
SECURITIES - CALIFORNIA

McDaniel v. Wells Fargo Investments, LLC

United States Court of Appeals, Ninth Circuit - April 9, 2013 - F.3d - 2013 WL 1405949

Federal securities laws held to preempt suits by investment advisors alleging that banks' in-house trading policies amount to forced-patronage in violation of California labor law.

Federal law requires brokerage firms to take measures reasonably designed to prevent their employees from misusing material, nonpublic information. To meet that obligation, defendants Wells Fargo, Morgan Stanley, and Merrill Lynch adopted policies generally forbidding their financial advisors from opening self-directed trading accounts outside the firm.

Former California employees of the firms sued, contending that the firms' trading policies allowing members to open self-directed trading accounts only in house, thus force each "employee … to patronize his or her employer … in the purchase of [a] thing of value" and thus amount to forced patronage in violation of section 450(a) of the California Labor Code.

The firms raised the defense of preemption. They contended that section 450(a) is an obstacle to the accomplishment of a significant objective of federal securities law – namely, that brokerage firms use their discretion to adopt whatever trading polices they think best suited to preventing insider trading and similar abuses.

After analysis, the appeals court affirmed the district court's ruling that the Securities Exchange Act and related SRO rules preempt the employees' forced-patronage suits.