Name: Jim Hays

Title: President, Wells Fargo Advisors

December 3, 2021 — Jim Hays

Date

Wells Fargo Advisors Financial Network, LLC
Respondent

Print Name: Jim Hays

Title: President, Wells Fargo Advisors

[redacted]

Reviewed by:

Michael Wolk

Michael D. Wolk
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Accepted by FINRA:

Signed on behalf of the
Director of ODA, by delegated authority

December 6, 2021

Date

Bruce Sabados

Bruce M. Sabados
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