

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 90898 / January 11, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-19704

In the Matter of

WELLS FARGO & COMPANY,

Respondent.

:
:
:
:
:
:
:
:
:
:

**ORDER APPROVING PLAN OF
DISTRIBUTION**

On February 21, 2020, the Commission issued an Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”)¹ against Wells Fargo & Company (“Wells Fargo”). In the Order, the Commission found that from 2012 through 2016, Wells Fargo violated the federal securities laws by misleading investors regarding the success of the core business strategy of the Community Bank operating segment, its largest business unit. At all relevant times, Wells Fargo was a publicly traded financial services corporation with common stock registered under Section 12(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and quoted on the New York Stock Exchange (Ticker: WFC). According to the Order, Wells Fargo, among other things, failed to disclose to investors that the Community Bank’s sales model had caused widespread unlawful and unethical sales practices misconduct that was at odds with its investor disclosures regarding needs-based selling, and that the publicly reported cross-sell metric included significant numbers of unused or unauthorized accounts. The Commission found that Wells Fargo violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and ordered it to pay a \$500 million civil money penalty to the Commission. The Commission also created a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the penalty paid by Wells Fargo can be distributed to harmed investors (the “Fair Fund”).

Wells Fargo has since paid in full. The Fair Fund has been deposited in an interest-bearing account at the United States of Treasury’s Bureau of Fiscal Service. Interest and any

¹ Exchange Act Rel. No. 88257 (Feb. 21, 2020).

additional funds received pursuant to Commission or Court order, agreement, or otherwise, will be added to Fair Fund.²

The Fair Fund currently holds approximately \$502.7 million, comprised of the \$500 million civil penalty paid by Wells Fargo and the \$2.5 million civil penalty paid by Stumpf, plus accrued interest.

By Order dated May 21, 2020, the Commission appointed Rust Consulting, Inc. as the fund administrator for the Fair Fund (“Rust”) and set the administrator’s bond amount at \$500 million.³

On August 6, 2020, the Secretary, pursuant to delegated authority, published a Notice of Proposed Plan of Distribution and Opportunity for Comment (“Notice”),⁴ pursuant to Rule 1103 of the Commission’s Rules on Fair Fund and Disgorgement Plans (the “Commission’s Rules”).⁵ The Notice advised all interested persons that they may obtain a copy of the proposed plan of distribution (“Proposed Plan”) from the Commission’s public website at <http://www.sec.gov/litigation/fairfundlist.htm> or by submitting a written request to Catherine E. Pappas, Senior Advisor, United States Securities and Exchange Commission, One Penn Center, 1617 JFK Blvd., Ste. 520, Philadelphia, PA 19103. All persons who desired to comment on the Proposed Plan could submit their comments, in writing, no later than September 5, 2020. The Commission received one comment during the comment period.

After considering the comment received on the Proposed Plan, the Commission staff, working with the Fund Administrator, recommends that the Proposed Plan be approved without modification.

After careful consideration, the Commission concludes that the Proposed Plan should be approved without modification.⁶

² An additional \$2.5 million paid by John G. Stumpf in a related matter has been added to the Fair Fund as ordered. *See* Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order, Securities Act Rel. No. 10887 (Nov. 13, 2020), *In the Matter of John G. Stumpf*, Admin. Proc. File No. 3-20148.

³ Order Appointing Fund Administrator and Setting Bond Amount, Exchange Act Rel. No. 88921 (May 21, 2020).

⁴ Exchange Act Rel. No. 89501 (Aug. 6, 2020).

⁵ 17 C.F.R. § 201.1103.

⁶ After publication, the Commission staff discovered some incorrect cross-references in the Proposed Plan, which have been corrected.

I.

A. Public Comment on the Proposed Plan

Broadridge Financial Solutions (“Broadridge”) submitted a letter dated September 3, 2020 objecting to two paragraphs in the Proposed Plan regarding procedures to be followed with respect to Third-Party Filers.⁷

1. Objection to Proposed Plan Paragraph 65

Broadridge objects to paragraph 65 of the Proposed Plan and, in particular, the following provision:

Documentation generated by the Third-Party Filer as well as affidavits in lieu of supporting documentation, will not be accepted unless, for good cause, the Fund Administrator determines it acceptable.

Broadridge claims that “it is the common practice in U.S. securities class actions and with SEC Fair Funds for processing services providers to submit to Fund Administrators data files that cover millions of transactions across thousands of claims in any one case. These files are submitted together with supporting affidavits or similar documents verifying that the records are true, accurate and complete. Because these affidavits are accepted in lieu of supplying millions of pages of documents or printouts of client screen shots, the process is both accurate and efficient. ... [B]y adding new steps for claims submitted by Third-Party Filers, the [Proposed Plan] would make claims submission significantly more burdensome and this could impede participation.”

The Commission has considered this objection and concludes that it does not require modification to the Proposed Plan. In consultation with members of its fund administrator pool (“Pool Members”), including Rust, the Commission staff has determined that the requirements of paragraph 65 are necessary for the protection of the distribution from fraudulent claims. Moreover, paragraph 65 does not preclude the submission of data files with an affidavit, as long as the Fund Administrator deems the documentation acceptable for good cause.

⁷ Third-Party Filers are defined in the Proposed Plan as a third-party, including without limitation a nominee, custodian, or an intermediary holding in street name, who is authorized to, and submits, a claim(s) on behalf of one or more Potential Claimants. Proposed Plan, ¶ 27.

2. Objection to Proposed Plan Paragraph 66

Broadridge objects to paragraph 66 of the Proposed Plan and, in particular, the following provisions:

Distribution Payments must be made by check or electronic payment payable to the Potential Claimant (beneficial account owner). The Third-Party Filer shall not be the payee of any Distribution Payment check or electronic Distribution Payment.

Broadridge further objects to the Proposed Plan's preclusion of the offset of Third-Party Filer fees from distribution payments, claiming that the offset of costs from payments will preclude Third-Party Filers from deferring their costs or aligning work performed with the payments recovered.

The Commission has considered this objection and concludes that it does not require modification to the Proposed Plan. In consultation with Pool Members, including Rust, the Commission staff has determined that the preferred method of payment is directly to the Eligible Claimant, as directed by paragraph 66. Notwithstanding, on occasion, with proper documentation including confirmation that the underlying contract with the Eligible Claimant exists and permits payment to the Third-Party Filer, the fund administrator may send a payment to the Third-Party Issuer for the benefit of the Eligible Claimant. This is consistent with paragraph 66, which permits the Fund Administrator, in consultation with the Commission staff, to use an alternative payment arrangement, if authorized by the Eligible Claimant. The Commission further concludes that the preclusion in paragraph 66 of the offset of Third-Party Filer compensation from Distribution Payments is appropriate as a means by which to protect the integrity of Commission distributions and will not significantly restrict distribution participation.

B. Approval of the Proposed Plan

For the reasons stated above, the Commission finds that the Proposed Plan is fair and reasonable and should be approved without modification.

II.

Accordingly, it is hereby ORDERED, pursuant to Rule 1104 of the Commission's Rules,⁸ that the Proposed Plan is approved, and the approved Plan of Distribution shall be posted simultaneously with this Order on the Commission's website at www.sec.gov.

By the Commission.

Vanessa A. Countryman
Secretary

⁸ 17 C.F.R. § 201.1104.