STATE OF VERMONT
DEPARTMENT OF FINANCIAL REGULATION

IN THE MATTER OF:	)	
	)	
WELLS FARGO ADVISORS LLC	)	Docket No. 16- -S
	)	
Respondent.	)	
	)	

ADMINISTRATIVE CONSENT ORDER

WHEREAS, Wells Fargo Advisors LLC ("Wells Fargo") is a broker-dealer registered in the state of Vermont; and

The Securities Division of the Vermont Department of Financial Regulation (the "Department") received and investigated a customer complaint regarding unsuitable investment recommendations made by Wells Fargo, through one or more of its investment advisor representatives and/or sales agents, in non-traditional Exchange Traded Funds and non-traditional Exchange Traded Notes ("non-traditional ETFs" and "non-traditional ETNs" respectively); and

The Department also investigated the same customer complaint regarding the lack of training and supervision Wells Fargo provides its investment advisor representatives and sales agents regarding non-traditional ETF investments; and

Wells Fargo has cooperated with the Department in its investigation by responding to inquiries, providing documentary evidence and other materials and providing the Department with access to facts relating to the customer complaint, investments in non-traditional ETFs and related matters; and

Wells Fargo has implemented certain changes to its Written Supervisory Procedures ("WSPs"), continuing education programs and training programs for financial advisors and supervisory staff relative to the use of and investments in non-traditional ETFs; and

Wells Fargo has agreed to make certain payments to the Department; and

Wells Fargo has implemented certain changes in its supervision of Registered Associates/ Financial Advisors who may be investing customer funds in ETFs and

Wells Fargo elects to permanently waive any right to a hearing and appeal under 9 V.S.A. Chapter 10, the Vermont Uniform Securities Act ("VUSA"), 3 V.S.A. Chapter 150 Chapter 25, the Vermont Administrative Procedures Act; the rules, regulations and orders of the Commissioner of the Vermont Department of Financial Regulation (the "Commissioner") with respect to this Administrative Consent Order (the "Order").

Wells Fargo, without admitting or denying the facts and allegations herein, does hereby consent to the following Order.

NOW, THEREFORE, the Commissioner as administrator of the VUSA, hereby enters this Order.

I. JURISDICTION AND AUTHORITY

1. Wells Fargo is subject to the jurisdiction of the Commissioner in this matter pursuant to the VUSA and consents to the entry of this Order.

II. PARTIES

1. Wells Fargo Advisors LLC is a broker dealer registered in the state of Vermont, with Central Registration Depository ("CRD") number 19616.
2. Michael French was an investment advisor representative and sales agent employed by Wells Fargo, with CRD number 819126.

III. FACTS AND ALLEGATIONS

1. Non Traditional Exchange-Traded Funds ("non-traditional ETFs") are similar to a mutual fund in that they track an index, a commodity, bonds or a diverse basket of assets. However, unlike mutual funds, ETFs trade like any exchange traded common stock with real time price fluctuations making them a more liquid investment option. Further, lower fees and no minimum initial purchase make ETFs a popular alternative to mutual funds.

2. Non-Traditional Exchange-Traded Notes ("non-traditional ETNs") are a senior, unsecured, unsubordinated debt security normally issued by an underwriting financial institution, and like non-traditional ETFs, they are traded on an exchange. However, non-traditional ETNs differ from traditional bonds. For example, unlike traditional bonds, non-traditional ETNs typically do not pay any interest payments to investors. Instead, the issuer promises to pay the holder of the non-traditional ETN an amount determined by the performance of the underlying index or benchmark on the non-traditional ETN's maturity date, minus any specified fees.

3. Because non-traditional ETFs and non-traditional ETNs are exchange traded, an investor can leverage an investment in non-traditional ETFs or non-traditional ETNs with margin debt or short a particular non-traditional ETF or non-traditional ETN. In fact, certain non-traditional ETFs and non-traditional ETNs directly offer leveraged exposure, meaning they promised to pay a multiple of the performance of the underlying index or benchmark. Similarly, certain non-traditional ETFs and non-traditional ETNs are inverse meaning they promise to pay the opposite of the performance of the underlying index or

benchmark. Finally, some non-traditional ETFs and non-traditional ETNs combine these features offering inversed leveraged exposure to the underlying index or benchmark.

4. Most non-traditional ETFs are "reset" daily, meaning they are designed to meet their performance objectives on a daily basis. Therefore, the performance of non-traditional ETFs over longer periods of time can differ significantly from the performance of the underlying index or benchmark during the same period. As a result, non-traditional ETFs are generally not suitable for long term investment, especially for investors with anything other than the highest possible risk tolerance.

5. Due to the daily reset, non-traditional ETFs generally have added fees associated with frequent trading and potentially adverse tax consequences. A careful suitability analysis and daily monitoring is crucial for any accounts invested in non-traditional ETFs.

Non-Traditional ETFs and Wells Fargo's Failure to Supervise

6. Between January 2008 and July 2009 Wells Fargo failed to establish a reasonable supervisory system and written procedures to monitor the sale of non-traditional ETFs and failed to establish adequate formal training regarding non-traditional ETFs, in violation of NASD Rule 3010.

7. Michael French did not have an adequate understanding of non-traditional ETFs before recommending these products to retail brokerage customers.

8. Michael French recommended non-traditional ETFs to customers with conservative income or conservative to moderate growth objectives and risk tolerances, in violation of FINRA Rule 2010 and NASD Rules 2110 and 2310.

9. Wells Fargo was the subject of a FINRA action arising from its failure to supervise adequately the sale of non-traditional ETFs between January 2008 and June 2009. That

action resulted in a Letter of Acceptance, Waiver and Consent ("AWC") that found, among other things, that Wells Fargo had failed to maintain a supervisory system and adequate written procedures designed to ensure compliance with relevant NASD and FINRA rules relative to non-traditional ETFs and had further failed to establish adequate formal training in this regard. The AWC included findings that some Wells Fargo customers were holding non-traditional ETFs for long periods, including certain elderly customers with a growth and income investment objective and moderate risk tolerance who had planned to rely on their investments to fund retirement.

10. Wells Fargo's written supervisory procedures, promulgated in the form the Branch Office Manager's Guide ("BOM Guide"), contain numerous specific provisions regarding the supervision of Registered Associates employed by Wells Fargo.

11. The BOM Guide in effect at all times relevant to this action also called for careful supervision of Registered Associates to ensure product suitability and to ensure that investment activity is consistent with client investment objectives.

12. In July 2009, Wells Fargo promulgated a Compliance Alert to be effective August 12, 2009, and added to its BOM Guide new provisions regarding ETF transactions which required that with the exception of non-traditional ETFs (-1x), non-traditional ETFs be purchased only in accounts with a trading and speculation objective (the "2009 Compliance Alert"). A February 2010 notice stated that all non-traditional ETF transactions in violation of the policy would be treated as errors with losses allocated to Financial Advisors (the "2010 FAQs"). Further bulletins indicated a hard block procedure would be put in place on or about March 3, 2010 to prevent such ETF purchases (the "2010 Bulletins").

13. From approximately August 2000 to August 2011, Michael French was employed by Wells Fargo or its predecessor Wachovia as an investment advisor representative and sales agent in the Colchester or Burlington, Vermont branch offices.

14. Multiple of French's customers filed complaints against him in, arising from French's alleged unsuitable trading in non-traditional ETFs, and related market losses, as well as French's lack of responsiveness to their inquiries.

15. French was the subject of a FINRA action which was resolved by an Acceptance, Waiver and Consent document dated August 7, 2013. FINRA alleged that between January 2010 and May 2011, French had recommended non-traditional ETFs to clients without a reasonable belief they were suitable and without understanding the risks associated with non-traditional ETFs. FINRA also alleged that French had been frequently absent from work and had failed to properly monitor trading.

Customer Complaint Against Michael French

16. On April 1, 2014, DB, a client of Wells Fargo and French, filed a complaint with the Department alleging financial losses arising from unsuitable investments made by French in non-traditional ETFs.

17. Complainant DB was a client of Wells Fargo and Michael French from the early 2000s through early 2011. The funds invested with Wells Fargo were the proceeds of an insurance settlement arising from a car accident which rendered DB wheelchair bound. Complainant DB's investment account indicated a growth investment objective and a moderate risk tolerance.

18. Between 2009 and 2011, French executed numerous trades in non-traditional ETFs in DB's investment account. Although Complainant DB has a more risk adverse growth investment objective, none of these trades were blocked by any system at Wells Fargo.

IV. LAW

The Commissioner has jurisdiction over this matter pursuant to the VUSA.

1. The failure to reasonably supervise a registered representative with regard to the use of and investment in non-traditional ETFS is a violation of 9 V.S.A. Section 5412(d)(9).
2. Failure to establish and maintain an adequate supervisory system, including but not limited to adequate written procedures and continuing education reasonably designed to achieve compliance with applicable NASD and/or FINRA rules in connection with the sale of and investment in non-traditional ETFs, is a violation of 9 V.S.A. Section 5412(d)(9).
3. The failure of a firm to follow the written supervisory procedures ("WSP") with respect to the use of and investment in non-traditional ETFs and the supervision of its agents is a violation of 9 V.S.A. Section 5412(d)(9).
4. Allowing a registered representative to recommend unsuitable products to a customer is a violation of 9 V.S.A. Section 5412(d)(9).
5. A violation of NASD Rules 2110 and 2310 and FINRA Rule 2010 and the resulting FINRA proceeding also violate 9 V.S.A. Section 5412(d)(6).
6. Pursuant to 9 V.S.A. Sections 5412(c) and 5412(d)(9), each of the above violations may constitute a basis for the assessment of administrative penalties.
7. The Commissioner finds the following relief appropriate and in the public interest.

ORDER

On the basis of the Findings of Fact and the Law, and Respondent's consents to the entry of this Order without admitting or denying the facts or denying the facts or conclusions herein,

IT IS HEREBY ORDERED:

1. This Order concludes the investigation by the Commissioner of the Complaint brought by DB and except as provided in Paragraphs 10 and 11 below, precludes any other action the Commissioner could commence under applicable Vermont law as it relates to the subject matter of the DB complaint.
2. This Order is entered into solely for the purpose of resolving the above-referenced complaint and is not intended to be used for any other purpose.
3. Wells Fargo shall cease and desist from violating the VUSA and will comply with all applicable provisions of the VUSA.
4. Within ten (10) days following the entry of this Order, Wells Fargo shall pay to the Department of Financial Regulation (DFR) the sum of $300,000, of which $270,000 represents the administrative penalty, $15,000 shall reimburse the DFR for its costs and $15,000 represents payment to the securities investor education and training fund.
5. Within ten (10) days following the entry of this Order, Wells Fargo shall make payment to DB in an amount of at least all fees and commissions charged to his account in connection with trading in non-traditional ETFs and shall simultaneously provide the DFR an accounting of all fees and commissions which were reimbursed.
6. Wells Fargo has provided the DFR with evidence of enhanced WSPs relative to the use of non-traditional ETFs.

7. Wells Fargo has provided continuing education to its Registered Associates, including the Supervisors of the Burlington, VT branch office. The Supervisors of the Burlington, VT branch office shall also attend a continuing education course relative to the use of non-traditional ETFs on or before July 31, 2016. Wells Fargo shall continue to provide such continuing education to VT supervisors pursuant to the applicable FINRA rules.
8. Nothing herein shall be construed as a waiver of any private right of action any person may have.
9. Nothing herein shall be construed as limiting the Commissioner's authority to conduct an investigation of Wells Fargo for reasons unrelated to the subject matter of this Order.
10. Wells Fargo acknowledges that the Commissioner shall not be precluded in any manner from seeking to subject Wells Fargo to further sanctions or enforcement proceedings for any alleged violation of this Order.
11. Wells Fargo consents to the entry of this Order and acknowledge its consent is given freely and voluntarily and that except as otherwise set forth herein, no promise was made to induce Wells Fargo to consent.
12. Wells Fargo acknowledges that they are and have been represented by counsel in this matter and voluntarily waive their right to a hearing on this matter and to judicial review of this Consent Order under 9 V.S.A. Chapter 150, the Vermont Uniform Securities Act ("VUSA"); 3 V.S.A. Chapter 25, the Vermont Administrative Procedures Act, and the rules, regulations and orders of the Commissioner.
13. Wells Fargo further acknowledges that the Commissioner retains jurisdiction over this matter for purposes of enforcing this Order.
14. This Order shall be governed by and construed under the laws of the State of Vermont.

15. This Order shall be binding upon Wells Fargo and its affiliates and to all successors and assigns of Wells Fargo and its affiliates with respect to all conduct subject to the provisions above and all future obligations, responsibilities, commitments, restrictions and conditions.

16. The parties agree that this Consent Order does not assert any allegations of fraudulent, manipulative or deceptive conduct and should not give rise to any issues of statutory disqualification for Wells Fargo.

Entered at Montpelier, Vermont this 28th day of June 2016.

BY ORDER OF THE COMMISSIONER

Susan L. Donegan

Susan L. Donegan, Commissioner
Vermont Department of Financial Regulation

AGREED AND ACCEPTED

Wells Fargo Advisors LLC

Frank Albanese - Regional President