

March 7, 2019

Memorandum

To: Members, Committee on Financial Services

From: FSC Majority Staff

Subject: March 12, 2019, “Holding Megabanks Accountable: An Examination of Wells Fargo’s Pattern of Consumer Abuses.”

The Committee on Financial Services will hold a hearing at 10:00 a.m. on Tuesday, March 12, 2019, in Room 2128, Rayburn House Office Building entitled, “Holding Megabanks Accountable: An Examination of Wells Fargo’s Pattern of Consumer Abuses.” This will be a one-panel hearing with the following witness:

- Timothy J. Sloan, President and Chief Executive Officer of Wells Fargo & Company (“Wells Fargo”).

Background

On September 8, 2016, the Consumer Financial Protection Bureau (CFPB), Office of the Comptroller of the Currency (OCC), and Los Angeles City Attorney fined Wells Fargo Bank, N.A. (“Wells Fargo Bank” or “Bank”)¹ collective penalties of \$185 million for opening millions of deposit and credit-card accounts in customers’ names without their consent or knowledge.² In addition to imposing civil money penalties, the CFPB and OCC required Wells Fargo Bank to pay restitution to harmed customers and to take action to identify, correct, and prevent deficiencies in the Bank’s sales practices.³ Financial regulators have since uncovered additional instances of consumer abuses at Wells Fargo and its subsidiaries. A summary of select issues is provided below.

Fake Accounts Scandal (2011 – 2016)

The CFPB’s September 8, 2016 consent order found that from January 1, 2011 to September 8, 2016, thousands of Wells Fargo Bank employees engaged in improper sales practices in connection with an aggressive incentive compensation program that encouraged

¹ Wells Fargo Bank is a wholly owned subsidiary of Wells Fargo and is a nationally-chartered bank.

² See CFPB Press Release, *Consumer Financial Protection Bureau Fines Wells Fargo \$100 Million for Widespread Illegal Practice of Secretly Opening Unauthorized Accounts* (Sept. 8, 2016), available at <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-fines-wells-fargo-100-million-widespread-illegal-practice-secretly-opening-unauthorized-accounts/>.

³ *Id.*; OCC Press Release, *OCC Assesses Penalty Against Wells Fargo, Orders Restitution for Unsafe or Unsound Sales Practices* (Sept. 8, 2016), available at <https://www.occ.gov/news-issuances/news-releases/2016/nr-occ-2016-106.html>.

employees to “cross-sell” banking products and services to existing customers.⁴ Wells Fargo employees: (1) opened unauthorized deposit accounts for existing customers; (2) submitted credit-card applications in customers’ names without their authorization; and (3) enrolled customers in online-banking services and requested debit cards on their behalf without their knowledge or consent.

Based on Wells Fargo Bank’s internal analysis, the CFPB also found that the Bank opened potentially 1.5 million unauthorized deposit accounts and 565,000 unauthorized credit-card accounts causing an estimated \$2.5 million in consumer harm.⁵ In August 2017, the Bank revised this total to 3.5 million accounts following a third-party review.⁶ Wells Fargo Bank reported that its customers incurred approximately \$6.1 million in erroneous banking fees.

In its 2018 10-K, Wells Fargo reported that it had “completed financial remediation for the customers” identified by the third-party review.⁷ However, because the CFPB and OCC orders remain open, it is unclear if these remediation efforts have satisfied regulators.

In response to the scandal, Wells Fargo Bank reportedly fired 5,300 employees who engaged in the fraudulent sales practices.⁸ Additionally, on September 13, 2016, Wells Fargo announced that it would end sales quotas for employees on January 1, 2017.⁹

Abuses Involving Servicemembers (2006 – 2016)

On September 29, 2016, the OCC announced¹⁰ a \$20 million penalty against Wells Fargo Bank for violating the Servicemembers Civil Relief Act (SCRA), which protects military members and their families from certain financial burdens during their active duty service.¹¹ The OCC found that between 2006 and 2016, Wells Fargo Bank: (1) charged servicemembers higher rates on certain loans than allowed under the SCRA; (2) failed to accurately disclose servicemembers’ active duty status to courts when those servicemembers faced eviction proceedings; and (3) repossessed servicemembers’ vehicles without first obtaining a court order.¹² In addition to ordering a \$20 million penalty and restitution for

⁴ See CFPB Consent Order, *In the Matter of Wells Fargo Bank, N.A.* (Sept. 8, 2016), available at https://files.consumerfinance.gov/f/documents/092016_cfpb_WFBconsentorder.pdf (hereinafter, “CFPB Sales Practices Consent Order”).

⁵ *Id.*

⁶ Wells Fargo Press Release, *Wells Fargo Reports Completion of Expanded Third-Party Review of Retail Banking Accounts, Paving Way to Complete Remediation Effort* (Aug. 31, 2017), available at <https://newsroom.wf.com/press-release/wells-fargo-reports-completion-expanded-third-party-review-retail-banking-accounts>.

⁷ Wells Fargo Form 10-K for the Year Ending December 31, 2018, available at <https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/sec-filings/2018/exhibit-13.pdf>.

⁸ Matt Egan, *5,300 Wells Fargo Employees Fired Over 2 Million Phony Accounts*, CNN (Sept. 9, 2016), available at <https://money.cnn.com/2016/09/08/investing/wells-fargo-created-phony-accounts-bank-fees/index.html>.

⁹ Wells Fargo Press Release, *Wells Fargo to Eliminate Product Sales Goals for Retail Bankers* (Sept. 13, 2016) available at <https://newsroom.wf.com/press-release/corporate-and-financial/wells-fargo-eliminate-product-sales-goals-retail-bankers>.

¹⁰ OCC Press Release, *OCC Assesses Penalty Against Wells Fargo; Orders Restitution for Violations of the Servicemembers Civil Relief Act* (Sept. 29, 2016), available at <https://www.occ.gov/static/enforcement-actions/ea2016-081.pdf>.

¹¹ 50 U.S.C. §§ 3901-4043.

¹² OCC Press Release (Sept. 29, 2016), *supra* n. 10.

affected servicemembers, the OCC gave the Bank 60 days to develop written SCRA compliance and audit programs.¹³ The OCC closed its September 29, 2016 consent order on June 18, 2018.¹⁴

In a parallel action, the Department of Justice (DOJ) settled with Wells Fargo Bank for its SCRA violations involving the unlawful repossession of servicemembers' vehicles.¹⁵ A National Guardsman tipped the DOJ off to Wells Fargo Bank's misconduct after the Bank repossessed his used car while he was preparing to deploy to Afghanistan. The Bank then tried to collect more than \$10,000 from the Guardsman to cover the difference between his loan balance and the resale value of his car.¹⁶

Pursuant to the DOJ's consent order, the Bank paid a \$60,000 fine and \$10,000 in restitution to each of the 863 affected servicemembers, plus any lost equity in the vehicle with interest (i.e., \$10,183,950 in total restitution).¹⁷

Widespread Consumer Abuses and Compliance Breakdowns

In response to the firm's "recent and widespread consumer abuses and other compliance breakdowns," the Federal Reserve Board (FRB) announced on February 2, 2018, that it was indefinitely restricting Wells Fargo's growth until the firm improved its governance and compliance programs. The FRB found that Wells Fargo had pursued a business strategy that prioritized growth over risk management. According to the FRB, Wells Fargo's failure to maintain an effective firm-wide risk management framework undermined its board of directors' awareness of serious compliance breakdowns. The FRB gave the firm 60 days to submit written plans to improve its governance and risk management processes, including strengthening the effectiveness of its board oversight.

In December 2018, Reuters reported that the FRB rejected Wells Fargo's compliance plans because they failed to include sufficient checks on the company's management.¹⁸

¹³ OCC Consent Order, *In the Matter of Wells Fargo Bank* (Sept. 29, 2016), available at <https://www.occ.gov/static/enforcement-actions/ea2016-081.pdf>.

¹⁴ OCC Order Terminating the Consent Order, *In the Matter of Wells Fargo Bank* (June 18, 2018), available at <https://www.occ.gov/static/enforcement-actions/ea2018-056.pdf>.

¹⁵ DOJ Press Release, *Justice Department Reaches \$4 Million Settlement with Wells Fargo Dealer Services for Illegally Repossessing Servicemembers' Cars* (Sept. 28, 2016), available <https://www.justice.gov/opa/pr/justice-department-reaches-4-million-settlement-wells-fargo-dealer-services-illegally> <https://www.justice.gov/opa/file/899191/download>.

¹⁶ *Id.*

¹⁷ At the time of the settlement, the DOJ announced that 413 servicemembers were eligible to receive compensation. Wells Fargo subsequently identified an additional 450 affected servicemembers. See DOJ Press Release, *Justice Department Obtains \$5.4 Million in Additional Relief to Compensate Servicemembers for Unlawful Repossessions by Wells Fargo Dealer Services* (Nov. 14, 2017), available at <https://www.justice.gov/opa/pr/justice-department-obtains-54-million-additional-relief-compensate-servicemembers-unlawful>.

¹⁸ Patrick Rucker, *Wells Fargo reform plans fail to satisfy Fed after scandals: sources*, Reuters (Dec. 6, 2018), available at <https://www.reuters.com/article/us-wells-fargo-fed-balance/wells-fargo-reform-plans-fail-to-satisfy-fed-after-scandals-sources-idUSKBN1O513O?feedType&>.

Mortgage and Auto Lending Failures (2005 – 2016)

On April 20, 2018, the CFPB and OCC announced coordinated settlements with Wells Fargo Bank for consumer abuses in two of the Bank’s loan-related programs.¹⁹ The CFPB found that from September 2013 through February 2017, Wells Fargo Bank inappropriately charged prospective home loan borrowers fees for extending the period for a mortgage interest-rate lock. According to the CFPB, the Bank’s loan officers inconsistently applied its extension fee policy and improperly charged borrowers fees, including when the Bank’s own delay created the need for extension.²⁰

The CFPB also found that between October 2005 and September 2016, Wells Fargo Bank purchased unnecessary or duplicative collateral-damage insurance (called “force-placed insurance”) for hundreds of thousands of borrowers’ vehicles and financed the coverage by adding the costs to borrowers’ auto-loan balance. On average, these borrowers paid over \$1,000 a policy for needless insurance coverage. Borrowers who failed to pay the force-placed insurance charges faced additional fees and, in some instances, experienced delinquency, loan default, and even repossession of their vehicles. Wells Fargo Bank acknowledged that at least 27,000 of its customers may have had their vehicle repossessed following defaults arising from the additional costs of force-placed insurance. In response to this misconduct, the CFPB assessed a record \$1 billion penalty against the Bank.²¹

The OCC found that Wells Fargo Bank’s violations resulted from “deficiencies in the bank’s enterprise-wide compliance risk management program that constituted reckless, unsafe, or unsound practices.”²² The OCC imposed a \$500 million fine, which the CFPB credited toward its \$1 billion penalty, and required the Bank to submit written plans for customer remediation and an enterprise-wide compliance program.²³

In September 2018, Reuters reported that the OCC rejected the Bank’s force-placed insurance remediation plan because the regulator was unconvinced that the plan would assure repayment to all affected customers.²⁴ On October 2, 2018, the Comptroller of the Currency, Joseph M. Otting, testified to the Senate Banking Committee that the OCC was “not comfortable” with Wells Fargo’s remediation progress to date.²⁵

¹⁹ See CFPB Press Release, *Bureau of Consumer Financial Protection Announces Settlement with Wells Fargo For Auto-Loan Administration and Mortgage Practices* (Apr. 20, 2018), available at <https://www.consumerfinance.gov/about-us/newsroom/bureau-consumer-financial-protection-announces-settlement-wells-fargo-auto-loan-administration-and-mortgage-practices/>.

²⁰ CFPB Consent Order, *In the Matter of Wells Fargo Bank, N.A.* (Apr. 20, 2018), available at https://files.consumerfinance.gov/f/documents/cfpb_wells-fargo-bank-na_consent-order_2018-04.pdf.

²¹ *Id.*

²² OCC Press Release, *OCC Assesses \$500 Million Penalty Against Wells Fargo, Orders Restitution for Unsafe or Unsound Practices* (Apr. 20, 2018), available at <https://www.occ.gov/news-issuances/news-releases/2018/nr-occ-2018-41.html>.

²³ *Id.*

²⁴ Patrick Rucker, *Exclusive: U.S. regulators reject Wells Fargo's plan to repay customers – sources*, Reuters (Sept. 11, 2018), available at <https://www.reuters.com/article/us-wells-fargo-insurance-exclusive/exclusive-u-s-regulators-reject-wells-fargos-plan-to-repay-customers-sources-idUSKCN1LR2LG>.

²⁵ Senate Committee on Banking, Housing, and Urban Affairs, *Hearing on Implementation of the Economic Growth, Regulatory Relief, and Consumer Protection Act* (Oct. 2, 2018).

Improper Sales of Complex Financial Products (2009 – 2013)

On June 25, 2018, Wells Fargo Advisors LLC (WFA)²⁶ settled securities fraud charges with the SEC related to the sale of complex financial products to retail investors.²⁷ According to the SEC, from at least January 2009 through June 2013, WFA representatives improperly solicited retail customers to actively trade market-linked investments (MLIs) which were intended to be long-term holdings. The SEC found that the trading strategy reduced the customers' investment returns while generating substantial fees for WFA.

WFA agreed to pay a \$4 million fine and return \$930,377 of commissions that WFA representatives improperly received, plus \$178,064 in interest. The SEC also censured WFA and ordered the firm to cease and desist from engaging in any current or future violations of certain antifraud provisions of the federal securities laws. In its order, the SEC recognized the remedial steps WFA took to address the allegedly improper sales practices.

Other Emerging Issues

In addition to the above issues, Wells Fargo and its subsidiaries have reportedly engaged in other misconduct that may be the subject of ongoing investigations, including:

- In August 2018, Wells Fargo disclosed that federal agencies are investigating erroneous fee calculations associated with its wealth management business.²⁸
- Wells Fargo also disclosed in August 2018 that federal agencies are investigating potential misconduct regarding collecting beneficial ownership information.²⁹ Wells Fargo is required to collect the information pursuant to a 2015 OCC consent order, which found deficiencies in the Bank's anti-money laundering compliance program.³⁰
- In November 2018, Wells Fargo reported that an internal investigation had thus far revealed that it erroneously denied, or did not offer, a loan modification to 870 customers due to an underwriting software error.³¹ According to Wells Fargo, the Bank foreclosed on 545 of these customers based on the error.
- In February 2019, Wells Fargo reported, among other things, potential violations related to the sale of add-on products and the freezing or closing of accounts.³²

²⁶ WFA is wholly owned by Wachovia Securities Financial Holdings, LLC, which is a wholly-owned by Wells Fargo.

²⁷ SEC Press Release, *Wells Fargo Advisors Settles SEC Charges for Improper Sales of Complex Financial Products* (June 25, 2018), available at <https://www.sec.gov/news/press-release/2018-112> <https://www.sec.gov/news/press-release/2018-112>

²⁸ Wells Fargo Form 10-Q for the Quarterly Period Ending June 30, 2018, available at <https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/sec-filings/2018/second-quarter-10q.pdf>.

²⁹ *Id.*

³⁰ OCC Consent Order, *In the Matter of Wells Fargo Bank* (Nov. 19, 2015), available at <https://www.occ.gov/static/enforcement-actions/ea2015-125.pdf>.

³¹ Wells Fargo Form 10-Q for the Quarterly Period Ending September 30, 2018, available at <https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/sec-filings/2018/third-quarter-10q.pdf>.

³² Wells Fargo Form 10-K, *supra* n. 7.