

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 94955 / May 20, 2022

INVESTMENT ADVISERS ACT OF 1940
Release No. 6031 / May 20, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20866

In the Matter of

**WELLS FARGO
CLEARING SERVICES,
LLC.**

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTIONS 15(b) AND 21C OF THE
SECURITIES EXCHANGE ACT OF 1934
AND SECTION 203(e) OF THE
INVESTMENT ADVISERS 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 Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(e) of the Investment Advisers Act of 1940 (“Advisers Act”) against Wells Fargo Clearing Services, LLC (“Wells Fargo Advisors” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) 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 it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Section 203(e) of the Investment Advisers 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 this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of Wells Fargo Advisors' failure to timely file certain suspicious activity reports ("SARs") between April 2017 and October 2021. First, when Wells Fargo Advisors switched to a new version of its internal anti-money laundering ("AML") transaction monitoring and alert system in January 2019, it failed to adequately monitor, detect and report certain transactions in its customers' brokerage accounts involving wire transfers to or from certain foreign countries determined to be at a high risk or moderate risk for money laundering, terrorist financing or other illegal monetary movements. Due to the deficient implementation and failure to test and conduct sufficient monitoring of the new AML system between January and September 2019, the system did not generate timely alerts for approximately 1,708 brokerage transactions and Wells Fargo Advisors consequently failed to timely surveil or investigate certain suspicious activity related to foreign wire transfers in its customers' accounts. As a result, Wells Fargo Advisors failed to timely file at least 25 SARs related to such activity as required by the Bank Secrecy Act ("BSA") and willfully violated Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.

2. In addition, between approximately April 2017 and October 2021, Wells Fargo Advisors failed to timely file at least nine additional SARs due to the failure to appropriately process wire transfer data into Wells Fargo Advisors' AML transaction monitoring system in certain additional situations, including on dates on which there was a bank holiday without a corresponding brokerage holiday.

Respondent

3. **Wells Fargo Clearing Services, LLC**, is a Delaware limited liability company with its headquarters offices located in St. Louis, Missouri. It is a subsidiary and non-bank affiliate of Wells Fargo & Company ("Wells Fargo"). In November 2016, Wells Fargo Advisors, LLC and First Clearing, LLC merged and the resulting entity was renamed Wells Fargo Clearing Services, LLC. Wells Fargo Clearing Services, LLC is dually-registered with the Commission as a broker-dealer and an investment adviser and conducts business and operates under the trade name "Wells Fargo Advisors" along with Wells Fargo Advisors Financial Network, LLC, which also is a dually-registered broker-dealer and investment adviser subsidiary of Wells Fargo.

Background

4. The BSA and implementing regulations promulgated by the U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN") require broker-dealers such as

¹ The findings herein are made pursuant to the Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Wells Fargo Advisors to file SARs with FinCEN to report, among other things, a transaction (or a pattern of transactions of which the transaction is a part) conducted or attempted by, at, or through the broker-dealer involving or aggregating funds or other assets of at least \$5,000 that the broker-dealer knows, suspects, or has reason to suspect, that: (1) involves funds derived from illegal activities or were conducted to disguise or hide funds or assets derived from illegal activities; (2) is designed to evade any requirement of the BSA; (3) has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage and the broker-dealer knows of no reasonable explanation for the transaction after examining the available facts; or (4) involves the use of the broker-dealer to facilitate criminal activity. 31 C.F.R. § 1023.320(a)(2) (the “SAR Rule”).

5. The BSA and FinCEN require the filing of a SAR within 30 calendar days after a broker-dealer determines the activity is “suspicious” within the meaning of the SAR Rule. FinCEN provides a form of administrative relief from the SAR filing deadline to financial institutions, including broker-dealers, for SARs identifying continuing activity of a previously-filed SAR. Under this administrative relief, instead of filing a new SAR for each instance of ongoing conduct, broker-dealers are allowed to file SARs for continuing activity after a 90-day review with the filing deadline being 120 calendar days after the date of the previously-related SAR filing. 31 C.F.R. § 1023.320(b)(3).

6. Exchange Act Rule 17a-8 requires broker-dealers registered with the Commission to comply with the reporting, record-keeping, and record retention requirements of the BSA. The failure to file a SAR, including continuing activity SARs, as required by the SAR Rule is a violation of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder. *See SEC v. Alpine Sec. Corp.*, 308 F. Supp. 3d 775, 798-800 (S.D.N.Y. 2018), *aff’d* 982 F.3d 68 (2d Cir. 2020), *cert. denied*, *Alpine Sec. Corp. v. SEC (2021)* (No. 19-3272) 595 U.S. ___ (2021).

7. On November 13, 2017, the Commission instituted settled Administrative and Cease-and-Desist proceedings against Wells Fargo Advisors, for violating Section 17(a) of the Exchange Act and Rule 17a-8 thereunder in connection with the firm’s failure to timely file at least 50 SARs, 45 of which related to continuing activity that occurred after a prior SAR filing. The Commission’s Order found that Wells Fargo Advisors’ AML management created confusion by issuing conflicting and confusing directions to AML investigators on when and whether to file certain SARs and instructed investigators not to document any disagreements with management’s decisions not to file SARs leading to missed and late SAR filings, in particular continuing activity SARs. The Commission’s Order further included Wells Fargo Advisors’ voluntary undertakings to review and update its internal policies, procedures and practices relating to the identification, evaluation and reporting of suspicious activity to determine whether AML investigative staff had sufficient time and resources to research account activity, formulate conclusions and timely file SARs and provide additional training on the appropriate determination of when to file SARs on suspicious activity for its AML investigative staff. *In the Matter of Wells Fargo Advisors, LLC* (Exchange Act Release No. 82054, Nov. 13, 2017).

Facts

8. As required by the BSA and FinCEN, Wells Fargo Advisors surveilled the brokerage transactions of its customers using automated transaction monitoring systems in order to timely alert the firm to potentially suspicious transactions occurring in its customers' accounts, including wire transfer activity involving certain foreign countries that Wells Fargo identified using proprietary criteria and information provided by FinCEN and other governmental agencies as posing a high risk or moderate risk for money laundering, terrorist financing, or other illegal money movements. To fulfill its obligations to comply with BSA and FinCEN requirements, Wells Fargo Advisors relied on the Financial Crimes Surveillance group within Wells Fargo Advisors' parent company, Wells Fargo, to develop and maintain Wells Fargo Advisors' transaction monitoring system as part of its enterprise-wide AML and BSA compliance program. Wells Fargo Advisors retained all responsibility for complying with its BSA and FinCEN requirements.

9. The alerts generated by the system were initially reviewed by the Financial Crimes Investigations group to determine whether further investigation of the activity that triggered the alert as potentially suspicious was warranted. Often, these alerts were the first indication of suspicious activity which could result in the filing of a SAR. If warranted, a subgroup of Wells Fargo's Financial Crimes Investigations group investigated the alerted activity on behalf of Wells Fargo Advisors to determine whether it was suspicious within the meaning of the SAR Rule and required Wells Fargo Advisors to file a SAR.

10. Wells Fargo Advisors' AML transaction monitoring system monitored international wire transfer activity, including activity within Wells Fargo Advisors' customer brokerage accounts, utilizing country codes based on the standards established by the National Geospatial Intelligence Agency ("Geospatial Codes"). In contrast, Wells Fargo's enterprise-wide AML and BSA compliance program utilized country codes based on a standard established by the International Organization for Standardization ("ISO Codes") for its list of high or moderate countries. Prior to January 2019, the AML system cross-referenced between the Geospatial Codes and ISO Codes when monitoring wire transfers to or from foreign countries.

The AML System Change

11. In January 2019, Wells Fargo Advisors switched to a new version of its AML transaction monitoring system. However, the new version failed to cross-reference the ISO codes of countries on the list of high risk or moderate risk countries with the Geospatial codes used for wire transfer data. The Geospatial Codes and ISO Codes were different for approximately 100 of the 160 high and moderate risk countries in which Wells Fargo Advisors facilitated brokerage transactions. As a result, the AML transaction monitoring system was not capable of producing alerts for wire transfers involving 58 of the 160 high risk or moderate risk countries in which Wells Fargo Advisors facilitated wire transfers within its brokerage accounts and for which the ISO and Geospatial Codes differed. The AML system continued to trigger alerts for 42 other countries

because the Geospatial Codes for those countries happened to be the same as the ISO Codes for another high risk or moderate risk country.

12. Upon deployment of the new version of its AML transaction monitoring system, Wells Fargo Advisors failed to perform sufficient testing to ensure that the system cross-referenced or otherwise reconciled both the ISO and Geospatial Codes in order to trigger alerts for wire transfers involving high risk or moderate risk countries. Wells Fargo Advisors also failed to conduct sufficient monitoring post-implementation to assess whether the system was operating as intended. As a result of these failures, for transactions occurring between January and August 2019, the AML transaction monitoring system failed to generate alerts for approximately 1,708 wire transfers to or from at least 20 high risk and 18 moderate risk countries, including certain countries on the Financial Crimes Enforcement Network's Financial Action Task Force list of high risk jurisdictions at the time, including Costa Rica, Turkey, Honduras, the British Virgin Islands, Antigua, Cayman Islands, Ukraine, and Guernsey. For the other 20 high risk and moderate risk countries for which the AML transaction monitoring system could not produce alerts for wire transfers, no wire transfers met the monetary threshold for triggering an alert between January and August 2019.

Discovery of Failed Alerts

13. In September 2019, as part of a routine, annual sales practice examination of Wells Fargo Advisors, the Financial Industry Regulatory Authority ("FINRA") requested information from the firm about wire transfers over \$5,000 to or from high risk or moderate risk countries that appeared to meet the AML transaction monitoring system's requirements but failed to trigger expected AML alerts.

14. After FINRA identified and raised the issue to Wells Fargo Advisors, the firm realized that the new version of the AML transaction monitoring system failed to cross-reference between ISO and Geospatial Codes when monitoring wire transfers to or from high risk or moderate risk countries.

15. In October 2019, Wells Fargo Advisors worked with Wells Fargo to fix the AML transaction monitoring system in order to ensure that it monitored wire transfers from high risk and moderate risk countries previously impacted by the failure to cross-reference between ISO and Geospatial Codes.

16. Between October 2019 and February 2020, the Financial Crimes Investigations group reviewed the 1,708 wire transfers for which the AML transaction monitoring system had failed to generate alerts.

17. As part of its review, the Financial Crimes Investigations group analyzed wire transfers to and from the accounts in which the transactions occurred as part of its AML and BSA compliance obligations to determine whether Wells Fargo Advisors was required to file any SARs related to any of the missed alerts.

Late SAR Filings Resulting from the Failed Alerts

18. As a result of the Financial Crimes Investigations group's analysis of the 1,708 wire transfers, Wells Fargo Advisors filed at least 25 late SARs on a rolling basis between October 2019 and February 2020, including one continuing activity SAR, as required by the SAR Rule. 31 C.F.R. § 1023.320(b)(3).²

19. On average, the late SARs were filed 157 days late. At least seven of the late SARs were filed more than 200 days late.

20. The dollar value of the underlying suspicious activity contained in the late SARs ranged from \$29,980 to \$2.5 million and included activity from at least eight high risk and moderate risk countries.

21. All of the late SARs involved wire transfers originating to or from certain high risk and moderate risk countries identified by Wells Fargo Advisors. Several of these late SARs also related to possible money laundering and money movements between multiple brokerage accounts with no business or apparent lawful purpose.

Wire Processing Failures and Resulting Late SARs

22. In December 2020, Wells Fargo Advisors identified and notified the Commission's staff about another, unrelated failure that impacted its AML transaction monitoring system. From approximately April 2017 through May 2019, wire transfer data was not appropriately processed into Wells Fargo Advisors' AML transaction monitoring system in certain situations, including on dates on which there was a bank holiday without a corresponding brokerage holiday. As a result of these failures, the AML transaction monitoring system failed to generate approximately 658 alerts on 11 days during this period. After discovering the problem, between October 2020 and October 2021, the Financial Crimes Investigations group reviewed the missed alerts and determined that at least nine additional late SARs needed to be filed as a result of the monitoring failures.

23. The dollar value of the underlying suspicious activity contained in the nine late SARs ranged from \$10,480 to \$6.2 million. The late SARs were filed between 536 and 1,209 days late.

² Financial institutions with SAR requirements may file SARs for continuing activity after a 90-day review with the filing deadline being 120 days after the date of the previously related SAR filing. Financial institutions may also file SARs on continuing activity earlier than the 120-day deadline if the institution believes the activity warrants earlier review by law enforcement.

24. After discovering these processing failures, the firm took steps to prevent future failures affecting its AML transaction monitoring system by adding additional processes to timely identify missing wire data and prompt reviews of the missing data.

Violations

25. As a result of the conduct described above, Wells Fargo Advisors willfully³ violated Section 17(a) of the Exchange Act and Rule 17a-8 thereunder, which require broker-dealers to comply with the reporting, record keeping, and record retention requirements of the BSA, including filing SARs as required by the SAR Rule, 31 C.F.R. § 1023.320(a)(2).

Wells Fargo Advisors' Remedial Efforts and Cooperation

26. In determining to accept Wells Fargo Advisors' Offer, the Commission considered remedial acts undertaken by Wells Fargo Advisors and the cooperation afforded the Commission's staff.

27. Wells Fargo Advisors voluntarily engaged in remedial measures, including promptly reviewing the AML transaction monitoring system when FINRA raised the ISO-Geospatial Code issue and when it discovered the wire processing failures; identifying and notifying the Commission's staff about the additional failure of its AML transaction monitoring system to process wire transfers in certain situations; correcting both issues; and coordinating responsibility between Compliance and Technology personnel in the implementation of future AML system upgrades. Wells Fargo Advisors also voluntarily retained an outside consulting firm to review its AML and BSA transaction monitoring system and procedures and to recommend enhancements concerning, among other things, architecture, testing, and governance for AML and BSA transaction monitoring. Wells Fargo Advisors also voluntarily provided the outside consulting firm's report and recommendations to the Commission's staff.

28. Wells Fargo Advisors also voluntarily conducted and shared results of its internal investigations of its AML transaction monitoring system and related processes; identified key documents; and made detailed presentations of its findings to the staff.

³ "Willfully," for purposes of imposing relief under Section 15(b) of the Exchange Act, "means no more than 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." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term "willfully" for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has "willfully omit[ted]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest, to impose the sanctions agreed to in Respondent Wells Fargo Advisors' Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act and Section 203(e) of the Advisers Act it is hereby ORDERED that:

- A. Respondent Wells Fargo Advisors cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rule 17a-8 promulgated thereunder.
- B. Respondent Wells Fargo Advisors is censured.
- C. Respondent Wells Fargo Advisors shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$7,000,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Wells Fargo Advisors as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Anne C. McKinley, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 175 West Jackson Boulevard, Suite 1450, Chicago, IL 60604.

D. 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 penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it 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, Respondent agrees that it 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 Securities and Exchange Commission. 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 Respondent 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.

By the Commission.

Vanessa A. Countryman
Secretary