

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**  
**Release No. 9349 / August 14, 2012**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 67649 / August 14, 2012**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 30167 / August 14, 2012**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-14982**

**In the Matter of**

**Wells Fargo Brokerage Services,  
LLC n/k/a Wells Fargo Securities,  
LLC and Shawn Patrick  
McMurtry**

**Respondents.**

**ORDER INSTITUTING  
ADMINISTRATIVE AND CEASE-AND-  
DESIST PROCEEDINGS PURSUANT TO  
SECTION 8A OF THE SECURITIES ACT  
OF 1933, SECTION 15(b) OF THE  
SECURITIES EXCHANGE ACT OF 1934,  
AND SECTION 9(b) OF THE  
INVESTMENT COMPANY ACT OF 1940,  
MAKING FINDINGS AND IMPOSING  
REMEDIAL SANCTIONS AND A CEASE-  
AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted, pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 15(b) of the Securities Exchange Act (“Exchange Act”), against Wells Fargo Brokerage Services, LLC n/k/a Wells Fargo Securities, LLC (“Wells Fargo”), and that public administrative and cease-and-desist proceedings be, and hereby are, instituted, pursuant to Section 8A of the Securities Act, Section 15(b) of the Exchange Act and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Shawn McMurtry (“McMurtry”) (Wells Fargo and McMurtry collectively “Respondents”).

**II.**

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) which the Commission has determined to accept. Solely for the

purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Section 15(b) of the Securities Exchange Act of 1934, and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

### III.

On the basis of the Order and the Respondents' Offers, the Commission finds<sup>1</sup> that:

#### Summary

1. From at least January 1, 2007 through August 14, 2007 ("relevant time period"), Wells Fargo and certain of its registered representatives made recommendations to certain institutional customers to purchase asset-backed commercial paper issued by limited purpose companies called Structured Investment Vehicles ("SIVs"), which were complex investment vehicles backed largely by high-risk mortgage-backed securities ("MBS") and collateral debt obligations ("CDOs"). Wells Fargo registered representatives in Wells Fargo's Institutional Brokerage and Sales Division, including McMurtry, recommended and sold these asset-backed commercial paper investments to certain institutional customers, including municipalities and non-profit institutions.

2. During the relevant time period, Wells Fargo and certain of its registered representatives recommended and sold complex forms of SIV-issued asset-backed commercial paper to institutional customers without obtaining sufficient information and understanding about the nature and risk of these products. Among other things, Wells Fargo and its registered representatives did not review the commercial paper private placement memoranda ("PPMs") for the investments and the extensive risk disclosures in those documents. Instead, Wells Fargo and its registered representatives relied almost exclusively on the credit ratings of these products, despite warnings against such over-reliance on ratings. Wells Fargo also failed to establish any procedures to ensure that its personnel adequately reviewed and understood the nature and risks of these commercial paper programs. As a result, Wells Fargo and its registered representatives failed to: (i) have a reasonable basis for their recommendations; and (ii) in connection with their recommendations, disclose to their institutional customers the risks associated with the complex SIV-issued asset-backed commercial paper investments, including the nature and volatility of the underlying assets. A number of institutional customers purchased SIV-issued asset-backed commercial paper as a result of Wells Fargo's recommendations. In particular, McMurtry exercised discretionary authority in violation of Wells Fargo's internal policy and selected the particular issuer of asset-backed commercial paper for one long-standing municipal customer. Although Wells Fargo received a small amount of commissions from these transactions, Wells Fargo's

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<sup>1</sup> The findings herein are made pursuant to the Respondents' Offers and are not binding on any other person or entity in this or any other proceeding.

misconduct nevertheless resulted in, or created a significant risk of, substantial losses by these customers in 2007 when three SIV-issued asset-backed commercial paper programs, which were backed largely by MBS and CDOs, defaulted.

3. Wells Fargo and McMurtry were, at a minimum, negligent in recommending the relevant asset-backed commercial paper programs without obtaining adequate information about them to form a reasonable basis for recommending these products and without disclosing the material risks of these products. As a result, Wells Fargo and McMurtry violated Sections 17(a)(2) and 17(a)(3) of the Securities Act.

### **Respondents**

4. Wells Fargo Brokerage Services, LLC was a registered broker-dealer subsidiary of Wells Fargo & Co. with its principal place of business in Minneapolis, Minnesota. On December 31, 2008, Wells Fargo & Co., the parent of Wells Fargo Brokerage Services, LLC, acquired the former Wachovia Corporation (“Wachovia”). In 2009, Wells Fargo Brokerage Services, LLC was combined with Wachovia’s former institutional broker-dealer business, Wachovia Capital Markets LLC, which now operates as Wells Fargo Securities, LLC. Wells Fargo Brokerage Services, LLC de-registered as a broker-dealer with the Commission in November 2009.

5. Shawn Patrick McMurtry, age 42, a resident of White Bear Lake, Minnesota, was employed by Wells Fargo or a predecessor from the time he graduated from college in June 1992 until he voluntarily terminated his employment in June 2012. Respondent McMurtry obtained his Series 7 and Series 63 licenses in July 1996 and became a registered representative in 2001. During the relevant time period, McMurtry was a Vice President in Wells Fargo’s Institutional Brokerage and Sales Division, and recommended and sold primarily fixed income securities to corporations, insurance companies, non-profit institutions, public entities and money managers.

### **Wells Fargo Targeted Municipalities and Non-Profit Customers**

6. Before and during 2007, the Institutional Brokerage and Sales Division of Wells Fargo had targeted municipalities and non-profit institutions as part of its institutional customer base (“municipal customers”).

7. Wells Fargo and its registered representatives routinely requested municipal customers’ investment policies to facilitate their recommendations. The first priority in the investment policies of many municipal customers was preservation of principal. Registered representatives frequently certified to these municipal customers on at least an annual basis that they understood the municipal customers’ investment policies. In addition, many municipal customers had long-term relationships with Wells Fargo and individual registered representatives.

8. Wells Fargo and its registered representatives knew, both from their customers’ investment policies and from discussions with customers, that many of their municipal

customers were interested in investing in conservative commercial paper.<sup>2</sup> Many of these customers needed to invest cash in instruments that allowed them timely access to the funds while obtaining an investment return.

9. Based on, among other things, the nature and longevity of their business relationships, many municipal customers placed a high level of trust in and reliance on their registered representatives. Customers that were permitted to purchase commercial paper generally would inform their registered representatives of the amount of money they had available for investment and the length of time they wished to invest it. Wells Fargo registered representatives typically would then respond with recommendations that included commercial paper. The commercial paper recommendations, which were based almost solely on the ratings assigned by the credit rating agencies, usually consisted of approximately three commercial paper investment choices that met the customers' criteria. Customers would then select one of the commercial paper investments recommended by the Wells Fargo registered representatives. Multiple registered representatives at Wells Fargo, including McMurtry, however, had a practice of exercising discretionary authority to make purchases of asset-backed commercial paper on behalf of certain customers. In these situations, the customer still informed the registered representative of the amount of money available for investment and the length of time for the investment, but permitted the registered representative to then select the particular commercial paper investment and execute the purchase of that investment for the customer.

**Wells Fargo Recommended Complex SIV-Issued Asset-Backed Commercial Paper to Its Municipal Customers Without Reviewing the Private Placement Memoranda and Risk Disclosures of the Asset-Backed Commercial Paper**

10. Wells Fargo and its registered representatives had historically sold highly-rated traditional direct corporate commercial paper to municipal customers. In addition to traditional commercial paper, many customers also purchased asset-backed commercial paper through Wells Fargo. Similar to direct commercial paper, asset-backed commercial paper was rated by various credit rating agencies.

11. The asset-backed commercial paper Wells Fargo sold to its municipal customers was not registered and thus the PPMs for those investments were not normally available to the general public. Customers accordingly could only obtain access to the information in the PPMs, or copies of the PPMs, from a professional in the securities industry. Wells Fargo generally did not provide the PPMs to customers in connection with commercial paper transactions.

12. It was not Wells Fargo's practice to conduct any review of the asset-backed commercial paper it recommended to customers and did not have procedures that required such a review. In addition, no department or individual inside of Wells Fargo was required to conduct any review of the offering documents or similar disclosure documents. In addition, no department or individual inside of Wells Fargo was required to assess any unique risks to the commercial paper type, the particular issuer or its structure. Instead, Wells Fargo and its

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<sup>2</sup> Commercial paper generally consists of short-term, unsecured promissory notes with fixed maturities, issued by corporations or other entities.

registered representatives relied largely on the credit ratings as the basis for their recommendations.

13. By 2007, in addition to the traditional direct corporate commercial paper, and the more established forms and issuers of asset-backed commercial paper that Wells Fargo had offered to its customers, other more unusual asset-backed commercial paper issued by complex investment vehicles was being created and sold in the marketplace. These newer commercial paper investments included asset-backed commercial paper programs that were collateralized by subprime mortgages. Some of this asset-backed commercial paper was issued by SIVs, little-known limited purpose companies that generally undertook arbitrage activities by buying primarily highly rated medium and long-term fixed-income assets, which they then funded through the sale of less expensive commercial paper and/or notes.

14. Some of the asset-backed commercial paper was issued by so-called "SIV-Lites," which also engaged in similar arbitrage activity but generally did not have the asset diversification of a SIV. In addition, SIV-Lites often were highly leveraged and the highest proportion of their assets consisted of residential mortgage-backed securities, many of which were derived from sub-prime mortgages. The SIV/SIV-Lite marketplace was at its height in 2007.

15. SIVs and SIV-Lites invested extensively in securities backed by subprime mortgages or related derivatives such as CDOs. The primary collateral of the asset-backed commercial paper issued by these entities thus was MBS and derivatives purchased by these special entities, which had little or no other assets. As a result, these asset-backed commercial paper programs were particularly exposed to risks associated with MBS and derivatives thereof.

16. Wells Fargo recommended and sold asset-backed commercial paper in its role as a broker for its institutional customers. Wells Fargo did not underwrite or participate in the issuance of, or act as a program dealer for, the SIV/SIV-Lite-issued asset-backed commercial paper, nor did Wells Fargo have any role in structuring the SIVs or SIV-Lites or in selecting their investments.

17. As SIVs and SIV-Lites became increasingly present in the marketplace, Wells Fargo did not change its practices as to the review or disclosure of risks of commercial paper. Thus, in 2007, no one at Wells Fargo was responsible for reviewing, and generally no one reviewed, the PPMs of asset-backed commercial paper programs to assess any specialized risks to the particular security or its structure. Accordingly, the registered representatives had little information about these securities beyond their ratings, yields and maturity dates. In fact, multiple registered representatives at Wells Fargo had never heard of a SIV at the time they were selling the SIV-issued asset-backed commercial paper to their customers. As a result of their failure to understand these products, the registered representatives made no distinctions among traditional direct corporate commercial paper, asset-backed commercial paper and unusually structured SIV-issued asset-backed commercial paper. Despite their lack of knowledge regarding these complex products, in 2007, Wells Fargo and certain of its registered representatives recommended asset-backed commercial paper that was backed by MBS and issued by SIV/SIV-Lites. They made recommendations based almost solely on the ratings that the credit rating agencies assigned to the commercial paper.

## **Wells Fargo's Misconduct Resulted in or Created a Significant Risk of Substantial Losses to Customers**

18. A number of the municipal customers had indicated in Wells Fargo account opening documents that they did not want to invest in MBS. Other municipal customers were prohibited by state law from holding certain MBS and these restrictions were set forth in the customers' investment policies or other documents in Wells Fargo's possession. However, because no one at Wells Fargo read the relevant disclosure documents for the asset-backed commercial paper in question, Wells Fargo offered customers asset-backed commercial paper programs that were materially exposed to the MBS market.

19. In 2007, Wells Fargo sold, among others, three SIV-Lite programs that had received the highest ratings from each of the three major credit rating agencies: Rhinebridge PLC ("Rhinebridge"), Mainsail II Ltd. ("Mainsail") and Golden Key Ltd. ("Golden Key").<sup>3</sup> The PPMs for all three products stated that the issuers were limited liability companies specifically formed to invest in MBS and other complex securities, such as CDOs, and that they were issuing asset-backed commercial paper to obtain short-term financing for these securities and derivatives.

20. The market for asset-backed commercial paper contracted severely beginning in mid-August 2007 due in part to the increased market perception of the risk of subprime mortgages, which formed much of the collateral for a number of SIV-issued asset-backed commercial paper programs. As a result, credit rating agencies downgraded a number of SIV-issued asset-backed commercial paper programs and, ultimately, many defaulted.

21. In August 2007, Mainsail and Golden Key defaulted. Rhinebridge, after having been on the market for only four months, defaulted in October 2007.

22. Approximately ten Wells Fargo customers were holding a total of approximately \$104.4 million in commercial paper issued by Mainsail, Golden Key and Rhinebridge when the defaults occurred. These three defaults resulted in, or created a significant risk of, substantial losses for these ten customers. Wells Fargo's total commission in 2007 for the sale of Mainsail, Golden Key and Rhinebridge was approximately \$65,000.

23. The PPMs for these asset-backed commercial paper programs provided clear disclosure about the risks associated with the products. In fact, the PPMs for these three SIVs each contained approximately 20-30 pages of risk disclosures. These risks included Risks Relating to Nonprime and other Mortgage Backed Securities, Risks Related to Investments Backed by Residential Mortgages, Risks Related to Commercial Mortgage Backed Securities, Risks Related to CDOs and Synthetic Securities, Considerations Related to Asset Backed Securities, Spread Risk, International Risk, Credit Risk and others. In addition, many of the PPMs had language specifically identifying a market decline in the residential mortgage market.

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<sup>3</sup> For example, Rhinebridge, Golden Key and Mainsail II each had been rated A1+ (a Standard & Poor's rating) or P1 (a Moody's rating), the highest possible ratings awarded by those credit rating agencies, at the time the Wells Fargo customers bought them.

24. In each case, the very scenario that took place in the market in 2007 had been described with precision in the risk disclosures in the PPMs. For example, Mainsail's July 2007 PPM specifically stated that "According to recently published reports, the residential mortgage market in the US has experienced a variety of difficulties and changed economic conditions that may adversely affect the performance and market value of US Residential ABS Securities... Delinquencies, defaults and losses with respect to residential mortgage loans generally reportedly have increased in recent months, and may continue to increase, particularly in the subprime sector. In addition, in recent months published reports have indicated that housing prices and appraisal values may result in additional increases in delinquencies and losses on US Residential Asset Backed Securities."

25. Because the Wells Fargo registered representatives had not reviewed the PPMs, or otherwise investigated the programs before recommending asset-backed commercial paper to their customers, they were unaware of the risks. They accordingly did not disclose these risks to customers or factor them into their recommendations.

26. As a result of this lack of adequate knowledge of the products they were selling, Wells Fargo and certain of its registered representatives recommended and sold SIV-issued asset-backed commercial paper to customers without adequate basis and without disclosure to customers of the relevant risks. They also did not disclose to these customers their lack of investigation regarding the programs.

27. Wells Fargo and its registered representatives' failures to have a reasonable basis for their recommendations and to disclose the risks associated with the products they recommended and sold were particularly significant failures, in light of the fact that many Wells Fargo customers had advised that they either did not want, or were legally prohibited from purchasing, MBS.

### **Contemporaneous Warnings Against Over-Reliance on Credit Ratings**

28. In 2005, the NASD (now FINRA) issued a written warning specifically cautioning against over-reliance on credit ratings in connection with structured products. In a September 2005 Notice to Members, the NASD provided guidance on the sale of structured products. The Notice stated:

"In some cases, structured products are assigned a credit rating by a nationally recognized statistical rating organization. To the extent that such credit rating pertains to the creditworthiness of the issuer (*i.e.*, the ability of the issuer to meet its obligations under the terms of the structured product) and is not indicative of the market risk associated with the structured product or the reference security, members must be careful to delineate these distinctions. ***Presentation of a credit rating for a structured product that suggests that the rating pertains to the safety of the principal invested or the likely investment returns will be viewed as misleading. Members presenting a credit rating must address the fact that the creditworthiness of the issuer does not affect or enhance the likely performance of the investment other than the ability of the issuer to meet its obligations.*** (emphasis added)"

29. At least one of the SIV PPMs explained that the collateral assets of the programs were “structured finance securities.”

30. Similarly, cautionary statements in many of the PPMs warned against such over-reliance on credit ratings. For example, the Rhinebridge PPM included a disclaimer that “a rating does not comment as to...suitability for a particular investor....”

31. Nevertheless, Wells Fargo and certain of its registered representatives relied almost exclusively on the credit ratings assigned to asset-backed commercial paper programs in making recommendations to their customers.

### **Wells Fargo’s Sale of SIV-Lite Asset-Backed Commercial Paper**

32. One particular municipal entity had been a customer of Wells Fargo, or a predecessor, since at least 1988. This customer’s investment objectives were safety of principal and income. Wells Fargo had a policy that prohibited its registered representatives from selecting investments on behalf of their customers in the absence of express written authority to do so. Nonetheless, Respondent McMurtry, who held the title of Vice President, selected which commercial paper issuers this municipal entity would purchase and executed the investments on the customer’s behalf. Wells Fargo’s internal records for the customer’s account specifically stated that the account should not invest in MBS. In addition, applicable state law prohibited municipal entities such as this customer from investing in certain “high-risk mortgage-backed securities.”

33. Respondent McMurtry nevertheless selected and purchased for this municipal customer a SIV-issued asset-backed commercial paper program which was backed by MBS and related high-risk mortgage-backed derivatives. In selecting the commercial paper issuer for the customer, McMurtry was exercising discretionary authority. On April 30, 2007, McMurtry selected and purchased Golden Key on behalf of the customer. McMurtry did not know what a SIV was at that time he selected Golden Key for his customer. Further, he did not read the PPM for Golden Key, nor did he inform the customer of the risks related to the SIV structure or the underlying high-risk mortgage-backed assets held by Golden Key.

34. The municipal customer’s investment in Golden Key was due to mature on September 28, 2007, but was downgraded on August 23, 2007 and defaulted thereafter. Until the default of Golden Key, the customer’s representatives believed Wells Fargo purchased only traditional commercial paper on its behalf. It was only after the default that they learned about the risks and nature of Golden Key asset-backed commercial paper.

### **Subsequent Developments**

35. In or about August 2007, as the market for asset-backed commercial paper contracted severely, Wells Fargo determined that credit ratings did not accurately reflect the risks of certain asset-backed commercial paper. As a result, on August 15, 2007, Wells Fargo made the decision to suspend the sale of all asset-backed commercial paper to its customers.

36. In addition, as part of the liquidation of Golden Key, Mainsail and Rhinebridge, two of the ten Wells Fargo customers elected to receive a one-time cash distribution at a severe

discount to the amounts of their original investments. As a result, these two customers realized losses of approximately \$4.2 million. Another six Wells Fargo customers, however, elected to receive periodic payments from the underlying assets that served as collateral to the SIV asset-backed commercial paper. As such, the amount of any loss that may be realized by these six Wells Fargo customers has not yet been determined because it is dependent upon the amount of future payments from these underlying assets.

37. In addition, two other of these ten Wells Fargo customers filed lawsuits against Wells Fargo in connection with their purchases of approximately \$8.5 million of asset-backed commercial paper from Rhinebridge and Golden Key. One of these customers received \$4,629,800 in a cash distribution as part of the liquidation of the investment and Wells Fargo, in settlement of the claims against it, subsequently paid \$4,157,971 to that customer. In addition, Wells Fargo paid \$489,410 to the second customer to settle its claim.

38. Since 2007, Wells Fargo has taken a number of remedial measures designed to ensure that Wells Fargo and its registered representatives have adequate information about the nature and risk of the securities that they recommend to customers, and that relevant information will be disclosed to the customers regarding such securities. The steps include: (1) a Wells Fargo Asset-Backed Commercial Paper Permitted List wherein the offering documents for asset-backed commercial paper are reviewed by money market traders and a limited number of commercial paper products are permitted for sale to institutional customers; (2) enhanced supervisory procedures related to the assessment of product knowledge by registered representatives in the relevant designated sales force who sell commercial paper to municipalities; (3) quarterly meetings attended by the heads of each fixed income trading desk, the national sales manager and representatives of the compliance department during which products sold to municipal and other customers and developments in those product types are reviewed as are the relevant trading desk reports on variations or modifications in the market that presently raise or are expected to raise materially new or different risks or that exhibit other characteristics that may require reassessment of the sales force's understanding of the product; and (4) the practice of delivering, or providing electronic access to, copies of offering materials to purchasers of asset-backed commercial paper.

### **Legal Discussion**

39. Section 17(a)(2) of the Securities Act prohibits any person, in the offer or sale of any security, from obtaining money or property by means of any untrue statement of material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. Section 17(a)(3) of the Securities Act prohibits any person, in the offer and sale of any security, from engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser. Sections 17(a)(2) and 17(a)(3) of the Securities Act do not require a showing of scienter. Aaron v. SEC, 466 U.S. 680 (1980). A showing of negligence is sufficient to establish violations of these provisions. Id. at 701-702.

40. A broker's recommendation "carries the implicit representation that it was 'responsibly made on the basis of actual knowledge and careful consideration.'" Richard G. Cody, Exchange Act Rel. No. 64565 at 12 (May 27, 2011) *citing* F.J. Kaufman & Co. of Va., 50

S.E.C. 164, 168 n. 18 (1989) (*citing Alexander Reid & Co., Inc.*, 40 S.E.C. 986, 990-91 (1962) ('A broker-dealer in his dealings with customers impliedly represents that his opinions and predictions respecting a [security] which he has undertaken to recommend are responsibly made on the basis of actual knowledge and careful consideration . . . . [I]t is not a sufficient excuse that a dealer personally believes the representation for which he has no adequate basis.');

Distribution by Broker-Dealers of Unregistered Securities, Exchange Act Rel. No. 6721 (Feb. 2, 1962) ('[T]he making of recommendations for the purchase of a security implies that the dealer has a reasonable basis for such recommendations which, in turn, requires that, as a prerequisite, he shall have made a reasonable investigation.')

*See also Hanly v. SEC*, 415 F.2d 589, 596-597 (2d Cir. 1969) ("Broker-dealers occupy a special relationship with buyers of securities in that by their position they implicitly represent that they have an adequate and reasonable basis for the opinions they render.")

A broker or salesperson who fails to investigate facts surrounding a security and who subsequently recommends that security to customers without having an adequate and reasonable basis for that recommendation may be in violation of the antifraud provisions of the federal securities laws, including Sections 17(a)(2) and 17(a)(3) of the Securities Act. *SEC v. Great Lakes Equities*, 1990 WL 260587 at\*6 (E.D. Mich. Sept. 4, 1990) *citing Hanly*, 415 F.2d at 592. Broker-dealers that recommend securities to their customers have an obligation to disclose all material information the broker-dealer has regarding the securities, including negative information. *DeKwiatkowski v. Bear, Stearns & Co., Inc.*, 306 F.3d 1293, 1302 (2d Cir. 2002) (Broker-dealer "is obliged to give honest and complete information when recommending a purchase or sale"); *see also Dane S. Faber*, Exchange Act Rel. 49216 at 5 (Feb. 10, 2004) (Broker who recommended security to a customer should have disclosed to customer the speculative nature of security.)

41. As a result of the conduct described above, Wells Fargo and McMurtry willfully violated Sections 17(a)(2) and 17(a)(3) of the Securities Act.<sup>4</sup>

#### **Wells Fargo's Remedial Efforts**

42. In determining to accept Wells Fargo's Offer, the Commission considered remedial acts undertaken by Wells Fargo.

#### **IV.**

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in the Respondents' Offers.

Accordingly, pursuant to Section 8A of the Securities Act, Section 15(b) of the Exchange Act and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

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<sup>4</sup> A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

### **Wells Fargo**

- A. Respondent Wells Fargo shall cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act.
- B. Respondent Wells Fargo is censured.
- C. Respondent Wells Fargo shall, within 10 days of the entry of this Order, pay disgorgement of \$65,000, prejudgment interest of \$16,571.96 and a civil money penalty in the amount of \$6,500,000 to the Securities and Exchange Commission.

### **Shawn McMurtry**

- D. Respondent McMurtry shall cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act.
- E. Respondent McMurtry be, and hereby is, suspended from association with any broker, dealer, investment adviser, municipal securities dealer, transfer agent, municipal advisor, or nationally recognized statistical ratings organization, is prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter, and is suspended from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock, for a period of six months, effective on the second Monday following the entry of this Order.
- F. Respondent McMurtry shall provide to the Commission, within thirty (30) days after the end of the six-month suspension period described above, an affidavit that he has complied fully with the suspension.
- G. Respondent McMurtry shall, within ten days of the entry of this Order, pay a civil money penalty in the amount of \$25,000 to the Securities and Exchange Commission.

### **Payments and Distributions**

- H. All payments pursuant to paragraphs IV. C and G above, shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (b) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to Enterprise Services Center, HQ Bldg, Room 181, AMZ-341, 6500 South MacArthur Blvd, Oklahoma City, OK 73169; and (D) submitted under cover letter that identifies each Respondent as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Peter K.M. Chan, U.S. Securities and Exchange Commission, 175 W. Jackson Boulevard, Suite 900, Chicago, Illinois 60604. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717 and/or SEC Rule of Practice 600.

I. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the disgorgement, interest, and penalties described in Paragraphs IV.C. and G. above. Regardless of whether any such distribution is made from such Fair Fund, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalties, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that any Respondent receiving such offset shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against any of the Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

J. The disgorgement, pre-judgment interest, civil penalties and any other funds which may be paid to the Fair Fund through or as the result of related actions, shall be aggregated in the Fair Fund, which shall be maintained solely at Wells Fargo's expense in an interest-bearing account, and shall be distributed pursuant to a distribution plan (the "Plan"). Respondent Wells Fargo shall retain, solely at Wells Fargo's expense, within 30 days of the date of entry of the Order, the services of a Fund Administrator (the "Administrator"), not unacceptable to the staff of the Commission. The Administrator shall identify the Wells Fargo customers that held positions in the three SIV-Lite issued asset-backed commercial paper programs at the time of their respective defaults, evaluate such customers' claims and propose a plan, subject to the approval of the staff, and effectuate that plan to distribute the Fair Fund resulting from this Order. The Fair Fund shall be used to compensate for customer losses pursuant to the Administrator's plan. Under no circumstances shall any part of the Fair Fund be returned to Wells Fargo or McMurtry. Respondent Wells Fargo shall pay all reasonable costs and expenses of such distribution within thirty (30) days after receipt of an invoice for such services.

By the Commission.

Elizabeth M. Murphy  
Secretary