STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION

IN THE MATTER OF DETERMINING whether there has been a violation of the Securities Act of Washington by: WELLS FARGO INVESTMENTS, LLC; WELLS FARGO BROKERAGE SERVICES, LLC; WELLS FARGO INSTITUTIONAL SECURITIES, LLC, Respondents.	Order Number S-08-141-08-SC01 STATEMENT OF CHARGES AND NOTICE OF INTENT TO ENTER ORDER TO CEASE AND DESIST, OFFER RESTITUTION, IMPOSE FINES, RECOVER COSTS, AND SUSPEND REGISTRATIONS.

THE STATE OF WASHINGTON TO: Wells Fargo Investments, LLC
Wells Fargo Brokerage Services, LLC
Wells Fargo Institutional Securities, LLC

STATEMENT OF CHARGES

Please take notice that the Securities Administrator of the State of Washington has reason to believe that Respondents, Wells Fargo Investments, LLC, Wells Fargo Brokerage Services, LLC, and Wells Fargo Institutional Securities, LLC, have violated the Securities Act of Washington and that the violations justify the entry of an order under RCW 21.20.390 and RCW 21.20.110 of the Securities Administrator to cease and desist from such violations, to order restitution, to impose fines, to recover costs, and in the event of non-compliance with an order of the Securities Administrator to suspend registration. The Securities Administrator finds as follows:

TENTATIVE FINDINGS OF FACT

Respondents

1. Wells Fargo Investments, LLC ("WFI"), a Delaware corporation, is a broker-dealer and investment adviser with its principal place of business at 420 Montgomery Street, 12th Floor MAC

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A0112-060, San Francisco, California. WFI has been registered in Washington State as a broker-dealer from July 1, 1982 to present, and as an investment adviser from May 22, 1988 to present. WFI has a Central Registration Depository ("CRD") number of 10582. WFI is a wholly owned subsidiary of Wells Fargo Investment Group, Inc., whose ultimate parent is Wells Fargo & Company, a publicly traded financial and bank holding company.

2. Wells Fargo Brokerage Services, LLC ("WFBS"), a Delaware corporation, is a broker-dealer with its principal place of business at 608 Second Avenue South N9303-109, Minneapolis, Minnesota. WFBS has been registered in Washington State as a broker-dealer from August 15, 1991 to present. WFBS has a CRD number of 16100. WFBS is a wholly owned subsidiary of Wells Fargo Investment Group, Inc., whose ultimate parent is Wells Fargo & Company.

3. Wells Fargo Institutional Securities, LLC ("WFIS"), a Delaware corporation, is a broker-dealer with its principal place of business at 608 Second Avenue South N9303-109, Minneapolis, Minnesota. WFIS has been registered in Washington State from April 19, 1984 to December 31, 1999 and from March 12, 2001 to present. WFIS has a CRD number of 5958. WFIS is a subsidiary of Wells Fargo Institutional Funding LLC, whose ultimate parent is Wells Fargo & Company.

<u>Other Related Person</u>

4. Wells Fargo Bank, N.A. ("Wells Fargo Bank"), established January 1, 1870, is a national bank with a principal place of business at 101 N. Phillips Avenue, Sioux Falls, South Dakota. Wells Fargo Bank is a subsidiary of Wells Fargo & Company.

<u>Introduction</u>

5. Beginning in approximately 2001, Respondents sold financial instruments known as Auction Rate Securities ("ARS") to customers as liquid, short-term, or cash equivalent investments. In

offering and selling ARS, Respondents misrepresented and failed to disclose material information to their customers. Beginning in approximately 2005, Respondents underwrote ARS and served as auction managing dealers for ARS auctions. During the period of the sales and underwriting activity, individual auctions began failing. Several auctions failed in 2007, and in mid-February 2008, the auctions failed in a manner to freeze customer funds. At the time of the market failures in February 2008, WFI, WFBS, and WFIS customers nationwide were holding an estimated $3.93 billion in ARS. This represented $2.95 billion held by WFI customers, and $989 million held by WBFS and WFIS customers. As of the entry date of this Statement of Charges, WFI, WFBS, and WFIS customers who hold ARS are still unable to access their funds.

<u>Relationship among Wells Fargo Entities</u>

6. Wells Fargo Investments, LLC ("WFI"); Wells Fargo Brokerage Services, LLC ("WFBS"); and Wells Fargo Institutional Securities, LLC ("WFIS") all have business models that focus on serving customers of Wells Fargo Bank. WFI focuses on private banking customers while WFBS and WFIS focus on commercial banking customers. Wells Fargo & Company prides itself on its ability to cross sell its products. In connection with the release of its quarterly earnings statement in July 2006, Wells Fargo & Company attributed its record earnings to its cross-selling efforts. Wells Fargo Bank, WFI, WFBS, and WFIS engaged in cross-selling in connection with ARS sales.

7. WFBS and WFIS operate as Institutional Brokerage & Sales ("IBS"). These two broker-dealers are both headquartered in Minneapolis. They share resources, including a trading desk, operations department, training department, compliance personnel, and, in some cases, supervisory personnel. WFBS clears for WFIS and carries its accounts. WFIS specializes in serving the California market. They also share a competitive strategy that provides securities, primarily fixed income

products, to business customers of Wells Fargo Bank. IBS receives referrals from Wells Fargo commercial bankers of Wells Fargo Bank customers who may be interested in securities products. The commercial bankers receive production credit for their referrals. IBS makes presentations to commercial bankers about investment products that may be of interest to Wells Fargo Bank customers. It made such presentations with regard to its auction rate securities products.

8. WFI's primary focus is providing securities to private banking customers of Wells Fargo Bank. WFI is part of Wells Fargo's Wealth Management Group, which encompasses brokerage, private banking, and trust services provided by various Wells Fargo affiliates. Private bankers at Wells Fargo Bank refer customers to WFI. The private bankers receive production credit for their referrals. In addition, some private bankers are licensed as securities salespersons through WFI. These licensed bankers share in commissions from some securities sales made to customers they refer to WFI.

<u>Background</u>

9. Auction Rate Securities ("ARS") are securities that have interest or dividend rates that are reset through a purported Dutch auction process. There are several types of ARS, including Auction Rate Certificates, Municipal Auction Preferred Stock, and Auction Preferred Stock. Auction Rate Certificates, also known as Auction Rate Debt Securities ("ARDS"), are created from tax exempt and, in some cases, taxable municipal bonds. These bonds have long-term maturity dates, such as 20 or 30 years. The coupon is reset on a 7, 28, or 35 day cycle and interest is paid periodically depending on the issue. Municipal Auction Preferred Stock is a perpetual preferred stock issued by a closed-end bond fund. The coupon is typically reset on a 7 or 28 day cycle and dividends are paid periodically depending on the issue. Auction Preferred Stock is a perpetual preferred stock of a corporation.

Dividends are typically reset every 49 days, and paid periodically. Municipal Auction Preferred Stock and Auction Preferred Stock are collectively referred to as Auction Rate Preferred Shares ("ARPS"). ARPS have no maturity date.

10. ARS are underwritten by many major brokerage firms, as well as WFIS. WFIS underwrote three issues of ARS totaling $144 million. WFIS underwrote Antelope Valley/East Kern Water Agency, Callegues Municipal Water District, and Semitropic Water Storage District auction rate issues.

11. WFBS, WFIS, and Wells Fargo Bank have served as ARS auction agents, auction managing dealers, or auction co-managing dealers. Auction agents manage the auction process, including collecting bids, enforcing auction deadlines, and operating as the custodian. Wells Fargo Bank acted as an auction agent through the Auction Agent Group located within Wells Fargo Bank's Corporate, Municipal and Escrow Services Group. In particular, Wells Fargo Bank accepted bids from broker-dealers, confirmed bids with auction participants, processed auction results, and communicated auction results to the auction participants. WFBS and WFIS, both a part of Wells Fargo Institutional Brokerage and Sales ("IBS"), were also hired by issuers to serve as auction managing dealers or co-managing dealers at the auctions. As auction managing dealers, WFBS and WFIS solicit bids and submit orders directly to the auction agent. For these services, WFBS and WFIS were paid by the issuers pursuant to broker-dealer agreements that govern the applicable bidding deadlines and auction procedures. Since March 2005, WFIS has served as auction managing dealer for four issues totaling approximately $164 million, including the three issues WFIS underwrote. WFBS has served as auction managing dealer or auction co-managing dealer for several issues totaling approximately $575 million. WFBS became auction managing dealer for these issues after February 2008 in anticipation

of refinancing following the general market failure in February 2008. WFBS continues to receive compensation from issuers for providing auction managing dealer services. In addition, WFBS entered into an agreement with Sallie Mae to provide successor auction agent services.

12. During a successful Dutch auction, ARS are auctioned at par and bids with successively higher rates are accepted by the underwriting desk of the firm who is the auction agent for the issuer until all of the available securities are sold. The auction managing dealer for ARS engages in "price talk" prior to the auction. Price talk consists of a range of bids at which the auction managing dealer expects the auction to clear. Prior to the auction, the auction managing dealer transmits the price talk to salespersons to use in formulating their bids. The "clearing rate" is the final rate at which securities are sold and will apply to all of the securities sold in the auction until the next auction is conducted. If there are not enough buy orders to purchase all the securities being sold at auction, a failed auction occurs. In the event of an auction failure, the issuer of the ARS pays a default interest rate until the next successful auction. For certain ARS, the default interest rate may be higher than the market, but for others, the default interest rate may be 0% or otherwise below the market. When there have not been enough purchasers to bid on the ARS at auction, the broker-dealers that serve as dealers for the auctions have placed "support bids" on their own behalf in order to prevent auction failures.

13. Beginning on or about February 13, 2008, there were not enough purchasers for ARS at auction. The broker-dealers that had previously made a market in these securities ceased their practice of bidding to prevent auction failures. As a result, the auctions began to fail and continued to fail throughout February 2008. As a result of the auction failures, ARS purchasers who wish to sell their ARS, including Washington residents and customers of WFI, WFBS, and WFIS, are forced to continue holding their positions.

<u>Sale of ARS by Wells Fargo Investments LLC ("WFI")</u>

14. WFI offered and sold ARS to retail customers including individual investors, small businesses, and non-profit organizations. Since at least 2001, WFI offered Auction Rate Preferred Shares ("ARPS") through its fixed income desk. In addition, beginning in 2006, WFI facilitated Auction Rate Debt Securities ("ARDS") trades for select customers. ARS sales increased as the interest or dividend rates for ARS became more favorable than the interest rates for money market funds and certificates of deposit.

15. On February 14, 2008, WFI customers nationwide were holding $2.950 billion in ARS in 5,692 accounts. This represented approximately $2.665 billion in ARPS and $284 million in ARDS. In Washington, approximately 578 WFI accounts held $175 million in ARS on February 14, 2008. This represented approximately $173 million in ARPS and $1.8 million in ARDS held by Washington customers.

16. Because of the auction failures, customers who purchased ARS have been unable to access their funds. Issuers have redeemed some ARS. However, as of August 26, 2008, WFI customers nationwide were still holding $2.1 billion in ARPS and $54 million in ARDS.

17. Wells Fargo Bank had the practice of referring banking customers to WFI. Bank employees mentioned to customers that customers could obtain higher returns than in their bank accounts and they referred customers to WFI. Bank customers were told that "7-day instruments" were available from WFI. In other instances, the customers were solicited by bank employees. Typically, these bank employees, some of whom were licensed as securities salespersons, would schedule a meeting for the customer with a salesperson from WFI. Salespersons with WFI might

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obtain 80% to 95% of their customers through bank referrals. In turn, WFI salespersons were encouraged to review customer profiles to find areas, such as securities, insurance, and estate planning, in which WFI or other units of Wells Fargo & Co. could provide services. Both on the banking side and on the investment side, the number of internal referrals an employee made was used as part of a matrix to determine eligibility for bonuses. Customers relied on Wells Fargo Bank to advise and direct them to safe financial services. Customers referred from Wells Fargo Bank were sold ARS as a safe, liquid investment that had a higher rate of return than bank depository accounts or short-term certificates of deposit.

18. WFI salespersons typically represented to retail customers, including individual investors, small businesses, and non-profit organizations, that ARS were safe, liquid investments suitable for short-term investments, but with better interest or dividend rates than the rates of bank money market instruments or certificates of deposit.

19. WFI salespersons typically did not disclose how the interest or dividend rates of ARS would be determined, how the auctions worked, the risk of auction failure, or the consequences of auction failure.

20. Salespersons believed that the ARS were safe and were generally unaware that auctions could fail and were failing, and that money invested in ARS could become frozen. In part, this was because WFI salespersons were not aware of significant aspects of the auction rate market. For instance, salespersons were generally not aware that PriceWaterhouseCoopers had issued an interpretive opinion on March 4, 2005, which stated that under existing Financial Accounting Standards Board ("FASB") rules, ARS could not be classified on balance sheets as cash or cash equivalents. Salespersons were not aware that several auction rate market makers had been subject to

an SEC settlement in 2006 for failure to make disclosures concerning auction practices, such as the market makers' use of price talk and practice of placing supporting bids. Salespersons were not aware that auctions had failed in and after August 2007.

21. Some individuals at WFI were aware of the 2006 SEC settlement and the 2007 auction failures, but did not disseminate this information to salespersons or salesperson supervisors.

22. In November 2007, an employee of Wells Fargo Bank's Trust Department prepared a document for trust officers entitled "Fixed Income Update: Failed Auction Risk in the Auction Rate Preferred Market." The document recommended against the purchase of ARS because of the risk of auction failures. The document was emailed on November 7, 2007 to the fixed income desk at WFI. The document was also provided to a few salespersons at WFI. The fixed income desk at WFI discussed the document with employees from Wells Fargo Bank's Trust Department. Ultimately, WFI decided to continue to sell ARS to its customers and did so until the auction failures in February 2008.

23. Salespersons were not aware of and did not disclose the specific risks associated with the single dealer structure of ARS. In a single dealer structure, ARS can be liquidated only in a successful auction held by the dealer. Unlike other short-term instruments where investors can purchase and sell the instruments through many dealers or markets, ARS can only be purchased or sold in a successful auction run by the auction dealer. There is no market other than the auction for that issue. If the dealer can no longer support or run the auction, or resigns without appointing a successor dealer, there will cease to be a market for that ARS and that ARS will be illiquid. Salespersons did not disclose the financial condition of the dealer nor how this might affect liquidity for a specific ARS given the single dealer structure.

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24. WFI did not provide training to its salespersons on ARS. Salespersons who had questions about ARS were directed to the sales liaisons at WFI's fixed income desk in Seattle. However, the fixed income desk failed to communicate material information to salespersons, including the risks of the ARS market. For other complex or high-risk products, such as variable annuities, market-linked CDs, or reverse convertibles, WFI required its salespersons to complete product training prior to being allowed to place orders for those products. WFI had no product training for ARS and did not require product training prior to accepting orders for ARS.

25. WFI did not prepare or provide informational materials on ARS for retail sales. WFI typically did not obtain prospectuses, disclosure documents, or other information on the ARS it sold. As such, salespersons typically did not supply retail customers with prospectuses, disclosure documents, or other informational materials.

26. When it first began offering ARPS, WFI placed its orders for ARPS by contacting Nuveen, an issuer of ARS. Later, WFI placed its orders for ARPS exclusively through Oppenheimer & Co., Inc., a broker-dealer. Nuveen supplied WFI with brochures on taxable and tax-free ARPS. These brochures discussed ARS as an alternative to money market funds, commercial paper, and Treasury bills. These brochures did not disclose how the auctions worked, the conflicts of interest involved, or the risk of auction failure. Some WFI salespersons read these brochures and provided them to customers, while others did not. Salespersons did not have any issuer materials for the other ARS sold through the WFI fixed income desk. The fixed income desk had copies of a brochure from Oppenheimer, which described the Dutch auction process and the different types of ARS. Even when the fixed income desk sales liaisons emailed the Oppenheimer brochure to WFI salespersons, because the Oppenheimer brochure was not approved for customer use, it was not distributed to customers.

27. WFI salespersons generally entered trade orders for securities through online platforms. However, salespersons who wanted to purchase ARDS or ARPS for their customers had to place an order by telephone with WFI's fixed income desk in Seattle. Around the time of the failures, WFI instituted the use of an online platform for salespersons to submit orders for ARPS themselves. The ARDS orders remain non-automated.

28. The WFI fixed income desk arranged ARPS transactions for its customers by placing purchase and sale orders through Oppenheimer. WFI had an arrangement with Oppenheimer which provided a "trail commission" for WFI and its salespersons for ARPS transactions. The trail commission pays WFI and its salespersons throughout the period of time customers hold their ARPS. WFI and its salespersons continued to be paid the trail commission even while the auctions continued to fail and customers could not sell their ARPS. When WFI first began offering ARPS to customers, salespersons would contact the WFI fixed income desk and the desk would identify the ARPS available for purchase through Oppenheimer. Then, either the fixed income desk or the salesperson would choose which ARPS to purchase. This was often done by determining which ARPS had the highest dividend rate. Either the fixed income desk or the salesperson would choose a bid price based on a price talk spread provided by Oppenheimer. In 2007, in order to comply with the new "Best Practices for Broker-Dealers of Auction Rate Securities" issued by SIFMA, WFI began requiring salespersons to identify the CUSIP of the ARPS they wished to purchase as well as a bid price. At this time, the fixed income department began posting on WFI's intranet an updated list of the fixed income products available and the price talk for the dividend rates. The list included ARPS but not ARDS.

29. ARPS transactions appeared on the trade blotter reviewed by WFI's branch supervisor. The customer information viewable on the computer while the branch supervisory personnel reviewed

the trade blotter included the customer's age, risk tolerance, and investment objectives. Branch supervisory personnel regularly approved ARPS purchases for customers with low risk tolerance.

30. WFI had no standing dealer for ARDS. WFI tightly controlled the sale of ARDS. ARDS trades could be facilitated only with the prior approval of senior management, and only for ARDS with an issuer credit rating of BBB or higher. When WFI salespersons inquired about ARDS at the fixed income desk, the fixed income desk would first direct the salesperson to the sales liaison who handled ARPS. Most salespersons would then purchase ARPS for their customers. The fixed income desk required salespersons to demonstrate that their customers had a need for ARDS, and had at least $10 million to invest in ARDS. For these customers, WFI would facilitate purchases of ARDS from the inventory of other broker-dealers. On limited occasions, WFI placed bids directly with auction agents. WFI's bid price would be determined by research by the fixed income desk. In 2007, WFBS, which had previously not sold ARDS to WFI, contacted WFI to inform WFI that WFBS had available an issue of ARDS for which it served as auction managing dealer. At that time, WFI began purchasing these ARDS for its customers.

31. In January 2008 WFI's fixed income desk learned of an auction failure for a Nuveen ARPS in which Lehman Brothers acted as the auction managing dealer. WFI consulted with Oppenheimer and the failure was attributed to Lehman Brothers because it did not support the auction. WFI did not notify its customers of the failure and continued to sell ARPS.

32. Prior to the auction failures in February 2008, WFI, on occasion, purchased ARS from its customers for its error account when a customer had a need to liquidate auction rate securities prior to an auction date. WFI would generally sell the ARS at the next auction date. Occasionally, ARS in the

error account would be transferred to customers who had unsuccessfully tried to purchase at the prior auction.

33. After the auction failures in February 2008, WFI purchased ARS from certain customers for its error account. However, WFI did not purchase ARS from the majority of its customers who wanted to sell their ARS. Instead, WFI and Wells Fargo Bank offered two loan programs for ARS customers. The first program, offered through WFI, was a margin loan for 50% of the par value of the ARS. Later, Wells Fargo Bank offered a non-recourse line of credit to WFI customers for up to 90% of the par value of the ARS with the ARS as collateral. Several WFI customers took these loans because they needed their money invested in the ARS.

<u>Sales of ARS by Wells Fargo Institutional Brokerage & Sales</u>

34. Two entities at Wells Fargo, Wells Fargo Brokerage Services LLC (WFBS) and Wells Fargo Institutional Securities LLC (WFIS), operate as Wells Fargo Institutional Brokerage & Sales. WFBS and WFIS offered and sold ARS to institutional customers as well as to certain retail customers. These institutional customers include corporations, banks, municipal entities, foundations, money managers, and other businesses. Though WFBS and WFIS were established for institutional customers, they also handled high net worth, but not necessarily sophisticated, retail customers who were seeking the fixed income securities offered by WFBS and WFIS. These retail customers had an existing WFBS/WFIS relationship through an institutional account or were referred by an existing customer. The WFBS trading desk carries an inventory of fixed income products including ARS. WFI relies on the WFBS fixed income trading desk as a source for some fixed income products such as California municipal bonds.

35. After the auction failures, on or about February 29, 2008, 306 WFBS and WFIS customers nationwide were holding approximately $989 million in ARS. This included 26 Washington customers holding approximately $52.5 million in ARS.

36. Because of the auction failures, customers who purchased ARS from WFBS and WFIS have been unable to access their funds.

37. WFBS and WFIS salespersons received customer referrals from Wells Fargo commercial bankers. Wells Fargo Business Bank, Commercial Bank, and its Corporate Division provide referrals that account for the majority of a WFBS/WFIS salesperson's customer base. Some training materials on ARS may have been provided to these banking partners in order to help them recognize potential referrals to WFBS and WFIS salespersons.

38. WFBS and WFIS salespersons typically told customers that ARS were short-term investments that were similar to money market funds but had a higher yield. ARS were compared with low-risk investment vehicles such as municipal bonds and certificates of deposit. Salespersons represented that funds could be accessed whenever the securities went to auction, which was typically every 7, 28, or 35 days. Customers typically were not told and did not understand that the auctions could fail or that the funds would become illiquid if an auction did fail. If a customer was told that auctions could fail, he was also typically told that very few auctions had failed in the past.

39. Starting in at least May 2005, WFBS and WFIS knew of the increasing risks of purchasing and holding ARS securities. The WFBS fixed income trading desk knew of several auction failures for ARS in August of 2007. Approximately 3% of WFBS/WFIS customers holding ARS during August experienced an auction failure. The trading desk attributed the August 2007 failures to ARS that held subprime mortgage debt. WFBS/WFIS notified customers who held ARS that experienced a failed

auction, but they did not notify those customers whose auctions succeeded, nor did they tell customers or salespersons about other ARS failures. The trading desk did not notify or provide any materials regarding the August 2007 failures to WFBS/WFIS salespersons. WFBS/WFIS did not change any practices in selling ARS following the August 2007 auction failures. As a result, WFBS and WFIS salespersons typically were not aware of the August 2007 auction failures.

40. WFBS and WFIS salespersons did not understand or disclose other significant aspects of the auction rate market. While some salespersons may have been aware of the SEC's almost industry wide ARS enforcement settlements in 2006 and 2007, those salespersons typically did not understand the terms of the settlements and how they might apply to WFBS or WFIS. Therefore, salespersons generally did not discuss this information with their customers.

41. WFBS and WFIS had training and marketing materials on ARS available for salespersons on their internal website. However, these documents minimized the possibility of auction failure, limited discussion to a single failed auction, and stressed that there had been few auction failures over the 18 years ARS had been available. The documents said that these auction failures had occurred only as a result of a rapid decline in the credit-worthiness or rating of the issuer. In addition, WFBS and WFIS had at least two documents which instructed that salespersons should not say that ARS were liquid, cash, or cash equivalents. However, these documents also described the customer for ARS as someone looking for an alternative to money market mutual funds. In practice, salespersons sold ARS to customers as safe, short-term investments that were similar to money markets and which could be liquidated on the dates of auction. WFBS and WFIS did not require product training prior to accepting orders for ARS from salespersons.

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42. The WFBS and WFIS fixed income trading desk had prospectuses available on the WFBS/WFIS intranet for a majority of the ARS available for sale. However, WFBS and WFIS salespersons typically did not provide, nor were they required to provide, prospectuses or official statements for the ARS they sold to customers. The prospectuses contained information on the ARS, including the maximum interest or dividend rate applied in the event of a failed auction. The maximum rate can be determined by a number of calculations involving different indexes or an absolute number. Because the customers were not provided the prospectuses, the customers did not know what the maximum or default rate would be, should an auction fail.

43. WFBS and WFIS had an Auction Rate Securities product fact sheet available for use with customers which discussed what would happen if there was insufficient demand at auction. However, WFBS and WFIS did not require salespersons to provide this fact sheet to customers. Typically, if customers requested ARS or had purchased them in the past, the salesperson assumed that the customer already had an understanding of the product. In those cases the ARS fact sheet would likely not be consulted or provided to the customer.

44. WFBS and WFIS had no ARS guidelines for determining the suitability of a recommendation to a customer to purchase ARS. A manager reviewing ARS transactions for suitability might assume that a recommendation to purchase ARS was suitable if the customer had asked his salesperson about ARS. A manager might deem a recommendation to purchase ARS suitable if a customer had purchased ARS previously. A manager might deem a recommendation to purchase ARS suitable without further examining the financial situation and needs of the customer.

45. WFBS and WFIS arranged ARS transactions for its customers by placing purchase and sale orders through various broker-dealers including Merrill Lynch, Lehman Brothers, Goldman Sachs,

UBS, and Piper Jaffray. WFBS and WFIS also maintained a small inventory of ARS in order to have inventory available for its customers. WFBS and WFIS made approximately 10% of their ARS sales from this inventory.

46. WFIS acted as auction managing dealer for ARS in four auctions from March 2005 to the present. WFIS acted as underwriter for three of those issues. These issues were available only to WFBS and WFIS customers, except for one issue that WFIS made available to WFI customers. WFBS, WFIS, and WFI salespersons received higher commissions for the sale of these issues than ARS for which WFBS/WFIS was not an auction managing dealer or underwriter. During each auction for which WFIS acted as an auction managing dealer, WFIS submitted a bid for those issues for its proprietary account. The bids were made at the highest price available from the price talk for that issue and were large enough to purchase the entire amount of the issue. On multiple occasions over the past few years those bids placed by WFIS prevented a failed auction. None of the ARS for which WFIS is underwriter or auction managing dealer has had an auction failure. However, all of those ARS have been refinanced into other funding vehicles.

47. After the auction failures in February 2008, WFBS became an auction co-managing dealer for at least four ARS issues. As co-managing dealer, WFBS submitted bid orders for its proprietary account to the auction agent. WFBS submitted those bids to ensure an orderly market for buyers and sellers. None of the ARS auctions for which WFBS acts as co-managing dealer has failed.

48. When the general auction rate market failed in February 2008, WFIS and WFBS did not purchase ARS from customers unless the customers held the ARS for which WFIS or WFBS served as auction managing dealer; WFIS and WFBS did not place bids in any other auctions. WFIS and WFBS

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referred customers holding ARS in auctions that failed to Wells Fargo Bank's Private Client Services which offered a loan program secured against the customer's ARS holdings.

Sales Connected to Washington

49. The following are examples of investors who purchased ARS from WFI and WFBS securities salespersons who are based in Washington.

Customer A

50. Customer A is a retired Washington resident. She currently invests in real estate in order to generate income during retirement. Since 1982, she has been a customer of the bank that became Wells Fargo Bank. In 2005, she sold a house and had $2 million in her bank account. She wanted to earn more interest on these funds, so a Wells Fargo Bank manager recommended a securities salesperson at WFI. Customer A was looking for conservative, liquid, no-risk investments. She needed liquidity in order to buy and sell real estate and she was also using these funds for living expenses.

50. In October 2005, Customer A met with a WFI securities salesperson, who was recommended to her. When dealing with the salesperson, she made clear that these funds had to be safe and liquid. The salesperson recommended several investment products, including commercial paper, which she invested in. On January 18, 2008, the salesperson called her to discuss a new type of "commercial paper" with her. She was told this commercial paper was more secure than the commercial paper that she previously held. Customer A was told this commercial paper had a higher interest rate, was AAA rated, backed at least 2:1, and her money could be liquid every 28 days. The salesperson never mentioned that this paper went to auction.

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51. Based on the salesperson's recommendation, Customer A invested $800,000 in Claymore Total Return auction rate preferred shares. Customer A was not provided with a prospectus or other disclosure document. She was not told about the risk of auction failures and funds becoming illiquid.

52. On February 15, 2008, the salesperson called Customer A to tell her not to worry about what was in the newspaper regarding failed auctions because they did not affect the securities she owned. The salesperson called her a few days later to tell her of the auction failures that affected her preferred shares. Because she purchased ARS just prior to the market failure, her ARS never experienced a successful auction.

53. At the time of the auction failures, Customer A was closing on real estate property. She had to use other funds to complete the transaction. Because her ARS funds were illiquid, Customer A was unable at that time to go forward with another real estate purchase. Customer A requested that WFI provide her with a "plan of exit" regarding the ARS she held. WFI did not offer to buy back Customer A's shares or otherwise provide her with an exit plan. Customer A was offered a loan by WFI, and subsequently a line of credit by Wells Fargo Bank. She took out the line of credit offered by Wells Fargo Bank.

Customer B

54. Customer B is a customer of Wells Fargo Bank. In May 2007, a Wells Fargo Bank representative told him that, because he had a large sum of money in a money market account, private banking would contact him about investment options. Although Customer B was not interested, private banking subsequently contacted him and he agreed to meet with a WFI private banker and a securities salesperson.

55. Customer B communicated his liquidity needs to the private banker and the salesperson. Customer B was remodeling a house and he made clear that he would need cash in 6 to 10 months. Customer B told them that liquidity and safety were more important than trying to earn a higher interest rate. The salesperson recommended auction rate preferred shares to Customer B. Customer B was told these securities would meet his needs for liquidity and safety. Customer B was told that these securities were similar to a money market account, they went to auction every 7 days, and he could have access to his money every 7 days.

56. In reliance on the recommendation, Customer B invested $525,000 in Advent & Claymore auction rate preferred shares. This amount represented 100% of Customer B's liquid funds. Customer B was not provided with a prospectus or other disclosure document. He was not told about the risk of auction failures and funds becoming illiquid.

57. In addition to the $525,000 invested in ARS, Customer B also has approximately $300,000 in several IRAs. The investment of $525,000 in ARS represents approximately 63% of Customer B's entire investment portfolio.

58. On February 12, 2008, Customer B met with the salesperson to discuss investing his liquid funds in the stock market. There was no mention of potential or actual problems with the auction rate market. On February 18, 2008, Customer B met with a securities salesperson from Ragen MacKenzie, a division of WFI, in order to get a second opinion about his investment plan. This securities salesperson told him that his money was frozen and explained to him what ARS were.

59. Due to the auction failures, all of Customer B's liquid funds are frozen. Customer B had to use credit card loans in order to meet his needs for liquid funds. Wells Fargo Bank offered Customer

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B a line of credit, which he accepted. Customer B has also had to take out a home equity line of credit on his residence.

Customer C

60. Customer C has been a customer of Wells Fargo Bank private banking since 2003 or 2004. In August 2006, he received a large sum of cash after the company he was working for was sold. His private banker understood he was interested in earning more interest on these funds than a money market account offers, and introduced him to a WFI securities salesperson.

61. Customer C was looking for a safe, liquid, short-term investment for these funds. He told the salesperson that he was not sure what the money was going to be used for, and it was possible he might buy a business in a month. The salesperson suggested investing the funds in ARS. Customer C was told these securities were backed by AAA rated municipal bonds and were just like a money market account, except funds could be liquid weekly. He was told they went to auction and that the key to liquidity was to stagger the securities so they went to auction on different days.

62. Customer C invested $800,000 in “Blackrock Municipal Inc. Trust Pfd Auction Rate Series M7,” “Federated Premier Inter Municipal Income Fund Auction Market Pfd Series A,” “Nuveen Mun Advantage Fd Ser W Pfd” and “Nuveen Prem Inc. Mun. Fd Inc. Muni Auction Rate Pfd Ser F.” The salesperson staggered the auction dates across days of the week so Customer C could always have next day liquidity on a portion of the funds.

63. Customer C was not provided with a prospectus or other disclosure document. He was not told about the risk of auction failures and funds becoming illiquid.

64. In February 2008, the salesperson called Customer C to tell him about the auction failures. At the time of the auction failures, Customer C had $675,000 in ARS that was frozen. Customer C has requested that WFI buy back his remaining ARS, but WFI has not honored this request.

Customer D

65. Customer D is a retired Washington resident. He has been a customer of Wells Fargo Bank for several years. He was eventually solicited to transfer funds to WFI; his banker scheduled Customer D for occasional meetings with a securities salesperson at WFI. Customer D decided to transfer his funds in May 2006.

66. Customer D told the salesperson that he wanted to keep $400,000 liquid for a possible real estate purchase. The salesperson recommended the purchase of auction rate preferred shares. Customer D was told these were as safe as a money market account, but had a higher interest rate. Customer D was told the funds could become liquid with 7 days notice. Customer D was not told that these securities went to auction; his impression was that these securities worked just like a money market account.

67. Based on the salesperson's recommendation, Customer D invested $400,000 in "ING Prime Rate TR Pfd Auction Rate Series T (Tuesday)." Customer D was not provided with a prospectus; nor was he told about the risk of auction failures and funds becoming illiquid.

68. In February 2008, Customer D learned about the auction failures after reading about them in the newspaper. He subsequently called the salesperson, who was not aware of the auction failures affecting his securities. Although he has been told several times by the salesperson that the market is "loosening up," his funds are not available to him.

Customer E

69. Customer E is a former Washington resident and is retired. In 2005, while a Washington resident, she sold her home and subsequently met with a WFI securities salesperson to discuss investing the proceeds. Customer E told the salesperson that she lived alone and needed complete access to her money at all times. Customer E also made clear that her investment objectives were safety and liquidity, and that she would like to earn as high a yield as possible on her funds. The salesperson recommended investing the sale proceeds in a money market account.

70. In August 2007, the salesperson called Customer E, who still resided in Washington, and recommended the purchase of ARS. Customer E was told that ARS earned more interest than a money market account, was just as safe as a money market account, and she could have access to her funds every 7 days. Based on the recommendation, Customer E invested $400,000 in Nuveen JPS auction rate preferred shares. She was told that her investment was insured up to $500,000 by WFI.

71. Customer E was told the securities went to auction every 7 days. However, she was not told about the risk of auction failures and funds becoming illiquid.

72. The investment in ARS represents 100% of Customer E's holdings at WFI. At the time of the investment, Customer E's other investments included an IRA, worth $32,500, at Ameriprise Financial. The investment in ARS represents approximately 92% of Customer E's entire investment portfolio.

73. In October 2007, Customer E moved to Nevada, where she currently resides. In March 2008, Customer E contacted a local WFI securities salesperson and learned that her $400,000 invested in ARS was frozen because of auction failures.

74. Customer E needed the money frozen in ARS to pay living expenses. Her only other source of income is from Social Security. In order to pay her living expenses, Customer E had no

choice but to accept the non-recourse line of credit offered by Wells Fargo Bank. Customer E had also intended to use her frozen funds to purchase a home in Nevada, but now is unable to do so.

Customers F and G

75. Customers F and G are relatives who reside in New York. Both Customers F and G have been investing with a WFI securities salesperson who is based in Washington State.

76. Customer F maintains several accounts at WFI, including a discretionary account intended for trading and a non-discretionary account with more conservative, income producing investments. In September 2007, after Customer F mentioned he was interested in tax-free income, the salesperson recommended auction rate preferred shares. The salesperson represented that auction rate preferred shares were a safe, liquid investment similar to a money market but with higher rates than money markets were making at the time. The salesperson told Customer F that he could sell auction rate preferred shares at face value at any time with a one-week notice. Customer F purchased $450,000 in Blackrock and PIMCO municipal auction rate preferred shares for his non-discretionary account. At the same time, the salesperson also purchased $100,000 in Blackrock municipal auction rate preferred shares for Customer F's discretionary account. The total amount invested in ARS was $550,000, which comprised 30% of Customer F's total investments with WFI.

77. Customer G had several accounts with WFI in August 2007, including retirement accounts, accounts for minor children, and a smaller discretionary account intended for trading. Customer G also had an account worth approximately $1 million intended for more conservative, income producing investments. This account was invested mainly in money markets, municipal fixed income, and certificates of deposit. In September 2007, the salesperson told Customer G that auction rate preferred shares were a short-term investment with better rates than money markets were making

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at the time. Based on this representation, Customer G purchased $200,000 of Blackrock New York municipal auction rate preferred shares for the more conservative account.

78. The salesperson did not tell Customer F or Customer G about the risk of auction failures and funds becoming illiquid. Neither Customer F nor Customer G was provided with a prospectus or other disclosure document regarding ARS.

79. Customers F and G were notified by the salesperson when the auctions failed in February 2008. Contrary to their desires for cash-like investments, Customer F and Customer G could not access the money invested in the ARS after the auction failures. Customer F and Customer G have each requested that WFI rescind their purchase of auction rate preferred shares. However, WFI has not rescinded the purchases.

Customer H

80. Customer H, an elderly Washington resident, gave her daughter-in-law a Power of Attorney to authorize her to act for Customer H. As Attorney-in-Fact, Customer H's daughter-in-law decided to transfer Customer H's IRA to WFI in March of 2007. The $200,000 of IRA funds was initially placed into a money market account.

81. Customer H's WFI securities salesperson later recommended that most of the funds be moved into a "cash instrument" that paid a higher return than a money market account while they determined where to invest the funds. The salesperson explained that the "cash instrument" could be accessed once per week.

82. Customer H's Attorney-in-Fact decided to invest $125,000 of Customer H's IRA in this "cash instrument" recommended by the salesperson. These "cash instruments" were Advent &

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Claymore auction rate preferred shares. Customer H's Attorney-in-Fact was not told that these securities went to auction, nor was she told about the risk of auction failures and funds becoming illiquid.

83. Customer H has no other investment holdings besides the $200,000 of IRA funds. The $125,000 invested in ARS represents approximately 62% of her entire investment portfolio.

84. Customer H's Attorney-in-Fact was not informed of the auction failures until May or June of 2008, when she decided to transfer Customer H's funds from WFI to another broker-dealer. It was only after the funds were to be transferred that the WFI securities salesperson explained that the ARS were illiquid.

85. Customer H withdraws $600 each month from her IRA to cover living expenses. Customer H's IRA is her only source of income other than Social Security. Prior to the auction failures, Customer H was in the process of remodeling her home. She has since been forced to take out a home equity loan to cover the remodel expenses.

Customer I

86. Customer I owns and operates a company that purchases and manages real estate. The business has significant cash flow from rents and real estate transactions. Customer I had been a private banking customer of Wells Fargo Bank for more than twenty years. His banker set up a meeting for Customer I to discuss the possibility of WFI doing cash management for his real estate business.

87. Customer I mentioned to his WFI securities salesperson that UBS Investments, Inc. ("UBS") provided cash management for his business through the use of "7-day floaters," which was

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the term his securities salesperson at UBS used to describe ARS. Customer I was told by the salesperson that WFI offered these products as well.

88. In approximately May 2007, Customer I invested cash from his business in taxable auction rate preferred shares. The salesperson set up a system to invest the regular cash flow from the business in the ARS. Money was cashed out of the ARS when needed for real estate transactions or other business expenses.

89. Customer I was not provided with a prospectus or other disclosure document for the ARS.

90. At the time of the auction failures, Customer I had approximately $1.5 million in ARS at WFI that was frozen. Customer I needed the money in the ARS to pay the operating expenses for his real estate business, but WFI did not offer to redeem his shares.

Customer J

91. Customer J is a business that is located in Oregon. Customer J has been investing with a WFBS securities salesperson for the past 10 years. The salesperson is based in the state of Washington.

92. In January 2008, Customer J was looking for an investment in which to place the company's funds that were used to pay operating expenses. The investment needed to be short term and liquid so that funds could be withdrawn to pay expenses as they came due. The salesperson had recommended ARS in the past and stated that they were available again.

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93. The ARS were described as liquid accounts that could be accessed every 7 days. Customer J was told that the interest rates reset each week at an auction. Based on these representations, Customer J purchased $300,000 worth of ARS through the salesperson.

94. Customer J was not told about the risk of auction failures and funds becoming illiquid. Customer J was not provided with prospectuses or other disclosure documents for ARS.

95. In February 2008, Customer J read about the auction failures in the newspaper and subsequently contacted the salesperson to confirm that the funds the company had invested were frozen.

96. Customer J needs the frozen funds to pay operating expenses. Additionally, the funds are needed to pay for expensive testing that is required as a part of the sale of property the business owns. The company may be forced to find other sources of funds to cover these expenses. Customer J was offered a loan through Wells Fargo Commercial Lending, but has not taken the offer.

Customer K

97. Customer K is the owner of a business that has been a customer of WFBS for several years. The controller of the company introduced Customer K to the WFBS securities salesperson in charge of the company's accounts. Subsequently, Customer K also began investing personal funds with the salesperson.

98. A few years ago, Customer K informed the salesperson that he sought a higher yield for funds that were sitting in his personal money market account. Customer K still wanted liquidity for the funds in case he found other investments. The salesperson recommended ARS.

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99. Customer K was told that ARS had a higher yield than his money market account and that the funds could be accessed every seven days when the securities went to auction to determine the new interest rate. Customer K invested $350,000 in Van Kampen ARS through WFBS. Customer K was not told about the risk of auction failures and funds becoming illiquid. He was also not told that in the event of auction failures, interest rates would reset to default rates; nor was he informed of how the default rates would be set.

100. In February 2008, Customer K received an email from the salesperson informing him that the auctions had failed and his funds were illiquid. Customer K currently has $275,000 frozen in ARS. WFBS has mentioned a possible loan to Customer K, but has not offered to purchase his ARS. Customer K is dismayed at the low yield he is earning pursuant to the default rate on his shares.

Customer L

101. Customer L is a business that is located in Oregon. For several years, Customer L had been investing with a WFBS securities salesperson based in Washington.

102. The salesperson routinely manages Customer L's short term cash that is used to pay general operating expenses and taxes. In the past, the salesperson had invested these funds in U.S. Treasuries. However, a couple of years ago the salesperson recommended that Customer L purchase ARS with the funds.

103. Customer L agreed to purchase City of Portland ARS after it was explained that the securities offered a higher return than the treasuries and weekly liquidity. Customer L was not told the risk of auction failures or the risk of funds becoming illiquid.

104. Customer L learned about the auction failures in February 2008, when attempting to sell the ARS that it held. When placing a sell order, the salesperson told Customer L that there had been

auction failures for East Coast ARS and that the auction for their securities might also fail. The auction for Customer L's ARS did fail. At the time of the auction failures, Customer L had $600,000 invested in ARS.

105. Customer L needed the funds that were frozen to pay general operating expenses. In April 2008, concerned over the cash flow of the business, the Chief Financial Officer ("CFO") of the company purchased the ARS from Customer L for her own account. WFBS facilitated the purchase of the ARS from Customer L to the CFO, but did not offer the company a loan. The CFO had heard that the City of Portland might refinance the ARS in late April and expected that the funds might become liquid within a month. However, the City of Portland has not refinanced the securities and the CFO has not been able to liquidate the $600,000 in ARS.

<u>Sales of ARS Nationwide</u>

106. The following are examples of investors who purchased ARS from WFI, WFBS, and WFIS securities salespersons nationwide.

Customer M

107. Customer M is a California resident who had been a customer of Wells Fargo Bank for many years.

108. In January 2008, Customer M went to Wells Fargo Bank to drop off a check with his private banker. The check represented proceeds from the sale of a building. At the time, Customer M was not seeking any investment vehicles and was on his way out of town.

109. Customer M's private banker recommended he look at alternatives that would make better returns than leaving his money in a checking account. She suggested a money market account, a 30-day certificate of deposit, or a 1-year certificate of deposit. Customer M told her he was not

interested in any of these alternatives. Customer M told the private banker he did not want to tie his money up for 30 days because he might need to use it sooner than 30 days.

110. The private banker then told Customer M he might be interested in another product. The product was a "7-Day Instrument" sold by a WFI securities salesperson. The private banker told Customer M that a "7-Day Instrument" was safe and was the equivalent of a money market fund but earned better interest.

111. Customer M trusted his private banker and therefore agreed to invest in the "7-Day Instruments." Customer M went over to the salesperson's desk, which was located just across the aisle from the private banker. Customer M invested $2.35 million in "7-Day Instruments" through the salesperson. Customer M was under the impression that the investment was through Wells Fargo Bank.

112. Customer M later discovered that he had invested in Nuveen and Blackrock ARPS. Although some of the ARPS have been redeemed, Customer M still holds $1.75 million in ARPS.

Customer N

113. Customer N is a resident of California whose son owns a business which invests through WFIS. Customer N's son recommended WFIS to Customer N. Customer N began investing with a WFIS securities salesperson.

114. Customer N is retired and considers himself a conservative investor. He needed the funds invested through WFIS for income. Customer N was also considering buying real estate in the near future. He informed the salesperson that he was looking for a short-term, liquid investment.

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115. The salesperson recommended ARS to Customer N. Customer N was told he would have access to his funds every 28 days and that the securities went to auction. The salesperson told Customer N the securities had been around for 20 to 25 years with no problems; he disclosed prior auction failures, but stated they were isolated and related to the mortgage industry. The salesperson told Customer N that ARS were guaranteed by the federal government.

116. Customer N considered the representations made by the salesperson about ARS to be mostly positive, and he decided to invest. In October 2007, he purchased $250,000 in Pennsylvania Higher Education auction rate bonds. In January 2008, Customer N purchased an additional $100,000 in Pennsylvania Higher Education auction rate bonds.

117. Customer N did not receive a prospectus. The salesperson emailed Customer N some materials on auction rate securities, including a PowerPoint presentation and a publication on market interest rates. However, the salesperson did not orally tell Customer N that there was a risk of auction failure. He did not disclose how the bidding in auctions was conducted or that the auction rate market depended on "support bids" made by broker-dealers. He did not disclose the creditworthiness of the underlying securities, the role WFIS and WFBS played in auctions, or what would happened to interest rates in the event of an auction failure. He did not disclose that he had never read a prospectus for ARS.

118. Customer N learned of the February 2008 auction failures through the media. He subsequently discussed the matter with the salesperson, who downplayed the seriousness of the failures. At this time, the salesperson informed Customer N that he had never read a prospectus for ARS.

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119. Since the failures, Customer N has had to postpone purchasing real estate. The Pennsylvania Higher Education auction rate bonds no longer pay the favorable interest rate they did prior to the auction failures. Customer N requested that WFIS buy back his ARS, but WFIS has not done so. According to Customer N, he asked for a loan, but was told Wells Fargo Bank would not give him a loan because he did not have a bank account there.

Customer O

120. Customer O is a business located in Wisconsin. Customer O has invested with a WFBS securities salesperson for several years. Customer O communicated to the salesperson its investment objectives of capital preservation and liquidity. Liquidity was desired due to possible capital expenditures and/or to pay the operating costs of the business.

121. The salesperson recommended ARS to Customer O. Customer O was told that these securities were very liquid and they reset every 28 days. He was told they could get out before the 28 days, but they would likely lose the interest. Customer O was told they were AAA rated, safe and secure.

122. In August 2006, Customer O invested $1 million in New Hampshire ARS. In July 2007, Customer O invested $2 million in Rivermont ARS. Customer O was not told about the risk of auction failures and funds becoming illiquid.

123. Beginning in August 2007, the Rivermont ARS began to fail at auction and has continued to fail. Approximately three months later, the salesperson notified Customer O of this failure. The salesperson told him this failure was related to the mortgage industry and it would correct itself. In or about February 2008, the New Hampshire ARS failed at auction. Due to the auction failures, Customer O currently has $3 million dollars in ARS that is illiquid.

124. In order to keep up with business competitors, Customer O ordered three printing presses in May 2008. With delivery dates ranging from November 2008 through March 2009, a total of at least $2 million is remaining due on the presses. Customer O needs the use of its frozen funds to pay for this capital expenditure.

Suitability

125. WFI, WFBS, and WFIS and their salespersons were required to have reasonable grounds to believe that their ARS recommendations to customers were suitable based on the facts disclosed by the customers as to their other security holdings and as to their financial situation and needs. Despite these requirements, WFI, WFBS, and WFIS salespersons recommended and sold ARS to many customers for whom ARS were unsuitable investments. WFI, WFBS, and WFIS salespersons recommended ARS as a liquid, cash equivalent investment when ARS were not. WFI, WFBS, and WFIS salespersons recommended ARS to customers who needed to be able to access the funds invested in ARS to pay living or other expenses. The recommendation of ARS for these customers was unsuitable because of the risk of auction failures and the risk that funds would become frozen. WFI, WFBS, and WFIS salespersons recommended ARS as short-term investments, even though ARS had long-term maturity dates, or in the case of ARPS, no maturity dates. WFI, WFBS, and WFIS salespersons recommended ARS to customers without concern for the concentration of ARS that customers would hold in their accounts. The auction rate market failure created hardships for WFI, WFBS, and WFIS customers in Washington and nationwide. WFI, WFBS, and WFIS and their salespersons created these hardships by making unsuitable investment recommendations.

Supervision of Salespersons

126. WFI failed to provide adequate supervision to its salespersons in connection with the offer and sale of ARS. WFI salespersons in Washington were not aware of significant aspects of the ARS market. WFI did not provide training for its salespersons on the topic of ARS. WFI did not prepare or provide resource materials on ARS for its salespersons to educate themselves on the auction rate market. WFI did not prepare any disclosures or written materials for its salesperson to provide to ARS customers. WFI did not ensure that the information salespersons had available on ARS were consistently delivered. Despite a lack of training or information, WFI allowed its salespersons to offer ARS to its customers.

127. WFI did not establish any written supervisory procedures for the review of ARS transactions, nor did WFI train supervisory personnel on how to review ARS transactions for suitability.

128. WFBS and WFIS failed to provide adequate supervision to their salespersons in connection with the offer and sale of ARS. WFBS and WFIS did provide informational materials and training to their salespersons. However, WFBS and WFIS did not require the training prior to allowing salespersons to offer ARS to their customers. In addition, WFBS and WFIS did not ensure that their salespersons understood the liquidity characteristics of ARS. WFBS and WFIS knew of the risk of auction failure because of WFBS and WFIS's participation as an auction managing dealer and underwriter in the auction rate market, but allowed their salespersons to sell ARS as a safe, short term, and liquid investment anyway.

129. WFBS and WFIS did not establish any written supervisory procedures for the review of ARS transactions, nor did WFBS and WFIS train supervisory personnel on how to review ARS transactions for suitability.

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130. By failing to provide adequate training and information on ARS, WFI, WFBS, and WFIS failed to adequately supervise their salespeople in connection with the sale of ARS. Further, the failure to adequately train salespersons directly resulted in salespersons making unsuitable investment recommendations and failing to disclose material information.

<u>Misrepresentations and Omissions</u>

131. In offering and selling ARS, Respondents made misrepresentations of material facts and/or omitted to state material facts necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading. One or more of the Respondents:

a. Misrepresented ARS as safe, short-term, liquid investments similar to money market funds when they were not;

b. Failed to disclose to customers the risks of ARS, including the risks of illiquidity;

c. Failed to disclose to customers how the auction market worked;

d. Failed to disclose that the auction rate market depended on "supporting bids" from broker-dealers, who had no obligation to continue making supporting bids;

e. Failed to disclose that auctions could fail;

f. Failed to disclose that auctions had failed in the recent past;

g. Failed to disclose that in the event of auction failures, interest rates would reset to default rates;

h. Failed to disclose how the default rates were set;

i. Failed to disclose the risks associated with the single dealer auction structure;

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j. Failed to disclose that WFI, WFBS, and WFIS salespersons who sold ARS had not reviewed the prospectuses, disclosure documents, or other information for the auction rate securities they were selling; or

k. Failed to disclose that WFI, WFBS, and WFIS had not provided its salespersons with prospectuses, disclosure documents, or other information on the specific ARS sold.

<u>Non-Cooperation with Securities Division Investigation</u>

132. As of the date of entry of this Statement of Charges, Respondents have not provided a complete response to requests for discovery made by the Securities Division during the investigation of this matter.

133. Wells Fargo Bank N.A. has failed to cooperate with the Securities Division investigation by failing to produce a bank employee as a witness for testimony pursuant to a subpoena issued by the Securities Division, and by failing to provide other information requested by the Securities Division.

Based upon the above Tentative Findings of Fact, the following Conclusions of Law are made:

CONCLUSIONS OF LAW

1. The offer or sale by Respondents of the Auction Rate Securities ("ARS") described above constitute the offer and/or sale of a security as defined in RCW 21.20.005(10) and (12).

2. The offer and/or sale of said securities was made in violation of RCW 21.20.010 because, as set forth above, in connection with the offer and sale of ARS in Washington, Respondents made misrepresentations of material facts and/or omitted to state material facts necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading, and Respondents engaged in acts, practices, and courses of business which operated as a fraud or deceit.

3. The offer and/or sale of said securities was made in violation of RCW 21.20.702 and was a dishonest or unethical business practice under RCW 21.20.110(1)(g) and WAC 460-21B-060(3) because, as set forth above, Respondents recommended the purchase, sale, or exchange of a security without reasonable grounds to believe that the recommendation was suitable. Such conduct is grounds to impose a fine pursuant to RCW 21.20.110(1).

4. Respondents failed to supervise reasonably their salespersons and employees by failing to provide ARS disclosure information to salespersons, failing to provide ARS training and resources to salespersons, failing to develop ARS guidelines for review, approval, and suitability of ARS transactions by salespersons, and failing to ensure that salespersons were making suitable ARS investment recommendations. Such conduct is grounds to impose a fine pursuant to RCW 21.20.110(1)(j) and RCW 21.20.110(1)(g), WAC 460-21B-060(24), and NASD Conduct Rule 3010.

NOTICE OF INTENT TO ORDER RESPONDENTS TO CEASE AND DESIST

Pursuant to RCW 21.20.390(1), and based on the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that Respondents, and their agents and employees, shall each cease and desist from violations of RCW 21.20.010 and RCW 21.20.702.

NOTICE OF INTENT TO ORDER THE RESPONDENTS TO OFFER AND PAY RESTITUTION

Pursuant to RCW 21.20.390(1), and based on the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that Respondents offer restitution at par value to all outstanding holders of ARS (and restitution to investors who have already sold below par), on terms and conditions that the Securities Administrator deems appropriate; and such other affirmative relief as is necessary to make investors whole.

NOTICE OF INTENT TO IMPOSE FINES AND RECOVER COSTS

Pursuant to RCW 21.20.110, and based upon the Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that each Respondent shall be assessed a fine and shall pay the costs, fees, and other expenses incurred in the conduct of the administrative investigation and hearing of this matter.

NOTICE OF INTENT TO SUSPEND BROKER-DEALER AND INVESTMENT ADVISER REGISTRATION

Pursuant to RCW 21.20.110(1), and based on the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that the broker-dealer and investment adviser registrations of a Respondent be suspended if the Respondent willfully violates or fails to comply with any order entered by the Securities Administrator in this matter.

AUTHORITY AND PROCEDURE

This Statement of Charges is entered pursuant to the provisions of RCW 21.20.110, RCW 21.20.120 and RCW 21.20.390 and is subject to the provisions of RCW 34.05. Respondents may make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Statement of Charges.

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If a Respondent does not request a hearing, the Securities Administrator intends to adopt the above Tentative Findings of Fact and Conclusions of Law as final, enter a permanent cease and desist order including restitution, and impose fines and costs as to that Respondent.

DATED AND ENTERED this 20th day of November, 2008.

Michael E. Stevenson

MICHAEL E. STEVENSON
Securities Administrator

Approved by:

SUZANNE SARASON
Chief of Compliance & Examinations

Presented by:

Bridgett Fisher

BRIDGETT FISHER
Enforcement Attorney

Presented by:

Jill M Vallely

JILL VALLELY
Enforcement Attorney

Presented by:

JACK MCCLELLAN
Enforcement Attorney