

THE SECURITIES ACT)
Subsections 8(1), 148.1(1) and 148.2(3))

Order No. 6997
September 18, 2014

TRANSAMERICA SECURITIES INC.
(Formerly WFG Securities of Canada Inc.)

WHEREAS:

(A) On May 6, 2011, The Manitoba Securities Commission (the Commission) issued an Amended Notice of Hearing (the Notice) giving notice of its intention to hold a hearing (the Hearing) to consider whether or not it was in the public interest to grant an order pursuant to subsections 8(1), 148.1(1) and 148.2(3) of The Securities Act (the Act) with respect to WFG Securities of Canada Inc. (now known as Transamerica Securities Inc.) (" the Respondent");

(B) Staff of the Commission and the Respondent have entered into a Settlement Agreement (a copy of which is attached as Schedule "A") dated September 9, 2014 (the Settlement Agreement), which proposed settlement of the proceedings initiated by the Notice, subject to the approval of the Commission;

(C) The Respondent has consented to the issuance of this Order and has waived its rights to a full hearing;

(D) The Commission has reviewed the Settlement Agreement and is of the opinion that it is in the public interest to make this Order.

IT IS ORDERED:

1. **THAT** the Settlement Agreement, Schedule "A", be and the same is hereby approved.
2. **THAT** the Respondent will make a voluntary payment to the Minister of Finance of the Province of Manitoba in the amount of \$250,000.
3. **THAT** the Respondent pay costs in the amount of \$20,000.
4. **THAT** the Respondent deal fairly, honestly and in good faith with any client with a Leveraged Account.

BY ORDER OF THE COMMISSION



Acting Director



THE MANITOBA
SECURITIES
COMMISSION

SCHEDULE "A"

Ex. S 1 Date Sept 18/14
Exam of WFG
Staff Tom Bruce
Court Reporter

IN THE MATTER OF: THE SECURITIES ACT

-and-

IN THE MATTER OF: WFG SECURITIES OF CANADA INC.

SETTLEMENT AGREEMENT

A. INTRODUCTION

- A.1 By way of Notice of Hearing and Statement of Allegations of Staff of The Manitoba Securities Commission (the "Commission"), notice was given to WFG Securities of Canada Inc. ("WFG") of the Commission's intention to hold a hearing under *The Securities Act* ("the Act").
- A.2 Discussions have been held between WFG and Staff of the Commission ("Staff") in an effort to settle the matters set out in the Notice of Hearing and Statement of Allegations ("Proceedings"). A settlement ("Settlement") has been reached based on the terms and conditions set forth in this agreement ("Settlement Agreement").
- A.3 Pursuant to the Settlement, Staff agrees to recommend to the Commission that the Proceedings initiated against WFG be resolved and disposed of in

accordance with the terms and conditions of the Settlement Agreement as set forth below. WFG consents to the Settlement and to the making of the consent order referred to in Part D below, on the terms and conditions set forth in this Settlement Agreement.

B. STATEMENT OF FACTS

B.1 WFG agrees with the facts set out in this Part B.

Registration

B.2 WFG is at present and at all material times has been registered as a mutual fund dealer under the Act.

B.3 On or about July 1, 2013, WFG changed its name to Transamerica Securities Inc.

Supervision and Compliance

B.4 WFG at all material times operated and continues to operate its head office out of Toronto, Ontario and has branch offices across Canada including several branch offices in the City of Winnipeg (a "Winnipeg Branch Office").

B.5 WFG had and continues to have a role in the ongoing monitoring of client accounts, as well as, in the monitoring of the activities of salespersons of WFG to ensure compliance with securities legislation.

Leveraged Accounts

B.6 In the period between January 2006 and November 2008 (“the material time”) WFG salespersons in Manitoba opened accounts with clients wherein WFG salespersons recommended and/or assisted clients in seeking loans from third party lenders to permit investments in mutual funds (the “Leveraged Accounts”).

B.7 At the material time WFG maintained policies in connection with the opening of Leveraged Accounts. These policies contained leveraging parameters which included:

- Clients must have a risk tolerance of medium or higher;
- Borrowed funds must not exceed 40% of the client’s verifiable total net worth (no differentiation will be made between total net worth and liquid net worth);
- Client investment horizon must be long term;
- Client investment knowledge must be good or excellent;
- Minimum family income must be \$25,000 or more;
- Clients must be able to afford to service their debt load using their own demonstrated personal income. The following methods to fund a loan are prohibited: systematic withdrawal plans (SWP’s) and cash distributions from underlying funds:
- For portfolios in excess of \$25,000 representatives should consider diversifying to a number of individually chosen funds or a portfolio product offered by WFG approved providers:
- Independent Legal Advice (“ILA”) must be obtained for all loans of \$250,000 or more. If this is already a requirement of the lender you will not be required to obtain additional ILA.

Details

- B.8 In or about March – April, 2007 Staff of The Manitoba Securities Commission (“MSC Staff”) conducted limited reviews of two WFG offices located in Winnipeg (the “Leila Branch” and the “Portage Avenue Branch”).
- B.9 During the course of the foregoing reviews, MSC Staff became concerned about the number of Leveraged Accounts at the two WFG Winnipeg Branch Offices. MSC Staff referred its concerns to the Mutual Fund Dealers Association who subsequently performed a review of the WFG Head Office, several branches in Winnipeg and elsewhere.
- B.10 MSC Staff also initiated an investigation into the Leveraged Accounts at the Winnipeg Branch Offices.
- B.11 MSC Staff commenced a review of Leveraged Accounts at several of the WFG Winnipeg branches between November 2008 – June 2009. During this time frame and since, MSC Staff received a number of complaints from WFG clients relating to their Leveraged Accounts.
- B.12 A review of the complaints received and a number of Leveraged Accounts at the Winnipeg Branch Offices revealed problems relating to the Leveraged Accounts including:

- i) WFG salespersons recommending to clients that they borrow funds for securities purchases where such an investment strategy was unsuitable given the clients' personal circumstances;
- ii) Inaccurate Know Your Client ("KYC") forms were found in a significant number of client accounts where the clients' investment knowledge, income, risk tolerance, and/or investment objectives were incorrectly stated;
- iii) Inaccurate loan applications to support borrowing for the Leveraged Accounts were found where net worth of WFG clients and debts were incorrectly recorded and which applications were used to support a loan in relation to the Leveraged Accounts;
- iv) In certain instances, the Leveraged Accounts were recommended as a means to increase cash flow for the WFG clients;
- v) Risks associated with the Leveraged Accounts were in a significant number of instances not being explained adequately, or at all, to WFG clients by some WFG salespersons;
- vi) Leveraged Accounts were being promoted whereby a significant number of WFG clients were being told that they would not have to make payments on the loans in support of the Leveraged Accounts with said

loans being interest only payments to be paid out of distributions from the mutual fund purchases in the Leveraged Accounts.

- B.13 Several WFG clients interviewed by MSC Staff indicated they could not then afford to pay the loans in connection with the Leveraged Accounts without receiving distributions from the mutual funds purchased.
- B.14 Under WFG policies, every Leveraged Account opened by WFG salespersons must be approved by WFG Compliance Department. Leveraged Accounts were also to be reviewed and approved by WFG Branch Managers at the Winnipeg Branches.
- B.15 As part of its review of the Portage Avenue Branch operations, MSC Staff reviewed the then Branch Manager's supervision of the Branch's trading activity.
- B.16 A Branch Manager of the Portage Avenue Branch advised MSC Staff that a review of Know Your Client Forms and accompanying trade tickets were done by a "team leader" and not by that Branch Manager. This was contrary to WFG policies.
- B.17 The then Branch Manager further advised MSC Staff that he reviewed forms for completeness prior to sending them to Head Office but it was the team leader who reviews client information and suitability of trades. The Portage

Avenue Branch Manager also stated he did not complete daily trade blotter reviews of trading activity within the Branch and made limited use of WINFUND, a program database which allows dealers and their representatives access to client transaction information, for review of activity in the Branch. This was contrary to WFG policies.

- B.18 MSC Staff also reviewed WFG practices for approval of trades and day to day account opening at branches where the Branch Manager was away from the office or otherwise unavailable. In such situations WFG would allow day to day account opening or trading approvals being approved by a Branch Manager from another location who did not have immediate access to client files for review prior to providing approvals. This was contrary to WFG policies.
- B.19 As a result of concerns raised by Staff, WFG in December, 2008, cooperatively agreed not to open any further Leveraged Accounts. This agreement has remained in effect throughout these proceedings.
- B.20 Since December, 2008, Staff and WFG have met and corresponded on numerous occasions to resolve Staff's concern in connection with the Leveraged Accounts.
- B.21 Beginning in early 2009, WFG engaged Compliance Alliance Inc. ("CAI") to perform a preliminary review of the activities of its Approved Persons ("APs")

who recommended strategies to use borrowed funds to purchase securities during the material time. This preliminary review was undertaken by WFG in agreement with the MFDA (The "National Review"). The National Review included a limited review of the leveraging activity in Manitoba at the material time.

B.22 CAI issued its Completion Report in connection with the preliminary review on 8/04/2010.

B.23 In its Completion Report, using regulatory requirements and in particular MFDA requirements with respect to leverage, including MR-0069, CAI made a number of findings concerning the Leveraged Accounts including:

- Prior to April 2008 WFG did not in all cases exercise appropriate controls over the leverage activity of its approved persons.
- The use of distributions from leverage investments to service clients' loan payments was found to be a prevalent practice at some of the WFG locations reviewed.
- A review of the client holdings for the leveraged accounts revealed the prevalent use of funds from IA Clarington and Stone Co. which paid regular streams of distributions from return of capital, dividend and other income. CAI noted at issue with this strategy was the distributions from the leveraged investments may fluctuate and/or decline so that the strategy would no longer be affordable or practical.

- WFG did not have adequate mechanisms or controls in place to fully supervise many of the Leveraged Accounts prior to April, 2008.
- Non-compliant, misleading promotional materials, printed proposals, illustrations and diagrams concerning leveraging were found in client files.
- Training conducted by certain senior sales persons focused on leverage investing and improper leveraging strategies were identified.
- Non-compliant “customized leverage disclosures” were found in some files.

B.24 Staff at the Commission issued a Notice of Hearing and Statement of Allegations on May 4, 2010, returnable June 28, 2010.

B.25 On October 18, 2010, with the consent of WFG, a Commission Panel issued Order No. 6238 ordering:

- i) WFG retain the services of CAI to complete reviews of the Leveraged Accounts opened by clients of WFG in or before December 31, 2008.
- ii) Compliance Alliance Inc. will conduct a review in a manner similar to its reported preliminary reviews and will report back its findings to the Commission Panel by means of final review report by no later than January 31, 2011.

B.26 CAI completed the Leveraged Account reviews referred to in Commission Order No. 6238 and provided its findings in a Completion Report dated December 31, 2010 (the "December 2010 Report").

B.27 In the December 31, 2010 Report, CAI made a number of findings. These included:

- A total amount of 548 Leveraged Accounts were reviewed.
- 86% of the files reviewed were assessed as requiring remediation (as defined by CAI) from WFG head office.
- 68 complaints regarding leverage were found.
- 9 leveraged accounts were identified as in arrears, in default or having loan payment problems.
- 8 pre-signed forms were found;
- 30 large loans (\$190,000 plus) were identified and all (100%) were assessed as having leverage which required "remediation" from WFG head office;
- 2 Smith Maneuver strategies and 5 RRSP Meltdown Strategies were found;
- the use of distributions from leveraged investments to service the loan payments was found to be a prevalent practice and a non-compliant promotional piece entitled "Understanding Cash Distribution Funds-A Scoop on Return of Capital" was found in a high number of client files (38%);

- Non-compliant “customized leverage disclosures” were found.

B.28 The December 31, 2010 Report also provided a number of recommendations including:

- A subset of Leveraged Accounts assessed as requiring “action” should be remedied based on recommendations made by CAI in its December 31, 2010 Report;
- WFG should develop a comprehensive training program for leverage including developing a leverage suitability manual and WFG compliance policies and procedures manual.
- CAI recommended that WFG further develop its policies and procedures manual used by branch managers to specifically target supervision requirements of branch managers.

B.29 On September 5, 2012, the Commission issued Order No. 6583, which ordered provided, inter alia, WFG proceed with the recommendations contained in the December 31, 2010 Completion Report. A copy of this Order is attached as Exhibit “A” to this Settlement Agreement.

B.30 Pursuant to Commission Order No. 6583 a plan (“the MSC Plan”) was prepared by CAI as monitor (the “Monitor”) and agreed to by Staff and WFG to implement the recommendations in the December 31, 2010 Completion Report.

B.31 On March 31, 2014 CAI issued its final report. CAI reported that, as of the time of the report, 41 complaints remained open or re-opened and the final letters (non-complaint) to clients were to be completed and reviewed. CAI noted that while the MSC Plan was essentially complete, the final remaining outstanding complaints and letters listed above would warrant monitor review by CAI. CAI also expressed that notwithstanding the final remaining outstanding items noted above, it is CAI's assessment that WFG has satisfied the terms prescribed in MSC Order No. 6583.

ADDITIONAL FACTS

In 2013, the MFDA commenced disciplinary proceedings against four individuals in connection with their conduct concerning certain leveraged accounts while registered as mutual fund sales persons with WFG at the material time. The matters were either settled by the individuals involved or in one case, went before the MFDA on an uncontested basis. The outcome of those proceedings led to certain prohibitions, fines and costs.

C. ACKNOWLEDGEMENTS

C.1 WFG acknowledges and agrees that:

- (a) It approved the opening of a significant number of Leveraged Accounts when the strategy was unsuitable given the client's personal circumstances.

- (b) Failed to properly supervise the activities of certain WFG salespersons in regards to Leveraged Accounts.
- (c) Approved the opening of a significant number of Leveraged Accounts which did not comply with the leveraging parameters contained in WFG compliance bulletins and/or supervisory compliance procedural manuals.
- (d) Did not act fairly, honestly and in good faith towards those clients, contrary to s. 154.2(3) of the Act.

D. MITIGATING FACTORS

D.1 The following mitigating factors have been taken into account in arriving at the Settlement Agreement:

- WFG cooperated with Staff throughout this proceeding and promptly responded to Staff's concerns at all times.
- WFG voluntarily ceased leveraging practices in December 2008 and during the review by CAI.
- WFG retained and paid for the review conducted by CAI.
- WFG cooperated fully with CAI and agreed to meet CAI's more stringent standards, mainly MR-0069, than were industry norm at the material time.
- WFG has dealt in good faith with clients identified by CAI as requiring compensation and has substantially met CAI's recommendations.
- WFG has taken corrective action, including local management changes and education, and has upgraded its systems and practices.

- In reaching the terms of this Settlement Agreement, Staff has considered the costs incurred by WFG to date in dealing with clients identified as requiring compensation and incurred by WFG in retaining CAI and implementing its recommendations.

E. TERMS OF SETTLEMENT

- E.1 WFG agrees to make a voluntary payment to the Minister of Finance of Manitoba in the amount of \$250,000.
- E.2 WFG agrees to pay a contribution to costs in the amount of \$20,000.
- E.3 WFG agrees to deal fairly, honestly, and in good faith, with any client with a Leveraged Account.
- E.4 Staff seeks a Consent Order from the Commission consistent with the terms contained in the previous paragraphs E.1-E.3 of the Settlement Agreement pursuant to the provisions of the Act.
- E.5 The Consent Order sought by the Staff is as follows:
- (a) THAT the Settlement Agreement be approved;
 - (b) THAT WFG make a voluntary payment to the Minister of Finance of Manitoba in the amount of \$250,000.

(c) THAT WFG agrees to pay costs in the amount of \$20,000.

(d) THAT WFG deal fairly, honestly and in good faith with any client with a Leveraged Account.

E.6 In the event the Settlement Agreement is approved, Staff will discontinue the proceedings as against WFG.

F. PROCEDURE FOR APPROVAL OF SETTLEMENT

F.1 The approval of this Settlement Agreement and the making of the Consent Order set out in this Settlement Agreement shall be sought at an *in camera* hearing pursuant to the Notice of Hearing.

F.2 Staff, WFG, agree that if this Settlement Agreement is approved by the Commission, it will constitute the entirety of the evidence to be submitted to the Commission in connection with the Proceedings and WFG hereby waive their respective rights to a full hearing and appeal of this matter.

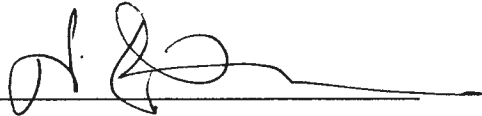
F.3 Notwithstanding any other provision of this Settlement Agreement, if, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or the Consent Order referred to in Section D above is not made by the Commission, Staff will be entitled to proceed with whatever steps it is entitled by law to take, including but not restricted to, the commencement of a

hearing before the Commission, unaffected by this Settlement Agreement or the settlement discussions. In the event that such steps are taken, WFG shall have all of the usual rights of a person subject to such proceedings.

- F.4 If the Settlement Agreement is not approved or the Consent Order set out in Section D above is not made by the Commission, the terms of this Settlement Agreement shall remain confidential and shall not be raised in this or any other proceeding, and any admissions contained in this Settlement Agreement shall be considered as without prejudice communications and furtherance of settlement discussions which will not be binding upon the parties and which will be inadmissible in any proceeding whatsoever.
- F.5 If this Settlement Agreement is approved by the Commission and the Consent Order made upon the terms set out in this Settlement Agreement, this Settlement Agreement will be a public document.
- F.6 WFG agree that, if this Settlement Agreement is approved by the Commission and the Consent Order is made upon the terms set out in this Settlement Agreement, WFG will not raise as a basis for attack on the Order this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement, alleged bias, alleged unfairness, or any such other challenges to the validity of the Consent Order.

F.7 WFG further agrees that if this Settlement Agreement is approved by the Commission and the Consent Order is made upon the terms set out in this Settlement Agreement, they will not make any statements inconsistent with the terms of this Agreement.

DATED at Toronto, Ontario, this 4th day of September, 2014.



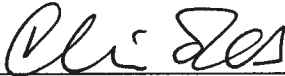
Witness



WFG

DATED at Winnipeg, Manitoba, this 9th day of September, 2014.

Staff of the Manitoba Securities Commission

Per: 

Chris Besko, Acting Director



THE SECURITIES ACT)	Order No. 6583
)	
Section 8(1))	September 5, 2012

WFG SECURITIES OF CANADA INC. ("WFG")

WHEREAS:

(A) On May 4, 2010, The Manitoba Securities Commission ("Commission") issued a Notice of Hearing ("Notice") giving notice of its intention to hold a hearing to consider, inter alia, whether or not it was in the public interest to grant an order pursuant to subsection 8(1) of *The Securities Act* ("Act") with respect to WFG.

(B) Pursuant to Commission Order No. 6238, Compliance Alliance Inc. ("CAI") completed a review of leveraged accounts opened by clients of WFG in Manitoba in or before December, 2008. (the "Completion Report")

(C) Pursuant to the Completion Report, CAI made recommendations to WFG concerning actions required for certain leveraged accounts assessed by CAI.

(D) Upon noting the consent of WFG and staff of the Commission to the making of this order, the Commission is of the opinion that it is in the public interest to make this order.

IT IS ORDERED:

1. THAT WFG will proceed with the recommendations contained in the Completion Report for the account reviews.
2. THAT within 40 days of the granting of this order, WFG will prepare a plan (the "Plan") for the account reviews acceptable to Staff and the Monitor (as hereinafter defined) to implement the recommendations contained in the Completion Report.
3. THAT WFG shall conduct the recommended account reviews in accordance with the Plan and shall notify each client that the review is being conducted to assess the suitability of leveraging in their account with WFG.
4. THAT CAI shall be appointed as a Monitor ("the Monitor") to approve the Plan, monitor, follow-up and provide status reports, quarterly, of the account reviews to WFG and Commission staff.
5. THAT the Monitor's compensation and expenses shall be borne exclusively by WFG.

6. THAT WFG will offer clients subject to the account reviews an opportunity to meet face to face with WFG representatives for an account review and the Monitor shall be present at a select sample of any such account reviews, as determined at the Monitor's discretion, acting reasonably.

7. THAT WFG shall conduct the account reviews in the client's first language, upon request or where necessary due to language barriers arising during the account reviews.

8. THAT the Monitor shall have reasonable access to all of WFG's records necessary to complete the Monitor's mandate and the ability to meet privately with WFG officers and employees. WFG shall require its officers and employees to cooperate fully with the Monitor with respect to the Plan.

9. THAT the Monitor shall make and keep notes of any interviews attended and maintain copies of documents gathered in connection with the performance of its duties and responsibilities.

10. THAT a copy of this order shall be provided to all clients involved in the account reviews.

11. THAT WFG or Commission staff may return to the Commission Panel for further assistance or directions, as may be required or at such time as the Commission Panel directs.

BY ORDER OF THE COMMISSION



Director Legal and Enforcement