Assembly Banking and Finance Committee

Oversight Hearing

Wells Fargo Settlement of Claims Relating to Unauthorized Accounts

Background

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On December 21, 2013 the Los Angeles Times published an investigative report revealing an environment at Wells Fargo that encouraged intense cross-selling activities of Wells Fargo employees, *Wells Fargo's Pressure-Cooker Sales Culture Comes at a Cost.* The *Times* investigation found that Wells had a culture and environment that encouraged and incentivized aggressive sales tactics to meet add-on services goals. In order to meet quotas, employees opened accounts for customers without their consent, ordered credit cards without permission and in some cases forged client signatures on paperwork. Former employees interviewed for the LA Times story admitted to opening unneeded accounts to meet sales quotes and in some cases asking family members to open ghost accounts. The sales quotas were not abstract goals expected of employees. Former employees have said that managers coached employees on ways to inflate sales numbers. These sales tactics resulted in the opening of at least 1.5 million deposit accounts and 565,443 credit card accounts on behalf of customers without their knowledge or consent with approximately 14,000 of these accounts accruing $403,145 in fees.[1]

Wells Fargo is the nation's leading bank in selling add-on services to its customers and promotes this cross-selling in its earnings reports. The bank expects branch employees to sell at least four financial products to 80% of their customers, and top executives have touted the "Great 8" an average of eight products per household. These sales quotas were enforced by constant monitoring. Daily sales for each branch, and each sales employee were reported and discussed by district managers four times a day. Those failing to meet goals were approached by management and reprimanded. Quotas were also not limited to daily goals, as tellers were expected to generate at least 100 sales of products per quarter.

On May 4, 2015 the Los Angeles City Attorney filed suit against Wells Fargo claiming violations of California's Unfair Competition Law (B&P Code, §17200). The declarations included:

> *Wells Fargo imposes unrealistic sales quotas on its employees, and has adopted policies that have, predictably and naturally, driven its bankers to engage in fraudulent behavior to meet those unreachable goals. As a result, Wells Fargo's employees have engaged in unfair, unlawful, and fraudulent conduct, including opening customer accounts, and issuing credit cards, without authorization…Wells Fargo further victimized its customers by failing to inform them of the breaches, refund fees they were owed, or otherwise remedy the injuries that Wells Fargo and its bankers have caused.*

[1] Wells Fargo Fined $185 Million for Opening Accounts With Customers' Knowledge. Forbes. September 8th, 2016. http://www.forbes.com/sites/maggiemcgrath/2016/09/08/wells-fargo-fined-185-million-for-opening-accounts-without-customers-knowledge/#eaec3085d7a7

The City of Los Angeles action against Wells Fargo spurred investigations by the Consumer Financial Protection Bureau (CFPB), the Office of the Comptroller of the Currency (OCC) into the cross selling practices and unauthorized account openings of Wells Fargo. The OCC investigation concluded that the actions of Wells were unsafe and unsound business practices. Specifically the OCC found:

1) The incentive compensation program and plans within the Wells Fargo Community Bank Group were not aligned properly with local branch traffic, staff turnover, or customer demand, and they fostered the unsafe or unsound sales pressured Bank employees to sell bank products not authorized by the customer.

2) Wells Fargo lacked an Enterprise-Wide Sales Practices Oversight Program and thus failed to provide sufficient oversight to prevent and detect the unsafe or unsound sales practices.

3) Wells Fargo lacked a comprehensive customer complaint monitoring process that impeded the bank's ability to:

   a) assess customer complaint activity across the Bank;

   b) adequately monitor, manage, and report on customer complaints; and

   c) analyze and understand the potential risk of sales practices.

4) Wells Fargo Community Bank Group failed to adequately oversee sales practices and failed to adequately test and monitor branch employee sales practices.

5) Wells Fargo audit coverage was inadequate because it failed to include in its scope an enterprise-wide view of the Bank's sales practices.

In the course of its ongoing supervision, the OCC has identified the following unsafe or unsound sales practices in the Wells Fargo Community Bank Group:

1) The selling of unwanted deposit or credit card accounts.

2) The unauthorized opening of deposit or credit card accounts.

3) The transfer of funds from authorized, existing accounts to unauthorized accounts ("simulated funding").

4) Unauthorized credit inquiries for purposes of the conduct

As a result of these findings the OCC levied a civil penalty against Wells Fargo of $35 million

CFPB:

The CFPB investigation found the following:

Opening deposit accounts and transferring funds without authorization: According to the bank's own analysis, employees opened roughly 1.5 million deposit accounts that may not have been authorized by consumers. Employees then transferred funds from consumers' authorized accounts to temporarily fund the new, unauthorized accounts. This widespread practice gave the employees credit for opening the new accounts, allowing them to earn additional compensation and to meet the bank's sales goals. Consumers, in turn, were sometimes harmed because the bank charged them for insufficient funds or overdraft fees because the money was not in their original accounts.

Applying for credit card accounts without authorization: According to the bank's own analysis, Wells Fargo employees applied for roughly 565,000 credit card accounts that may not have been authorized by consumers. On those unauthorized credit cards, many consumers incurred annual fees, as well as associated finance or interest charges and other fees.

Issuing and activating debit cards without authorization: Wells Fargo employees requested and issued debit cards without consumers' knowledge or consent, going so far as to create PINs without telling consumers.

Creating phony email addresses to enroll consumers in online-banking services: Wells Fargo employees created phony email addresses not belonging to consumers to enroll them in online-banking services without their knowledge or consent.

CFPB Enforcement:

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, the CFPB has the authority to take action against institutions violating consumer financial laws, including engaging in unfair, deceptive, or abusive acts or practices.

Pay full refunds to consumers: Wells Fargo must refund all affected consumers the sum of all monthly maintenance fees, nonsufficient fund fees, overdraft charges, and other fees they paid because of the creation of the unauthorized accounts. These refunds are expected to total at least $2.5 million. Consumers are not required to take any action to get refunds to which they are entitled.

Ensure proper sales practices: Wells Fargo must hire an independent consultant to conduct a thorough review of its procedures. Recommendations may include requiring employees to undergo ethical-sales training and reviewing the bank's performance measurements and sales goals to make sure they are consistent with preventing improper sales practices.

Pay a $100 million fine: Wells Fargo will pay a $100 million penalty to the CFPB's Civil Penalty Fund. It is the largest penalty ever levied by CFPB.

City of Los Angeles

In spite of initially claiming that the City of Los Angeles did not have jurisdiction to sue Wells Fargo, the bank settled with the city. The settlement calls for restitution for consumers and a $50 million fine, the largest such payment in the history of the city attorney's office.[2] In addition, Wells Fargo must provide the following written notice to deposit and credit card account holders in California:

> *It's important for you to have peace of mind. We want to ensure you're comfortable with your accounts and have the tools you need to manage your money. We recommend you visit your local Wells Fargo bank location, or call the toll-free number that appears on this statement, to make sure you are satisfied with all your accounts and services. We'll spend time understanding your financial needs and reviewing your accounts and options. We'll also help you close any accounts or discontinue services you do not recognize or want, and discuss the process that's been established to address any remaining concerns resulting from accounts and services opened on your behalf.*

In order to comply with the settlement with the Los Angeles City Attorney Wells Fargo must also comply with the following:

- Establish policies and procedures that ensure that customers receive the appropriate information about any accounts that are directly owned by the customer.
- Provide a current statement of any account the customer owns.
- When a customer closes an account, provide a written receipt that confirms account closure.
- The forms required shall be provided to customers in Spanish when requested.

[2] Settlement Document available at http://freepdfhosting.com/29677883a9.pdf

Wells Fargo is required to hire an independent third party consulting firm to help identify customers that may have unauthorized accounts in their name. In those cases where current or former customers may have sustained a direct monetary loss exceeding $1 as a result of unauthorized accounts, Wells Fargo shall identify affected customers and provide written notice informing those customers that Wells Fargo will reimburse the customer for any fees or other charges that were paid by the customers for unauthorized accounts. Notice and reimbursement must be completed 90 days from the date of the settlement.

The L.A. City settlement also establishes a mediation process for current or former customers that contend they incurred fees or were harmed as a result of unauthorized accounts. Customers who make a compliant in a Wells Fargo branch location in California, or that call the Wells Fargo Feedback toll-free number asserting that they have unauthorized accounts shall be sent a notice with details concerning the mediation program within 60 days of the compliant.

Wells Fargo is required, for at least two years after the settlement to conduct an internal audit every six months to report on compliance with the obligations of the settlement.

<u>Additional Actions:</u>

In addition to the settlement fines and restitution to be provided to customers, Wells Fargo has fired over 5,000 employees during the last several years that they claim were responsible for the creation of phony accounts. Though, it is still unclear what level of responsibility these employees had for creating this problem or which among them were in a position to enforce the cross selling policies. Several former Wells Fargo employees have filed a class action lawsuit in federal court against the bank seeking $7.2 billion for workers nationwide who were fired or demoted after refusing to open fake accounts. The United States Department of Labor is currently conducting a review of Wells Fargo relating to whistleblower complaints, as well as potential wage and hour violations.[3]

At the time of this writing, Wells Fargo has announced the claw back of compensation valued at $41 million from chairman and chief executive, John G. Stumpf.[4] Additionally, Carrie Tolstedt, former leader of the Wells Fargo community banking division will surrender stock valued at about $19 million. Both executives will forgo any bonus payments for the year.

On September 28, 2016 California State Treasurer John Chiang announced that he was cutting ties with Wells Fargo for at least one year in response to the consent orders and the activities of

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[3] *Wells Fargo faces 'top-to-bottom' Labor Department review for possible workplace violations*. LA Times. September 27, 2016, http://www.latimes.com/business/la-fi-wells-fargo-overtime-20160927-snap-story.html

[4] *Wells Fargo to Claw Back $41 Million of Chief's Pay Over Scandal*. The New York Times. September 27, 2016. http://www.nytimes.com/2016/09/28/business/dealbook/wells-fargo-john-stumpf-compensation.html?_r=0

Wells Fargo that have come to light. The action by the Treasurer includes the suspension of investments by the Treasurer's Office in all Wells Fargo securities, suspending the use of Wells Fargo as a broker-dealer for purchasing of investments and suspension of Wells Fargo in its underwriting capacity for California state bonds. The Treasurer further provided that he will use his seat on the board of the California Public Employee's Retirement System and the California State Teachers' Retirement System to seek Wells Fargo governance reforms including

- Separation of the chief executive and chair positions;
- Appointment of a consumer ombudsman or confirmation that such a position exists, with detailed information on the position's authority and role within the organization;
- Development of an anonymous ethics reporting process and whistleblower protection program or confirmation that such a program exists with detailed information on the program and how it operates;
- A review of Wells Fargo's compensation practices; and,
- Consideration of 'clawbacks' for those executives most directly linked to Wells Fargo's deceptive and predatory sales practices.[5]

[5] California State Treasurer John Chiang Letter to Wells Fargo & Company, September 28, 2016. http://www.treasurer.ca.gov/news/releases/2016/20160928_letter.pdf