

April 17, 2019

Joseph M. Otting
Comptroller of the Currency
400 7th Street SW
Washington, D.C. 20219

Dear Comptroller Otting,

In the wake of the recent departure of Timothy Sloan¹, former Chief Executive Officer (CEO) and President of Wells Fargo Bank, N.A., (Wells Fargo), I am writing to request information about the role that the Office of the Comptroller of the Currency (OCC) will play in the selection of a new Chief Executive Officer and President at Wells Fargo. Under federal law, underperforming financial institutions must give the OCC the opportunity to object before making changes to their senior leadership, such as hiring new board members and senior executive officers. The OCC, however, has systemically exempted Wells Fargo from this requirement—raising questions about the agency’s willingness to hold the bank accountable for its misdeeds.

OCC Can Supervise the Hiring of Senior Executives at “Troubled” Banks

Federal banking regulators have the power to veto the hiring of new senior executives and board members at underperforming banks. 12 U.S.C. § 1831i requires any “insured depository institution or depository institution holding company” that “is not in compliance with the minimum capital requirement applicable to such institution or is otherwise in a troubled condition” to “notify the appropriate Federal banking agency of the proposed addition of any individual to [their] board of directors or the employment of any individual as a senior executive officer...before such addition or employment becomes effective.”² The institution “may not add any individual to the board of directors or employ any individual as a senior executive officer if the appropriate Federal banking agency issues a notice of disapproval of such addition or employment before the end of the notice period.”³

In its implementing regulations (12 C.F.R. § 5.51), the OCC defines “troubled condition” as “a national bank or Federal savings association that...is subject to a cease and desist order, a consent order, or a formal written agreement, unless otherwise informed in writing by the OCC.”⁴ It defines a “senior executive officer” as a “president, chief executive officer, chief operating officer, chief financial officer, chief lending officer, chief investment officer, and any

¹ CNBC, “Wells Fargo CEO Tim Sloan is retiring, and shares jump,” Hugh Son and Kate Rooney, March 28, 2019, <https://www.cnbc.com/2019/03/28/wells-fargo-ceo-tim-sloan-retiring.html>.

² 12 U.S.C. § 1831i (online at <https://www.law.cornell.edu/uscode/text/12/1831i>).

³ *Ibid.*

⁴ 12 C.F.R. § 5.51 (online at <https://www.law.cornell.edu/cfr/text/12/5.51>).

other individual the OCC identifies in writing to the national bank or Federal savings association who exercises significant influence over, or participates in, major policy making decisions” at the bank.⁵

The OCC requires “troubled” banks to file a written notice “at least 90 calendar days before adding or replacing any member of its board of directors, employing any individual as a senior executive officer...or changing the responsibilities of any senior executive.”⁶ Upon receiving notice, the OCC has 90 days to request additional information, issue a “notice of intent not to disapprove” of the new board member or senior executive, or issue a “notice of disapproval.”⁷ The OCC “may disapprove an individual proposed as a member of the board of directors or as a senior executive officer if the OCC determines on the basis of the individual’s competence, experience, character, or integrity that it would not be in the best interests” of the bank or the public “to permit the individual to be employed by, or associated with,” the bank.⁸

The OCC Systemically Exempted Wells Fargo from 12 C.F.R. § 5.51

For years, Wells Fargo has been embroiled in a series of scandals that have called into question the bank’s ability to manage risk and the competence of its leadership. Wells Fargo’s failure to comply with banking and consumer protection law has left it saddled with fines and regulatory restrictions—including unresolved cease and desist and consent orders from the OCC. In November 2015, for example, the OCC took actions against Wells Fargo for the bank’s failure to comply with anti-money laundering laws⁹ citing “deficiencies in an internal control pillar of the Bank’s program for Bank Secrecy Act/Anti-Money Laundering compliance” in its Wholesale Banking Group.¹⁰

In September 2016, the OCC, along with the Consumer Financial Protection Bureau and the City and County of Los Angeles, fined Wells Fargo over the bank’s creation of millions of unauthorized deposit and credit card accounts.¹¹ In July 2017, the bank admitted that it had forced unnecessary auto insurance on over 800,000 customers, pushing almost 300,000 people into delinquency,¹² and in October 2017, the bank revealed that it had improperly charged over 100,000 homebuyers for locking the rates on their residential mortgages.¹³ In April 2018, the

⁵ 12 C.F.R. § 5.51 (online at <https://www.law.cornell.edu/cfr/text/12/5.51>).

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

⁹ Wall Street Journal, “Wells Fargo Struggles to Meet an Enforcement Action Deadline,” Emily Glazer, April 22, 2018, <https://www.wsj.com/articles/wells-fargo-struggles-to-meet-an-enforcement-action-deadline-1524412800>.

¹⁰ Office of the Comptroller of the Currency, “Consent Order in the Matter of Wells Fargo Bank, National Association, AA-EC-2015-79,” November 19, 2015, <https://www.occ.gov/static/enforcement-actions/ea2015-125.pdf>.

¹¹ Consumer Financial Protection Bureau, “Consumer Financial Protection Bureau Fines Wells Fargo \$100 Million for Widespread Illegal Practice of Secretly Opening Unauthorized Accounts,” press release, September 8, 2016, <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-fines-wells-fargo-100-million-widespread-illegal-practice-secretly-opening-unauthorized-accounts/>.

¹² 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>.

¹³ CNN Business, “Wells Fargo wrongly hit homebuyers with fees to lock in mortgage rates,” Matt Egan, October 4, 2017, <https://money.cnn.com/2017/10/04/investing/wells-fargo-mortgage-rate-lock-fees/index.html>.

CFPB and the OCC and issued additional consent orders against Wells Fargo related to the bank's auto lending and rate-lock mortgage practices.¹⁴ To date, Wells Fargo has not yet met the requirements of the 2015, 2016, or 2018 consent orders.¹⁵

OCC regulations make clear that banks operating under consent orders are considered to be in "troubled condition"—and are thus required to give the OCC the opportunity to object before hiring new senior executives and board members. The OCC, however, has systemically exempted Wells Fargo from this requirement. The OCC's November 2015 consent order specifically states that Wells Fargo "is not subject to the limitation of 12 C.F.R. § 5.51 requiring OCC approval of a change in directors and senior executive officers."¹⁶ Its September 2016 consent order similarly granted Wells Fargo leniency, exempting the bank from "the limitation of...requiring OCC approval of a change in directors and senior executive officers."¹⁷

Because the bank was exempt from 12 C.F.R. § 5.51, Wells Fargo was able to appoint Timothy Sloan—a "31-year company veteran" of Wells Fargo who served in a variety of senior positions at the bank—as CEO and President in October 2016 without OCC oversight.¹⁸ Had the OCC conducted a review of Mr. Sloan's "competence, experience, character, or integrity," it may have concluded that Mr. Sloan's tenure as a high-ranking Wells Fargo executive—including serving as the head of the bank's Wholesale Banking business from 2014 to November 2015 while the bank failed to comply with anti-money laundering laws—disqualified him from becoming CEO at a time when Wells Fargo was in need of drastic reform.¹⁹ Instead, the OCC did not assess Mr. Sloan's fitness for the role of CEO. As a result, Mr. Sloan served as CEO of Wells Fargo until March 2019—overseeing numerous scandals and misdeeds in the process.

The OCC Can Oversee the Upcoming Wells Fargo CEO Selection

In November 2016, after Sloan was appointed CEO, the OCC reversed course and informed Wells Fargo that it was "subject to the limitation of 12 C.F.R. § 5.51 requiring prior written notice of a change in directors and senior executive officers."²⁰ However, in its April 2018

¹⁴ Wells Fargo, "Wells Fargo Enters into Consent Orders with OCC and CFPB," press release, April 20, 2018, <https://newsroom.wf.com/press-release/corporate-and-financial/wells-fargo-enters-consent-orders-occ-and-cfpb>.

¹⁵ Letter from Joseph M. Otting, Comptroller of the Currency, to Senator Elizabeth Warren, April 3, 2019, <https://www.warren.senate.gov/imo/media/doc/2019.04.03%20OCC%20Response%20to%20Letter%20to%20OCC%20and%20CFPB%20re%20Wells%20Fargo%20Auto%20Lending%20Settlement.pdf>.

¹⁶ Office of the Comptroller of the Currency, "Consent Order in the Matter of Wells Fargo Bank, National Association, AA-EC-2015-79," <https://www.occ.gov/static/enforcement-actions/ea2015-125.pdf>.

¹⁷ Office of the Comptroller of the Currency, "Consent Order in the Matter of Wells Fargo Bank, N.A., AA-EC2016-66," September 8, 2016, <https://www.occ.gov/news-issuances/news-releases/2016/nr-occ-2016-106b.pdf>.

¹⁸ Wells Fargo, "Timothy J. Sloan," accessed April 12, 2019 via the Internet Archive, <https://web.archive.org/web/20190322025417/https://www.wellsfargo.com/about/corporate/governance/sloan/>; Wells Fargo, "Wells Fargo Chairman, CEO John Stumpf Retires; Board of Directors Elects Tim Sloan CEO, Director; Appoints Lead Director Stephen Sanger Chairman, Director Elizabeth Duke Vice Chair," press release, October 12, 2016, <https://newsroom.wf.com/press-release/corporate-and-financial/wells-fargo-chairman-ceo-john-stumpf-retires-board-directors>.

¹⁹ Wells Fargo, "Timothy J. Sloan," accessed April 12, 2019 via the Internet Archive, <https://web.archive.org/web/20190322025417/https://www.wellsfargo.com/about/corporate/governance/sloan/>.

²⁰ Office of the Comptroller of the Currency, "Statement Regarding Revocation of Relief to Wells Fargo Bank, N.A., from Certain Regulatory Consequences of Enforcement Actions," November 18, 2016, <https://www.occ.gov/topics/laws-regulations/enforcement-actions/statement-wellsfargo-111816.pdf>.

consent order, the OCC once again exempted Wells Fargo again from 12 C.F.R. § 5.51 (and applied this exemption to “all other consent orders between the Bank and the OCC outstanding as of the effect of this Order”). The April 2018 order did include a provision similar to 12 C.F.R. § 5.51 requiring Wells Fargo to “obtain a prior written determination of no supervisory objection” from the agency before appointing new senior executive officers or board members. This provision allows the OCC to object to a new Wells Fargo CEO, but presumably allows that process to take place in secret, as is customary of supervisory actions.²¹

According to C. Allen Parker, Wells Fargo’s interim CEO and President, the bank is actively engaging in “an external search for the company’s next CEO and [P]resident.”²² Wells Fargo’s imminent selection of a new CEO will test the OCC’s commitment to conducting a thorough review of Wells Fargo senior executives.

Questions

In a recent letter, you told me that the OCC “is fully engaged and prepared to ensure Wells Fargo corrects...deficiencies, remediates identified harm to its customers, and operates in a safe and sound manner going forward.” You stated that you “expect all National Banks to treat their customers fairly, operate in a safe and sound manner, and follow the rules of law.”²³

I agree that federal regulators must hold Wells Fargo accountable for its misdeeds and ensure that the bank ends its streak of unlawful behavior. The OCC’s repeated willingness to exempt Wells Fargo from 12 C.F.R. § 5.51, however, calls into question the agency’s commitment to using all of the tools in its toolbox to ensure that Wells Fargo corrects its deficiencies. To help me better understand the role that the OCC will play in the selection of a new senior leadership at Wells Fargo, I ask that you answer the following questions no later than May 1, 2019:

1. Does the OCC plan to conduct a review, as outlined in 12 C.F.R. § 5.51 and OCC guidance documents implementing the regulation, of the new Wells Fargo CEO and President selected by the bank at the conclusion of its search? If not, why not?
2. The OCC has the power to “disapprove an individual proposed as a member of the board of directors or as a senior executive officer” of a national bank or federal savings association “if the OCC determines on the basis of the individual’s competence, experience, character, or integrity that it would not be in the best interests of the

²¹ Office of the Comptroller of the Currency, “Consent Order in the Matter of Wells Fargo Bank, N.A., AA-EC-2018-15,” April 20, 2018, <https://www.occ.gov/static/enforcement-actions/ea2018-025.pdf>. This includes subjecting Wells Fargo to the requirements outlined in *Changes in Directors and Senior Executive Officers*, an OCC licensing manual outlining “the policies and processes regarding notices of changes in directors and senior executive officers pursuant to 12 CFR 5.51.”

²² USA Today, “Wells Fargo CEO Tim Sloan steps down; search underway for bank’s next CEO and president,” Kelly Tyko, March 28, 2019, <https://www.usatoday.com/story/money/2019/03/28/wells-fargo-ceo-tim-sloan-retiring/3302889002/>.

²³ Letter from Joseph M. Otting, Comptroller of the Currency, to Senator Elizabeth Warren, April 3, 2019, <https://www.warren.senate.gov/imo/media/doc/2019.04.03%20OCC%20Response%20to%20Letter%20to%20OCC%20and%20CFPB%20re%20Wells%20Fargo%20Auto%20Lending%20Settlement.pdf>.

depositors of the [financial institution]...or the public to permit the individual to be employed by, or associated with, the” financial institution.²⁴

- a. What factors does the OCC consider in assessing an individual’s “competence, experience, character, or integrity”? What information about an individual’s “competence, experience, character, or integrity” would be considered disqualifying for a senior executive or board member?
 - b. What factors does the OCC consider in assessing what would be in “the best interest of depositors...or the public?” What information would be considered disqualifying for a senior executive or board member?
3. 12 C.F.R. § 5.51 permits the OCC to issue notices of disapproval and “intent not to disapprove” to banks subject to its review of senior executives. It also permits the OCC to issue waivers of prior notice banks in cases where a delay in selecting senior leadership “would not be in the public interest” or “could adversely affect the safety and soundness” of the bank.²⁵ Does the OCC make these notices and waivers, and its deliberations about these notices and waivers, available to the public? Does the OCC intend to make the “prior written determination of no supervisory objection” required in its April 2018 consent order with Wells Fargo available to the public?
 4. Why did the OCC exempt Wells Fargo from 12 C.F.R. § 5.51 in its November 2015 and September 2016 consent orders? How many times has the OCC exempted Wells Fargo from 12 C.F.R. § 5.51 in its enforcement actions?
 5. Does the OCC, which exempted Well Fargo from 12 C.F.R. § 5.51 in September 2016, believe that the appointment of Timothy Sloan as CEO of the bank (which took place without OCC review or approval) was in the “best interest” of Wells Fargo depositors and the public?
 6. Congress granted the OCC the authority to approve or disapprove of troubled national banks in 1989.²⁶ For every year since 2000:
 - a. How many enforcement actions, including consent orders, cease and desist orders, or other formal written agreements, has the OCC taken against its regulated financial institutions?
 - b. Of those enforcement actions, how many subjected financial institutions to the requirement that the OCC approve or disapprove of changes to its senior leadership?

²⁴ 12 C.F.R. § 5.51 (online at <https://www.law.cornell.edu/cfr/text/12/5.51>).


²⁵ *Ibid.*

²⁶ See H.R. 1278—Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (online at <https://www.congress.gov/bill/101st-congress/house-bill/1278/text>).

- c. Of those enforcement actions, how many exempted financial institutions from the requirement that the OCC approve or disapprove of changes to its senior leadership?

Please do not hesitate to reach out to Susannah Savage of my staff at 202-224-4543 with any questions or concerns.

Sincerely,



Elizabeth Warren
United States Senator