

October 18, 2018

The Honorable Jerome Powell
Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, D.C. 20551

Dear Chairman Powell:

I write to urge you not to remove the growth cap the Federal Reserve has imposed on Wells Fargo until the company's Board of Directors replaces CEO Tim Sloan with someone who is not deeply implicated in the bank's repeated and egregious misconduct. Given Mr. Sloan's track record, the Board of Directors cannot comply with the Federal Reserve's requirements for removing the growth cap if it permits Mr. Sloan to continue running the company.

I. The Federal Reserve's February 2, 2018 Cease and Desist Order

Following revelations that Wells Fargo employees had opened more than three million fake customer accounts over a five-year period, the Federal Reserve entered into a Cease and Desist order with Wells Fargo & Company (WFC) on February 2, 2018.

The order states that WFC "pursued a business strategy that emphasized sales and growth without ensuring that senior management had established and maintained an adequate risk management framework commensurate with the size and complexity of the Firm, which resulted in weak compliance practices."¹ The order also finds that the Federal Reserve had "previously identified deficiencies in WFC's risk management – including compliance risk management – that WFC has yet to correct fully."²

The order identifies certain goals for the WFC Board of Directors. First, "WFC must continue to implement an effective firmwide risk management program that is commensurate with WFC's size, complexity and risk profile to ensure that WFC operates in a safe and sound manner and complies with all applicable laws and regulations."³ Second, the Board must "maintain effective corporate governance and oversight over the Firm, including the establishment and maintenance of robust risk management and compliance programs on a consolidated basis."⁴

¹ *In the Matter of Wells Fargo & Company*, Docket No. 18-007-B-HC, "Order to Cease and Desist Issued Upon Consent Pursuant to the Federal Deposit Insurance Act, as Amended," <https://www.federalreserve.gov/newsevents/pressreleases/files/enf20180202a1.pdf>.

² *Id.*

³ *Id.*

⁴ *Id.*

To achieve those goals, the order requires the Board to submit two written plans. One plan must explain how the Board will “improve its firmwide compliance and operational risk management program.”⁵ The other must explain how the Board will “enhance [its] effectiveness in carrying out its oversight and governance of WFC.”

The Federal Reserve specifically directs the Board to spell out in this second plan how it will impose accountability on senior management:

- The plan must identify “actions that the Board will take to further improve its oversight of senior management, *including holding senior management accountable for implementing and maintaining the Firm’s strategy in accordance with Board direction and the Firm’s risk tolerance and capacity*, and the Firm’s risk management and control framework (including the enhancements required in this Order).”⁶
- The plan must identify “actions the Board will take *to ensure senior management’s ongoing effectiveness in managing the Firm’s activities and related risks and promoting strong risk management across the Firm.*”⁷

Once the Board submits these two plans and the Federal Reserve approves them, WFC must adopt and implement the plans.⁸ WFC must then conduct an independent third-party review of its implementation of these plans.⁹

The order imposes a growth restriction that requires WFC to maintain total consolidated assets below the level it reported at the end of 2017.¹⁰ The Federal Reserve must keep this growth cap in place until: (1) WFC submits its two written plans; (2) the Federal Reserve finds the two plans acceptable; (3) WFC “adopts and implements” the two plans; and (4) the independent third-party review is completed to the Federal Reserve’s satisfaction.¹¹ On May 10, 2018, in response to a letter I sent you, you stated that “the decision about terminating the asset growth restriction will be made by a vote of the [Federal Reserve’s] Board of Governors.”¹²

The order also states that “[i]f WFC does not make progress satisfactory to the Board of Governors in addressing the deficiencies cited in this Order, the Board of Governors may impose additional restriction or limits, or take other action as permitted under applicable law.”¹³

⁵ Id. ¶ 3.

⁶ Id. ¶ 2(b) (emphasis added).

⁷ Id. ¶ 2(c) (emphasis added).

⁸ Id. ¶ 4.

⁹ Id.

¹⁰ Id. ¶ 5.

¹¹ Id.

¹² Letter from Chairman of the Board of Governors of the Federal Reserve System Jerome Powell to Senator Elizabeth Warren, May 10, 2018,

<https://www.warren.senate.gov/imo/media/doc/2018.05.10%20Powell%20Response%20re%20Wells%20Fargo.pdf>.

¹³ *In the Matter of Wells Fargo & Company*, Docket No. 18-007-B-HC, “Order to Cease and Desist Issued Upon Consent Pursuant to the Federal Deposit Insurance Act, as Amended,”

<https://www.federalreserve.gov/newsevents/pressreleases/files/enf20180202a1.pdf>, ¶ 5(c).

II. Wells Fargo Cannot Satisfy the Requirements for Rescinding the Federal Reserve's Growth Cap Without Removing Mr. Sloan

The Wells Fargo Board cannot demonstrate that it is “holding senior management accountable for implementing and maintaining the Firm’s strategy” or “ensur[ing] senior management’s ongoing effectiveness in managing the Firm’s activities” if it continues to retain Mr. Sloan as CEO.

In the eight months since the Federal Reserve imposed the growth restriction, there have been several new reports about serious misconduct at Wells Fargo during periods when Mr. Sloan served in senior management roles at the bank – including as CEO. These new reports come on top of numerous earlier reports of misconduct from times when Mr. Sloan served in leadership roles at the bank. Mr. Sloan’s long track record at the bank demonstrates little ability to “effectively manage the Firm’s activities” – and should give the Federal Reserve little confidence that he can help transform the bank’s culture and operations as the Cease and Desist Order requires.

Mr. Sloan has been at Wells Fargo for more than thirty years. He spent much of that time in the company’s Wholesale Banking division. From September 2010 to February 2011, he served as Chief Administrative Officer. He then spent roughly three years as the company’s Chief Financial Officer. From 2014 to 2015, he served as the head of the Wholesale Banking division. Finally, he served as Chief Operating Officer from November 2015 to October 2016, before being elevated to CEO in the wake of the fake-accounts scandal.¹⁴

Mr. Sloan was implicated in the fake-accounts scandal. In December 2013, the *Los Angeles Times* published a long article that detailed the relentless pressure Wells Fargo management placed on employees to open new customer accounts.¹⁵ The article reviewed internal Wells Fargo documents and court filings, and relied on interviews with more than thirty current and former Wells Fargo employees. The article stated unequivocally that Wells Fargo employees had opened fake customer accounts in response to management pressure. When asked for comment for the article, Mr. Sloan – the bank’s CFO at the time – stated that he was “not aware of any overbearing sales culture” at Wells Fargo.¹⁶

Despite the article’s claim that Wells Fargo management had pressured bank employees to the point where they had opened fake customer accounts, Mr. Sloan continued to promote the bank’s average accounts-per-customer – or “cross-sell ratio” – to investors. In the next investor call he participated in following the publication of the *Los Angeles Times* article, Mr. Sloan said that “[r]etail banking continued to grow cross-sell, achieving a record of 6.17 products per household, up from 6.1 products a year ago.”¹⁷

In June 2016, Mr. Sloan – then COO of Wells Fargo – defended the bank’s high-pressure sales tactics despite being aware of the massive scale of the fake-accounts problem. According to the

¹⁴ Timothy J. Sloan, <https://www.wellsfargo.com/about/corporate/governance/sloan/>.

¹⁵ Los Angeles Times, “Wells Fargo’s pressure-cooker sales culture comes at a cost,” E. Scott Reckard, December 21, 2013, <http://www.latimes.com/business/la-fi-wells-fargo-sale-pressure-20131222-story.html>.

¹⁶ *Id.*

¹⁷ Q1 2014 Wells Fargo Earnings Conference Call, April 11, 2014, https://www.warren.senate.gov/files/documents/2014Q1_WellsFargoEarningsCall.pdf.

investigative report commissioned by the Independent Directors of the Board of Wells Fargo & Company, by June 2016, Mr. Sloan knew that thousands of employees had been fired for opening millions of fake accounts and other sales violations, and had decided that the head of the Community Banking division should be let go because of her role in the matter.¹⁸ Nevertheless, in an interview, Mr. Sloan denied that the bank had pushed its sales goals too far, and proclaimed that “the fundamental strategy that we have is not going to change.”¹⁹ Two months later, Wells Fargo publicly admitted to opening more than two million fake customer accounts²⁰ – a number that has since grown to more than 3.5 million.²¹

Mr. Sloan also served in senior management roles as Wells Fargo engaged in other forms of serious misconduct that harmed customers and employees. Among other instances:

- Between January 2012 and July 2016, “[m]ore than 800,000 people who took out car loans from Wells Fargo were charged for auto insurance they did not need.” The bank’s own internal report found that “[t]he expense of the unneeded insurance . . . pushed roughly 274,000 Wells Fargo customers into delinquency and resulted in almost 25,000 wrongful vehicle repossessions.” Active-duty service members were among those harmed.²²
- Wells Fargo failed to refund money owed to customers who had paid off their car loans early. “Tens of thousands of customers” may have been denied proper refunds. A spokesperson for the bank admitted that the failure stemmed from “a lack of oversight and controls.”²³
- For years, Wells Fargo “charged monthly fees to customers for dozens of products they didn’t understand or know how to use.”²⁴ These add-on charges were particularly

¹⁸ Independent Directors of the Board of Wells Fargo & Company, Sales Practices Investigation Report, April 10, 2017, <https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/presentations/2017/board-report.pdf>.

¹⁹ American Banker, “Picking the Brain of Wells Fargo’s (Likely) Next CEO,” Kristin Broughton & Robert Barba, June 16, 2016, <https://www.americanbanker.com/news/picking-the-brain-of-wells-fargos-likely-next-ceo>.

²⁰ Consumer Financial Protection Bureau, “Consumer Financial Protection Bureau Fines Wells Fargo \$100 Million for Widespread Illegal Practice of Secretly Opening Unauthorized Accounts,” press release, <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-fines-wells-fargo-100-million-widespread-illegal-practice-secretly-opening-unauthorized-accounts/>.

²¹ Bloomberg, “Wells Fargo Boosts Fake-Account Estimates 67% to 2.5 Million,” Laura J. Keller, August 31, 2017, <https://www.bloomberg.com/news/articles/2017-08-31/wells-fargo-increases-fake-account-estimate-67-to-3-5-million>.

²² New York Times, “Wells Fargo Forced Unwanted Auto Insurance on Borrowers,” Gretchen Morgenson, July 27, 2017, <https://www.nytimes.com/2017/07/27/business/wells-fargo-unwanted-auto-insurance.html>. The bank later said 570,000 customers might be eligible for a refund. See Vanity Fair, “Oops: Wells Fargo Admits Charging 800,000 People for Car Insurance They Didn’t Need,” Bess Levin, July 28, 2017, <https://www.vanityfair.com/news/2017/07/wells-fargo-insurance-scandal>.

²³ New York Times, “Wells Fargo, Awash in Scandal, Faces Violations Over Car Insurance Refunds,” Gretchen Morgenson, August 7, 2017, <https://www.nytimes.com/2017/08/07/business/wells-fargo-insurance.html?ref=todayspaper>.

²⁴ Wall Street Journal, “Wells Fargo’s Latest Challenge: Refunds for Pet Insurance, Legal Services,” Emily Glazer, July 19, 2018, <https://www.wsj.com/articles/wells-fargos-latest-challenge-refunds-for-pet-insurance-legal-services-1532009933>.

egregious because the bank had entered into a consent order in 2015 with the Office of the Comptroller of the Currency (OCC) about similar improper charges.²⁵

- In 2015, the OCC found deficiencies in Wells Fargo's internal controls related to Bank Secrecy Act (BSA) and Anti-Money Laundering Act (AML) rules in the Wholesale Banking Group – which was then led by Mr. Sloan. The consent order noted that “the Bank has failed to make acceptable substantial progress toward correcting previously identified BSA/AML problems that were previously brought to its attention.”²⁶
- Between 2008 and 2015, Wells Fargo repossessed vehicles belonging to 450 members of the military in violation of the Servicemembers Civil Relief Act (SCRA).²⁷ Those repossessions represented different SCRA violations than those addressed in a September 2016 settlement with the Department of Justice.²⁸
- Between 2010 and 2015, Wells Fargo admittedly made “calculation errors” that denied loan modifications to 625 eligible homeowners, leading to approximately 400 wrongful foreclosures.²⁹
- Between March 2013 and August 2017, Wells Fargo failed to properly compensate certain lower-level employees for legally required break periods. A federal judge ordered the bank to pay more than \$97 million in damages.³⁰
- Wells Fargo disclosed in March 2018 that federal agencies were looking into the bank's wealth management business.³¹ The federal agencies were examining “whether there have been inappropriate referrals or recommendations, including with respect to rollovers for 401(k) plan participants, certain alternative investments, or referrals of brokerage customers to the company's investment and fiduciary services business.”³²

²⁵ Consent order between the Comptroller of the Currency and Wells Fargo Bank, National Association, June 3, 2015, <https://www.occ.gov/static/enforcement-actions/ea2015-048.pdf>.

²⁶ *In the Matter of: Wells Fargo Bank, National Association Sioux Falls, South Dakota*, AA-EW-2018-15, “Consent Order,” <https://www.occ.gov/static/enforcement-actions/ea2015-125.pdf>.

²⁷ U.S. Department of Justice, “Justice Department Obtains \$5.4 Million in Additional Relief to Compensate Servicemembers for Unlawful Repossessions by Wells Fargo Dealer Services,” press release, November 14, 2017, <https://www.justice.gov/opa/pr/justice-department-obtains-54-million-additional-relief-compensate-servicemembers-unlawful>

²⁸ *Id.*

²⁹ Wells Fargo Form 10-Q, Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, for the Quarterly Period Ending June 30, 2018, Available at: <https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/sec-filings/2018/second-quarter-10q.pdf>

³⁰ CNN Money, “Wells Fargo Owes \$97 million to California Workers,” Matt Egan, May 10, 2018, <http://money.cnn.com/2018/05/10/news/companies/wells-fargo-worker-lawsuit-97-million/index.html>.

³¹ Wells Fargo Form 10-Q, Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, for the Quarterly Period Ending March 31, 2018, Available at: <https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/sec-filings/2018/first-quarter-10q.pdf> <https://www.wellsfargo.com/assets/pdf/about/investor-relations/sec-filings/2018/first-quarter-10q.pdf>

³² *Id.*

- Wells Fargo employees in the bank's Wholesale Banking Group reportedly changed information on customer documents without authorization.³³ This conduct reportedly occurred in 2017 and 2018, when Mr. Sloan was the bank's CEO.³⁴ The Department of Justice is investigating whether "there is a pattern of unethical and potentially fraudulent employee behavior tied to management pressure."³⁵
- Wells Fargo has struggled to effectively remediate customers under Mr. Sloan's watch. It sent out 38,000 "erroneous communications to customers that it forced to buy unneeded auto insurance." It "sent refunds to people who weren't the bank's customers; notified those who were harmed of incorrect amounts to be paid; and told people of coming refunds even though they had never gotten insurance." It did not promptly provide refunds to "as many as 110,000 customers who were charged improper fees to extend interest-rate commitments they received from Wells Fargo on their mortgages." And it planned to create a refund request process that required customers "to agree to a refund through the mail before sending them money," despite its own estimates that "half or fewer" of affected customers would take the necessary steps to secure a refund.³⁶ In September 2018, the OCC rejected Wells Fargo's plan for remediating customers pushed into unneeded auto insurance, finding that the bank was not doing enough "to ensure that it has found and compensated every affected driver."³⁷

Mr. Sloan has served as CEO, CFO, and COO as Wells Fargo has engaged in this persistent and widespread mistreatment of customers and employees. There are only two possibilities: either he was aware of this misconduct and did nothing to stop it, or he was not aware of it despite his obligations as a senior manager of the company. Either way, the Wells Fargo Board of Directors cannot plausibly claim that it is "ensur[ing] senior management's ongoing effectiveness in managing the Firm's activities" while retaining a CEO that helped oversee this much misconduct.

III. Conclusion

Wells Fargo is fundamentally broken. Over the last decade, it has regularly engaged in illegal or otherwise improper conduct that has hurt millions of its customers and employees. Reports of new misconduct seem to emerge on a monthly basis.

³³ Wall Street Journal, "Wells Fargo Employees Altered Information on Business Customers' Documents," Emily Glazer, May 17, 2018, <https://www.wsj.com/articles/wells-fargo-employees-altered-information-on-business-customers-documents-1526563418>.

³⁴ Id.

³⁵ Reuters, "U.S. Probing Wells Fargo's Wholesale Banking Unit: WSJ," September 6, 2018, <https://www.reuters.com/article/us-wells-fargo-probe/u-s-probing-wells-fargos-wholesale-banking-unit-wsj-idUSKCN1LM28Q>.

³⁶ Wall Street Journal, "Wells Fargo Fumbles Effort to Repay Aggrieved Customers," Gretchen Morgenson and Emily Glazer, February 10, 2018, <https://www.wsj.com/articles/wells-fargo-struggles-to-repay-aggrieved-customers-1518295023>.

³⁷ Reuters, "Exclusive: U.S. regulators reject Wells Fargo's plan to repay customers – sources," Patrick Rucker, September 11, 2018, <https://www.reuters.com/article/us-wells-fargo-insurance-exclusive/exclusive-u-s-regulators-reject-wells-fargos-plan-to-repay-customers-sources-idUSKCN1LR2LG>.

Mr. Sloan served in senior management roles while this misconduct took place. And he defended the bank's high-pressure sales culture despite knowing that it had harmed hundreds of thousands of the bank's customers.

To effectively enforce the requirements in the February 2, 2018 Cease and Desist order, the Federal Reserve should not remove the growth cap on WFC until the Board replaces Mr. Sloan with a new CEO who has not contributed to the very problems the Federal Reserve is seeking to fix.

Sincerely,



Elizabeth Warren
Ranking Member
Senate Subcommittee on Financial Institutions and Consumer Protection