UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

February 27, 2019

Elizabeth A. Ising
Gibson, Dunn & Crutcher LLP
shareholderproposals@gibsondunn.com

Re: Wells Fargo & Company
Incoming letter dated December 21, 2018

Dear Ms. Ising:

This letter is in response to your correspondence dated December 21, 2018 concerning the shareholder proposal (the "Proposal") submitted to Wells Fargo & Company (the "Company") by Harrington Investments, Inc. (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence on the Proponent's behalf dated January 30, 2019. Copies of all of the correspondence on which this response is based will be made available on our website at http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

M. Hughes Bates
Special Counsel

Enclosure

cc: Sanford J. Lewis
sanfordlewis@strategiccounsel.net

February 27, 2019

Response of the Office of Chief Counsel
<u>Division of Corporation Finance</u>

Re: Wells Fargo & Company
Incoming letter dated December 21, 2018

The Proposal requests that the board commission an independent study, including recommendations to shareholders regarding options for the board to amend the Company's governance documents to enhance fiduciary oversight of matters relating to customer service and satisfaction.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(7) as relating to the Company's ordinary business operations. In this regard, we note that the Proposal relates to decisions concerning the Company's customer relations. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on rule 14a-8(i)(7). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which the Company relies.

Sincerely,

Michael Killoy
Attorney-Adviser

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the company in support of its intention to exclude the proposal from the company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes and rules administered by the Commission, including arguments as to whether or not activities proposed to be taken would violate the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversarial procedure.

It is important to note that the staff's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly, a discretionary determination not to recommend or take Commission enforcement action does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the company's management omit the proposal from the company's proxy materials.

SANFORD J. LEWIS, ATTORNEY

January 30, 2019
Via electronic mail

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Shareholder Proposal to Wells Fargo and Company Regarding Fiduciary Duty and Consumer Protection on Behalf of Harrington Investments, Inc.

Ladies and Gentlemen:

Harrington Investments, Inc. (the "Proponent") is beneficial owner of common stock of Wells Fargo and Company (the "Company") and has submitted a shareholder proposal (the "Proposal") to the Company. I have been asked by the Proponent to respond to the letter dated December 22, 2018 ("Company Letter") sent to the Securities and Exchange Commission by Elizabeth A. Ising of Gibson Dunn. In that letter, the Company contends that the Proposal may be excluded from the Company's 2019 proxy statement by virtue of Rule 14a-8(i)(10).

I have reviewed the Proposal, as well as the letter sent by the Company, and based upon the foregoing, as well as the relevant rules, it is my opinion that the Proposal must be included in the Company's 2019 proxy materials and that it is not excludable by virtue of those rules. A copy of this letter is being emailed concurrently to Elizabeth Ising.

SUMMARY

The proposal (Appended as Exhibit A) requests the Wells Fargo board of directors to commission an independent study, including recommendations to shareholders regarding options for the board of directors to amend our Company's governance documents to enhance fiduciary oversight of matters relating to customer service and satisfaction. In its supporting statement, the proposal notes that "It is apparent that our Company is rapidly losing its ability to compete in banking because of disregard for lawful conduct. As a fiduciary, our directors need to fix a crippled business model and restore Wells Fargo's reputation."

It is well documented in Delaware law that the language of governance documents can serve as a vehicle for providing a contractual level of clarity regarding the responsibility and focus of individual board members. For instance, the responsibility to approve a report or policy of the Company can be assigned to a committee, rather than to the board as a whole. See discussion below regarding decision of Delaware Supreme Court in *In re Walt Disney Co. Derivative Litigation*, 906 A.2d 27, 53-54 (Del. 2006) (Appended as Appendix B) which described the duties of Disney's compensation committee as a "charter-imposed duty," the consequences of which was to allocate decision-making on compensation to the committee members rather than the board as a whole.

As Wells Fargo has been reportedly finding it difficult to alter its corporate culture to imbue respect for consumers, the Proposal seeks clearer lines of fiduciary responsibility and liability for failures of due care. This represents an alternative fix to the company's governance, which the company notably does not claim to have explored or implemented.

Instead, the Company claims the proposal can be excluded pursuant to Rule 14a-8(i)(7) because the Proposal relates to the Company's ordinary business operations. Because the Proposal addresses a significant policy issue that is also of obvious and even existential importance to the company, and the Proposal does not micromanage, the Proposal is not excludable pursuant to Rule 14a-8(i)(7). The Proposal is correctly framed as a governance initiative that would encourage the Board of Directors to examine how fiduciary responsibilities are allocated.

The Company claims the proposal can be excluded pursuant to Rule 14a-8(i)(3) because the Proposal is impermissibly vague and indefinite so as to be inherently misleading. To the contrary, the Proposal including the supporting statement and whereas clauses provide sufficient information for shareholders and the Directors to understand the inquiry sought by the proposal. Neither shareholders nor the board would have difficulty understanding how the proposal can be implemented, and yet the proposal leaves discretion to the Board to take such a study in an appropriate direction.

BACKGROUND

Although it is the smallest of the four large companies now dominating US commercial banking, Wells Fargo has distinguished itself in the extent to which it has faced scandals over consumer deception and egregious business misconduct. Multiple lawsuits have accused the Company of racketeering and fraud; in 2016, the news broke that employees opened approximately two million accounts for customers without their permission; in 2017, another scandal broke, describing the bank's enrollment of about 570,000 auto loan borrowers in "extra" collision insurance unbeknownst to the borrowers, which lead 20,000 customers to default and have their cars repossessed.

All told, the Company has been required to pay more than $11 billion in fines and penalties since 2000. These fines have directly impacted investor returns. While a small fraction of penalties have been imposed on selected employees, including some firings, shareholders have taken the lion's share of loss.

The severe implications for the company of these issues is demonstrated by the September 2017 report[1] (Appended as Appendix C) prepared by the Democratic Staff members of the house

[1] THE CASE FOR HOLDING MEGABANKS ACCOUNTABLE: An Examination of Wells Fargo's Egregious Consumer Abuses, Report Prepared by the Democratic Staff of the Committee on Financial Services, U.S. House of

Financial Services Committee under the direction of Maxine Waters (hereafter "Financial Services Committee Report or "Waters Report") which directly raised the question:

> **whether Wells Fargo deserves to continue operating certain retail business lines, or, more appropriately, given the laundry list of large-scale consumer abuses, continue operating as a national bank and continue being afforded federal deposit insurance.**

The report further highlighted the impact of the abuses on investors:

> **penalties imposed on megabanks are often actually paid by shareholders, not the chief executives and senior officials responsible for the wrongdoing at the institution. As such, while fines have resulted in bad publicity that may temporarily lower a bank's share prices, the leadership within these megabanks, who condoned or failed to stop the unlawful practices, are rarely, if ever, held personally accountable.**

And finally, the report noted that these consumer protection issues connect directly to issues of safety and soundness of the bank:

> Federal prudential banking regulators have acknowledged that violations of consumer protection laws can become safety and soundness issues for a bank. In its consent order with Wells Fargo, the OCC noted as part of its findings that the agency identified certain "deficiencies and unsafe or unsound practices in the Bank's risk management and oversight of the Bank's sales practices,"[2] which led to the fraudulent account scandal. And following the Wells Fargo enforcement action, Chair Yellen of the Federal Reserve Board stated in her quarterly press conference in September, 2016, that instances of consumer harm "can become safety and soundness issues," and "[a]t least one of the lessons from the financial crisis, I think, is that abuses of consumers of the sort that we saw in the subprime lending ultimately did become safety and soundness issues."[3]

The failings of culture and governance at Wells Fargo have led to a flood of articles and analyses inquiring as to what went wrong. These analyses highlight the failures of criminal law, boardroom culture, fiduciary duty and administrative and legislative oversight.

There have been numerous Wells Fargo-focused policy commentaries discussing the failures of current mechanisms including criminal law for to produce better behavior from companies and boards. *See* David Dayen, "Give Wells Fargo the Corporate Death Penalty," The New Republic (Aug. 1, 2017), *available at*: https://newrepublic.com/article/144144/give-wells-fargo-corporate-

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Representatives, The Honorable Maxine Waters, Ranking Member, 115th Congress, First Session, September 29, 2017.

[2] Press Release, Office of the Comptroller of the Currency, "OCC Assesses Penalty Against Wells Fargo, Orders Restitution for Unsafe or Unsound Sales Practices," (Sept. 8, 2016), available at: https://www.occ.treas.gov/news-issuances/news-releases/2016/nr-occ-2016-106.html.

[3] See, Transcript of Chair Yellen's Quarterly Press Conference on Monetary Policy and the Economy, (Sept. 21, 2016), available at: https://www.federalreserve.gov/mediacenter/files/FOMCpresconf20160921.pdf.

death-penalty; Patrick Radden Keefe, "Why Corrupt Bankers Avoid Jail," New Yorker (July 31, 2017), *available at*: https://www.newyorker.com/magazine/2017/07/31/why-corrupt-bankers-avoid-jail; Kyle Noonan, "The Case for a Federal Corporate Charter Revocation Penalty," The George Washington Law Review (Feb. 2012), *available at*: http://www.gwlr.org/wp-content/uploads/2012/03/80-2-Noonan.pdf; and The Honorable Jed S. Rakoff, "The Financial Crisis: Why Have No High-Level Executives Been Prosecuted?" The New York Review of Books (Jan. 9, 2014), *available at*: http://www.nybooks.com/articles/2014/01/09/financial-crisis-why-no-executive-prosecutions/.

"Rotten barrel not rotten apples"

Perhaps the most compelling critique of the Board of Directors efforts so far is that the Company's focus has been on the idea that the company had "a few rotten apples" - a few employees behaving badly. But as the company fired 5300 employees, it became clear that something else was wrong - as one legal observer has characterized it: the barrel is rotting, not the apples.[4] Better governance strategies - repair of the barrel, rather than pulling out more apples, is needed to stem the damage.

The Financial Services Committee report also raised questions regarding the fiduciary culture of the corporation, under which anti-consumer behaviors appear to die hard:

> However, in June 2016, when asked about the company's aggressive cross-selling culture, current Wells Fargo Chief Executive Officer Tim Sloan, who was then the bank's Chief Financial Officer, said that the company had not "pushed that strategy to the limit" and "the fundamental strategy that [Wells Fargo had was] not going to change." Wells Fargo's executives and directors of the Board did not address the aggressive sales practices until after [a] September 8, 2016 regulatory enforcement action [by the OCC].

Identified structural problem: under current rules highest-paid employees have more benefits than risks in anti-consumer behavior

In the book, *Better Bankers, Better Banks: PROMOTING GOOD BUSINESS THROUGH CONTRACTUAL COMMITMENT*[5] [hereafter: *Better Bankers*] the authors[6] assert that all of the

[4] Susan S. Silbey, 'Rotten Apples or a Rotting Barrel: How Not to Understand the Current Financial Crisis', (2009) XXI No. 5 MIT Faculty Newsletter.

[5] Claire A. Hill and Richard W. Painter, *Better Bankers, Better Banks: PROMOTING GOOD BUSINESS THROUGH CONTRACTUAL COMMITMENT, University of Chicago Press, 2015.* All quotes herein are from Chapter 5.

[6] The authors**,** Claire A. Hill and Richard W. Painter are distinguished corporate law professors at the University of Minnesota. Claire A. Hill is professor and the James L. Krusemark Chair in Law at the University of Minnesota Law School, where she teaches corporate law, mergers and acquisitions, contracts, and a seminar in law and economics. She is the founding director of the Law School's Institute for Law and Rationality, and the associate director of its Institute for Law and Economics. She is also an affiliated faculty member of the University's Center for Cognitive Sciences. Before becoming a law professor, she practiced corporate law at several law firms including Milbank, Tweed, Hadley & McCloy in New York and Dickstein Shapiro in Washington D.C.
Richard W. Painter is the S. Walter Richey Professor of Corporate Law at the University of Minnesota Law School. Painter received his B.A., summa cum laude, in history from Harvard University and his J.D. from Yale University, where he was an editor of the Yale Journal on Regulation. Following law school, he clerked for Judge John T.

big banks have a structural problem associated with the incentives for their highest paid employees.

According to *Better Bankers*:

> Bankers now have incentives to take inappropriate financial risks with their banks' money and with customers' and clients' money, and to take legal risks in areas such as institutional safety and soundness, proprietary trading, compliance with tax laws and anti–money laundering laws, transactions with customers and clients, transactions with third parties, and disclosure to investors.

The core concept presented in *Better Bankers* is that establishing personal liability of the highest-paid employees of banks that are not connected to fault will change the culture of the bank in a manner that is more appropriately risk averse:

> Personal liability should encourage bankers to reduce these risks and, since the liability is not fault based, to monitor each other's behavior to the same end.

The approach suggested by *Better Bankers* is a contrast to current practices, including the practices highlighted by the Company in response to its recent consumer fraud crisis.

> The May 2012 hearing of the House Financial Services Committee ……focused on…whether the SEC and other regulators should insist on an admission of wrongdoing in settlements. ….Testifying at the hearing, Richard Painter [coauthor of *Better Bankers*] told the committee that the problem with many SEC settlements was not the lack of admission of guilt as much as the fact that a penalty assessed against an entity is effectively paid by its shareholders. The shareholders neither caused the behavior that led to the fine nor were they responsible for preventing it. The officers, by contrast, are only affected by the penalty to the extent they are shareholders or indirectly, insofar as their bonuses are tied to earnings reduced by the penalty unless the directors take the rare step of removing them as a result of their behavior. They thus have less incentive to change their behavior or that of the bank than they would if they were personally liable for a portion of the fine.

This incentive structure has led to the company moving employees around on the organizational chart, rather than effectively addressing continuing culture, incentives and judgments by the board – as noted in the Financial Services Committee report:

Noonan Jr. of the United States Court of Appeals for the 9th Circuit and later practiced at Sullivan & Cromwell in New York City and Finn Dixon & Herling in Stamford, Conn. From February 2005 to July 2007, he was associate counsel to the president in the White House Counsel's office, serving as the chief ethics lawyer for the president, White House employees, and senior nominees to Senate-confirmed positions in the executive branch. Painter has also been active in law reform efforts aimed at deterring securities fraud and improving ethics of corporate managers and lawyers. A key provision of the Sarbanes-Oxley Act of 2002, requiring the SEC to issue rules of professional responsibility for securities lawyers, was based on earlier proposals Painter made in law review articles and to the ABA and the SEC. Professor Painter has on six occasions provided invited testimony before committees of the U.S. House of Representatives or the U.S. Senate on government ethics, securities litigation, and/or the role of attorneys in corporate governance.

> ….the decision of the board of Wells Fargo to elevate Tim Sloan to the chief executive officer position of the bank, even though he was the chief operating officer with direct responsibility for the actions of the bank's employees during the fraudulent account scandal, raises questions as to whether Wells Fargo's board is serious about fixing the culture of the bank.

The Proponent

The Proponent, Harrington Investments, Inc. is a manager of assets of individual and institutional investors requiring social and environmental as well as financial portfolio performance. Our firm utilizes a comprehensive social and environmental screen and commits clients' assets to community investing. The firm also works to advance corporate financial and social responsibility through shareholder resolutions, addressing issues such as U.S. economic security, sustainability, human rights, corporate governance, and CEO compensation. We believe the manner in which these issues are managed affects long-term value creation and societal impact. Therefore, our investing and engagement strategy seeks to improve governance and oversight by clarifying corporate directors' fiduciary duties on issues surfacing at their companies.

Delineating fiduciary focus: and ongoing and successful initiative by the Proponent

Since 2009, the Proponent has been working with companies in its portfolio to clarify the fiduciary duties of boards of directors to address environment and human rights.

In 2010, Intel, Inc. agreed to amend its Charter of the Corporate Governance and Nominating Committee to include "corporate responsibility and sustainability performance" in the committee's overall policy responsibility.[3] Intel also provided the proponent with an outside legal opinion by the law firm of Gibson Dunn & Crutcher stating that under Delaware Law directors have a clear fiduciary duty to address corporate responsibility and sustainability performance when these issues are written into the committee charter.

A Monsanto attorney confirmed for the Proponent, after Monsanto revised its committee charter to include sustainability, that the members of the Committee, as fiduciaries of the Company and its shareowners, have undertaken a duty to review and monitor the performance of the Company as it affects matters relating to sustainability and to report thereon periodically to the full Board of Directors of the Company.[4]

Similarly, the Board of Directors of Target Corporation received an outside counsel opinion that Target, as a Minnesota Corporation, has a duty pursuant to Section 302A.241 of the Minnesota Business Corporation Act to take actions that are set forth in any charter adopted by the Board of Directors setting forth the authority and responsibilities of such committee.

Though not directly as a result of dialogue with the Proponent, Wells Fargo Corporation, which has recently been under fire for numerous failings in corporate responsibility, has clarified board duties in a similar vein. On November 28, 2017, it amended its Corporate Responsibility

Committee Charter to state:

> The CRC shall oversee the Company's policies and programs related to environmental sustainability, human rights, and other social and public matters of significance to the Company, including the Company's supplier diversity initiatives.

Clarifying these fiduciary duties of directors at a level of contractual clarity is a strong option for companies looking to demonstrate a top level, legally effective commitment to environment and human rights, as it provides a level of contractual clarity about the jurisdiction and responsibility of directors. As an approach to portfolio companies, it is also relevant to institutional investors who are seeking tools to address long-term value creation, and to mitigate portfolio companies' systemic or cross-portfolio impacts.

In contrast to the exemplary actions by companies revising board of directors charters, other firms are reticent to make such changes. Conversations with corporate secretaries and boards have indicated that, indeed, some boards are uncomfortable with revising corporate governance documents, precisely because they do not wish to add clearly articulated legal duties on environment or human rights, possibly increasing the likelihood that a director could be liable for a related duty of care, good faith or loyalty in oversight. Limiting the articulation of such issues to voluntary principles, codes or sustainability reports, does not necessarily have the same legal impact of expanding the scope of board fiduciary duties.

Focusing fiduciary duty: an explanation of Delaware law basis for the Proposal

The Proponent's governance efforts to amend committee charters have been justified, in part, by legal opinion of the Company's own counsel. In the memo provided for Intel, Gibson Dunn noted:

> The fact that a board committee's duties can be defined through a committee charter was acknowledged by the Delaware Supreme Court in *In re Walt Disney Co. Derivative Litigation,* 906 A.2d 27, 53-54 (Del. 2006), which described the duties of Disney's compensation committee as a "charter-imposed duty."

At issue in the Walt Disney Company derivative litigation were allegations that an excessive salary was paid to Michael Ovitz as executive president and director. Part of the litigation turned on who had responsibility and fiduciary duty of care in determining appropriate compensation levels. The court in the Walt Disney litigation noted:

> The Delaware General Corporation Law (DGCL) expressly empowers a board of directors to appoint committees and to delegate to them a broad range of responsibilities,[69] which may include setting executive compensation. Nothing in the DGCL mandates that the entire board must make those decisions. At Disney, the responsibility to consider and approve executive compensation was allocated to the compensation committee, as distinguished from the full board. The Chancellor's ruling that executive compensation was to be fixed by the compensation committee is legally

> correct.
>
> * * *
>
> **The compensation committee also had the charter-imposed duty** to "approve employment contracts, or contracts at will" for "all corporate officers who are members of the Board of Directors regardless of salary."

In examining the activities of the Walt Disney board, the court found that these allocations of responsibility in committee charters actually served to alleviate responsibility and liability of some board members by allocating it to others. But another way of understanding this is that it demonstrates that fiduciary responsibilities can be FOCUSED and CLARIFIED through the vehicle of a charter. This is one way in which a Board of Directors may create clear lines of responsibility – a contractual level of clarity about who is responsible for overseeing and setting policy on an issue like consumer relations. **The allocation of committee duties is also, as demonstrated in *In re Walt Disney*, a delineation of liability.**

The rationale for the current proposal is that existing Wells Fargo responses do not go far enough to enable the culture change that is needed to prevent future harm by the Company. A key finding from the Board's Independent Investigation was that, amongst senior leadership, again and again, there was a "disinclination to see the problem as systemic". The Proposal seeks an assessment of an approach consistent with the company's own findings, to consider steps to implement true systemic change by examining potential tweaks to allocations of fiduciary responsibility.

Fundamental accountability of the board and senior officers of the company is still lacking because federal banking regulators appear timid in their interventions. The Waters report notes that:

> …. the federal prudential banking regulators have also failed to hold the board of directors and senior officers of the largest banks accountable (i.e., by removing them from their positions or holding them civilly liable) for their acts or omissions that contributed to or enabled Wells Fargo's repeated violations of federal consumer protection laws.

This Proposal, therefore, represents a governance intervention to strengthen the degree of contractual clarity regarding the scope and allocation of responsibility and focus among board members and committees. The Walt Disney precedent cited above demonstrates that there is potential for corporate governance documents to define and allocate the attention and responsibility of board members to specific issues or decisions. Such charter- assigned responsibilities can focus on the role of a board committee in review of reports or policies on behalf of the board, and can also determine who has an approval capacity in relation to defined corporate policy matters. It is of clear value to Wells Fargo investors to encourage our company to better delineate and allocate responsibilities on the company's consumer relations culture.

ANALYSIS

I. The Proposal is not excludable as relating to ordinary business under Rule 14a-8(i)(7).

As demonstrated in the background section of this letter, the Company's mismanagement of consumer relations is a significant policy issue with dire significance for the Company. The proponents and others believe that the problem has not been effectively addressed by other efforts by the board and management to date. While the issue of consumer relations might, in other circumstances, be considered a mere matter of ordinary business, it represents an existential question for this company – a question that the Democratic members of the House financial services committee has expressed as:

- **When a megabank has engaged in a pattern of extensive violations of law that harms millions of consumers, like Wells Fargo has, it should not be allowed to continue to operate within our nation's banking system, and avail itself of all of the associated privileges afforded to it.**

Therefore, the Proposal raises a significant policy issue that transcends ordinary business. Moreover, the proposal neither prescribes detailed methods for implementing complex policy, nor delves too deeply into matters beyond the reach of shareholders. Quite to the contrary, it is framed as an appropriate effort to encourage the company to study and report back to shareholders on more deliberate governance strategies to strengthen board accountability and responsiveness.

Once a financial services provider is known to be vulnerable to significant policy issues with consumer or systemic impacts associated with their ordinary business practices such as marketing or lending, the Staff has made it clear that the issues may transcend ordinary business and render a proposal non-excludable pursuant to Rule 14a-8(i)(7). In recent years the Staff has rendered such decisions regarding subprime lending, predatory lending, and similar serious social impact issues threatening the reputations and even solvency of the banks.

In each of the following no-action relief was denied under Rule 14a-8(i)(7). *Wells Fargo & Company/MN (*March 11, 2013) The proposal requested that the board conduct an independent review of internal controls to ensure that its mortgaging and foreclosure practices do not violate fair housing and fair lending laws to report to shareholders. *JPMorgan Chase & Co.* (March 4, 2009) The proposal recommended that the company issue a report related to its credit card marketing, lending, collection practices, and the impacts the practices have on borrowers. *Bank of America Corporation* (March 29, 2006) Proposal requesting that the board develop higher standards for the **securitization of subprime loans to preclude securitization of loans involving predatory practices**. *Bank of America Corporation* (March 14, 2011) where the proposal asked the board to have its audit committee conduct an independent review of the company's internal controls related to loan modifications, foreclosures, and securitizations, and to report to shareholders its findings. *JPMorgan Chase & Co.* (March 14, 2011) Requesting that the board oversee the development and enforcement of policies to ensure that the same loan modification methods for similar loan types are applied uniformly to loans owned by the company and those serviced for others and report policies and results to shareholders. *Pulte Homes, Inc.* (February 27, 2008) Proposal recommended that "'the Board of Directors establish a committee consisting solely of outside directors to oversee the development and enforcement of policies and procedures to ensure that the loan terms and underwriting standards of nontraditional mortgage loans made by the Company, its subsidiaries, and its affiliates are consistent with prudent lending practices, including consideration of a borrower's repayment capacity, and that consumers have sufficient information to clearly understand loan terms and associated risks prior to making a product choice."

II. <u>The content of the Proposal is neither false nor misleading.</u>

The language of the proposal is neither false nor misleading, despite the overreaching assertions by the Company, a dramatic misapplication of the Staff's approach to Rule 14a-8(i)(3). The Company's assertion that the proposal is vague is itself hard to fathom. This is not a situation where shareholders or the board would be unable to discern the meaning of the proposal, or the actions needed by the board to implement it. The proposal in its entirety provide sufficient guidance regarding the issues raised and the approach of a study.

The Company Letter claims that the Proposal is vague because it fails to explain what the recommendations of the report should address. However, the Proposal is clear that the recommendations to shareholders are "regarding options for the board of directors to amend our Company's governance documents to enhance fiduciary oversight of matters relating to customer service and satisfaction."

It is in the discretion of the board to take that study in a direction that it finds appropriate, but the thrust of the proposal is plain: to shore up the company against its ability to compete in banking because of disregard for lawful conduct, and to fix a crippled business model and restore Wells Fargo's reputation.

The Company Letter attempts to once again blow smoke as if the meaning of either "enhance[d]" or "fiduciary oversight" are unclear. They are not. The precedents cited by the Company are inapplicable. The proposal read in its entirety is clear as written and not excludable pursuant to Rule 14a-8(i)(3).

CONCLUSION

Based on the foregoing, we believe it is clear that the Company has provided no basis for the conclusion that the Proposal is excludable from the 2018 proxy statement pursuant to Rule 14a-8. As such, we respectfully request that the Staff inform the Company that it is denying the no action letter request. If you have any questions, please contact me at 413 549-7333 or sanfordlewis@strategiccounsel.net.

Sincerely,

Sanford Lewis

Cc: Elizabeth A. Ising

APPENDIX A

THE PROPOSAL

WELLS FARGO

Whereas, Wells Fargo has paid over $12.5 billion dollars in penalties since 2000;

Whereas, our Company's employees opened as many as 3.5 million accounts using fictitious or unauthorized customer information, ultimately paying $185 million in penalties and $5 million to customers, including the termination of 5,300 employees;

Whereas, our Company admitted forcing 800,000 people to take out redundant auto insurance from 2012 to 2017, setting aside $80 million for refunds and to compensate victims;

Whereas, in 2017, the Ranking Member of the House Committee on Financial Services' report cited our Company as having a record of repeatedly and egregiously harming our customers, appearing that large monetary penalties have not been a sufficient deterrent to correct the continuing social harm created by our Bank;

Whereas, the Federal Reserve in 2018 capped the bank's assets in an unprecedented enforcement action, ordering our Company to replace four of our directors, citing "widespread insurance abuse";

Whereas, our Company also settled for $1 billion in 2018 with the Consumer Financial Protection Bureau and the Office of the Comptroller of the Currency, for its failure to manage risk;

Whereas, this past summer, our Company finalized a settlement of over $2 billion with the United States Department of Justice, where federally insured financial institutions lost billions of dollars investing in residential mortgage backed securities originated by Well Fargo;

Whereas, the United States Department of Justice and the Securities and Exchange Commission is investigating our Company's Wealth Asset division for overcharging customers for seven years, requiring our Bank to refund $114 million to wealth management customers and $171 million to foreign exchange clients;

Whereas, in 2018, a retired justice of the New York State Supreme Court called for the death penalty for Wells Fargo, "revoking its corporate charter forever...";

Whereas, a recent editorial noted that our bank's reputational issues may be hurting commercial lending, our Company's competitors are pulling ahead and there "...is still no reason for investors to hold this stock";

Whereas, our Company is losing valued employees, company advisors and retail executives;

Resolved: Shareholders request the board of directors commission an independent study, including recommendations to shareholders regarding options for the board of directors to amend our Company's governance documents to enhance fiduciary oversight of matters relating to customer service and satisfaction. The report should be produced at reasonable expense, exclude proprietary or legally privileged information and be published no later than October 1st, 2019.

Supporting Statement

It is apparent that our Company is rapidly losing its ability to compete in banking because of disregard for lawful conduct. As a fiduciary, our directors need to fix a crippled business model and restore Wells Fargo's reputation.

APPENDIX B

Excerpts from *In re Walt Disney Derivative Litigation*

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APPENDIX C

THE CASE FOR HOLDING MEGABANKS ACCOUNTABLE: An Examination of Wells Fargo's Egregious Consumer Abuses, Report Prepared by the Democratic Staff of the Committee on Financial Services, U.S. House of Representatives, The Honorable Maxine Waters, Ranking Member, 115th Congress, First Session, September 29, 2017.

THE CASE FOR HOLDING MEGABANKS ACCOUNTABLE: AN EXAMINATION OF WELLS FARGO'S EGREGIOUS CONSUMER ABUSES

REPORT PREPARED BY THE DEMOCRATIC STAFF OF THE COMMITTEE ON FINANCIAL SERVICES, U.S. HOUSE OF REPRESENTATIVES

THE HONORABLE MAXINE WATERS, RANKING MEMBER

115TH CONGRESS, FIRST SESSION

SEPTEMBER 29, 2017

This report has not been officially adopted by the Committee on Financial Services and may not necessarily reflect the views of its Members

Table of Contents

Executive Summary

On September 8, 2016, the Consumer Financial Protection Bureau ("Consumer Bureau") announced a $100 million fine against Wells Fargo Bank, N.A. ("Wells Fargo") for illegally opening millions of fraudulent credit card and deposit accounts in its customers' names without their knowledge or consent.[1] The Office of the Comptroller of the Currency ("OCC") announced a $35 million civil penalty[2] and the Office of the Los Angeles City Attorney ("LACA") announced a $50 million civil penalty against the bank for the same abusive acts.[3] The combination of a toxic, high-pressure sales environment at Wells Fargo—along with misconduct sanctioned, and even encouraged, by its executives—resulted in widespread consumer harm. Unfortunately, the fraudulent sales practices were not an isolated incident and instead have been revealed to be just one scandal in a series of revelations of other illicit customer abuses that have occurred at the bank.

In addition to these fines levied on the bank, Wells Fargo has paid out billions of dollars for a disturbingly consistent pattern of other wrongdoing. These practices, discussed in Section I, include illegal student loan servicing practices, inappropriate checking account overdraft fees, and unlawful mortgage lending practices, such as overcharging veterans for refinance loans. There are also allegations that the bank has engaged in unlawful practices that have not yet been subject to fines and enforcement actions, including enrolling customers in life insurance policies without their consent,[4] delaying mortgage closing dates until after the expiration of borrowers' interest rate lock to levy additional fees,[5] and charging over 570,000 customers for auto insurance policies they did not need, which resulted in at least 20,000 customers, including active duty service members, having their vehicles inappropriately repossessed.[6]

When megabanks like Wells Fargo engage in repeated, intentional, regular, deliberate, or institutionalized misconduct by violating laws and regulations that cause widespread and significant harm to innocent customers, such conduct warrants the use of regulators' most severe enforcement tools to protect the interest of the public and ensure the integrity of the U.S. banking system.

As Section II of this report describes, the federal prudential banking regulators – the OCC, the Board of Governors of the Federal Reserve System ("Federal Reserve Board"), and the Federal Deposit Insurance Corporation ("FDIC") – have enforcement tools beyond civil money

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[1] Consumer Financial Protection Bureau, "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/.

[2] https://www.occ.gov/news-issuances/news-releases/2016/nr-occ-2016-106.html.

[3] http://www.lacityattorney.org/allegations-against-wells-fargo.

[4] Matt Egan, "Wells Fargo scandal spreads to Prudential insurance," CNN Money (Dec. 12, 2016), *available at*: http://money.cnn.com/2016/12/12/investing/wells-fargo-insurance-scandal-prudential/index.html.

[5] Jesse Eisinger, "Wells Fargo Places L.A. Exec on Leave Amid Rate-Lock Fee Inquiry," PROPUBLICA (Feb. 22, 2017), *available at:* https://www.propublica.org/article/wells-fargo-places-la-exec-on-leave-amid-rate-lock-fee-inquiry.

[6] Gretchen Morgenson, "Wells Fargo Forced Unwanted Auto Insurance on Borrowers," NEW YORK TIMES (Jul. 27, 2017), *available at:* https://www.nytimes.com/2017/07/27/business/wells-fargo-unwanted-auto-insurance.html.

penalties that should be deployed to more effectively deter wrongdoing by highly profitable megabanks, for which even steep fines for illicit activity seem to amount to merely the cost of doing business. While regulators can impose large civil money penalties, only the federal prudential banking regulators have the authority to impose the most severe sanctions against a bank and its senior executives, such as restricting a bank's line of business relating to any fraudulent activity, directing a bank to remove senior officers and directors and permanently banning them from working in the industry, revoking a bank's national charter, or appointing a receiver to wind down a bank. These underutilized authorities should be, but have not been in the case of Wells Fargo, exercised in order to adequately combat rampant, illicit activity by a bank.

Obtaining a national charter and operating a federally-insured bank in the United States is a privilege, not an entitlement, which is conditioned upon compliance with all applicable laws and regulations and is subject to the regulatory purpose for which Congress established banking laws. The federal prudential banking regulators' seeming unwillingness to exercise their strongest statutory enforcement powers demonstrates the need for an additional review from Congress. Legislation is needed to address the regulators' reluctance to use all available enforcement powers, and to underscore the importance of deterrence to these regulators and the banks they supervise. Because megabanks offer and provide financial products and services to millions of American consumers, it is particularly important for Congress to close any loopholes that have shielded executives and senior management at these institutions who knew, or should have known, about the repeated violations of consumer protections that transpired under their leadership. Potential remedies to address this problem will be discussed in Section III.

Unfortunately, the House Financial Services Committee ("Committee") Republicans' investigation into Wells Fargo's fraudulent sales practices has focused primarily on the role of the Consumer Bureau instead of the long list of illegal conduct by the bank outlined in this report. Furthermore, Committee Republicans have yet to announce any hearings this year to have Wells Fargo's senior leadership discuss additional revelations of wrongdoing that have been unmasked since the last hearing held on this matter over a year ago in September 2016, despite a specific request by the Committee's Ranking Member and other senior Committee Democrats to do so. In lieu of a more robust and holistic investigation by Committee Republicans, this staff report attempts to shine a light on Wells Fargo's long list of illicit activities that have harmed consumers, identify the broad array of enforcement tools available to regulators, and underscore potential legislative and regulatory solutions that would better protect consumers and to achieve actual accountability for unlawful practices at megabanks by ensuring the leadership within these institutions are held accountable. Such steps would serve as a deterrent to stop megabanks from continuing to engage in schemes that reap huge profits at the expense of consumers and in violation of laws and regulations.

Findings

Wells Fargo Has Demonstrated a Pattern of Egregiously Harming Its Customers

- Wells Fargo has repeatedly engaged in a pattern of consumer abuses and other violations of law, which have unjustly enriched the bank at the expense of the bank's customers.
- When a megabank has engaged in a pattern of extensive violations of law that harms millions of consumers, like Wells Fargo has, it should not be allowed to continue to operate within our nation's banking system, and avail itself of all of the associated privileges afforded to it.

Prudential Regulators Have Failed to Use Their Most Severe Tools to Shut Down Recidivist Megabanks

- To date, Wells Fargo has not been deterred by the current enforcement tools utilized by regulators. Even civil money penalties in the billions have proven ineffective in stopping a trillion dollar megabank like Wells Fargo from engaging in practices that repeatedly harm consumers, because fines — even extremely large ones — solely amount to the "cost of doing business" for these institutions. Furthermore, penalties imposed on megabanks are often actually paid by shareholders, not the chief executives and senior officials responsible for the wrongdoing at the institution. As such, while fines have resulted in bad publicity that may temporarily lower a bank's share prices, the leadership within these megabanks, who condoned or failed to stop the unlawful practices, are rarely, if ever, held personally accountable.
- While regulators, including the Consumer Bureau, have the authority to impose civil money penalties, and have done so, federal prudential banking regulators, including the OCC, Federal Reserve Board, and FDIC, have not fully utilized other enforcement tools with respect to Wells Fargo, including restricting the bank's line of business, directing the bank to remove senior officers and directors and barring them from working at another bank, revoking the bank's charter, or terminating the bank's federal deposit insurance.

Effective Deterrence Demands the Use of Robust Enforcement Tools to End Unlawful Practices of Megabanks and their Senior Officers and Directors

- If federal prudential banking regulators refuse to deploy their most aggressive enforcement tools to shut down a megabank like Wells Fargo that has engaged in a pattern of repeated violations of consumer protection laws, Congress should consider legislation mandating the use of these tools to finally end such conduct and examine ways to improve accountability and address barriers that have previously prevented regulators and law enforcement from imposing civil and criminal penalties against the senior executives at these megabanks.
- Committee Republicans' failure to conduct a full-scale investigation into the long list of Wells Fargo's illicit practices or agree to Committee Democrats' request to hold a follow-up hearing with Wells Fargo's current executives demonstrates a fatal flaw in the scope and credibility of the Committee Republican's investigation to date. Instead of a tunnel-vision focus on the Consumer Bureau, the Committee should more fully review Wells Fargo's misdeeds, the full suite of enforcement tools that can be used by all federal prudential banking regulators, and consider legislative and regulatory remedies that may

be needed to ensure that a megabank cannot engage in a pattern of illicit activity that harms millions of consumers with impunity.

I. Repeat Offender: Wells Fargo and its Record of Repeatedly and Egregiously Harming its Customers

Wells Fargo has established a track record of repeatedly and egregiously harming its customers in an astonishing and growing variety of ways. According to one estimate, Wells Fargo & Company and its subsidiaries have paid over $11 billion in fines and penalties for consumer and other violations since 2000.[7] It appears that a series of large monetary penalties have not been a sufficient deterrent for Wells Fargo, a company with over $1.93 trillion in assets that has generated over $200 billion in profits since 2000.[8]

As some observers and experts have noted, large fines amount to the "cost of doing business" for large corporations and megabanks like Wells Fargo, and they do not serve as an adequate deterrent to stop similar bad behavior.[9] Indeed, Wells Fargo has continually chosen to eschew its consumer protection responsibilities, and instead has presumably engaged in systematic abuses to maximize profits. A sample of the bank's most grievous actions, which appear to permeate every division of its consumer lending business, are detailed below.

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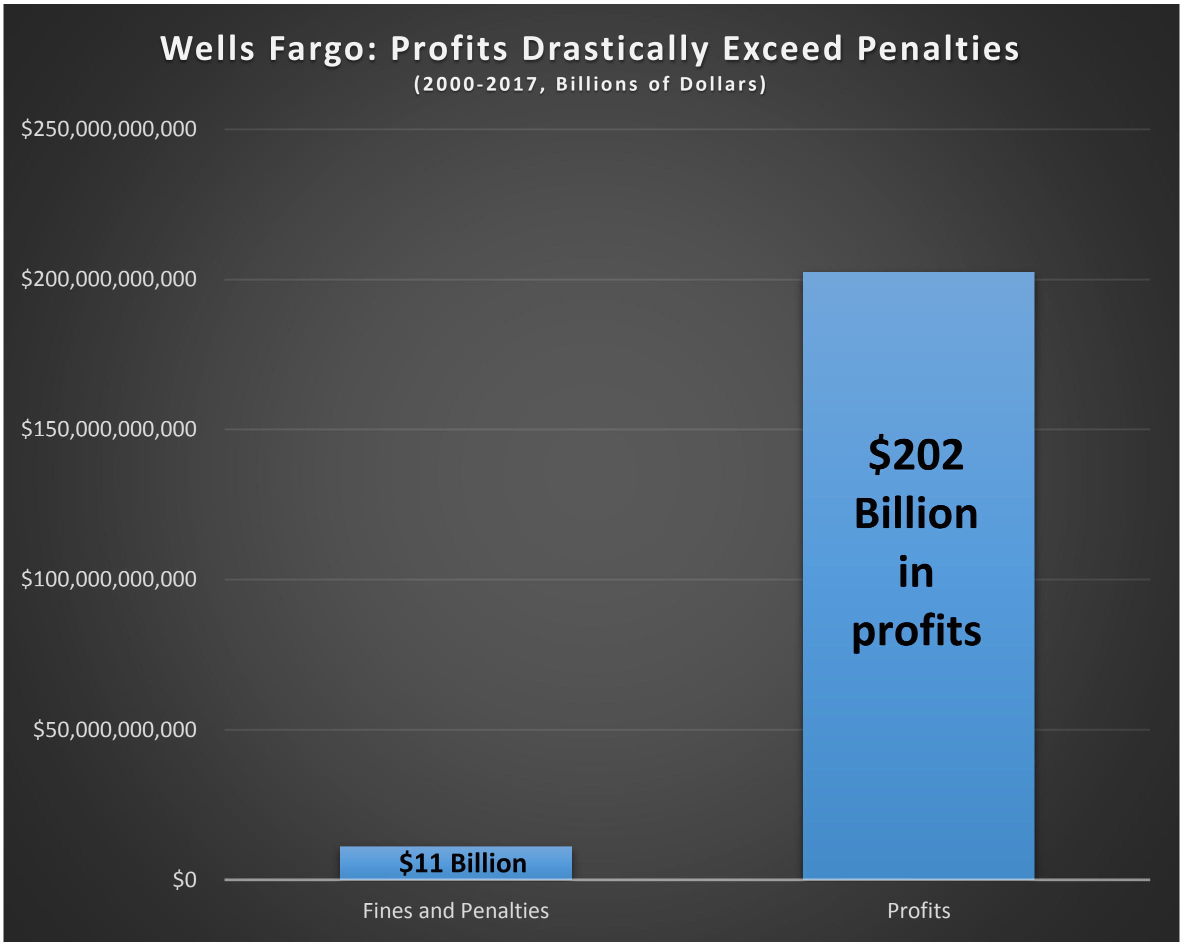
[7] Good Jobs First, "Tracking Subsidies, Promoting Accountability in Economic Development," Violation Tracker Parent Company Summary for Wells Fargo, *available at:* http://violationtracker.goodjobsfirst.org/prog.php?parent=wells-fargo; *see also* Americans for Financial Reform, "Wells Fargo Scandal Tracker" (Sep. 18, 2017), *available at*: http://blog.ourfinancialsecurity.org/2017/09/wells-fargo-scandal-tracker/.

[8] Wells Fargo & Company Annual Reports and Proxy Statements, *available at:* https://www.wellsfargo.com/about/investor-relations/annual-reports/. Since the inception of Wells Fargo's fraudulent account scandal, which is believed to be in 2001, Wells Fargo has accumulated nearly $200 billion in profits. See appendix for annual profits by year for Wells Fargo.

[9] *See* David Dayen, "Give Wells Fargo the Corporate Death Penalty," The New Republic (Aug. 1, 2017), *available at*: https://newrepublic.com/article/144144/give-wells-fargo-corporate-death-penalty; Patrick Radden Keefe, "Why Corrupt Bankers Avoid Jail," New Yorker (July 31, 2017), *available at*: https://www.newyorker.com/magazine/2017/07/31/why-corrupt-bankers-avoid-jail; Kyle Noonan, "The Case for a Federal Corporate Charter Revocation Penalty," The George Washington Law Review (Feb. 2012), *available at*: http://www.gwlr.org/wp-content/uploads/2012/03/80-2-Noonan.pdf; and The Honorable Jed S. Rakoff, "The Financial Crisis: Why Have No High-Level Executives Been Prosecuted?" The New York Review of Books (Jan. 9, 2014), *available at*: http://www.nybooks.com/articles/2014/01/09/financial-crisis-why-no-executive-prosecutions/.

Figure 1. Wells Fargo's Profits Compared to Penalties Paid by the Bank Since 2000



Source: Committee on Financial Services, Democratic Staff

A. Millions of Fraudulent Customer Accounts

On September 8, 2016, the Consumer Bureau, the Office of the Los Angeles City Attorney, and the OCC revealed that Wells Fargo had opened at least 2 million customer accounts without the authorization or knowledge of its customers. Under its consent order with the Consumer Bureau, Wells Fargo is required to take a number of remedial steps to improve its compliance with federal consumer protection laws, pay restitution to consumers harmed by the bank's fraudulent account scandal, and pay civil money penalties of $100 million.[10] Under its

[10] Consumer Financial Protection Bureau, In the Matter of: Wells Fargo Bank, N.A. Consent Order, 2016-CFPB-0015 (Sept. 8, 2016), *available at:* http://files.consumerfinance.gov/f/documents/092016_cfpb_WFBconsentorder.pdf. Consumer Financial Protection Bureau, In the Matter of: Wells Fargo Bank, N.A. Consent Order, 2016-CFPB-0015 (Sept. 8, 2016), *available at*: http://files.consumerfinance.gov/f/documents/092016_cfpb_WFBconsentorder.pdf. Subsequent actions that have occurred since Wells Fargo was exposed for its fraudulent account scandal include, the firing of more than 5,300 Wells Fargo employees, removal of 700 manager positions, clawbacks of over $70 million in bonuses paid to four executives, and the resignation of the bank's former chief executive officer, John Stumpf. Additionally, Wells Fargo

consent order with the OCC, the bank also agreed to take certain remedial steps to address its sales practices that were deemed unsafe or unsound business practices by the agency, and pay an additional $35 million civil money penalty to the OCC.[11] Wells Fargo agreed to another $50 million in penalties as settlement to its lawsuit with the LACA.[12]

In Wells Fargo's March 2017 annual public SEC filing, the bank warned investors that its original estimate of the number of accounts opened during the fraudulent account scandal period may have been low, and recently, Wells Fargo disclosed that a third-party review of Wells Fargo's business records indicates that the number of fraudulent accounts is closer to 3.5 million from the period of January 2009 to September 2016.[13]

Wells Fargo's fraudulent account practices began in 2002, if not earlier.[14] The company's troubling sales practices (a result of "cross-selling") and the employee misconduct that emanated from them were sanctioned, and even encouraged, by upper-level management within the company. Per Wells Fargo's own records, its employees would open unauthorized customer checking accounts to meet sales goals, and then transfer funds from consumers' authorized accounts to fund the unauthorized ones. Furthermore, the bank's employees opened unauthorized credit card accounts by "utilizing a bank database to identify customers who had been pre-approved for credit cards, then ordered cards without asking them."[15]

According to an internal investigation performed by Wells Fargo's Independent Directors of the Board, "[i]n 2002, the Community Bank [Wells Fargo] took steps to address an increase in

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is being sued by its shareholders for misleading them about the severity of the account scandal, and in its most recent quarterly filing with the SEC, the bank disclosed that its review of the expanded fraudulent account timeline "may lead to a significant increase in the identified number of potentially unauthorized accounts" which is currently estimated at 3.5 million. The OCC also removed the lead examiner responsible for overseeing Wells Fargo from his position at the agency.

[11] Press Release, Office of the Comptroller of the Currency, "OCC Assesses Penalty Against Wells Fargo, Orders Restitution for Unsafe or Unsound Sales Practices," (Sept. 8, 2016), *available at*: https://www.occ.treas.gov/news-issuances/news-releases/2016/nr-occ-2016-106.htmlhttps://www.occ.treas.gov/news-issuances/news-releases/2016/nr-occ-2016-106.html.

[12] Press Release, Los Angeles City Attorney, "Los Angeles City Attorney Mike Feuer Achieves Historic Result in Consumer Action Against Wells Fargo; Bank to Make Restitution to Customers, Pay $50-million in Penalties; Unprecedented Coordination with Federal Regulators to Benefit Consumers Nationwide," (Sept. 8, 2016), *available at:* http://www.lacityattorney.org/single-post/2016/09/08/Los-Angeles-City-Attorney-Mike-Feuer-Achieves-Historic-Result-in-Consumer-Action-Against-Wells-Fargo-Bank-to-Make-Restitution-to-Customers-Pay-50-million-in-Penalties-Unprecedented-Coordination-with-Federal-Regulators-to-Benefit-Consumers-Nationwide8, 2016), *available at*: http://www.lacityattorney.org/single-post/2016/09/08/Los-Angeles-City-Attorney-Mike-Feuer-Achieves-Historic-Result-in-Consumer-Action-Against-Wells-Fargo-Bank-to-Make-Restitution-to-Customers-Pay-50-million-in-Penalties-Unprecedented-Coordination-with-Federal-Regulators-to-Benefit-Consumers-Nationwide.

[13] Laura J Keller, "Wells Fargo Boosts Fake -Account Estimate 67% to 3.5 million," Bloomberg (Aug. 31, 2017), *available at*: https://www.bloomberg.com/news/articles/2017-08-31/wells-fargo-increases-fake-account-estimate-67-to-3-5-million; Kartikay Mehrotra and Laura J Keller, "Wells Fargo's Fake Accounts Grow to 3.5 Million in Suit," Bloomberg (May 12, 2017), *available at:* https://www.bloomberg.com/news/articles/2017-05-12/wells-fargo-bogus-account-estimate-in-suit-grows-to-3-5-million.

[14] Dawn Giel, "Wells Fargo fake account scandal may be bigger than thought," CNBC (May 12, 2017), *available at:* http://www.cnbc.com/2017/05/12/wells-fargo-fake-account-scandal-may-be-bigger-than-thought.html.

[15] E. Scott Reckard, "Wells Fargo's pressure-cooker sales culture comes at a cost," Los Angeles Times (December 21, 2013), *available at:* http://www.latimes.com/business/la-fi-wells-fargo-sale-pressure-20131222-story.html

sales practice violations,"[16] and "until as late as 2015...sales practices were labeled a 'high risk' in materials provided to the Risk Committee of the Board."[17] However, in June 2016, when asked about the company's aggressive cross-selling culture, current Wells Fargo Chief Executive Officer Tim Sloan, who was then the bank's Chief Financial Officer, said that the company had not "pushed that strategy to the limit" and "the fundamental strategy that [Wells Fargo had was] not going to change."[18] Wells Fargo's executives and directors of the Board did not address the aggressive sales practices until after the September 8, 2016 regulatory enforcement action. On September 13, 2016, the bank eliminated product sales goals in the retail bank, and in January 2017 the bank put a new incentive program in place that focused on customer service rather than selling products.[19]

As a result of the fraudulent account scandal, Wells Fargo's customers incurred financial penalties for having insufficient funds in their accounts with the bank, were charged unwarranted fees and finance charges for credit cards opened without their consent, and consequently may have had their credit scores negatively impacted.[20]

Below is the state-by-state list, provided to the Committee by Wells Fargo, of the number of checking and credit card accounts opened by Wells Fargo staff within the 2.1 million fraudulent accounts initially identified in 2016, as well as a breakdown of how many employees were fired per state of the 5,300 employees fired between 2011 and 2015.

Figure 2. State-by-State Breakdown of Wells Fargo's Number of Unauthorized Accounts and Number of Employees Fired (Source: Wells Fargo)

State	Number of Accounts (Credit & Deposit)	Number of Employees Fired
Alabama	22,795	86
Alaska	5,970	7
Arizona	178,972	211
Arkansas	1,310	4
California	897,972	1,421

[16] Wells Fargo, "Independent Directors of the Board of Wells Fargo & Company Sales Practices Investigation Report," at pg. 31, (Apr. 10, 2017), *available at:* https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/presentations/2017/board-report.pdf.
[17] Id. at pg. 14.
[18] Kristin Broughton and Robert Barba, "Picking the Brain of Wells Fargo's (Likely) Next CEO," American Banker (Jun. 16, 2016), *available at:* https://www.americanbanker.com/news/picking-the-brain-of-wells-fargos-likely-next-ceo.
[19] Wells Fargo, "Independent Directors of the Board of Wells Fargo & Company Sales Practices Investigation Report," at pg. 8.
[20] Matt Egan, "5,300 Wells Fargo employees fired over 2 million phony accounts," CNN Money (Sept. 9, 2016), *available at:* http://money.cnn.com/2016/09/08/investing/wells-fargo-created-phony-accounts-bank-fees/index.html; see also, Renae Merie, "Wells Fargo's scandal damaged their credit scores. What does the bank owe them?" The Washington Post (Aug. 18, 2017), *available at:* https://www.washingtonpost.com/business/economy/in-wake-of-wells-fargo-scandal-whats-to-be-done-about-damaged-credit-scores/2017/08/18/f26d30e6-7c78-11e7-9d08-b79f191668ed_story.html.

State	Number of Accounts (Credit & Deposit)	Number of Employees Fired
Colorado	64,481	235
Connecticut	11,497	64
Delaware	4,255	19
Florida	117,752	602
Georgia	55,579	128
Hawaii	805	N/A
Idaho	14,316	31
Illinois	4,890	14
Indiana	5,222	18
Iowa	12,630	58
Kansas	1,296	2
Kentucky	629	1
Louisiana	862	N/A
Maine	217	N/A
Maryland	15,391	56
Massachusetts	1,142	1
Michigan	2,891	8
Minnesota	31,238	172
Mississippi	2,355	3
Missouri	1,191	7
Montana	8,352	16
Nebraska	12,348	47
Nevada	53,675	154
New Hampshire	217	N/A
New Jersey	95,921	302
New Mexico	18,847	53
New York	24,048	102
North Carolina	38,722	168
North Dakota	1,939	5
Ohio	1,579	7
Oklahoma	761	N/A
Oregon	35,202	87
Pennsylvania	79,918	241
Rhode Island	192	N/A
South Carolina	23,327	78
South Dakota	4,803	31
Tennessee	3,534	10
Texas	149,857	529

State	Number of Accounts (Credit & Deposit)	Number of Employees Fired
Utah	41,686	72
Vermont	144	N/A
Virginia	41,703	189
Washington	38,861	58
Washington, DC	2,433	25
West Virginia	341	N/A
Wisconsin	8,922	27
Wyoming	2,317	18

Source: House Committee on Financial Services, "Holding Wall Street Accountable: Investigating Wells Fargo's Opening of Unauthorized Customer Accounts," (Sept. 29, 2016), Wells Fargo & Company's Responses to Questions for the Record.
*N/A is listed for states in which the number of employees fired in connection with the fraudulent account scandal was not provided.

Moreover, Wells Fargo previously attempted to enforce its mandatory pre-dispute arbitration clauses in the contracts of these defrauded customers in an effort to block harmed consumers from joining together in a class-action suit and pursuing remedies in a court of law. Although Wells Fargo eventually gave up its fight to compel arbitration in one of the larger settlement cases, the bank's blatant attempts to evade full responsibility and mitigate customer redress are shocking.[21] In a response to a written question from Committee Democrats, former Wells Fargo CEO John Stumpf wrote, "We are working to connect with customers and, for those negatively impacted by unauthorized accounts, to fix the issues. For those cases that may require additional attention, Wells Fargo is offering a no-cost mediation option to its customers."[22] However, Mr. Stumpf neglected to mention that banks like Wells Fargo win an overwhelming 93 percent of these "no-cost mediation" proceedings initiated under mandatory pre-dispute arbitration clauses, and in the rare instances that consumers do recover money under arbitration, the recovery on average is only 12 cents on each dollar that they have lost due to anti-consumer practices by the bank.[23]

On a related note, Congressional Republicans have been aggressively attempting to pass a joint resolution pursuant to the Congressional Review Act that would repeal a new rule the Consumer Bureau finalized earlier this year to prevent financial institutions, like Wells Fargo, from using mandatory pre-dispute arbitration clauses to restrict consumers ability to join with

[21] Jabbari, et. al. v. Wells Fargo & Co., *available at*: https://consumermediallc.files.wordpress.com/2016/12/calcompel.pdf
[22] House Committee on Financial Services, "Holding Wall Street Accountable: Investigating Wells Fargo's Opening of Unauthorized Customer Accounts," Wells Fargo & Company's Responses to Questions for the Record, pg. 3 (Sept. 29, 2016).
[23] Linda Sherry, "Finally! A rule to stop companies from ripping off consumers," The Hill (Jun. 24, 2016), *available at:* http://thehill.com/blogs/congress-blog/judicial/284687-finally-a-rule-to-stop-companies-from-ripping-off-consumers

other harmed consumers and seek remedies in court.[24] The House passed such a measure on July 25, 2017,[25] and the Senate may take up the matter soon.

B. Illegal Student Loan Servicing Practices

In August 2016, the Consumer Bureau took action against Wells Fargo for the bank's illegal student loan servicing practices.[26] After investigating the bank for 10 months,[27] the Consumer Bureau found that Wells Fargo "failed to provide important payment information to consumers, charged consumers illegal fees, and failed to update inaccurate credit report information."[28] Under the consent order with the bank, the Consumer Bureau required Wells Fargo to reimburse harmed customers the amount of $410,000 and pay an additional $3.6 million dollars in civil money penalties.[29] According to the Consumer Bureau's findings stated in the consent order, in a familiar pattern for the bank, Wells Fargo processed student loan payments in a way that caused its customers to incur additional costs and fees in an attempt to maximize the bank's profits.[30] According to Richard Cordray, the Director of the Consumer Bureau, "Wells Fargo hit borrowers with illegal fees and deprived others of critical information needed to effectively manage their student loan accounts." In a time when over 44 million borrowers in the U.S. have more than $1.34 trillion in student loan debt, and one in six of those borrowers are severely delinquent in repayment,[31] Wells Fargo's actions constitute a failure that has unduly

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[24] For more information, *see* Press Release, "Democratic Staff Report Documents Successes of Consumer Financial Protection Bureau, Importance of Rulemaking on Forced Arbitration," (July 24, 2017), *available at*: https://democrats-financialservices.house.gov/news/documentsingle.aspx?DocumentID=400699; Press Release, "Waters Opening Floor Statement in Opposition to Republican Resolution to Repeal Forced Arbitration Rule," (July 25, 2017), *available at*: https://democrats-financialservices.house.gov/news/documentsingle.aspx?DocumentID=400716; Press Release, "Waters Condemns Republican Effort to Repeal Forced Arbitration Rule," (July 25, 2017), *available at*: https://democrats-financialservices.house.gov/news/documentsingle.aspx?DocumentID=400717; and Press Release, "ICYMI: Waters Joins Pelosi, Warren in Fight Against Republican Attempts to Repeal Forced Arbitration Rule," (July 26, 2017), *available at*: https://democrats-financialservices.house.gov/news/documentsingle.aspx?DocumentID=400720.

[25] See H.J. Res. 111 (115th Congress), *available at*: https://www.congress.gov/bill/115th-congress/house-joint-resolution/111/.

[26] Press Release, Consumer Financial Protection Bureau, "CFPB Takes Action Against Wells Fargo for Illegal Student Loan Servicing Practices," (Aug. 22, 2016), *available at:* https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-wells-fargo-illegal-student-loan-servicing-practices/

[27] Ashlee Kieler, "Wells Fargo Must Pay $4M Over Allegedly Illegal Student Loan Servicing," Consumerist (Aug. 22, 2016), *available at:* https://consumerist.com/2016/08/22/wells-fargo-must-pay-4m-over-allegedly-illegal-student-loan-servicing/.

[28]Press Release, Consumer Financial Protection Bureau, "CFPB Takes Action Against Wells Fargo for Illegal Student Loan Servicing Practices," (Aug. 22, 2016), *available at:* https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-wells-fargo-illegal-student-loan-servicing-practices/

[29] Id.

[30] Consent Order, In the Matter of: Wells Fargo Bank, N.A., 2016-CFPB-0013, pgs. 6-9 (Aug. 22, 2016), *available at:* http://files.consumerfinance.gov/f/documents/2016-CFPB-0013Wells_Fargo_Bank_N.A.--_Consent_Order.pdf

[31] See Federal Reserve Bank of New York, "Quarterly Report on Household Debt and Credit, 2017:Q2," pgs. 2 and 31 (Aug. 2017), *available at:* https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf/HHDC_2017Q2.pdf; see also, Kim Clark, "A Record Number of People Aren't Paying Back Their Student Loans," TIME Money (Mar. 14, 2017), *available at:* http://time.com/money/4701506/student-loan-defaults-record-2016/.

increased the amount of delinquent student loan accounts, and unjustly caused financial harm to its private student loan borrowers.

C. Checking Account Overdraft Fees

In dozens of separate cases seeking class action status, Wells Fargo is accused of re-ordering the posting of consumer debit card charges in order to obtain the maximum amount of overdraft fees from its customers. Prior to 2001, Wells Fargo posted debits from low-to high (as was common industry practice at that time), which allowed for as many items as the account balance could possibly cover before any overdraft fees would be charged for insufficient funds tied to overdrafts. However, starting in 2001, Wells Fargo began resequencing debit transactions to post in highest-to-lowest order, which had the immediate effect of maximizing the number of overdraft fees charged to customers.[32]

In the 2010 class action case, *Gutierrez v. Wells Fargo Bank, N.A.*, the U.S. District Court of the Northern District of California found that Wells Fargo's actions were deliberate, calculated, and the result of a brazen push for profits.[33] In spite of Wells Fargo's claims that there was no nefarious intent behind its decision to reorder customer debit transactions, the judge in the case stated that:

> "The trial record [in the case] is most telling about the true reasons Wells Fargo adopted high-to-low bookkeeping […]. **Internal bank memos and emails leave no doubt that, overdraft revenue being a big profit center, the bank's dominant, indeed sole, motive was to maximize the number of overdrafts** and squeeze as much as possible out of what it called its "ODRI [overdraft/returned item] customers" and particularly out of the four percent of ODRI customers it recognized supplied a whopping 40 percent of its total overdraft and returned-item revenue. This internal history — which is laid bare in the bank's internal memos — is so at odds with the bank's theme of "open and honest" communication and that "overdrafts must be discouraged" that the details will be spread herein[…]
>
> Overdraft fees are the second-largest source of revenue for Wells Fargo's consumer deposits group, the division of the bank dedicated to providing customers with checking accounts, savings accounts, and debit cards. The revenue generated from these fees has been massive. **In California alone, Wells Fargo assessed over $1.4 billion in overdraft penalties between 2005 and 2007**. Only spread income — money the bank generated using deposited funds — produced more revenue." (emphasis added)."[34]

[32] See *Gutierrez v. Wells Fargo Bank, N.A.*, 730 F. Supp. 2d 1080 (2010) ("To illustrate, assume that a customer has $100 in his account and uses his debit card to buy ten small items totaling $99 followed by one large item for $100, all of which are presented to the bank for payment on the same business day. Using a low-to-high posting order, there would be only be one overdraft — the one triggered by the $100 purchase. Using high-to-low resequencing, however, there would be *ten* overdrafts — because the largest $100 item would be posted first and thus would use up the balance as quickly as possible.").
[33] Id.
[34] Id.

The district court ordered Wells Fargo to stop posting transactions in high-to-low order, and to pay out $203 million in restitution to its customers.[35] Nevertheless, Wells Fargo continues to defend its abusive and deceptive overdraft practices. While other large banks settled similar class action lawsuits,[36] Wells Fargo is still pursuing an appeal to overturn the California district court ruling and push its aggrieved customers into bank-friendly forced arbitration proceedings.[37]

D. Mortgage Lending

i. VA Loan Refinancing Fraud

Wells Fargo is accused of violating the False Claims Act[38] by defrauding veterans and charging them illegal fees under its mortgage refinance program, and then concealing those fees from the government so the bank could receive guarantees from the U.S. Department of Veterans Affairs.[39] When lenders provide veteran borrowers with interest rate reduction refinance loans on their homes, the lenders are not allowed to charge attorney fees, escrow fees, or closing fees, but they are authorized to charge a reasonable fee for a title examination.[40] In 2006, a group of whistleblowers revealed that Wells Fargo was advising brokers that the impermissible fees should lumped into title examination costs.[41] As a result, veterans were paying hundreds of dollars more than they needed to pay to refinance. The government was also harmed because it was guaranteeing the loans, and the additional costs raised the risk of default on the loans. Wells Fargo claimed that it lacked the intent necessary to violate the False Claims Act, but on August 4, 2017, the bank paid the government $108 million to settle a lawsuit related to the allegations.[42]

ii. Discriminatory Mortgage Lending

Over the past several years, the cities of Los Angeles, Miami, Oakland, Baltimore, Memphis, and Philadelphia have all filed lawsuits against Wells Fargo,[43] asserting that the bank steered African-American and Latino homebuyers into more expensive mortgages compared to

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[35] Id.

[36] Andrew Martin, "Bank of America to Settle Overdraft Suit for $410 Million," NEW YORK TIMES (May 23, 2011), *available at:* http://www.nytimes.com/2011/05/24/business/24bank.html.

[37] It is worth noting that Wells Fargo only attempted to invoke its forced-arbitration contract provisions *after* it lost the overdraft fee suit at the trial level, once again demonstrating how large companies depend on forced arbitration clauses as a means to evade accountability. In 2016, a Florida district court advised Wells Fargo that it waived any rights it had to compel arbitration when it chose instead to litigate for years in hopes of winning in court, but Wells Fargo continues to pursue arbitration in an attempt to avoid paying out restitution to its victims in the class action suits.

[38] 31 U.S.C. §§ 3729 - 3733. The False Claims Act gives the government and citizens the right to sue people or corporations who knowingly submit a false claim for payment to the government.

[39] Jonathan Stempel, "Wells Fargo to pay U.S. $108 million over veterans' loans," REUTERS (Aug. 4, 2017), *available at:* https://www.reuters.com/article/us-wellsfargo-settlement-idUSKBN1AK1U1

[40] U.S. Department of Veterans Affairs Lenders Handbook, VA Pamphlet 26-7, Chapter 8:Borrower Fees and Charges and the VA Funding Fee, *available at:* http://www.benefits.va.gov/warms/docs/admin26/handbook/chapterlendershanbookchapter8.pdf

[41] *United States v. Wells Fargo Home Mortgage, et al.*, Case No. 1:06-cv-00547 (D. Ga. Mar. 8, 2006).

[42] Id.

[43] J. Weston Phippen, "Philadelphia's Lawsuit Against Wells Fargo," THE ATLANTIC (May 15, 2017), *available at*: https://www.theatlantic.com/news/archive/2017/05/philadelphia-wells-fargo-lawsuit/526758/

their white counterparts, which is a violation of the Fair Housing Act of 1986, and resulted in a disparate number of foreclosures for minority borrowers.[44] According to the City of Los Angeles, between 2004 and 2014, Wells Fargo's African-American borrowers were twice as likely to receive high-cost loans when compared with white borrowers with similar credit backgrounds, and Latino borrowers were 1.7 times as likely to receive costly loans when compared with white borrowers with similar credit backgrounds.[45] The U.S. District Court of the Northern District of California ultimately decided that the city would need to present additional evidence to support the allegations in its complaint that policies of the bank pushed minority borrowers into pricier or riskier mortgages than those offered to white borrowers, and the U.S. Ninth Circuit Court of Appeals upheld the lower court's decision.[46] However, the U.S. Supreme Court has ruled that cities can sue banks for such violations under the Fair Housing Act,[47] and several cities have severed ties with the bank. Philadelphia City Councilwoman Cindy Bass has even called the bank the "antithesis of corporate social responsibility."[48]

Wells Fargo is also accused of negligently maintaining homes in predominantly minority neighborhoods during the same time frame. According to research by the National Fair Housing Alliance ("NFHA"), Wells Fargo maintained and marketed properties that it owned in predominantly white areas "in materially better condition" than properties that it owned in neighborhoods that are predominantly African-American, Latino, or non-white, all in violation of the Fair Housing Act.[49] Wells Fargo paid $42 million to settle a lawsuit regarding these allegations.[50]

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[44] *City of Los Angeles v. Wells Fargo & Co*., 2015 U.S. Dist. LEXIS 93451, 2015 WL 4398858 (2015) ("In describing the specifics of reverse redlining, the City of Los Angeles identifies in its complaint eight types of allegedly "predatory" home loans issued by Wells Fargo to minority borrowers: (1) high-cost loans (defined by the City as loans with an interest rate three percentage points or more above the federally established benchmark); (2) subprime loans; (3) interest-only loans; (4) balloon payment loans; (5) loans with prepayment penalties; (6) negative-amortization loans; (7) no-documentation loans; and (8) adjustable rate mortgage loans with "teaser" rates.").

[45] Id.

[46] See gen., James Rufus Koren, "Appeals court deals setback to L.A. mortgage discrimination suits against big banks," Los Angeles Times (May 30, 2017), ***available at:*** http://www.latimes.com/business/la-fi-mortgage-discrimination-appeal-20170530-story.html.

[47] Adam Liptak, "Supreme Court Rules Miami Can Sue for Predatory Lending," NEW YORK TIMES (May 1, 2017)(citing Bank of America Corp. v. City of Miami, Florida, 581 US __ (2017)), ***available at:*** https://www.nytimes.com/2017/05/01/us/politics/supreme-court-miami-banks-fair-housing.html.

[48] Fabiola Cineas, "Philadelphia Sues Wells Fargo Over Discriminatory Lending Practices," BizPhilly (May 15, 2017), ***available at:*** http://www.phillymag.com/business/2017/05/15/philadelphia-wells-fargo-discriminatory-lending-practices-loans-lawsuit/#qf5H7XBpQB07TOHE.99

[49] National Fair Housing Alliance, "Zip Code Inequality: Discrimination by Banks in the Maintenance of Homes in Neighborhoods of Color," (Aug. 27, 2014), ***available at:*** http://nationalfairhousing.org/wp-content/uploads/2017/04/2014-08-27_NFHA_REO_report.pdf

[50] U.S. Department of Housing and Urban Development, Conciliation Agreement under the Fair Housing Act between National Fair Housing Alliance et al. and Wells Fargo Bank, N.A., Case No. 09-12-0708-8 (2013), ***available at:*** http://nationalfairhousing.org/wp-content/uploads/2017/04/ExecutionVersionofNFHAConciliationAgreement.pdf

Wells Fargo previously paid $175 million dollars to the U.S. Department of Justice ("DOJ") — the second largest fair lending settlement in the DOJ's history[51] — over allegations that it overcharged borrowers of color for mortgage loans and wrongly steered them into subprime mortgages during the financial crisis, which one DOJ official called "a "racial surtax."[52] While discussing the DOJ settlement, an Assistant U.S. Attorney General opined that the Wells Fargo case was "about real people, African-American and Latino, who suffered real harm as a result of Wells Fargo's discriminatory lending practices," and that "people with similar qualifications […] should be judged by the content of their creditworthiness and not the color of their skin."[53]

iii. Illegal Loan Modifications

In June 2017, certain borrowers seeking bankruptcy protection filed a class action lawsuit against Wells Fargo in the U.S. Bankruptcy Court for the Western District of North Carolina, claiming the bank has improperly used the Bankruptcy Code and Rules to force debtors into mortgage loan modifications that neither the borrowers nor the bankruptcy courts presiding over the related bankruptcy cases requested or approved.[54] According to the filed complaint, the bank has an unlawful practice of filing unauthorized Notice of Mortgage Payment Change forms in bankruptcy proceedings, which may slightly reduce the borrower's monthly mortgage payments, but also extends the term of the mortgage by decades and thereby exposes the borrower to tens of thousands of dollars more in additional interest payments.[55] In defiance of multiple court orders that instruct Wells Fargo to withdraw its unauthorized mortgage modifications in several cases because they were violations of due process, the bank has continued to file unauthorized Notice of Mortgage Payment Change forms in bankruptcy proceedings.[56] In addition to the class action lawsuit, seven other cases criticizing the bank's loan modification practices have arisen in

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[51] The largest fair lending settlement in the DOJ's history is the Countrywide Financial Corporation settlement. See Press Release, U.S. Department of Justice, "Justice Department Reaches $355 Million Settlement to Resolve Allegations of Lending Discrimination by Countrywide Financial Corporation," (Jun. 22, 2015), *available at:* https://www.justice.gov/usao-cdca/dojcountrywide-settlement-information.

[52] See Press Release, U.S. Department of Justice, "Justice Department Reaches Settlement with Wells Fargo Resulting in More Than $175 Million in Relief for Homeowners to Resolve Fair Lending Claims,"(Jul. 12, 2012), *available at:* https://www.justice.gov/opa/pr/justice-department-reaches-settlement-wells-fargo-resulting-more-175-million-relief

[53] Yian Q. Mui, "Wells Fargo, Justice Department settle discrimination case for $175 million," The Washington Post (Jul. 12, 2012), *available at:* https://www.washingtonpost.com/business/economy/wells-fargo-justice-department-settle-discrimination-case-for-175-million/2012/07/12/gJQAX66ZgW_story.html?utm_term=.7739dd3f0077

[54] Plaintiff's Original Class Complaint and Application for Injunctive Relief, Cotton v. Wells Fargo Bank, N.A., Bankr. W.D. N.C. (2017), *available at*: https://consumermediallc.files.wordpress.com/2017/06/1.pdf.

[55] Id. at pgs. 8-13. The named plaintiffs in the class action lawsuit, the Cottons, claim that they had voluntarily filed a Chapter 13 bankruptcy petition, but were current on their mortgage payments to Wells Fargo when the bankruptcy petition was filed and remained current on their mortgage payments throughout the pendency of their bankruptcy case. However, without the Cottons knowledge or consent, Wells Fargo filed a mortgage payment change notice with the bankruptcy court, requesting modification of the Cotton's mortgage payments to be paid by the appointed Trustee. The mortgage payment amounts were reduced by approximately $130 per month, however, the term of the Cotton's mortgage was extended by nearly 26 years, which would result in up to $129,319 in additional interest fees.

[56] Obj. to Notice of Mortgage Payment Change at 6, Cotton v. Wells Fargo Bank, N.A., Bankr. W.D. N.C. (2016) (Case No. 14-30287).

Louisiana, New Jersey, North Carolina, Pennsylvania, and Texas.[57] Some borrowers even allege that Wells Fargo's unlawful practice of modifying mortgage terms without the borrower's consent or knowledge have sent them into bankruptcy.[58] Wells Fargo has admitted to pushing unknowing customers into these modifications "at least 100 times in cases that were pending as of April 24, 2017,"[59] and the bank has profited handsomely from the loan modifications, receiving "up to $1,600" from the government for each distressed loan it modified.[60] In response to one borrower complaint related to the unwanted loan modifications, a bankruptcy court judge called Wells Fargo's practices "beyond the pale of due process."[61]

iv. Fraudulent Mortgage Fees

When consumers apply for mortgages, it is standard industry practice for lenders to guarantee an interest rate for the borrower for a set period of time, typically 30 to 60 days. These interest rate "locks" protect borrowers from rising interest rates while they are attempting to buy a home.[62] In January 2017, investigative reporters discovered that Wells Fargo was systematically delaying customers' mortgage closing dates until after the expiration of the borrower's interest rate lock period in an attempt to pocket additional fees.[63] Former bank employees in Los Angeles said the delays "were usually the bank's fault, but management forced them to blame the customers."[64] As a result, customers ended up paying fees of $1,500 or more for the bank's deceptive practices.[65] Since the story was initially published, other current and former Wells Fargo employees and customers have come forward to corroborate the claims, and allege that these practices extend far beyond the Los Angeles area.[66] Furthermore, a former Wells Fargo employee said that he was fired for trying to report the abuses—which included wrongfully blaming customers for the bank's errors and falsifying documents to back up the bank's false narratives—in violation of federal whistleblower laws.[67] A former branch officer who was aware of the practices said: "I believed in Wells Fargo. I loved Wells Fargo. But it was just stealing from people."[68]

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[57] Gretchen Morgenson, "Wells Fargo Is Accused of Making Improper Changes to Mortgages," NEW YORK TIMES (Jun. 14, 2017), *available at:* https://www.nytimes.com/2017/06/14/business/wells-fargo-loan-mortgage.html.
[58] Kartikay Mehrotra, Laura J Keller, and Margaret Cronin Fisk, "How Wells Fargo's Troubles Went from Bad to Worse," BLOOMBERG BUSINESSWEEK (Aug. 7, 2017), *available at:* https://www.bloomberg.com/news/articles/2017-08-07/how-wells-fargo-s-troubles-went-from-bad-to-worse-quicktake-q-a
[59] Plaintiff's Original Class Complaint and Application for Injunctive Relief, Cotton v. Wells Fargo Bank, N.A., Bankr. W.D. N.C. (2017), *available at*: https://consumermediallc.files.wordpress.com/2017/06/1.pdf.
[60] Gretchen Morgenson, "Wells Fargo Is Accused of Making Improper Changes to Mortgages," NEW YORK TIMES (Jun. 14, 2017), *available at:* https://www.nytimes.com/2017/06/14/business/wells-fargo-loan-mortgage.html.
[61] Id.
[62] https://www.consumerfinance.gov/ask-cfpb/whats-a-lock-in-or-a-rate-lock-en-143/
[63] Jesse Eisinger, "Here's Another Way Wells Fargo Took Advantage of Customers," PROPUBLICA (Jan. 23, 2017), *available at:* https://www.propublica.org/article/heres-another-way-wells-fargo-took-advantage-of-customers
[64] Id.
[65] Id.
[66] James Rufus Koren, "Wells Fargo stuck mortgage borrowers with extra fees, whistle-blower's lawsuit says," LOS ANGELES TIMES, (Jul. 14, 2017), *available at*: http://www.latimes.com/business/la-fi-wells-fargo-rate-lock-20170714-story.html
[67] Id.
[68] Jesse Eisinger, "Wells Fargo Places L.A. Exec on Leave Amid Rate-Lock Fee Inquiry," PROPUBLICA (Feb. 22, 2017), *available at*: https://www.propublica.org/article/wells-fargo-places-la-exec-on-leave-amid-rate-lock-fee-inquiry

E. Auto Lending Abuses

In July 2017, the *New York Times* published an article detailing how more than 800,000 people who obtained auto loans from Wells Fargo were charged for collateral protection insurance ("CPI" or "forced-placed auto insurance") they did not need.[69] Wells Fargo had a commercial insurance agreement with National General under which National General was instructed to place CPI on any auto loans for borrowers that National General or Wells Fargo could not confirm had insurance to cover the outstanding balance of the auto loan. However, Wells Fargo's CPI program was administered in a negligent manner, and as a result, over 274,000 Wells Fargo auto loan customers were pushed into delinquency on their loans and over 25,000 customers, including active-duty military and veterans, had their vehicles wrongly repossessed.[70] Wells Fargo alleges that "only" 570,000 of its customers were harmed by the misplaced CPI policies but admitted that the unnecessary CPI policies may have caused approximately 20,000 auto loan customers to go into default and resulted in their vehicles being wrongly repossessed.[71] In a press release, Wells Fargo stated that it "[takes] full responsibility for [its] failure to appropriately manage [its CPI program] and [is] extremely sorry for any harm this caused [its] customers, who expect and deserve better."[72] Wells Fargo customers do indeed deserve better, but the approximately $64 million in cash remediation that Wells Fargo plans to remit to its customers[73] will not be enough to compensate the thousands of consumers who suffered far more than financial harm: damage to credit reports, emotional harm from repossession, and potential loss of employment from a lack of access to a vehicle all add up to an inexcusable amount of injury.[74] Per the Washington Post, "the effect on customers whose cars were repossessed is likely … catastrophic — similar to losing your home in a foreclosure or declaring bankruptcy — and could last for years."[75] According to the Washington Post article, one victim of the forced-placed auto insurance scandal, Samir Hanef, had his car repossessed and missed work as a result of Wells Fargo's mistakes. He underscored the emotional damage, not just financial harm, he endured because of the unlawful practice, recounting that "the stress and anxiety ... [were] truly indescribable."[76]

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[69] Gretchen Morgenson, "Wells Fargo Forced Unwanted Auto Insurance on Borrowers," NEW YORK TIMES (Jul. 27, 2017), *available at:* https://www.nytimes.com/2017/07/27/business/wells-fargo-unwanted-auto-insurance.html
[70] Id.
[71] Press Release, Wells Fargo & Company, "Wells Fargo Announces Plan to Remediate Customers for Auto Insurance Coverage," (Jul. 27, 2017), *available at*: https://newsroom.wf.com/press-release/consumer-lending/wells-fargo-announces-plan-remediate-customers-auto-insurance.
[72] Id.
[73] Id.
[74] Matt Egan, "Wells Fargo customer: It felt like my car was held as extortion," CNN MONEY (Aug. 8, 2017), *available at*: http://money.cnn.com/2017/08/08/investing/wells-fargo-auto-insurance-scandal/index.html
[75] Renae Merle, "Wells Fargo's scandal damaged their credit scores. What does the bank owe them?" THE WASHINGTON POST (Aug. 18, 2017), *available at*: https://www.washingtonpost.com/business/economy/in-wake-of-wells-fargo-scandal-whats-to-be-done-about-damaged-credit-scores/2017/08/18/f26d30e6-7c78-11e7-9d08-b79f191668ed_story.html.
[76] Id.

This auto insurance scandal came to light only months after Wells Fargo paid $24 million to settle allegations that it wrongfully repossessed vehicles from active-duty military members and charged them higher interest rates in violation of the Servicemembers Civil Relief Act.[77] The DOJ ordered Wells Fargo to pay a $4.1 million penalty for that wrongdoing.[78] In an announcement about the settlement, a U.S. District Attorney stated that, "We all have an obligation to ensure that the women and men who serve our country in the Armed Forces are afforded all of the rights they are due, [and] Wells Fargo failed in that obligation."[79]

F. Committee Republicans' Flawed Investigation into Wells Fargo's Bad Practices and Continued Misguided Attacks on the Consumer Bureau

Instead of investigating all of the illegal conduct of Wells Fargo, including the list of nefarious actions identified in this report that resulted in tremendous consumer harm, Committee Republicans have singled out the Consumer Bureau for attention, perhaps as a means of pursuing an ideological mission of functionally terminating the Consumer Bureau.[80] While the Consumer Bureau has taken actions against Wells Fargo, including for the fraudulent customer account scandal, it is worth noting the Consumer Bureau was not even established until nearly a *decade after* Wells Fargo employees had begun creating fraudulent accounts to meet the bank's aggressive sales goals. Rather, the OCC was the bank's primary regulator during this period, and the OCC's Ombudsman even issued a report admitting to the OCC's shortcomings in supervising the bank.[81] Despite the OCC's acknowledgment of its supervisory deficiencies in this matter, Committee Republicans have ignored both the OCC's critical supervisory failures that enabled Wells Fargo to continue its fraudulent customer account scandal for a decade and the ongoing misdeeds of the bank. Furthermore, Committee Republicans have given minimal attention to authorities federal prudential regulators have yet to deploy, described in detail in the next section of the report.

In light of the growing list of consumer abuses documented earlier in this report, Ranking Member Maxine Waters (D-CA), Vice Ranking Member Daniel T. Kildee (D-MI), and Oversight and Investigations Subcommittee Ranking Member Al Green (D-TX), sent a letter to Chairman Hensarling on August 1, 2017, requesting that the Committee hold a hearing with Wells Fargo's top executives, writing, "[T]here have been seemingly never-ending developments

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[77] Jackie Wattles, "U.S.: Wells Fargo illegally repossessed service members' cars," CNN MONEY (Sept. 30, 2016), *available at*: http://money.cnn.com/2016/09/29/news/wells-fargo-servicemembers-cars/index.html.
[78] Press Release, The U.S. Dept. of Justice, "Justice Department Reaches $4 Million Settlement with Wells Fargo Dealer Services for Illegally Repossessing Servicemembers' Cars," (Sept. 29, 2016), *available at*: https://www.justice.gov/opa/pr/justice-department-reaches-4-million-settlement-wells-fargo-dealer-services-illegally
[79] Id.
[80] E.g., see Committee Chairman Jeb Hensarling (R-TX), "How We'll Stop a Rogue Agency," THE WALL STREET JOURNAL (Feb. 8, 2017), *available at*: https://www.wsj.com/articles/how-well-stop-a-rogue-federal-agency-1486597413; see also Press Release, "House Republicans to Bring Bill to Floor to Gut Wall Street Reform, Harm Americans," (June 7, 2017), *available at*: https://democrats-financialservices.house.gov/news/documentsingle.aspx?DocumentID=400509.
[81] Office of Enterprise Governance and the Ombudsman, Office of the Comptroller of the Currency, "Lessons Learned Review of Supervision of Sales Practices at Wells Fargo," (Apr. 19, 2017), *available at*: https://www.occ.gov/publications/publications-by-type/other-publications-reports/pub-wells-fargo-supervision-lessons-learned-41917.pdf.

about additional customers who have been harmed in a number of ways by the bank that clearly warrant Committee scrutiny."[82] The letter goes on to note that instead of engaging in a bipartisan investigation, Committee Republicans have run a partisan one, with Republican staff holding secret, unrecorded interviews with the Chief Executive Officer, Chief Financial Officer, General Counsel and Chief Risk Officer for Wells Fargo for three days in December 2016. Despite repeated requests, Wells Fargo executives have not submitted to interviews with Democratic staff. In addition, over 33 consumer advocacy groups have sent letters to Chairman Hensarling and the Senate Banking Committee urging additional hearings on Wells Fargo's ongoing fraud.[83]

Chairman Hensarling replied to the letter led by Ranking Member Waters on August 14, 2017, writing that staff-level briefings were taking place, and that, "The investigation will proceed in an orderly fashion," without committing to hold a hearing or even responding to the request to hold a hearing, in spite of the fact that former Wells Fargo CEO John Stumpf may have lied to Congress about the extent of the bank's issues when he last testified in September 2016.[84] The Committee has numerous oversight authorities at its disposal that it has thus far failed to utilize. These include conducting bipartisan depositions of senior Wells Fargo executives, performing more investigative due diligence with a broader scope focused on the bank to reveal how widespread the illegal activity has been, and pressing federal prudential bank regulators like the OCC to take stronger, more meaningful enforcement actions than they have taken thus far.

It is crucial for the Committee to investigate all of the recent revelations concerning Wells Fargo's wrongdoing and to hold additional public hearings this term to explore these newly uncovered issues, and what steps regulators, especially federal prudential bank regulators, should take to better hold megabanks accountable for their actions.

II. Federal Regulators Must Take Stronger Actions: Ineffective Deterrence Underscores Need to Shut Down Banks like Wells Fargo

Various government agencies have important roles to play in supervising banks under their purview and enforcing federal laws and regulations with respect to operating in a safe and sound manner, as well as complying with consumer protection laws. For the largest banks, like Wells Fargo, all three of the federal prudential banking regulators and the Consumer Bureau have certain enforcement authorities that the agencies could rely on in requiring the bank to comply with federal laws. The OCC, Wells Fargo's primary federal regulator, has a range of enforcement tools at its disposal to oversee safety, soundness, and consumer protections of the bank. The FDIC also has enforcement authority over Wells Fargo, because the bank is an insured depository institution, and the Federal Reserve Board, as the regulator of bank holding

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[82] https://democrats-financialservices.house.gov/news/documentsingle.aspx?DocumentID=400732

[83] Press Release, "Waters Calls for Hearing to Examine Wells Fargo's Consumer Abuses" (Aug. 1, 2017), *available at*: https://democrats-financialservices.house.gov/news/documentsingle.aspx?DocumentID=400732; Letter to Chairman Crapo and Ranking Member Brown of the U.S. Senate Banking Committee and Chairman Hensarling and Ranking Member Waters of the House Financial Service Committee from Americans for Financial Reform and Public Citizen, as well as 31 other consumer advocacy groups, dated Aug. 31, 2017, *available at*: http://www.fairarbitrationnow.org/wp-content/uploads/Letter-Requesting-Additional-Wells-Fargo-Hearings.pdf.

[84] https://www.nytimes.com/2017/08/31/business/wells-fargo-testimony.html?mcubz=0&_r=0

companies, has enforcement authority over Wells Fargo's parent holding company. Lastly, the Consumer Bureau, as the watchdog of consumer protection laws, has the authority to supervise Wells Fargo for compliance with federal consumer protection laws.

In the case of Wells Fargo, while various civil monetary penalties have been applied in a number of cases, there are other authorities that the federal prudential banking regulators have not utilized that should be exercised to stop the bank from repeatedly and egregiously ripping off its customers.

A. Statutory Authorities of the Regulators

The Consumer Bureau has made great strides in promoting consumers' financial protection, including returning over $12 billion to 29 million harmed consumers since the agency was established.[85] However, unlike the federal prudential banking regulators, the Consumer Bureau is not a chartering or licensing agency. The Consumer Bureau has the authority to examine financial institutions for compliance with federal consumer protection laws, but its enforcement powers are more akin to those of a law enforcement agency, like the Federal Trade Commission or the Department of Justice. The Consumer Bureau's enforcement tools include investigative authority and the ability to (i) conduct hearings and adjudication proceedings; (ii) commence civil action lawsuits and make referrals to the U.S. Attorney General for criminal proceedings; (iii) issue consent orders, under which restitution, refunds, rescission or reformation of contracts, or claw-back of compensation is required; and (iv) impose civil money penalties.[86]

The federal prudential banking regulators, on the other hand, have certain supervisory enforcement powers that impact the operations of a banking organization, including the authority to revoke a charter or operating license of a banking organization.[87] For example, under the National Bank Act,[88] the Comptroller of the Currency ("Comptroller") is entrusted with the authority to determine whether an institution is lawfully entitled to commence the business of

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[85] *See* H.R. Dem. Staff Rep., *The Consumer Financial Protection Bureau In Perspective* (July 21, 2017) (The Federal prudential banking regulators — OCC, FDIC, and the Federal Reserve Board — have been entrusted and authorized with the responsibility of supervising banking organizations and financial institutions operating in the U.S., including Wells Fargo. Before the enactment of the Dodd-Frank Act in 2010, these regulators were responsible for supervising banks for both safety and soundness and compliance with Federal consumer protection laws. During the 2008 financial crisis, however, Congress found that regulators were not enforcing Federal consumer protection laws appropriately, which led to widespread consumer abuses that in turn fueled the crisis and led to the collapse of the U.S. banking system. In order to protect the financial interest of consumers and restore integrity in the banking system, as part of the Dodd-Frank Act, Congress enacted the Consumer Financial Protection Act and established the Consumer Bureau. Pursuant to the Dodd-Frank Act, the responsibility for examining and supervising large banks, like Wells Fargo, for compliance with Federal consumer protection laws was then transferred from each of the prudential banking regulators to the Consumer Bureau.), *available at:* https://democrats-financialservices.house.gov/uploadedfiles/cfpb_staff_report.pdf.

[86] 12 USC §§ 5561-5566. The Consumer Bureau may also seek these relief measures as part of administrative or court proceedings, as well as "limits on the activities or functions" of an institution. See, 12 USC § 5565(a)(2).

[87] Mary Kreiner Ramirez and Steven A. Ramirez, *The Case for the Corporate Death Penalty*, pgs. 10-11, NYU Press (2017).

[88] 12 USC § 21 et seq.

banking (i.e. entitled to a national bank charter),[89] and banks that obtain national charters are subject to the rules, regulations and orders of the Comptroller, as well as subject to the same rights, privileges, duties, restrictions, penalties, liabilities, conditions, and limitations that apply under the national banking laws to a national bank.[90] In addition, the Comptroller has statutory authority to revoke the national charter of a bank if the bank is found to violate the National Bank Act or Federal Reserve Act,[91] as well as impose penalties on a bank or any "institution-affiliated party" of a bank (i.e. any director, officer, employee, or controlling shareholder of, or agent for a bank).[92] The Comptroller may also appoint a receiver for a national bank to wind the institution down[93] if it has satisfied one of a number of criteria under the Federal Deposit Insurance Act.[94] Under the Federal Deposit Insurance Act, the Board of Directors of the FDIC ("FDIC Board"), as the overseer of the Federal Deposit Insurance Fund, is responsible for deciding which institutions qualify for federal deposit insurance, which is a necessity if the bank intends to receive deposits other than trust funds.[95] In considering whether to grant a depository institution federal deposit insurance, the FDIC Board is required to consider, among other things, "the general character and fitness of the management of the depository institution," and "the convenience and needs of the community to be served" by the institution.[96] The FDIC Board also has the statutory authority to terminate the federal deposit insurance of a financial institution on a number of grounds, including if the FDIC Board finds that the depository institution or its directors or trustees have engaged or are engaging in unsafe or unsound business practices, as well as if an institution or its directors or trustees have violated any applicable law or regulation.[97]

In addition, the federal prudential banking regulators have a number of other supervisory tools, public and nonpublic, to force a banking organization to comply with federal banking laws and regulations, including federal consumer protection laws and regulations. Such tools include:

- The ability to enter into informal and formal written agreements that require remediation by noncompliant institutions;
- The ability to issue civil money penalties;
- The ability to enter into consent orders that (i) require restitution or reimbursement; (ii) restrict the growth of an institution; (iii) require disposition of a loan or asset; (iv) rescind agreements or contracts; (v) require an institution to employ qualified officers, or employees; or (vi) mandates any other action the regulator determines to be appropriate;

[89] 12 USC § 26.
[90] 12 USC § 27(b)(2).
[91] 12 USC §§ 93(a) and 501a.
[92] 12 USC § 93(b).
[93] 12 USC § 191.
[94] 12 USC § 1821(c)(5).
[95] 12 USC §§ 1814 and 1815(a).
[96] 12 USC § 1816.
[97] 12 USC § 1818(a).

- The ability to place limitations on the activities or functions of a bank or any director, officer, controlling shareholder, or employee of a bank for violations of federal banking laws or regulations;[98] and,
- The ability to require removal of a director, officer, or employee that is directly or indirectly responsible for an institution violating a law, regulation, consent order, or written condition of the regulator.[99]

B. The Prudential Regulators' Failures with Wells Fargo and the Fraudulent Account Scandal

Notwithstanding the vast variety of supervisory tools available to the federal prudential banking regulators in supervising banks and enforcing federal banking laws, regulators currently rely predominantly on consent orders and civil money penalties when there are consumer protection issues. A review of available case law and publicly available agency actions shows that the regulators tend to use their most aggressive enforcement tools, including revocation of a national bank charter and termination of deposit insurance, only in instances where a financial institution's activities rise to the level of criminal liability, threaten the solvency of the institution, or threaten the financial stability of the banking system. Even when a financial institution's violations have demonstrated a pattern and practice of reckless, unsafe, or unsound business practices, the prudential regulators have not used their most effective and statutorily available enforcement measures in curtailing such consumer protection violations by large banks.

For example, the OCC, the primary regulator of Wells Fargo, was well aware of Wells Fargo's consumer protection violations for over a decade. The OCC identified issues with the bank's sales practices as early as 2005 (Wells Fargo's internal investigation suggested these fraudulent practices began at least in 2002 if not earlier), but failed to take timely and effective supervisory or enforcement actions to curtail the practices of the bank.[100] According to the OCC's Ombudsman's report on the OCC's shortcomings in supervising Wells Fargo, the OCC's supervisory record for Wells Fargo "indicated several missed opportunities to perform comprehensive analyses and take more timely action beginning in 2010."[101] The OCC's failures included (1) untimely and ineffective supervisory actions after the OCC identified significant issues with the bank's complaint management and sales practices, including "fail[ure] to document the resolution of [over 700] whistleblower cases …[and] fail[ure] to follow-up on significant complaint management and sales practices issues"; (2) untimely and ineffective supervision of the bank's incentive sales program; (3) ineffective communication and follow-up regarding matters requiring attention communicated by the OCC to bank staff; (4) failure to address the bank's noncompliance with OCC guidance related to risk management and sales practices; and (5) unclear supervisory records.[102] In any of these areas and at any time after

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[98] 12 USC § 1818(b).
[99] 12 USC § 1818(e).
[100] Office of Enterprise Governance and the Ombudsman, Office of the Comptroller of the Currency, "Lessons Learned Review of Supervision of Sales Practices at Wells Fargo," pg. 4, (Apr. 19, 2017), *available at:* https://www.occ.gov/publications/publications-by-type/other-publications-reports/pub-wells-fargo-supervision-lessons-learned-41917.pdf.
[101] Id. at pg. 5.
[102] Id. at pgs. 4-12.

identifying significant issues with the bank, the OCC could have taken enforcement action against the bank. However, the OCC failed to take any public actions against the bank until after the Consumer Bureau and LACA intervened, and the OCC's public response was limited to a consent order and civil money penalties, as well as a downgrade of the bank's CRA exam rating. Based on the OCC's supervisory review record of the bank and a lack of evidence that Wells Fargo attempted to provide meaningful restitution to consumers once it discovered the issue, it is evident that the restitution, civil money penalties, and remediation commitments obtained from Wells Fargo under its settlement agreements with the CFPB, OCC, and LACA would not have otherwise been obtained absent the intervention of the Consumer Bureau in investigating the bank, and the Consumer Bureau's effective enforcement authority, including its ability to demand vital information through its pre-litigation subpoena power and CID authority.

While the OCC was aware of Wells Fargo's unlawful sales practices years ago, the agency's mishandling of the bank's CRA examinations contributed to Wells Fargo's ability to keep the public in the dark about its longstanding and widespread unsound and unsafe operational problems. The CRA was enacted in 1977 to encourage banks to meet the credit needs of the communities where and with whom they do business, including low- and moderate-income communities and people. As such, the CRA requires federal regulators to review a bank's lending, investment, and services activities in its assessment areas and provide an overall rating based on these individual evaluations. In 2009, the OCC gave Wells Fargo an "Outstanding" CRA rating, which is the highest possible score. Although the OCC conducted a CRA evaluation of the bank in 2012, it failed to publicly release these results until March 28, 2017. Ranking Member Waters sent a letter to the OCC on October 18, 2016 expressing deep concerns about the agency's significant delay in making the bank's 2012 CRA performance publicly available and the potential that its rating would fail to appropriately incorporate the bank's extensive fair lending and consumer compliance violations, many of which are outlined previously in this report.[103] The OCC underscored that it was updating its policies, procedures, and practices "to ensure that, going forward, CRA performance evaluations are completed and published in a timely fashion and eliminating any backlogs" in its January 5, 2017, response.[104] Even the bank seemed to acknowledge the agency's CRA regulatory failures, with its CEO, Mr. Timothy Sloan, stating that, "[w]ith more than four years having passed since the end of our last CRA evaluation period, Wells Fargo intends to ask the OCC to accelerate the timing of its next exam so that [it] may continue to serve most effectively the low- and moderate-income communities in which [it] operate[s]."[105]

Even more troubling than the OCC's slowness in publicly releasing the 2012 CRA result is the quality of the CRA evaluation for the bank, which gives the bank an "Outstanding" rating for its overall performance, with an "Outstanding" on the lending test, an "Outstanding" on the investment test, and a "High Satisfactory" on its service tests. While it is true that the OCC ultimately downgraded the bank's final rating to "Needs to Improve" based on "non-CRA performance factors" related to matters raised in consent orders, the initial rating of

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[103] Letter dated October 18, 2016, from Ranking Member Waters to the OCC.
[104] Letter dated January 5, 2017, from Thomas Curry, Comptroller of the Currency, to Ranking Member Waters.
[105] BUSINESSWIRE, "Wells Fargo Announces Community Reinvestment Act Rating,," (Mar. 28, 2017), *available at*: http://www.businesswire.com/news/home/20170328006184/en/Wells-Fargo-Announces-Community-Reinvestment-Act-Rating

"Outstanding" calls into question whether the agency really "gives serious consideration to any findings of discriminatory or other illegal credit practices by an institution," as it claimed in its January letter.

Additionally, the federal prudential banking regulators have also failed to hold the board of directors and senior officers of the largest banks accountable (i.e., by removing them from their positions or holding them civilly liable) for their acts or omissions that contributed to or enabled Wells Fargo's repeated violations of federal consumer protection laws.[106] After the 2008 financial crisis and with the enactment of the Dodd-Frank Act, the federal prudential banking regulators, and the Federal Reserve Board specifically, place significantly higher expectations on the boards of directors of large banking organizations, including the expectation that a board be more involved in risk-management and compliance of the bank with federal banking laws rather than delegated such responsibilities to lower-management.[107] However, such heightened board expectations have generally been tied to capital matters of the bank,[108] as well as the bank's compliance with prudential banking laws, such as the Bank Secrecy Act, rather than the bank's compliance with federal consumer protection laws. And most recently in August 2017, Governor Jerome Powell revealed in his speech, "The Role of Boards at Large Financial Firms," that the Federal Reserve Board plans to propose a new framework for oversight of bank holding company boards that would seemingly make the boards less responsible for overseeing the operations of the banking organization that directly impact services provided to consumers.[109] Given the federal prudential banking regulators' current reluctance to hold the boards and senior officers of the largest banking organization accountable for egregious consumer abuses, like those exhibited by Wells Fargo, it is not appropriate for regulators to further lessen the oversight responsibilities of the boards of the largest banks.

In response to the fraudulent account scandal and growing cases of massive consumer abuse, Wells Fargo tried to remedy the situation by firing thousands of low-ranking staff, accepting the retirement of the Chief Executive Officer, and terminating a few mid-level officers

[106] See Letter from Sen. Warren to Hon. Janet Yellen, Chair of the Federal Reserve Board of Governors (Aug. 16, 2017), *available at:* https://www.warren.senate.gov/files/documents/2017_08_16_Fed_Followup_WellsFargo.pdf; see also, Alex Morrell, "The Federal Reserve has done nothing: Elizabeth Warren urges the Fed to clean house at Wells Fargo," BUSINESS INSIDER (Jun. 19, 2017), *available at:* http://www.businessinsider.com/elizabeth-warren-letter-fed-wells-fargo-board-of-directors-2017-6. The Federal Reserve most recently used its authority to permanently bar a former executive of Four Oaks Bank and Trust Company from the banking industry. See Press Release, "Federal Reserve Board permanently bars former employee of Four Oaks Bank and Trust Company from the banking industry," (Aug. 29, 2017), *available at:* https://www.federalreserve.gov/newsevents/pressreleases/enforcement20170829a.htm. Senior executives and directors at the larger institutions should equally be held accountable for wrongdoings.
[107] Press Release, Governor Jerome H. Powell, "The Role of Boards at Large Financial Firms," Board of Governors of the Federal Reserve System (Aug. 30, 2017), *available at:* https://www.federalreserve.gov/newsevents/speech/powell20170830a.htm.
[108] E.g., Under the Federal Reserve Board's Comprehensive Capital Analysis and Review supervisory process, directors on the boards of institutions subject to the process are required to review and approve the capital plans of their respective bank holding companies prior to the submission of the capital plan. See 12 CFR 225.8(d).
[109] Press Release, Governor Jerome H. Powell, "The Role of Boards at Large Financial Firms," Board of Governors of the Federal Reserve System (Aug. 30, 2017), *available at:* https://www.federalreserve.gov/newsevents/speech/powell20170830a.htm

who were deemed responsible by the bank for the consumer law violations.[110] Wells Fargo also clawed back some executive compensation, and made several changes to its board of directors, including recently naming Elizabeth Duke, a former Governor of the Federal Reserve Board, as the new Chair of the board starting next year. However, these actions will not prevent more consumers from being harmed by the bank based on its pattern and practice of flouting the law.[111] Such decisions of whether a director or senior executive officer should be removed or a senior officer should be promoted to lead an organization that has repeatedly violated consumer protection laws for over a period of a decade should not be left solely to the institution. Rather, the federal prudential banking regulators should intervene and oversee the process to prevent the institution from continuing to victimize its customers. For example, the decision of the board of Wells Fargo to elevate Tim Sloan to the chief executive officer position of the bank, even though he was the chief operating officer with direct responsibility for the actions of the bank's employees during the fraudulent account scandal, raises questions as to whether Wells Fargo's board is serious about fixing the culture of the bank. However, the federal prudential banking regulators have not publicly indicated any opposition or concern with Wells Fargo's choice.[112] Due to the reluctance of Wells Fargo's shareholders to hold its top leadership accountable and fix its corporate culture, the OCC or the Federal Reserve Board should exercise their legal authority to remove the bank's legacy Board members. Cam Fine, president and CEO of the Independent Community Bankers of America (the nation's largest community bank advocacy group),[113] released a statement highlighting this disconnect, stating that:

> "The most shocking aspect of the multiple Wells scandals is not that some of these practices have gone on for years—it is that Federal regulators have taken no meaningful action against the board and senior managers who were supposedly responsible for the ethical, moral and legal conduct of the bank. Federal regulators haven't even given them a good slap on the wrist… The Wells Fargo board should be replaced, and so should its senior management. End of story."[114]

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[110] Wells Fargo, "Independent Directors of the Board of Wells Fargo & Company Sales Practices Investigation Report," (Apr. 10, 2017), *available at:* https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/presentations/2017/board-report.pdf

[111] See Letter from Sen. Warren to Hon. Janet Yellen, Chair of the Federal Reserve Board of Governors (Aug. 16, 2017), *available at*: https://democrats-financialservices.house.gov/news/documentsingle.aspx?DocumentID=400736

[112] On November 16, 2016, the OCC revoked provisions of its original September 29 enforcement action against Wells Fargo for the bank's fake account scandal. This resulted in a requirement that Wells Fargo must provide the OCC with written notices if it plans to replace board members or bank executives. In spite of this, to date, the OCC has not taken any public action or released any public comments regarding these changes to Wells Fargo's board or leadership. *See* Press Release, OCC, *Statement Regarding Revocation of Relief to Wells Fargo Bank, N.A., from Certain Regulatory Consequences of Enforcement Actions* (Nov. 18, 2016), https://www.occ.gov/topics/laws-regulations/enforcement-actions/statement-wellsfargo-111816.pdf.

[113] "The Independent Community Bankers of America, the nation's voice for more than 6,000 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education and high-quality products and services." INDEPENDENT COMMUNITY BANKERS OF AMERICA, http://www.icba.org/about (last visited Sep. 6, 2017).

[114] Press Release, ICBA, *ICBA's Cam Fine Reacts to Latest Wells Fargo Scandal News* (Sep. 6, 2017), http://www.icba.org/news/press-releases/2017/09/06/icba-s-cam-fine-reacts-to-latest-wells-fargo-scandal-news.

On August 16, 2017, Senator Elizabeth Warren made a similar request to the Federal Reserve Board.[115]Given the extent of the scandals discussed above at Wells Fargo, every member of the Board who presided over the banks' alarming consumer abuses should have been removed by the prudential regulators long ago for failing to conduct adequate oversight of the bank. Furthermore, the OCC's late public response to the Wells Fargo fraudulent account scandal, delayed downgrade of the bank's CRA exam, as well as the OCC's Ombudsman's report on the agency's shortcomings in supervising the bank, demonstrate that the OCC failed to use appropriate and effective enforcement measures in curtailing the abusive sales practices of Wells Fargo. Even though Wells Fargo has continued to engage in a litany of consumer protection violations and deceptive business practices, resulting in several lawsuits, the OCC, the FDIC, and the Fed have not publicly announced their intent to use more potent enforcement measures, including consideration of whether Wells Fargo deserves to continue operating certain retail business lines, or, more appropriately, given the laundry list of large-scale consumer abuses, continue operating as a national bank and continue being afforded federal deposit insurance.

Figure 3. Wells Fargo Board of Directors[116]

NAME	Present During Consumer Protection Failures	Still on Board as of September 8, 2017
CEO/ President Timothy Sloan	*YES*	*YES* **(joined Wells Fargo in 1987)**
Chair of the Board Stephen Sanger	*YES*	*YES* **(retiring on Dec. 31, 2017)**
Director, Vice Chair Elizabeth Duke	*YES*	*YES* **(promoted to Chairman of the Board as of Jan. 1, 2018 to)**
Director John Baker III	*YES*	*YES*
Director John Chen	*YES*	*YES*
Director Lloyd Dean	*YES*	*YES*
Director Susan Engel	*YES*	*YES*
Director Enrique Hernandez, Jr.	*YES*	*YES*
Director Donald James	*YES*	*YES*
Director Cynthia Milligan	*YES*	*YES* **(retiring on Dec. 31, 2017)**

[115] See Letter from Sen. Warren to Hon. Janet Yellen, Chair of the Federal Reserve Board of Governors (Aug. 16, 2017), *available at*: https://www.warren.senate.gov/files/documents/2017_08_16_Fed_Followup_WellsFargo.pdf
[116] See Wells Fargo, *Wells Fargo & Company 2017 Proxy Statement*, (Mar. 15, 2017), p. 29-39, *available at*: https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/presentations/2017/board-report.pdf.

NAME	Present During Consumer Protection Failures	Still on Board as of September 8, 2017
Director Karen Peetz	*NO*	*YES*
Director Federico Peña	*YES*	*YES*
Director Juan Pujadas	*NO*	*YES*
Director James Quigley	*YES*	*YES*
Director Ronald Sargent	*NO*	*YES*
Director Susan Swenson	*YES*	*YES* **(retiring on Dec. 31, 2017)**
Director Suzanne Vautrinot	*YES*	*YES*

Source: https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/annual-reports/2017-proxy-statement.pdf

III. If Regulators Don't Act, Congress Must Compel Action to Better Protect Consumers

A. Need for Congressional Action

Banks that are repeatedly cited for violating consumer protection laws, and are generally found to be engaging in reckless unsafe or unsound banking practices that result in the bank being unjustly enriched to the financial detriment of its customers, should not only be restricted from engaging in certain business activities, but also should be considered candidates for losing their federal charters. Federal prudential banking regulators have acknowledged that violations of consumer protection laws can become safety and soundness issues for a bank. In its consent order with Wells Fargo, the OCC noted as part of its findings that the agency identified certain "deficiencies and unsafe or unsound practices in the Bank's risk management and oversight of the Bank's sales practices,"[117] which led to the fraudulent account scandal. And following the Wells Fargo enforcement action, Chair Yellen of the Federal Reserve Board stated in her quarterly press conference in September, 2016, that instances of consumer harm "can become safety and soundness issues," and "[a]t least one of the lessons from the financial crisis, I think, is that abuses of consumers of the sort that we saw in the subprime lending ultimately did become safety and soundness issues."[118] However, both the OCC and Federal Reserve Board have abstained from using their full arsenal of enforcement tools in penalizing or deterring Wells

[117] Press Release, Office of the Comptroller of the Currency, "OCC Assesses Penalty Against Wells Fargo, Orders Restitution for Unsafe or Unsound Sales Practices," (Sept. 8, 2016), *available at:* https://www.occ.treas.gov/news-issuances/news-releases/2016/nr-occ-2016-106.html.
[118] See, Transcript of Chair Yellen's Quarterly Press Conference on Monetary Policy and the Economy, (Sept. 21, 2016), *available at:* https://www.federalreserve.gov/mediacenter/files/FOMCpresconf20160921.pdf.

Fargo from continuing to impose financial harm on its customers.[119] Because the federal prudential banking regulators refuse to fully employ their enforcement powers under their chartering authorities in instances of egregious consumer protection violations by financial institutions, Congress should pass legislation that would require the regulators to use these existing authorities to revoke the charter of such banks and put them out of business. Congress should similarly require the FDIC to terminate the deposit insurance of such banks. Furthermore, Congress should clarify that federal prudential banking regulators must utilize all of their enforcement tools, including those under their chartering authority, to penalize banks for repeated and extensive consumer protection violations that warrant a more forceful response than a slap on the wrist.

B. Additional Legislative Considerations

In addition to compelling regulators to shut down financial institutions that repeatedly and egregiously harm consumers, and strengthening the ability to shut down banks that extensively break consumer laws, there are additional dynamics Congress should consider to strengthen the enforcement tools that will hold banks and their senior executives and directors accountable for their actions.

For example, federal prudential banking regulators need to hold the board of directors and senior officers accountable for their actions or inactions in ensuring that financial institutions are complying with federal consumer protection laws. One significant barrier to holding senior executives at large financial institutions like Wells Fargo accountable has been the difficulty in demonstrating that high level officials knew about the fraud being committed. This obstacle was recently highlighted by Christy Romero, the Special Inspector General for The Troubled Asset Relief Program ("SIGTARP"), a federal law enforcement agency that is primarily tasked with investigating crime at financial institutions that received federal bailout funds distributed after the financial crisis through the TARP programs. As of December 16, 2016, SIGTARP's efforts have resulted in 88 bankers being criminally charged and 23 bankers being civilly charged, with 44 bankers sentenced to prison.[120] SIGTARP concluded that the organizational structure of large financial institutions enables bank leadership to insulate themselves from knowledge of crime or civil fraud. SIGTARP has called for a legislative fix that would require the CEO, CFO, and COO at the largest Wall Street banks to sign an annual certification to law enforcement that they have conducted due diligence and can certify that there is no criminal conduct or civil fraud within

[119] After being questioned by Senator Warren during the Federal Reserve's semiannual testimony before the Senate Banking Committee about whether the Federal Reserve planned to dismiss members of Wells Fargo's board for its consumer protection violations, Chairwoman Yellen indicated that the Board may take further action, stating, "I will say that the behavior that we saw was egregious and unacceptable... we do have the power if it proves appropriate to remove directors. A number of actions already have been taken. We need to conduct a thorough investigation to look at the full record to understand the root causes of the problems. We are certainly prepared to take enforcement actions if those prove to be appropriate." See Jeff Cox, "Fed is prepared to act against Wells Fargo if warranted, Yellen says," CNBC, (Jul. 13, 2017), *available at:* https://www.cnbc.com/2017/07/13/fed-is-prepared-to-act-against-wells-fargo-if-warranted-yellen-says.html.
[120] Office of the Special Inspector General for the Troubled Asset Relief Program, "Quarterly Report to Congress," (Jan. 27, 2017), https://www.sigtarp.gov/Documents/January_27_2017_Report_To_Congress.pdf.

their organization.[121] SIGTARP argues that this attestation requirement would then make it more likely that a bank's illicit conduct would be brought to the attention of the CEO and board of directors.

As previously noted, the Federal Reserve Board, OCC, and FDIC currently have the authority to remove institution-affiliated parties (including senior executives) from banking organizations for certain conduct, and the regulators also have the statutory authority to ban such individuals from working in the banking industry generally, as well as the ability to hold such individuals personally liable for losses to a banking organization, its shareholders, or other persons harmed by the individual's acts. However, due to the flexibility in management style allowed by banking organizations, board members and senior officers are often able to insulate themselves from the wrongdoings of bank staff and lower management. At the largest banks, supervisory issues identified by bank examiners are rarely escalated to senior executives and the board of directors, which provides such senior officers with the ability to have deniable culpability and thereby avoid being held personally accountable for the wrongdoings of the bank. Congress should consider legislation that would require the board of directors and senior officers of the largest banks to be more involved in oversight of their banks and be informed about supervisory matters identified by bank examiners, regardless of the organizational structure chosen by the bank. Such a law may have resulted in swifter action by the Wells Fargo board of directors and senior management in ending the abusive sales practices identified by OCC bank examiners and noted in their supervisory record for the bank as early as 2005.

In designing a legislative response, Congress should consider focusing attention on the largest banks operating in the United States, such as those affiliated with a global systemically important banking organization. These few banks, including Wells Fargo, currently make up about half of total U.S. deposits[122] and interact with millions of consumers. In addition, previous enforcement of consumer violations by bank regulators tended to focus on smaller banks. For example, research has found that most previous OCC actions regarding violations of consumer lending laws targeted small national banks, even though a handful of large banks accounted for four-fifths of all complaints received by the OCC.[123] One analysis noted that, "[D]uring 1995-2007, the OCC issued only 13 public enforcement orders against national banks for violations of consumer protection laws. Most of those enforcement orders were issued against small national banks…"[124] Furthermore, a number of enforcement tools remain and can be applied as necessary to smaller banks and other financial institutions. Any illegal activity by

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[121] Office of the Special Inspector General for the Troubled Asset Relief Program, "Quarterly Report to Congress," (Oct. 26, 2017), https://www.sigtarp.gov/Quarterly%20Reports/October_26_2016_Report_To_Congress.pdf.

[122] *See* U.S. Department of the Treasury, "A Financial System That Creates Economic Opportunities: Banks and Credit Unions," (June 2017), *available at:* https://www.treasury.gov/press-center/press-releases/Documents/A%20Financial%20System.pdf.

[123] Center for Responsible Lending, "Neglect and Inaction: An Analysis of Federal Banking Regulators' Failure to Enforce Consumer Protections," (July 13, 2009) *available at*: http://www.responsiblelending.org/mortgage-lending/policy-legislation/regulators/neglect-and-inaction-7-10-09-final.pdf.

[124] Arthur E. Wilmarth, Jr., "Cuomo v. Clearing House: The Supreme Court responds to the subprime financial crisis and delivers a major victory for the dual banking system and consumer protection," THE PANIC OF 2008: CAUSES, CONSEQUENCES, AND IMPLICATIONS FOR REFORM (edited by Lawrence E. Mitchell, Arthur E. Wilmarth, Jr.; Jan. 1, 2010) at 308.

megabanks, however, that is not effectively deterred will have the greatest negative impact on the American people and the economy. Therefore, legislation should focus regulatory attention and impose the strictest requirements on megabanks.[125]

Congress should also consider strengthening state authorities.[126] Because of preemption issues, state regulators have limited ability to curtail bad practices that happen in their states. For example, on February 4, 2003, the California Commissioner of Corporations ("Commissioner"), who is responsible for enforcing California laws for licensed home-mortgage lenders, including a state statute that prohibits lenders from charging interest rates on loans during certain periods,[127] instituted administrative proceedings against Wells Fargo Home Mortgage Inc. ("WFHMI") to revoke its license to operate in California. WFHMI is a wholly owned subsidiary of Wells Fargo National Bank that was licensed to conduct real estate lending under the California Residential Mortgage Lending Act and the California Finance Lenders Law.[128] The Commissioner initiated the proceedings after Wells Fargo refused to comply with its request to conduct audits of its residential mortgages to determine whether it had overcharged interest and provided unduly low estimates of certain classes of settlement fees in violation of California law. On August 12, 2005, the Ninth Circuit held that that the National Bank Act preempted state regulators' investigative and licensing authority over the operating subsidiaries of national banks.[129] Because the federal appeals court found that in this case, federal banking law preempted state law, the Commissioner was blocked from revoking Wells Fargo's license to engage in residential mortgage lending in California, notwithstanding the Commissioner's intent, and general public interest, of protecting California consumers. State regulators should be able to enforce state consumer protection laws against national banks if it is in the public interest to do so. In addition, Congress should consider allowing state regulators to petition the federal banking regulators to review consumer protection abuses in their states for compliance with federal consumer protection laws and appropriate federal enforcement.

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[125] Such an approach is consistent with the tiered regulatory approach established by the Dodd-Frank Act, and ensures the strictest requirements and oversight is focused on the largest, riskiest financial institutions while providing for better calibrated oversight for community banks and credit unions that are critical to the communities they serve. E.g., see Former Treasury Secretary Jacob J. Lew, "How Wall Street Reform Strengthened our Financial System and Laid the Foundation for Long-Run Growth," NYU Journal of Legislation and Policy (Dec. 2016) *available at*: http://www.nyujlpp.org/wp-content/uploads/2016/12/Lew-Eight-Years-After-The-Financial-Crisis-19nyujlpp611.pdf; Remarks by Daniel K. Tarullo, "Tailoring Community Bank Regulation and Supervision," at ICBA's 2015 Washington Policy Summit (Apr. 30, 2015), *available at*: https://www.federalreserve.gov/newsevents/speech/tarullo20150430a.htm; and Remarks by Governor Tarullo, "A Tiered Approach to Regulation and Supervision of Community Banks", at the Community Bankers Symposium in Chicago (Nov. 7, 2014), *available at*: https://www.federalreserve.gov/newsevents/speech/tarullo20141107a.htm.

[126] Title X of the Dodd-Frank Act partially addressed the limits of state authority to adequately protect residents from financial wrongdoing by national banks as occurred in 2003 with Wells Fargo in California, by clarifying, among other things, that a state has the power to apply and enforce its consumer financial laws if it provides greater consumer protections than otherwise afforded under Federal laws for national banks. However, it did not create a clear mechanism for states to force national banks out of the business of banking within their states for egregious violations of consumer protections.

[127] Cal. Fin. Code § 50204(o) prohibited the charging *per diem* interest on all loans.

[128] Cal. Fin. Code §§ 50000 et seq.; Cal. Fin. Code §§ 22000 et seq.

[129] *Wells Fargo Bank N.A. v. Boutris*, 419 F.3d. 949 (9th Cir. 2005).

IV. Conclusion

The federal prudential banking regulators should be more aggressive in their use of enforcement measures against megabanks that demonstrate a pattern of engaging in unlawful conduct that harms consumers. Recently, Federal Reserve Board Chair Janet Yellen hinted that there is indeed more that federal prudential banking regulators could and should do with respect to Wells Fargo. She said, "Let me say that I consider the behavior of Wells Fargo toward its customers to have been egregious and unacceptable. We take our supervision responsibilities of the company very seriously. And we are attempting to understand what the root causes of those problems are and to address them."[130] Furthermore, the 2008 financial crisis revealed that predatory business practices of banking organizations that harms millions of consumers constitute reckless unsafe and unsound banking practices that warrant regulators' use of the most severe enforcement tools to combat violations of consumer protections, not just for circumstances that involve prudential matters.

Because of the large profits earned at megabanks, and the substantial number of consumers that have obtained services or products from them, it is particularly important for regulators to focus on these institutions in determining appropriate measures to protect and deter unlawful conduct from occurring at them. Consent orders or settlement agreements that require civil monetary penalties, but that do not otherwise pose any real restrictions or limitations on the business activities of a megabank, have not been effective deterrent measures. As such, regulators' should use more aggressive enforcement tools to effectively deter large institutions from violating laws and harm millions of consumers.

If federal prudential banking regulators continue to shy away from using these tools, then Congress must force them to do so, in order to protect American consumers and the needs of the public. Congress should also strengthen the enforcement framework to provide for a more powerful deterrent against future bad behavior by megabanks and their senior executives that demonstrate a reckless disregard for the law and their customers. A more holistic investigation into the incidents that have occurred at Wells Fargo, and why regulators' actions have not been successful preventing the reckless behavior that has been unmasked at the bank, should have been the focus of the Committee's resources. Even absent this congressional scrutiny, we believe there is sufficient information to demonstrate that legislation is needed to prevent megabanks from repeatedly victimizing consumers, and such legislation should force federal prudential banking regulators to aggressively utilize their most potent enforcement tools, including winding down a bank found to repeatedly violate consumer protection laws.

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[130] John Heltman, "Yellen signals Wells may face more actions," AMERICAN BANKER (Sep. 20, 2017), *available at*: https://www.americanbanker.com/news/fed-chair-janet-yellen-signals-wells-fargo-may-face-more-regulatory-actions.

Appendix A

Wells Fargo Annual Profits between 2000-2016

2000	$4,026,000,000
2001	$3,423,000,000
2002	$5,710,000,000
2003	$6,202,000,000
2004	$7,014,000,000
2005	$7,671,000,000
2006	$8,420,000,000
2007	$8,057,000,000
2008	$2,655,000,000
2009	$12,275,000,000
2010	$12,362,000,000
2011	$15,869,000,000
2012	$18,897,000,000
2013	$21,878,000,000
2014	$23,057,000,000
2015	$22,894,000,000
2016	$21,938,000,000

Appendix B

Legal Actions listed in Wells Fargo's June 30, 2017 Quarterly Public Filing

**The following text was copied verbatim from Wells Fargo's Form 10-Q for the quarter ended June 30, 2017:[131]

"**ATM ACCESS FEE LITIGATION.** In October 2011, plaintiffs filed a putative class action, *Mackmin, et. al. v. Visa, Inc. et. al.*, against Wells Fargo & Company, Wells Fargo Bank, N.A., Visa, MasterCard, and several other banks in the United States District Court for the District of Columbia. Plaintiffs allege that the Visa and MasterCard requirement that if an ATM operator charges an access fee on Visa and MasterCard transactions, then that fee cannot be greater than the access fee charged for transactions on other networks violates antitrust rules. Plaintiffs seek treble damages, restitution, injunctive relief and attorneys' fees where available under Federal and state law. Two other antitrust cases which make similar allegations were filed in the same court, but these cases did not name Wells Fargo as a defendant. On February 13, 2013, the district court granted defendants' motions to dismiss and dismissed the three actions. Plaintiffs appealed the dismissals and, on August 4, 2015, the United States Court of Appeals for the District of Columbia Circuit vacated the district court's decisions and remanded the three cases to the district court for further proceedings. On June 28, 2016, the United States Supreme Court granted defendants' petitions for writ of certiorari to review the decisions of the United States Court of Appeals for the District of Columbia. On November 17, 2016, the United States Supreme Court dismissed the petitions as improvidently granted, and the three cases returned to the district court for further proceedings."

"**AUTO LENDING MATTERS** As the Company centralizes operations in its dealer services business and tightens controls and oversight of third-party risk management, the Company anticipates it will identify and remediate issues related to historical practices concerning the origination, servicing, and/or collection of indirect consumer auto loans, including related insurance products. For example, in July 2017, the Company announced a plan to remediate customers who may have been financially harmed due to issues related to automobile collateral protection insurance (CPI) policies purchased through a third-party vendor on their behalf (based on an understanding by the vendor that the borrowers' insurance had lapsed). The Company determined that certain external vendor processes and operational controls were inadequate, and, as a result, customers may have been charged premiums for CPI even if they were paying for their own vehicle insurance, as required, and in some cases the CPI premiums may have contributed to a default that led to their vehicle's repossession. The Company discontinued the CPI program in September 2016. Multiple putative class action cases alleging, among other things, unfair and deceptive practices relating to these CPI policies, have been filed against the Company in United States Federal courts, including in the United States District Courts for the Northern District of California and Southern District of New York. In addition, the Company has identified certain issues related to the unused portion of guaranteed auto protection waiver or insurance agreements between the dealer and, by assignment, the lender, which may result in refunds to customers in certain states. These and other issues related to the origination, servicing and/or collection of indirect consumer auto loans, including related insurance products, may subject the Company to formal or informal inquiries, investigations or examinations from Federal, state and/or local government agencies, and may also subject the Company to litigation."

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[131] https://www.sec.gov/Archives/edgar/data/72971/000007297117000397/wfc-06302017x10q.htm#sCA946102DED95B69B353022FFC25B00A

“CONSUMER DEPOSIT ACCOUNT RELATED REGULATORY INVESTIGATION The Consumer Financial Protection Bureau (CFPB) has commenced an investigation into whether customers were unduly harmed by the Company’s procedures regarding the freezing (and, in many cases, closing) of consumer deposit accounts after the Company detected suspected fraudulent activity (by third-parties or account holders) that affected those accounts.”

“INADVERTENT CLIENT INFORMATION DISCLOSURE in July 2017, the Company inadvertently provided certain client information in response to a third-party subpoena issued in a civil litigation. The Company obtained temporary restraining orders in New Jersey and New York state courts requiring the electronic data and all copies to be delivered to the New Jersey state court for safekeeping. The Company has made voluntary self-disclosure to various regulatory agencies.”

“INTERCHANGE LITIGATION Plaintiffs representing a putative class of merchants have filed putative class actions, and individual merchants have filed individual actions, against Wells Fargo Bank, N.A., Wells Fargo & Company, Wachovia Bank, N.A. and Wachovia Corporation regarding the interchange fees associated with Visa and MasterCard payment card transactions. Visa, MasterCard and several other banks and bank holding companies are also named as defendants in these actions. These actions have been consolidated in the United States District Court for the Eastern District of New York. The amended and consolidated complaint asserts claims against defendants based on alleged violations of Federal and state antitrust laws and seeks damages, as well as injunctive relief. Plaintiff merchants allege that Visa, MasterCard and payment card issuing banks unlawfully colluded to set interchange rates. Plaintiffs also allege that enforcement of certain Visa and MasterCard rules and alleged tying and bundling of services offered to merchants are anticompetitive. Wells Fargo and Wachovia, along with other defendants and entities, are parties to Loss and Judgment Sharing Agreements, which provide that they, along with other entities, will share, based on a formula, in any losses from the Interchange Litigation. On July 13, 2012, Visa, MasterCard and the financial institution defendants, including Wells Fargo, signed a memorandum of understanding with plaintiff merchants to resolve the consolidated class action and reached a separate settlement in principle of the consolidated individual actions. The settlement payments to be made by all defendants in the consolidated class and individual actions totaled approximately $6.6 billion before reductions applicable to certain merchants opting out of the settlement. The class settlement also provided for the distribution to class merchants of 10 basis points of default interchange across all credit rate categories for a period of eight consecutive months. The District Court granted final approval of the settlement, which was appealed to the Second Circuit Court of Appeals by settlement objector merchants. Other merchants opted out of the settlement and are pursuing several individual actions. On June 30, 2016, the Second Circuit Court of Appeals vacated the settlement agreement and reversed and remanded the consolidated action to the United States District Court for the Eastern District of New York for further proceedings. On November 23, 2016, prior class counsel filed a petition to the United States Supreme Court, seeking review of the reversal of the settlement by the Second Circuit, and the Supreme Court denied the petition on March 27, 2017. On November 30, 2016, the District Court appointed lead class counsel for a damages class and an equitable relief class. Several of the opt-out litigations were settled during the pendency of the Second Circuit appeal while others remain pending. Discovery is proceeding in the opt-out litigations and the remanded class cases.”

“MORTGAGE INTEREST RATE LOCK RELATED REGULATORY INVESTIGATION The CFPB has commenced an investigation into the Company’s policies and procedures regarding the circumstances in which the Company required customers to pay fees for the extension of interest rate lock periods for residential mortgages.”

“MORTGAGE RELATED REGULATORY INVESTIGATIONS Federal and state government agencies, including the United States Department of Justice (the “Department of Justice”), continue investigations or examinations of certain mortgage related activities of Wells Fargo and predecessor institutions. Wells Fargo, for itself and for predecessor institutions, has responded, and continues to respond, to requests from these agencies seeking information regarding the origination, underwriting and securitization of residential mortgages, including sub-prime mortgages. These agencies have advanced theories of purported liability with respect to certain of these activities. The Department of Justice and Wells Fargo continue to discuss the matter, including potential settlement of the Department of Justice's concerns; however, litigation with these agencies, including with the Department of Justice, remains a possibility. Other financial institutions have entered into similar settlements with these agencies, the nature of which related to the specific activities of those financial institutions, including the imposition of significant financial penalties and remedial actions."

"OFAC RELATED INVESTIGATION The Company has self-identified an issue whereby certain foreign banks utilized a Wells Fargo software-based solution to conduct import/export trade-related financing transactions with countries and entities prohibited by the Office of Foreign Assets Control ("OFAC") of the United States Department of the Treasury. We do not believe any funds related to these transactions flowed through accounts at Wells Fargo as a result of the aforementioned conduct. The Company has made a voluntary self-disclosure to OFAC and is cooperating with an inquiry from the Department of Justice."

"ORDER OF POSTING LITIGATION Plaintiffs filed a series of putative class actions against Wachovia Bank, N.A. and Wells Fargo Bank, N.A., as well as many other banks, challenging the "high to low" order in which the banks post debit card transactions to consumer deposit accounts. Most of these actions were consolidated in multi-district litigation proceedings (the "MDL proceedings") in the United States District Court for the Southern District of Florida. The court in the MDL proceedings has certified a class of putative plaintiffs, and Wells Fargo moved to compel arbitration of the claims of unnamed class members. The court denied the motions to compel arbitration on October 17, 2016. Wells Fargo has appealed this decision to the Eleventh Circuit Court of Appeals."

"RMBS TRUSTEE LITIGATION In November 2014, a group of institutional investors (the "Institutional Investor Plaintiffs") filed a putative class action in the United States District Court for the Southern District of New York against Wells Fargo Bank, N.A., alleging claims against the bank in its capacity as trustee for a number of residential mortgage-backed securities ("RMBS") trusts (the "Federal Court Complaint"). Similar complaints have been filed against other trustees in various courts, including in the Southern District of New York, in New York state court and in other states, by RMBS investors. The Federal Court Complaint alleges that Wells Fargo Bank, N.A., as trustee, caused losses to investors and asserts causes of action based upon, among other things, the trustee's alleged failure to notify and enforce repurchase obligations of mortgage loan sellers for purported breaches of representations and warranties, notify investors of alleged events of default, and abide by appropriate standards of care following alleged events of default. Plaintiffs seek money damages in an unspecified amount, reimbursement of expenses, and equitable relief. In December 2014 and December 2015, certain other investors filed four complaints alleging similar claims against Wells Fargo Bank, N.A. in the Southern District of New York, and the various cases pending against Wells Fargo are proceeding before the same judge. On January 19, 2016, an order was entered in connection with the Federal Court Complaint in which the District Court dismissed claims related to certain of the trusts at issue (the "Dismissed Trusts"). The Company's motion to dismiss the Federal Court Complaint was granted in part and denied in part in March 2017. In May 2017, the Company filed third-party complaints against certain investment advisors affiliated with the Institutional Investor Plaintiffs seeking contribution with respect to claims alleged in the Federal Court Complaint.

A complaint raising similar allegations to the Federal Court Complaint was filed in May 2016 in New York state court by a different plaintiff investor. In addition, the Institutional Investor Plaintiffs subsequently filed a complaint relating to the Dismissed Trusts and certain additional trusts in California state court (the "California Action"). The California Action was subsequently dismissed in September 2016. In December 2016, the Institutional Investor Plaintiffs filed a new putative class action complaint in New York state court in respect of 261 RMBS trusts, including the Dismissed Trusts, for which Wells Fargo Bank, N.A. serves or served as trustee (the "State Court Action"). The Company has moved to dismiss the complaint.

In July 2017, certain of the plaintiffs from the State Court Action filed a civil complaint relating to Wells Fargo Bank, N.A.'s setting aside reserves for legal fees and expenses in connection with the liquidation of eleven RMBS trusts at issue in the State Court Action. The complaint seeks, among other relief, declarations that Wells Fargo Bank, N.A. is not entitled to indemnification, the advancement of funds or the taking of reserves from trust funds for legal fees and expenses it incurs in defending the claims in the State Court Action."

"SALES PRACTICES MATTERS Federal, state and local government agencies, including the Department of Justice, the United States Securities and Exchange Commission and the United States Department of Labor, and state attorneys general and prosecutors' offices, as well as Congressional committees, have undertaken formal or informal inquiries, investigations or examinations arising out of certain sales practices of the Company that were the subject of settlements with the Consumer Financial Protection Bureau, the Office of the Comptroller of the Currency and the Office of the Los Angeles City Attorney announced by the Company on September 8, 2016. The Company has responded, and continues to respond, to requests from a number of the foregoing seeking information regarding these sales practices and the circumstances of the settlements and related matters.

In addition, a number of lawsuits have also been filed by non-governmental parties seeking damages or other remedies related to these sales practices. First, various class plaintiffs purporting to represent consumers who allege that they received products or services without their authorization or consent have brought separate putative class actions against the Company in the United States District Court for the Northern District of California and various other jurisdictions. In April 2017, the Company entered into a settlement agreement in the first-filed action, *Jabbari v. Wells Fargo Bank, N.A.*, to resolve claims regarding certain products or services provided without authorization or consent for the time period May 1, 2002 to April 20, 2017. Pursuant to the settlement, we will pay $142 million for remediation, attorneys' fees, and settlement fund claims administration. In the unlikely event that the $142 million settlement total is not enough to provide remediation, pay attorneys' fees, pay settlement fund claims administration costs, and have at least $25 million left over to distribute to all class members, the Company will contribute additional funds to the settlement. The court granted preliminary approval of the settlement in July 2017. A final approval hearing has been scheduled for the first quarter of 2018. Second, Wells Fargo shareholders are pursuing a consolidated securities fraud class action in the United States District Court for the Northern District of California alleging certain misstatements and omissions in the Company's disclosures related to sales practices matters. Third, Wells Fargo shareholders have brought numerous shareholder derivative lawsuits asserting breach of fiduciary duty claims, among others, against current and former directors and officers for their alleged failure to detect and prevent sales practices issues, which lawsuits are consolidated into two separate actions in the United States District Court for the Northern District of California and California state court, as well as two separate actions in Delaware state court. Fourth, a range of employment litigation has been brought against Wells Fargo, including an Employee Retirement Income Security Act class action in the United States District Court for the District of Minnesota brought on behalf of 401(k) plan participants; class actions pending in the United States District Courts for the Northern District of California and Eastern District of New York on behalf of employees who allege that they protested sales practice misconduct and/or were terminated for not meeting sales goals; various wage and hour class actions brought in Federal and state court in California, New Jersey, and Pennsylvania on behalf of non-exempt branch based employees alleging sales pressure resulted in uncompensated overtime; and multiple single plaintiff Sarbanes-Oxley Act complaints and state law whistleblower actions filed with the Department of Labor or in various state courts alleging adverse employment actions for raising sales practice misconduct issues."

"VA LOAN GUARANTY PROGRAM QUI TAM Wells Fargo Bank, N.A. is named as a defendant in a *qui tam* lawsuit, *United States ex rel. Bibby & Donnelly v. Wells Fargo, et al.*, brought in the United States District Court for the Northern District of Georgia by two individuals on behalf of the United States under the Federal False Claims Act. The lawsuit was originally filed on March 8, 2006, and then unsealed on October 3, 2011. The United States elected not to intervene in the action. The plaintiffs allege that Wells Fargo charged certain impermissible closing or origination fees to borrowers under a U.S. Department of Veteran Affairs' (VA) loan guaranty program and then made false statements to the VA concerning such fees in violation of the civil False Claims Act. On their behalf and on behalf of the United States, the plaintiffs seek, among other things, damages equal to three times the amount paid by the VA in connection with any loan guaranty as to which the borrower paid certain impermissible fees or charges less the net amount received by the VA upon any re-sale of collateral, statutory civil penalties of between $5,500 and $11,000 per False Claims Act violation, and attorneys' fees. The parties have engaged in extensive discovery, and both have moved for judgment in their favor as a matter of law. In August 2017, the parties reached a settlement in which the Company will pay $108 million. The settlement amount does not include plaintiffs' attorneys' fees, which are subject to court approval."

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December 21, 2018

VIA E-MAIL

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *Wells Fargo & Company*
Shareholder Proposal of Harrington Investments, Inc.
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that Wells Fargo & Company (the "Company") intends to omit from its proxy statement and form of proxy for its 2019 Annual Meeting of Shareholders (collectively, the "2019 Proxy Materials") a shareholder proposal (the "Proposal") and statements in support thereof submitted by Harrington Investments, Inc. (the "Proponent").

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the Company intends to file its definitive 2019 Proxy Materials with the Commission; and

- concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D") provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the "Staff"). Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to this Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

THE PROPOSAL

The Proposal states:

<u>Resolved:</u> Shareholders request the board of directors commission an independent study, including recommendations to shareholders regarding options for the board of directors to amend our Company's governance documents to enhance fiduciary oversight of matters relating to customer service and satisfaction. The report should be produced at reasonable expense, exclude proprietary or legally privileged information and be published no later than October 1st, 2019.

The Supporting Statement states:

It is apparent that our Company is rapidly losing its ability to compete in banking because of disregard for lawful conduct. As a fiduciary, our directors need to fix a crippled business model and restore Wells Fargo's reputation.

A copy of the Proposal and the Supporting Statement, as well as related correspondence with the Proponent, is attached hereto as <u>Exhibit A</u>.

BASES FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2019 Proxy Materials pursuant to:

- Rule 14a-8(i)(7) because the Proposal relates to the Company's ordinary business operations; and
- Rule 14a-8(i)(3) because the Proposal is impermissibly vague and indefinite so as to be inherently misleading.

ANALYSIS

I. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because The Proposal Deals With Matters Related To The Company's Ordinary Business Operations.

A. Background

Rule 14a-8(i)(7) permits the Company to omit from its proxy materials a shareholder proposal that relates to its "ordinary business operations." According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" "refers to matters that are not necessarily 'ordinary' in the common meaning of the word," but instead the term "is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release").

In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting," and identified two central considerations that underlie this policy. As relevant here, one of these considerations was that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." The Commission also has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the issuer. *See* Exchange Act Release No. 20091 (Aug. 16, 1983).

B. The Proposal Is Excludable Under Rule 14a-8(i)(7) Because It Relates To The Company's Customer Relations

The Proposal requests that the Company commission an independent study and then report to shareholders on options related to enhancing fiduciary oversight of "matters relating to customer service and satisfaction." As discussed below and consistent with Rule 14a-8(i)(7) and the 1998 Release, the Company may exclude the Proposal pursuant to Rule 14a-8(i)(7) because it deals with matters "fundamental to management's ability to run a company on a day-to-day basis," specifically the Company's relations with its customers.

The Staff has routinely concurred that shareholder proposals dealing with customer relations relate to ordinary business matters and, accordingly, may be excluded under Rule 14a-8(i)(7). Precedent makes clear that the Staff views a wide spectrum of issues as customer relations matters, including the creation of reports evaluating customer relations policies and the adoption of policies that govern customer relations. For example, in *The Coca-Cola Co.* (avail. Jan. 21, 2009, *recon. denied* Apr. 21, 2009), the proposal, concerned about the "company's reputation with consumers" and stating that "[g]ranting consumers access to better information about [the company's] products can boost consumer confidence," requested that the company prepare a report evaluating new or expanded policy options to further enhance transparency of information to consumers of bottled beverages produced by the company. The Staff concurred that the company could "exclude the proposal under Rule 14a-8(i)(7), as relating to Coca-Cola's ordinary business operations (i.e., marketing and consumer relations)." Similarly, in *Dean Foods Co.* (avail. Mar. 9, 2007), the Staff concurred with the exclusion of a proposal that expressed concern that the company's "[b]rand image and shareholder value [were] threatened by . . . consumer concerns and the associated widespread and increasing media coverage" of the national Organic Consumers Association boycott of the company's dairy products. The proposal requested that an independent committee review the company's policies and procedures for its organic dairy products and report to shareholders on the adequacy of those policies and procedures in protecting the company's brands and reputation and in addressing consumer and media criticism. The Staff agreed that the proposal could be excluded because it related to the company's "customer relations and decisions relating to supplier relationships." *See also Ford Motor Co.* (avail. Feb. 13, 2013) (proposal requesting that the company review dealership performance and remove dealers that are inept at repairing vehicles and show poor customer service was excludable because it concerned customer relations); *OfficeMax, Inc.* (avail. Feb. 13, 2006) (proposal requesting the establishment of a task force to benchmark policies used for handling promotional rebates provided to customers was excludable because it concerned customer relations); *Bank of America Corp.* (avail. Mar. 3, 2005) (proposal requesting that the company take action and adopt a "Customer Bill of Rights" and create the position of "Customer Advocate" was excludable because it concerned customer relations); *Consolidated Edison, Inc.* (avail. Mar. 10, 2003) (proposal relating to the management of employees, interaction with customers and customer relations was excludable because it concerned customer relations); *BellSouth Corp.* (avail. Jan. 9, 2003) (proposal to correct personnel and computer errors relating to customers was excludable because it concerned management of employees and customer relations); *Verizon Communications Inc.* (avail. Jan. 9, 2003) (proposal to establish improved quality control procedures for advertisements in the Yellow Pages directories and adopt policies regarding customer complaints was excludable because it concerned customer relations).

Similar to the *Coca-Cola* and *Dean Foods* proposals, the Proposal's Supporting Statement claims that the Company's reputation needs to be restored and that the Company is "losing its ability to compete." In addition, the Proposal seeks a comprehensive study on "fiduciary oversight matters relating to customer service and relations," which necessarily would require the Company to describe the steps taken to address this oversight, much like the requests found in both the *Coca-Cola* and *Dean Food* proposals.

As with *Coca-Cola, Dean Foods* and the other precedent discussed above, the Proposal relates to the Company's relations with its customers as it concerns "matters relating to customer service and satisfaction." Additionally, the "Whereas" clauses include examples of customer relations related to "accounts," "auto insurance," "mortgage backed securities," the "Wealth Asset division" and "commercial lending." With respect to the Company's oversight of customer relations, the Company's vision is to satisfy its customers' financial needs and help them succeed financially.[1] To execute this vision, the Board and management review various complex criteria about which the Company's shareholders, as a group, would not be in a position

[1] The Company notes that this vision is supported by the Company's five values, which articulate what is most important to the Company, including what's right for customers. As reflected in the Company's goals, the Company aspires to build lifelong relationships with its customers by listening to and understanding customers and their financial goals and providing exceptional service and guidance to help them succeed financially. *See* The Vision, Values & Goals of Wells Fargo, *available at* https://www.wellsfargo.com/about/corporate/vision-and-values.

to make informed judgments. Yet the Proposal seeks to create shareholder oversight of this area. As the Staff has consistently recognized in the precedent discussed above, decisions related to the Company's customer relations are fundamental to management's ability to run the Company and are not an appropriate matter for shareholder oversight. Therefore, consistent with Staff precedent, the Proposal is excludable under Rule 14a-8(i)(7).

C. The Proposal Does Not Focus On A Significant Policy Issue

The Proposal's request for amendments to the Company's "governance documents to enhance fiduciary oversight" of these matters does not introduce a significant policy issue. Instead, by asking the Company to commission an independent study that includes "amend[ing] our Company's governance documents to enhance fiduciary oversight *relating to customer service and satisfaction,*" the Proposal focuses on a specific issue (customer relations) and not the Board's overall oversight of risk.

For example, in *Comcast Corp.* (avail. Mar. 24, 2015), the Staff concurred in the exclusion under Rule 14a-8(i)(7) of a proposal that requested that the board amend the board's nominating and governance committee charter to provide oversight and public reporting with respect to smoking and other matters that "may endanger young people's well-being" in the company's programming and film production. Similarly in *Rite Aid* (avail. Mar. 24, 2015) the Staff concurred in the exclusion under Rule 14a-8(i)(7) of a proposal that requested the board add a new section to its nominating and governance committee charter to provide oversight on the decision to sell various products and services. Like the Proposal, the *Comcast* and *Rite Aid* proposals focused on the board's oversight of specific risks related to that company's ordinary business – programming and film product and the sale of products and services, respectively – neither of which raised a significant policy issue nor focused on either board's overall management of risk. *See also The Western Union Co.* (avail. Mar. 14, 2011) (concurring in the exclusion of a proposal requesting the establishment of a board risk committee and a report by the committee on how the company was monitoring and controlling particular risks, where the subject matters of the risks involved ordinary business matters); Staff Legal Bulletin No. 14E (Oct. 27, 2009). Moreover, the Proposal is not even limited to Board oversight of customer matters. The Proposal seeks "enhance[d] *fiduciary* oversight of matters relating to customer service and satisfaction." Under Delaware law (the state where the Company is incorporated), both directors and officers have fiduciary duties to the corporation. Thus, the text of the Proposal includes the role of both the Board and management. For these reasons, the Proposal is not focused on the Board's overall management of risk and is properly excludable under Rule 14a-8(i)(7).

Thus, like the proposals in the precedent cited above that were excluded under Rule 14a-8(i)(7), the Proposal focuses on the Company's ordinary business decisions regarding customer relations and does not focus on a significant policy issue, and therefore may be excluded

II. The Proposal May Be Excluded Pursuant To Rule 14a-8(i)(3) Because It Is Impermissibly Vague And Indefinite So As To Be Inherently Misleading.

Rule 14-8(i)(3) permits the exclusion of a shareholder proposal if the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials. The Staff consistently has taken the position that a shareholder proposal is excludable under Rule 14a-8(i)(3) when it is vague and indefinite so that "neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." Staff Legal Bulletin No. 14B (Sept. 15, 2004); *see also Dyer v. SEC, 287 F.2d 773, 781* (8th Cir. 1961) ("[I]t appears to us that the proposal, as drafted and submitted to the company, is so vague and indefinite as to make it impossible for either the board of directors or the stockholders at large to comprehend precisely what the proposal would entail.").

We believe that neither shareholders nor the Company will be able to determine with any reasonable certainty exactly what actions or measures the Proposal requires because central to the Proposal are several vague and indefinite terms. First, the Proposal asks that the requested report include "recommendations to shareholders" but fails to explain what these recommendations should address. For example, without explaining what shareholders should do with the recommendations, the meaning of the recommendations is unknown. For example, the Proposal could mean that shareholders should be allowed to vote on the various "options for the board of directors." The reference to "recommendations" is even more vague given that the Board can unilaterally amend many of the "Company's governance documents." As a result, if the recommendations are intended to give the shareholder the opportunity to express their views on the recommendations, it is worth noting that the Board would not be required to seek shareholder approval of the many "options" that the Board could decide to implement. Accordingly, it is unclear what options the report would be recommending to shareholders and how shareholders would be able to act upon these recommendations.

Moreover, the Proposal seeks "enhance[d] fiduciary oversight of matters relating to customer service and satisfaction." However, the proposal does not sufficiently explain the meaning of either "enhance[d]" or "fiduciary oversight." As a result of the vague term "enhance," different shareholders may have different views on the scope of action required in response to the Proposal. In addition, as noted above, under Delaware law (the state where the Company is incorporated), both directors and officers have fiduciary duties to the corporation. Thus, the reference to "fiduciary" in the Proposal could be read as meaning that the Board should "amend our Company's governance documents" to enhance the fiduciary oversight role played by both the Board <u>and</u> management. However, the Supporting Statement advances a narrower definition of "fiduciary" as it only refers to directors as fiduciaries: "As a fiduciary, our directors need to fix a crippled business model . . . ." In sum, the Proposal fails to identify and explain the scope of the possible amendments sought by the Proposal and, as a result, neither shareholders nor the company will be able to determine with any reasonable certainty exactly what actions or measures the Proposal requires.

The excludability of the Proposal is supported by Staff precedent. For example, in *The Boeing Co. (Recon.)* (avail. Mar. 2, 2011), the Staff permitted the exclusion of a proposal asking Boeing to negotiate with senior executives to "request that they relinquish, for the common good of all shareholders, preexisting executive pay rights, if any, to the fullest extent possible." The Staff agreed that Boeing could exclude the proposal under Rule 14a-8(i)(3), noting "in particular [Boeing's] view that the proposal does not sufficiently explain the meaning of 'executive pay rights' and that, as a result, neither stockholders nor the company would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." *See also Altera Corp.* (avail. Mar. 8, 2013) (concurring in the exclusion of a proposal requesting that the company's "board take[] the steps necessary . . . to strengthen our weak shareholder right to act by written consent" as "vague and indefinite"); *Staples, Inc.* (avail. Mar. 5, 2012) (concurring in the exclusion of a proposal seeking to limit accelerated vesting of equity awards in the event of "termination" or a "change-in-control," subject to "pro rata vesting," where such terms were not defined); *General Motors Corp.* (avail. Mar. 26, 2009) (concurring with the exclusion of a proposal to "eliminate all incentives for the CEOS and the Board of Directors" where the proposal did not define "incentives"); *Bank of America Corp*. (avail. June 18, 2007) (concurring with the exclusion of a proposal calling for the board of directors to compile a report "concerning the thinking of the Directors concerning representative payees" as "vague and indefinite"); *Prudential Financial Inc*. (avail. Feb. 16, 2007) (concurring with the exclusion of a proposal requiring shareholder approval for certain "senior management incentive compensation programs" where the proposal failed to define these programs and other key terms); and *Puget Energy, Inc.* (avail. Mar. 7, 2002) (permitting exclusion of a proposal requesting that the company's board of directors "take the necessary steps to implement a policy of improved corporate governance"). The Proposal therefore may properly be excluded under Rule 14a-8(i)(3) as vague and indefinite, because neither shareholders nor the Company can determine with any reasonable certainty what actions the Proposal seeks.

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2019 Proxy Materials.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8287 or Mary E. Schaffner, Senior Vice President and Senior Company Counsel, at (612) 667-2367.

Sincerely,

Elizabeth Ising

Elizabeth A. Ising

Enclosures

cc: Mary E. Schaffner, Senior Vice President and Senior Company Counsel
Willie J. White, Vice President and Senior Counsel
John C. Harrington, Harrington Investments, Inc.

EXHIBIT A

HARRINGTON
INVESTMENTS, INC.

RECEIVED

OCT 17 2018

TIM SLOAN

October 15, 2018

Wells Fargo Company
Attn: Timothy J. Sloan,
Chief Executive Officer
420 Montgomery St.
San Francisco, CA 94104

RE: Shareholder Proposal

Dear Chief Executive Officer,

As a shareholder in Wells Fargo, I, representing Harrington Investments, Inc. (HII), am filing the enclosed shareholder resolution pursuant to Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934 for inclusion in Wells Fargo's Proxy Statement for the 2019 annual meeting of shareholders.

HII is the beneficial owner of at least $2,000 worth of Wells Fargo stock. HII has held the requisite number of shares for over one year, and plan to hold sufficient shares in Wells Fargo through the date of the annual shareholders' meeting. In accordance with Rule 14a-8 of the Securities Exchange Act of 1934, verification of ownership is included in this packet. I or a representative will attend the stockholders' meeting to move the resolution as required by SEC rules.

If you have any questions, I can be contacted at (707) 252-6166.

Sincerely,

John C. Harrington

President and CEO
Harrington Investments, Inc.

1001 2ND STREET, SUITE 325 NAPA, CALIFORNIA 94559 707-252-6166 800-788-0154 FAX 707-257-7923
WWW.HARRINGTONINVESTMENTS.COM

WELLS FARGO

Whereas, Wells Fargo has paid over $12.5 billion dollars in penalties since 2000;

Whereas, our Company's employees opened as many as 3.5 million accounts using fictitious or unauthorized customer information, ultimately paying $185 million in penalties and $5 million to customers, including the termination of 5,300 employees;

Whereas, our Company admitted forcing 800,000 people to take out redundant auto insurance from 2012 to 2017, setting aside $80 million for refunds and to compensate victims;

Whereas, in 2017, the Ranking Member of the House Committee on Financial Services' report cited our Company as having a record of repeatedly and egregiously harming our customers, appearing that large monetary penalties have not been a sufficient deterrent to correct the continuing social harm created by our Bank;

Whereas, the Federal Reserve in 2018 capped the bank's assets in an unprecedented enforcement action, ordering our Company to replace four of our directors, citing "widespread insurance abuse";

Whereas, our Company also settled for $1 billion in 2018 with the Consumer Financial Protection Bureau and the Office of the Comptroller of the Currency, for its failure to manage risk;

Whereas, this past summer, our Company finalized a settlement of over $2 billion with the United States Department of Justice, where federally insured financial institutions lost billions of dollars investing in residential mortgage backed securities originated by Well Fargo;

Whereas, the United States Department of Justice and the Securities and Exchange Commission is investigating our Company's Wealth Asset division for overcharging customers for seven years, requiring our Bank to refund $114 million to wealth management customers and $171 million to foreign exchange clients;

Whereas, in 2018, a retired justice of the New York State Supreme Court called for the death penalty for Wells Fargo, "revoking its corporate charter forever…";

Whereas, a recent editorial noted that our bank's reputational issues may be hurting commercial lending, our Company's competitors are pulling ahead and there "…is still no reason for investors to hold this stock";

Whereas, our Company is losing valued employees, company advisors and retail executives;

Resolved: Shareholders request the board of directors commission an independent study, including recommendations to shareholders regarding options for the board of directors to amend our Company's governance documents to enhance fiduciary oversight of matters relating to customer service and satisfaction. The report should be produced at reasonable expense, exclude proprietary or legally privileged information and be published no later than October 1st, 2019.

Supporting Statement

It is apparent that our Company is rapidly losing its ability to compete in banking because of disregard for lawful conduct. As a fiduciary, our directors need to fix a crippled business model and restore Wells Fargo's reputation.

charles
SCHWAB

October 15, 2018

Wells Fargo Company
Attn: Timothy J. Sloan,
Chief Executive Officer
420 Montgomery St.
San Francisco, CA 94104

RE: Account ***
HARRINGTON INVESTMENTS INC
1001 2nd ST, STE 325
NAPA, CA

Dear Chief Executive Officer:

This letter is to confirm that Charles Schwab is the record holder for the beneficial owner of the Harrington Investments, Inc. account and which holds in the account 100 shares of common stock in the Wells Fargo Company. These shares have been held continuously for at least one year prior to and including October 15, 2018.

The shares are held at Depository Trust Company under the Participant Account Name of Charles Schwab & Co., Inc., number 0164.

This letter serves as confirmation that the account holder listed above is the beneficial owner of the above referenced stock.

Should additional information be needed, please feel free to contact me directly at 877-393-1951 between the hours of 11:30am and 8:00pm EST.

Sincerely,

Advisor Services
Charles Schwab & Co. Inc.