

**HEARING BEFORE THE UNITED STATES HOUSE OF
REPRESENTATIVES COMMITTEE ON FINANCIAL SERVICES**

March 11, 2020

Testimony of Elizabeth Duke

Chairwoman Waters, Ranking Member McHenry, and Members of the Committee, thank you for inviting us to testify at today's hearing. As the markets face increasing volatility, a strong Wells Fargo is needed now more than ever. Transformational changes are taking hold at the Bank, with strong new leadership in management. I believe that, today, Wells Fargo has the right team and is on the right track toward a bright future as an institution that is deserving of the trust customers place in Wells Fargo every day.

Over the past several days, however, it became clear to my colleague Jim Quigley and me that our continued leadership at the Bank was drawing more attention to the problems of the past rather than to the Company's success in the future. For this reason, and out of continued loyalty to Wells Fargo, its customers and employees, we recommended to our colleagues on the Board last week that we step down from our leadership roles, effective immediately, and they have accepted our resignations. We believe that changes in these roles will facilitate the new CEO's ability to turn the page and focus on the Bank's future progress.

We welcome any opportunity to discuss Wells Fargo's commitment to charting a different and better course. But we are no longer able to speak on behalf of Wells Fargo or to address the Committee's interest in issues facing the company going forward. We are also constrained by the scope of regulators' waivers of their confidential supervisory privilege. Within those limitations, we will be as helpful to the Committee as we can be.

Wells Fargo's new CEO Charlie Scharf is in the best position to provide a comprehensive update on the transformational change that has taken place at the company, and the significant improvements that remain to be executed, so that Wells Fargo fulfills its core mission of helping customers and the communities it serves.

Like the Members of this Committee, the Board was appalled by the egregious customer abuses that occurred in the Community Bank and the flaws in the business model that led to them. Once the Board was informed of the truth of these totally unacceptable problems, we took immediate and decisive action. It began by commissioning an independent review to investigate the root causes of the issues. Based on that work, the Board oversaw profound changes at every level of the company. There is a new management team in place, with valuable perspective from peer institutions, and there is new expertise with a diversity of experience on the Board. We also oversaw the complete restructuring of the Bank's internal operating model, making it simpler and more centralized, and the building of a new risk management platform from the ground up.

Wells Fargo still has significant work to do. The breadth of the cultural and systemic transformation has taken time to implement— more time than anyone anticipated, and more time than any of us, especially on the Board of Directors, would have liked. We have shared the Committee's, our regulators', and the Board's frustration that the Bank has not yet satisfied all

aspects of the consent orders that the company has entered into. We are confident that the Board of Directors will continue to hold management accountable until the job is finished.

Throughout our tenure on the Board, however, we were continually mindful that the Board cannot supplant management in the administration of the enterprise. Consistent with widely accepted principles of corporate governance, the Board's primary responsibilities are to oversee the company's management and business strategies, to select a well-qualified CEO, to monitor and evaluate the CEO's performance, and importantly, not to micromanage the company's business. Both Jim and I were instrumental in leading the search for and recently hiring a new CEO, Charlie Scharf, and we have confidence in his ability to be an effective agent of change at the Bank. We know our former colleagues on the Board are determined to provide him the space and support to carry forward the critical improvements that are underway.

In this statement, I briefly describe my background and why the work we did to make good on our commitments to our customers, and to our hundreds of thousands of employees, is so important to me. I then summarize the Board's actions in response to the past issues in the Community Bank and our work to fundamentally change the organization, both in terms of holding management accountable and building a new structure to make sure the institution is worthy of the trust our customers place in us every day. As Board members, we shared our regulators' high expectations for meaningful change, and we are confident Wells Fargo today is on course to get there.

I. Background and Experience

I started my banking career as part-time drive-through teller. When I needed a full-time job, I transitioned to a start-up bank as a new account clerk—the second-lowest paid employee. Over time, I began to take on management roles, and when the CEO of that bank died, I took on his role. I built my career on that foundation as a community banker, including lending to individuals and small businesses, one loan at a time.

I worked my way up by getting to know my customers, sitting across the table from them and learning about their businesses and their needs, about their families and their aspirations. By helping them meet their goals, I found my own.

I became the first woman to chair the American Bankers Association. In 2008, I became a member of the Board of Governors of the Federal Reserve System, and worked to keep access to lending available during the depths of the financial crisis. Before I resigned from Wells Fargo, I was the only woman serving as Chair or CEO of a major American financial institution—and I hope many more will follow.

Working as a community banker during the economic downturn of the early 1990s gave me a vivid understanding of the impact that access to financial services can have on people's lives. I drew heavily on those lessons when the 2008 crisis hit. I chaired the Federal Reserve Board's Committee on Consumer and Community Affairs, and I also served on the Supervisory and Regulatory Affairs Committee.

In those roles, I shaped the implementation of new regulations for consumer protections and on safety and soundness when a number of institutions failed. I was also actively involved

in the Federal Reserve’s oversight of mortgage-lending activities and its attempts to restore the flow of credit to individuals and small business. When I toured the country to meet directly with organizations that invest in low- to moderate-income areas, I was deeply impressed with Wells Fargo and its significant role serving main street customers with mortgage loans, auto loans, and small business loans.

That was the primary reason I accepted the invitation to join Wells Fargo’s Board in 2015. I am a community banker, and Wells Fargo struck me as a bank that reflected my values. During my tenure on the Board, I found that Wells Fargo is strong financially and effectively serves the needs of many customers and communities, but it is also a bank with operational and cultural weaknesses that have hurt customers. I have not shied away from challenges in my career, and my service on the Board of Wells Fargo was no exception.

II. Wells Fargo’s Steps Toward a Fundamental Transformation

The past few years have been very difficult ones for the Bank, its customers, its employees, its management, and the Board. I want to be crystal clear in saying this: Wells Fargo let customers and employees down, and I believe every single Board member is committed to making sure that does not happen again. Unfortunately, the Board was misled on the sales practices issues initially, and we focused immediately on determining how that happened and making sure it never does again.¹ Based on the Board’s meetings and discussions with management, the Board believed at the time that the problems were serious but isolated, involving a discrete group of employees in the Community Bank.

The Board learned later—from public settlements with the Consumer Financial Protection Bureau, the Office of the Comptroller of the Currency, and the Los Angeles City Attorney—that the true number of Wells Fargo employees terminated for sales practice violations was over twenty times higher than we had been led to believe. The Board, in the fall of 2016, retained independent counsel to conduct a full and unfettered investigation into the scope and causes of the misconduct. We made the report of that investigation public, and instructed Board counsel to assist Congress, the DOJ, and SEC in their investigations. Since that time, the Board has acted decisively to repair the damage done, to rebuild our Bank, and to regain our customers’ trust.

Doing this the right way takes a great deal of work and perseverance, and as much as all of us wish it were already complete, it also takes a great deal of time. Yet we were determined not only to fix the problems of the past, but to do the painstaking work of transforming Wells Fargo’s leadership culture so that management is able to rebuild operations from the ground up. Regulators, employees, and customers deserve more than a short-term solution to these significant structural and regulatory issues. The highest priority is to make the hard changes that

¹ Appendix A to this testimony summarizes the independent assessments of the Department of Justice (“DOJ”), the Securities and Exchange Commission (“SEC”), Office of the Comptroller of the Currency (“OCC”), and the Independent Board Investigational Report about management’s failure to escalate the sales practices misconduct to the Board and the Board’s responses once it became known.

will be sustainable for Wells Fargo far into the future, because customers expect and deserve for Wells Fargo to be there with them.

A. The Board Has Overseen Transformational Change to Remake Wells Fargo

Since 2016, the Board oversaw significant changes across the institution in terms of how the Bank is organized, simplifying and centralizing structures, and building systems to measure and sustain accountability across the enterprise.

Today, I want to touch on a few areas that were our top priorities. Wells Fargo is not where it needs to be yet. But more than at any point since the sales practices issues came to light, I am confident Wells Fargo has the right team in place and that they are moving in the right direction to satisfy regulatory obligations.

The transformation we oversaw took two forms: changes to the Board itself, and enhanced oversight of management's work to improve key aspects of the Bank's day-to-day operations and the remediation of customer harm.

1. *Enhanced Board Governance and Composition*

We started with ourselves. We made profound changes to the structure of the Board, how it receives information from management, and the way it carries out its oversight role. Recognizing that our Board needed new areas of experience and fresh perspective, we also added strong new Board members. We are confident that the transition to new Board leadership will be seamless.

Changes to Board Governance. When I became Chair in 2018, I incorporated many lessons I learned from the Board's sales practices investigation report. I also discussed Board governance with investors representing over half of the outstanding shares, spearheaded the formation of a Stakeholder Council that included national leaders on corporate responsibility, studied the Notice of Public Rulemaking issued by the Federal Reserve outlining expectations for Board Governance of Financial Institutions, and engaged an independent third party to facilitate our Board self-evaluation. Consistent with the Federal Reserve's proposed guidance, we focused our efforts on setting clear and consistent direction for management, actively managing information flow and Board discussions, supporting the independence and stature of independent risk management and internal audit, and holding senior management accountable.

Board Composition. The Board recruited me in 2015 to meet the Federal Reserve's Enhanced Prudential Standards for large U.S. bank holding companies, which requires at least one member of the Risk Committee to have experience identifying, assessing, and managing risk exposures of large financial firms. Even after my resignation, there are four independent directors with banking experience and one former senior executive of MetLife, an insurance company that was designated as a Systemically Important Financial Institution. Three of those five directors meet the Federal Reserve definition of a risk expert.

As the first woman to chair the American Bankers Association and the first woman to chair the board of a major financial institution, I am acutely aware of the historic lack of diversity in this industry. The Wells Fargo Board has a long tradition of board diversity. When

Suzanne Vautrinot and I joined the Board in 2015, seven of the fifteen independent directors were women. Although eleven of the last thirteen independent directors to leave the Board were diverse, today there are still three women and three racially diverse directors. To make sure we retained our focus on diversity, I insisted on diversity in the Governance Committee, which recruits new directors, and the Human Resources Committee, which is responsible for human capital decisions and culture. The CEO Search Committee chaired by Jim Quigley was diverse by gender, ethnicity, and time on the Board.

Board Organization. We reviewed and changed the membership and charters of our Board committees. In particular, we eliminated the overlap between the Audit and Risk Committees, focusing the responsibilities of the Audit Committee to those more traditionally associated with audit and focusing the Risk Committee on oversight of risk management. To focus specifically on compliance and technology risk management, we created sub-committees of the Risk Committee in those areas. We assigned responsibility for oversight of conduct and culture to the Human Resource Committee. The Corporate Responsibility Committee's charter was refocused on the Board's oversight of environmental, social and governance matters.

Board Information. We revamped reporting to the Board to prioritize delivery of the information the Board needs to execute effective oversight. Improvement of Board reporting is still a work in progress. In addition to reports from management and regulators, our directors receive daily reports of media stories that mention Wells Fargo. Directors routinely question management about any issue that surfaces in the press or from other external sources.

2. *Regulatory Engagement*

Throughout our tenure on the Board of Directors, we shared our regulators' high expectations for change at Wells Fargo. Under normal circumstances, the Board's direct contact with the Bank's regulators is limited to a single annual meeting between the regulators and the full Board, and periodic meetings between select directors and the senior examiner. In recognition of the unusual circumstances facing Wells Fargo, however, our direct Board communication with regulators was more frequent, frank and continuous. Over the past few years, there were times that each of us spoke to regulators every single day. Since we no longer speak on behalf of Wells Fargo, it would be inappropriate for us to address or characterize current and ongoing regulatory engagement and so we defer to the comments yesterday of Wells Fargo CEO Charles Scharf. I can say, however, that when I was Chair of the Wells Fargo Board, my expectations for the risk management standards of the company were just as high as my expectations for all systematically important financial institutions when I was a member of the Board of Governors of the Federal Reserve System.

It is worth highlighting briefly here the changes the Board has overseen in the way management moves toward meeting Wells Fargo's goals.

Strengthened Management Structures for Operational and Compliance Risk. The past few years have required the Board to take an unusually hands-on role in restructuring Wells Fargo. Under the Board's leadership, the Bank has centralized previously federated internal structures in order to ensure operational risk problems are more easily surfaced, tracked, and resolved.

Holding Management Accountable. The Board has fundamentally changed its approach to compensation for senior leaders by linking pay more closely to non-financial risks. In 2018, the Board's Human Resources Committee introduced an enhanced performance objective framework that focuses on pre-established financial, strategic, and risk management objectives. This allows that Committee to assess performance against set objectives, to reward senior leaders when expectations are met or exceeded, and to hold them accountable for both what they achieve and how they achieve it. And in 2019, the Board introduced a regulatory performance condition that gives the Human Resources Committee discretion to forfeit all or a portion of an unpaid award based on the executive's role and responsibility for the Bank's progress in resolving outstanding regulatory matters.

Even before these new frameworks were put into place, the Board used risk forfeiture conditions in its compensation structure to hold executives accountable for failures in sales practices. In recognition of their collective failure to identify and escalate this conduct, the Board withheld 2016 cash bonus payments from eight members of Wells Fargo's Operating Committee in 2017, and imposed forfeitures, clawbacks, and compensation adjustments totaling more than \$180 million from responsible senior management. These included approximately \$69 million from former CEO John Stumpf and approximately \$67 million from the former head of the community bank.

Transforming Our Culture. Our investigation into the problems that led to sales practices and other customer abuses made clear to us that the Bank's culture needed fundamental change. First and foremost, under the Board's leadership, the Bank quickly ended the sales goals for Wells Fargo products that fostered a toxic environment at the Community Bank. Compensation incentives at the Community Bank are now designed to reward our employees and their immediate supervisors for fulfilling Wells Fargo's core mission: meeting our customers' needs. Additionally, entry-level bankers' compensation is now based on team performance, rather than individual performance, to promote a cooperative and open culture.

Management Changes. Bringing in external candidates for key leadership roles has been important in the overall transformation. The Board's objective in supporting these hires was to eliminate stale or ineffective strategies and to get fresh insights into what other banks in the industry are doing right. The Bank has hired a number of experienced, top-tier executives in the areas where Wells Fargo needs them the most, including hiring the former Chief Risk Officer of Consumer and Community Banking at JP Morgan Chase, Amanda Norton, to lead that function, and hiring Sarah Dahlgren, a twenty-five year veteran of the Federal Reserve Board, as Head of Regulatory Relations. In addition, the Bank has added a new Chief Compliance Officer, Mike Roemer, who came to us from the same position at Barclays; a new Head of Technology, Saul Van Beurden, who was previously Chief Information Officer of consumer and community banking for Chase; a new Chief Auditor, Julie Scammahorn, who was Chief Auditor at Citibank, N.A.; and a new Chief Human Resources Officer, David Galloreese, who was former Chief HR officer at Sam's Club and Head of Talent at Walmart.

B. The Board Selected Mr. Scharf to Act as a Change Agent

Of course, our most significant recent management hire is a new Chief Executive Officer, Charlie Scharf. At my request, Mr. Quigley led an extensive six-month search, and after

interviewing a number of excellent candidates, we determined that Mr. Scharf was best positioned to lead Wells Fargo and to continue its transformation. Our selection was guided by the professional and personal qualities that we believe make Mr. Scharf an ideal change agent for the Bank.

Mr. Scharf is a proven leader with more than 24 years of executive experience in the banking and payments industries. He has served as chairman and CEO of BNY Mellon and as director and CEO of Visa, and at both companies, he has been widely recognized as a transformative leader. In hiring him, we valued Charlie's strong track record in revitalizing and streamlining corporate structures and hiring diverse teams, and we expect him to play a similar role at Wells Fargo.

We have been pleased to see that Mr. Scharf has seized this new challenge with both hands. He has continued the work to attract top-quality leaders to support him, including a new Chief Operating Officer, Scott Powell, who will centralize the reporting line for operational matters. Mr. Powell was previously the Chief Executive Officer of Santander US and headed consumer banking and consumer-related risk functions at JP Morgan. The company will draw on all of the new officers' decades of external leadership experience to ensure that Wells Fargo not only keeps pace but leads with new standards at the top of the industry.

We know that Mr. Scharf fully recognizes both the scale and degree of work that needs to be done, and that he has the full set of skills to execute. We greatly appreciate his candor in assessing the Bank's weaknesses and the dedication he has already shown to its transformation. The Board, we are certain, will continue to exercise close oversight to ensure he builds effectively on the progress the Bank has made so far—and in particular that he leads the Bank's regulatory progress with an appropriate sense of urgency. Based on his first months at the Bank, we are confident that he will meet the high expectations of customers, regulators and the Board.

III. Wells Fargo's Employees

We understand that Wells Fargo's employees were also negatively impacted by the past cultural and compliance problems—both by the toxic workplace issues that we have learned about and by the negative reputational effects on Wells Fargo as a whole. We want to take this opportunity to thank the company's employees for their continued dedication and service in a challenging time of change. Wells Fargo's failures belong to its leadership, but the Bank's successes belong to our workforce.

Jim and I firmly believe that Wells Fargo's people are its primary competitive advantage in the industry. The team mirrors the makeup of America: 44% of the U.S. workforce is ethnically or racially diverse, and 57% are women. Wells Fargo currently has more than 8,400 self-identified veteran team members. We believe that this range of backgrounds will help the institution continue to innovate and make smarter decisions at all levels of the business, and that the institution will provide better and more empathetic service to our customers as a result.

IV. Conclusion

Wells Fargo's vision statement, which Mr. Quigley and I carried with us every day we served on the Board, is "to satisfy our customers' financial needs and help them succeed

financially.” We are proud of the work we did to help Wells Fargo carry out that mission, and we both believe that the fundamental transformation we helped to oversee is taking hold. We have the deepest respect for our former colleagues who will carry on that work from here, and we look forward to watching them continue to make Wells Fargo an institution deserving of the trust of customers, employees, and the public.

Appendix A

INDEPENDENT ASSESSMENTS

The following quotations reflect independent external assessments of management's failure to escalate the sales practices misconduct to the Board of Directors, the Board's response to the company's sales practices misconduct once they became aware of it, and the role of the Board in cooperating with authorities, conducting an independent investigation, and overseeing remediation of consumer harm.

I. Independent Assessments of Management's Failure to Escalate the Sales Practices Misconduct and Misleading the Board

A. February 21, 2020 DOJ Deferred Prosecution Agreement

Exhibit A: Statement of Facts

28. On numerous occasions, Community Bank senior leadership, including Executive A, also made statements and gave assurances to the Company's management and Board of Directors that minimized the scope of the sales practices problem and led key gatekeepers to believe the root cause of the issue was individual misconduct rather than the sales model itself. Until approximately 2015, Community Bank senior leadership viewed negative sales quality and integrity as a necessary byproduct of the increased sales and as merely the cost of doing business. They nonetheless failed to advise key gatekeepers of the significant risks that the non-needs-based selling posed to the Company.

B. February 21, 2020 SEC Order

34. On numerous occasions, Community Bank senior leadership also made statements and gave assurances to the Company's management and Board of Directors that minimized the scope of the sales practices problem and led key gatekeepers to believe the root cause of the issue was individual misconduct rather than the sales model itself. Until

approximately 2015, Community Bank senior leadership viewed negative sales quality and integrity as a necessary byproduct of the increased sales and as merely the cost of doing business. They nonetheless failed to advise key gatekeepers of the significant risks that the non-needs-based selling posed to the Company.

C. January 23, 2020 OCC Consent Order

- (8) From at least 2013, Respondent's efforts were inadequate in advising the CEO and the Board of Directors that the Community Bank's business model posed significant risks and incentivized illegal activity, that the relevant controls were deficient, and that the Community Bank was not resolving the problem

D. January 23, 2020 OCC Notice of Charges

- (120) Even after the Community Bank's sales practices misconduct problem became a national news story in October and December 2013, Respondents in the Community Bank, the Law Department, and Audit failed to take actions consistent with their respective responsibilities to identify, correct, and/or escalate the sales practices misconduct problem.
- (122) None of the Respondents ever escalated the 14-year sales practices misconduct problem to the Board or the OCC.
- (124) Even after Respondents Tolstedt and Russ Anderson were directed to inform the Board and the OCC about the sales practices misconduct problem, they provided false, misleading, and incomplete reporting on the root cause, duration, and scope of the problem, and the adequacy of the controls.
- (126) Respondent Tolstedt and her leadership team, including Respondent Russ Anderson, with assistance from the Law Department, prepared written materials for a meeting of the Risk

Committee of the Board covering sales practices on May 19, 2015 (“May 19, 2015 Memo”). The May 19, 2015 Memo was false, misleading, and incomplete.

- a. For example, the May 19, 2015 Memo falsely ascribed the root cause of the sales practices misconduct problem to “intentional team member misconduct based on the fact that only a small percentage of Retail Banking team members engaged in the outlier behavior.” The materials did not reveal that “outlier behavior” referred to only the most egregious misconduct detected by applying the highly restrictive 99.99 and 99.95% thresholds to only a limited set of misconduct.
- b. As another example, the May 19, 2015 Memo falsely stated that the Bank’s controls were effective.

(128) In May 2015, when Respondent Tolstedt provided to the CEO for his review a draft memorandum for the Risk Committee of the Board, the CEO advised that the committee was interested in information on the number of products sold without customer consent and termination figures. Nonetheless, despite the CEO’s instructions, the final memorandum provided to the Risk Committee of the Board and to the OCC omitted such key information that would have aided in the Board’s and the OCC’s understanding of the magnitude of the sales practices misconduct problem.

(129) The former CEO provided the following testimony before the OCC:

Q: Okay. Sitting here today, sir, do you agree that this [May 19, 2015] memo misleads the Board, whether intentionally or not, it misleads the Board about the scope of the problem, the root cause of the problem, and the adequacy of the bank’s controls.

A: I would agree with that.

...

Q: Sir, we were discussing the May memo to the Board. Would you agree that, if that – since that May memo was also presented to the OCC, then that May memo was also misleading to the OCC on the root cause, the extent of the problem, . . . and the adequacy of the bank’s controls?

A: I would agree with that.

(220) When forced to present on sales practices to the Board, Respondent Tolstedt provided false, misleading, and incomplete information about all aspects of the sales practices misconduct problem.

(221) Respondent Tolstedt first presented to the Board on sales practices on or around April 28, 2015, and only after being so directed.

a. During the April 2015 presentation, Respondent Tolstedt failed to inform the Risk Committee of the Board about critical aspects of the sales practices misconduct problem.

b. For example, Respondent Tolstedt failed to inform the Risk Committee that the sales practices misconduct problem was widespread, and failed to inform the Committee of its root cause, duration, and scope.

(230) Respondent Tolstedt never informed the Board about the inadequate controls to prevent and detect sales practices misconduct.

(234) Respondent Tolstedt ultimately did present at the Board meeting held on or around October 26-27, 2015. At this meeting, she failed again to inform the Board about critical aspects of the sales practices misconduct problem. She failed to inform the Board that the

sales practices misconduct problem was widespread, and failed to inform the Board of its root cause, duration, and scope.

- (236) Despite knowledge to the contrary, at no point in any of her presentations to the Board did Respondent Tolstedt attribute the sales practices misconduct problem to the Community Bank's business model.
- (237) Despite knowledge to the contrary, at no point in any of her presentations to the Board did Respondent Tolstedt attribute the sales practices misconduct problem to the unreasonable pressure, unreasonable sales goals, employees' fear of termination for not meeting the unreasonable sales goals, and the inadequate controls for preventing and detecting the misconduct.
- (303) Not only did Respondent Strother fail to properly escalate the sales practices misconduct problem to the Board or the CEO, he provided the Board with false, misleading, and incomplete information about sales practices misconduct even after the May 2015 Los Angeles City Attorney's lawsuit. Respondent Strother provided that same information to the OCC. Respondent Strother never corrected the false, misleading, and incomplete information provided to the Board and the OCC about sales practices misconduct.
- (355) The Law Department that Respondent Strother supervised knew about the root cause and scope of sales practices misconduct during the entire time the problem existed, which coincided with his tenure as General Counsel. Respondent Strother himself recognized the "systemic nature of sales practice[s] misconduct [by] Fall 2013." Nevertheless, he failed to escalate the sales practices misconduct problem to the Board and the CEO. Regardless of the amount of information supplied to him about the sales practices misconduct problem, at no point during his tenure as General Counsel did Respondent

Strother advise the Board and the CEO that the Community Bank’s business model motivated employees to break the law, that the business model needed to be changed, and that the Bank’s controls were inadequate and not reasonably designed to prevent and detect serious legal violations associated with sales practices misconduct.

- (359) Shortly after the Los Angeles City Attorney lawsuit, Respondent Strother submitted the May 19, 2015 Memo to the Risk Committee of the Board, which contained false, misleading, and incomplete information about critical aspects of sales practices misconduct in the Community Bank, including the scope, extent, duration, and root cause of the problem, and the adequacy of controls used to prevent and detect illegal activity.
- (412) Respondent Julian failed to identify and escalate the sales practices misconduct problem to the Audit and Examination Committee, the full Board, or any of the committees on which he served. Respondent Julian’s reports to the Audit and Examination Committee never identified the systemic sales practices misconduct problem at the Community Bank.
- (424) These failures allowed the problem to persist for years and prevented the Board from being accurately informed on the topic.

E. April 20, 2017 Report of Independent Directors of the Board of Wells Fargo & Company on Sales Practices (“Independent Board Investigational Report”)

Executive Summary (pages 8-9):

Wells Fargo’s decentralized organizational structure and the deference paid to the lines of business contributed to the persistence of this environment. Tolstedt and certain of her inner circle were insular and defensive and did not like to be challenged or hear negative information. Even senior leaders within the Community Bank were frequently afraid of or discouraged from airing contrary views. Tolstedt effectively challenged and resisted scrutiny both from within and

outside the Community Bank. She and her group risk officer not only failed to escalate issues outside the Community Bank, but also worked to impede such escalation, including by keeping from the Board information regarding the number of employees terminated for sales practice violations. Although they likely did so to give themselves freedom to address these issues on their own terms, rather than to encourage improper behavior, the dire consequences and cost to Wells Fargo are the same.

Corporate Control Organizations (page 14):

Finally, until as late as 2015, even as sales practices were labeled a “high risk” in materials provided to the Risk Committee of the Board, there was a general perception within Wells Fargo’s control functions that sales practice abuses were a problem of relatively modest significance, the equivalent of a tolerable number of minor infractions or victimless crimes. This underreaction to sales practice issues resulted in part from the incorrect belief, extending well into 2015, that improper practices did not cause any “customer harm”; and “customer harm” itself was narrowly construed to mean only financial harm such as fees and penalties. This flawed perspective made it easy to undervalue the risk to Wells Fargo’s brand and reputation arising from the misuse of customer information and the breaches of trust occasioned by improper sales practices.

The Board of Directors (pages 15-16):

While management appropriately identified sales practice issues to the Board and Risk Committee by way of the written noteworthy risk reports, the written and oral presentations made to the Risk Committee in May 2015 and to the full Board in October 2015 were inadequate. Board members believe that they were misinformed by the presentation made to the Risk Committee in May 2015 — which disclosed that 230 employees had been terminated in the

Community Bank but did not provide aggregate Community Bank-wide termination figures that the Risk Committee had expressly requested and which were far higher. A subsequent report to the entire Board by Tolstedt in October 2015 was widely viewed by directors as having minimized and understated problems at the Community Bank.

In May 2016, the Board's Audit & Examination ("A&E") Committee received a written presentation providing accurate termination figures for sales practice violations in the Community Bank for 2014 and 2015: 1,327 in 2014, declining by 30% to 960 in 2015. In July, the A&E Committee received termination figures for the first five months of 2016: 483 in the Community Bank. Tolstedt left the Community Bank effective July 31, 2016.

On September 8, 2016, through settlements with the Consumer Financial Protection Bureau (the "CFPB"), the Office of the Comptroller of the Currency ("OCC") and the Los Angeles City Attorney, the Board learned for the first time that approximately 5,300 Wells Fargo employees had been terminated for sales practice violations between January 1, 2011, and March 7, 2016. Discontinuation of sales goals and commencement of this investigation followed shortly thereafter.

From Publication of Los Angeles Times Articles in October and December 2013 to Filing of Los Angeles City Attorney Lawsuit in May 2015 (pages 76-77):

From the publication in the Los Angeles Times of articles about the Los Angeles/Orange County investigation in October and December of 2013 until the filing of the Los Angeles City Attorney lawsuit in May 2015, Law Department attorneys provided legal advice in connection with two sales integrity projects. While sales practices were conveyed to the Risk Committee and the Board in 2014 as a "noteworthy risk," the information, discussion and advice that accompanied that risk did not highlight or identify the potential consequences of the misconduct

that were distinctly legal in nature — e.g., a cascade of civil litigation, regulatory action from a host of federal and state agencies and the resulting serious harm to Wells Fargo’s reputation.

In September 2013, SSCOT and Internal Investigations launched an investigation into the Los Angeles/Orange County regional bank as a result of sales quality reports that identified unusual funding and phone number change activity. At the time, simulated funding was considered to be a new and different form of gaming behavior.

Although some line-level employment lawyers provided advice and guidance in the course of the investigation, its significance was not escalated, and senior employment attorneys only learned details of the investigation after the media began to inquire about the terminations. At that point, in early October 2013, the then-head of the Enterprise Services Division and the head of the Employment Law Section became concerned at this lack of escalation by the linelevel attorneys.

At the end of October, the Head of Enterprise Services briefed General Counsel James Strother and later CRO Loughlin about the investigation. The Law Department did not further escalate the existence or details of the investigation to the Board or any Board Committees at that time.

The Board of Directors (pages 97-110):

Prior to 2014, sales practice or sales integrity issues were not flagged as noteworthy risks either to the Board of Directors as a whole or to any Board committee. The principal report on noteworthy risks provided to the Board of Directors, starting at least with the first quarter of 2010, was prepared by the Enterprise Risk Management Committee, which included the most senior executives in the Risk, Compliance, Legal and Finance organizations. The ERMC prepared quarterly written reports to the Board of Directors that identified the Top Enterprise

Risks facing Wells Fargo, typically flagging 20-40 such risks. Prior to 2014, sales practice issues were not among the identified risks.

...

Throughout 2014, the quarterly “Noteworthy Risk Issues” submitted to the Risk Committee, two of which were also provided to the Board, continued to rank sales practices as a High and increasing risk, although it was not included in the Executive Summary covering the most important enterprise risks. The Board and Risk Committee thereafter received assurances from the Corporate Risk group, the Community Bank and Human Resources that sales practice issues were the subject of heightened attention, that the control environment was operating effectively and that the situation was improving.

II. Independent Assessments of the Board’s Role in Responding to and Remediating Sales Practices and Related Issues

A. February 21, 2020 DOJ Deferred Prosecution Agreement

Deferred Prosecution Agreement

- 2.c. Wells Fargo’s cooperation, through its Board and company counsel, with the USAOs’ investigation of the facts, which has substantially assisted the government’s efforts and has included:
- i. The Board’s commissioning of a detailed and transparent independent internal investigation, with the assistance of outside counsel, which culminated in a detailed written, public report of its findings;
 - ii. The Board’s extensive actions in connection with the collection, analysis, and organization of vast amounts of relevant data and evidence;

- iii. The Board's synthesis and presentation of relevant facts at regular intervals during its investigation, including making additional factual presentations to the USAOs;
 - iv. Identifying and organizing voluminous evidence and information for the USAOs on certain topics;
 - v. Making Wells Fargo witnesses available for interviews on a variety of subjects;
 - vi. Allowing the USAOs access to certain of its consultants and certain material prepared by those consultants;
 - vii. Assisting the USAOs in complex data analytics projects; and
 - viii. Assisting in obtaining waivers from various other federal agencies to share Confidential Bank Supervisory Information.
- 2.g. Wells Fargo's undertaking of remedial measures, which have included:
- i. The significant reconstitution of Wells Fargo's Board of Directors, with eight of its thirteen independent directors having been newly appointed since 2016 (when the conduct under investigation ended);
 - ii. Significant management turnover since 2016, including a new Chief Executive Officer, Head of Community Bank, Chief Operating Officer, Chief Auditor, General Counsel, and Chief Risk Officer;
 - iii. The enhancement of its compliance program, internal controls, and corporate risk function; and
 - iv. Significant work to identify and compensate Wells Fargo customers who may have been victims of identity theft or subject to improper or fraudulently imposed fees.

B. February 21, 2020 SEC Order

51. In determining to accept Wells Fargo's Offer, the Commission considered that Wells Fargo since 2016, has undertaken remedial measures to address the sales practices misconduct, including: terminating certain employees for their roles relating to the misconduct; replacing the majority of the Operating Committee – Wells Fargo's senior-most management committee; reconstituting its Board of Directors such that a majority of the independent directors are new; and reorganizing itself to centralize control functions.

C. April 20, 2017 Independent Board Investigational Report

Overview of the Report (page 0):

The Board has taken numerous actions and supported management steps to address these issues. Wells Fargo has replaced and reorganized the leadership of the Community Bank. It has also eliminated sales goals and reformed incentive compensation. Centralization of control functions is being accelerated. The Board has separated the role of the Chairman and the CEO, strengthened the charters of Board Committees and established regular reporting to the Board by the new Office of Ethics, Oversight and Integrity. As a result of the investigation, the Board has terminated for cause five senior executives of the Community Bank and has imposed forfeitures, clawbacks and compensation adjustments on senior leaders totaling more than \$180 million.

Executive Summary (pages 8-9):

As this investigation confirmed, the only way definitively to address the broken sales model and the root cause of sales practice abuses was to emphasize other metrics for performance and to abandon exerting pressure through sales goals and sales-driven incentive programs. With the concurrence of the Board, Wells Fargo announced on September 13, 2016, that the Community Bank would eliminate product sales goals in the retail bank. To address

misaligned compensation incentives, in January 2017 Wells Fargo put in place a new incentive program that focused on customer service rather than selling products.

Also, growing out of this investigation, on February 21, 2017, the Board announced the termination for cause of four officers within the Community Bank: its Group Risk Officer, its Head of Strategic Planning and Finance, who was primarily responsible for overseeing the sales goals and incentive system, and two senior regional banking leaders who had headed Los Angeles and Arizona and who encouraged and deployed especially improper and excessive sales practices. In doing so, the Board accorded credit to and treated differently other senior Community Bank leaders who made reasonable, good faith efforts to challenge and escalate concerns over sales goals and conduct.

Previously, on September 25, 2016, the Board caused to be forfeited \$19 million of Carrie Tolstedt's unvested equity awards and determined that she should not receive a bonus or severance. On April 7, 2017, following consideration by the Human Resources Committee and by the Independent Directors, it was determined that the finding made by the Board on September 25, 2016, that cause existed for terminating Tolstedt's employment was appropriate, with resulting forfeiture of her outstanding stock options awards with a current intrinsic value of approximately \$47.3 million.

The Board of Directors (pages 14-18):

Finally, without waiting for completion of this investigation, the Board made several changes to its own corporate governance. In early 2017, Wells Fargo combined Global Ethics and Integrity, Internal Investigations and sales practices and complaint oversight into a new Office of Ethics, Oversight, and Integrity, and the Risk Committee's responsibilities have been expanded to include oversight of that office. In addition, the Office of Ethics, Oversight, and

Integrity will report on its activities to the full Board at least twice a year. The Human Resources Committee's charter was modified to expand oversight of the incentive compensation risk management program, with support from Corporate HR, and to increase its oversight of terminations, culture and EthicsLine implementation. The Corporate Responsibility Committee's charter was also amended to require that the committee receive enhanced reporting from management on customer complaints and allegations from other sources, such as the EthicsLine, relating to customers. And the A&E Committee's oversight responsibilities for legal and regulatory compliance were broadened to include the company's compliance culture. These steps should help to clarify Board oversight of conduct risk, provide for greater centralization of review and oversight and augment reporting to the Board of the type of issues that contributed to the breakdown in Wells Fargo's sales culture.