

August 30, 2019

Jay Clayton  
Chairman  
Securities and Exchange Commission  
100 F Street NW  
Washington, DC 20549

Dear Chairman Clayton:

I write to express my concern that Wells Fargo executives may have once again intentionally misled investors—this time about the strength of their customer base. Recent reports suggest that Wells Fargo keeps accounts active for months after informing customers that they had been closed, and in some cases, charges customers thousands in overdraft fees when charges hit the still-open accounts.<sup>1</sup> In its efforts to shore up investors concerned with its seemingly incessant string of scandals, Wells Fargo executives have repeatedly trumpeted rising numbers of checking accounts. I request that the Securities and Exchange Commission (SEC or the Commission) investigate whether the Wells Fargo leaders violated securities laws by reporting to investors false metrics that include accounts that had already been closed.

According to a report last week in the *New York Times*, Wells Fargo routinely keeps open accounts that customers have been told are closed, causing the account to accrue overdraft fees anytime an additional charge – even a fraudulent charge – hits the account.<sup>2</sup> While the full scope and magnitude of this problem are not yet clear, one customer reportedly indicated that he was charged almost \$1,500 in fees on his “closed” account and a single company whistleblower apparently took in approximately \$100,000 in overdraft fees in just eight months.<sup>3</sup> Customers who are affected can pay a heavy price – they “usually learn what happened only after their overdrawn accounts are sent to Wells Fargo’s collections department ... [and are] reported to a national database ... which compiles names of delinquent bank customers ... [t]hat often means a customer cannot open a new bank account anywhere.”<sup>4</sup> Moreover, according to reports, customers who attempted to mitigate the problem with Wells Fargo employees were told “[t]he accounts are closed out – we cannot do anything.”<sup>5</sup>

In the wake of a string of illegal activities, beginning with revelations in September 2016 that Wells Fargo opened millions of fake accounts, analysts and investors have been concerned

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<sup>1</sup> New York Times, Wells Fargo Closed their Accounts but the Fees Continued to Mount, Emily Flitter, August 16, 2019, <https://www.nytimes.com/2019/08/16/business/wells-fargo-overdraft-fees.html>.

<sup>2</sup> New York Times, Wells Fargo Closed their Accounts but the Fees Continued to Mount, Emily Flitter August 16, 2019, <https://www.nytimes.com/2019/08/16/business/wells-fargo-overdraft-fees.html>.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

about Wells Fargo losing customers.<sup>6</sup> Wells Fargo has sought to shore up investors by frequently discussing its account growth. For example, on every quarterly earnings call from the third quarter of 2018 to the present, Senior Executive Vice President and Chief Financial Officer John R. Shrewsbury announced that “primary consumer checking customers [have grown] year-over-year.”<sup>7 8 9 10</sup> Additionally, in the supplement to each quarterly earnings release, Wells Fargo lists the number of primary consumer checking customers, in addition to the quarterly and annual growth numbers.<sup>11</sup> These documents specifically define this customer base as those “who actively use their checking account,” but it isn’t clear whether incoming charges or accrual of overdraft fees counts as active use.<sup>12</sup> It would be troubling if these numbers included accounts that the holders thought were closed.

Throughout several recent filings with the SEC signed by Wells Fargo Executive Vice President and Controller Richard D. Levy, Wells Fargo has reported various fees as part of its income, and many of these fees may be associated with accounts that holders believed were closed. Notably, Wells Fargo cited the company’s growth in the number of primary checking customers in the first and second quarters of 2017 and the first, second, and third quarters of 2018, as well as their growth in overdraft fees and service charges on deposit accounts in the second quarter of 2019.<sup>13 14 15 16 17</sup> Additionally, in its annual 10-K reports, also signed by then-

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<sup>6</sup> See e.g., CNN Business “Wells Fargo customers are Fed up. They could yank billions of dollars in deposits,” October 10, 2018, <https://www.cnn.com/2018/10/10/business/wells-fargo-bank-customers-scandal/index.html>.

<sup>7</sup> The Motley Fool, “Wells Fargo & Company (WFC) Q3 2018 Earnings Conference Call Transcript,” October 12, 2018, <https://www.fool.com/earnings/call-transcripts/2018/10/12/wells-fargo-company-wfc-q3-2018-earnings-conference.aspx>.

<sup>8</sup> The Motley Fool, “Wells Fargo & Company (WFC) Q4 2018 Earnings Conference Call Transcript,” January 15, 2019, <https://www.fool.com/earnings/call-transcripts/2019/01/15/wells-fargo-co-wfc-q4-2018-earnings-conference-call.aspx>.

<sup>9</sup> The Motley Fool, “Wells Fargo & Company (WFC) Q1 2019 Earnings Conference Call Transcript,” April 12, 2019, <https://www.fool.com/earnings/call-transcripts/2019/04/12/wells-fargo-co-wfc-q1-2019-earnings-call-transcript.aspx>.

<sup>10</sup> The Motley Fool, “Wells Fargo & Company (WFC) Q2 2019 Earnings Conference Call Transcript,” July 16, 2019, <https://www.fool.com/earnings/call-transcripts/2019/07/16/wells-fargo-co-wfc-q2-2019-earnings-call-transcript.aspx>.

<sup>11</sup> Wells Fargo, 2Q19 Quarterly Supplement, July 16, 2019, <https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/earnings/second-quarter-2019-earnings-supplement.pdf>

<sup>12</sup> *Id.*

<sup>13</sup> Securities and Exchange Commission, Wells Fargo & Company, Form 10-Q, Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the quarterly period ended March 31, 2017, <https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/sec-filings/2017/first-quarter-10q.pdf>.

<sup>14</sup> Securities and Exchange Commission, Wells Fargo & Company, Form 10-Q, Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the quarterly period ended June 30, 2017, <https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/sec-filings/2017/second-quarter-10q.pdf>.

<sup>15</sup> Securities and Exchange Commission, Wells Fargo & Company, Form 10-Q, Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the quarterly period ended March 31, 2018, <https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/sec-filings/2018/first-quarter-10q.pdf>.

<sup>16</sup> Securities and Exchange Commission, Wells Fargo & Company, Form 10-Q, Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the quarterly period ended June 30, 2018, <https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/sec-filings/2018/second-quarter-10q.pdf>.

<sup>17</sup> Securities and Exchange Commission, Wells Fargo & Company, Form 10-Q, Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the quarterly period ended September 30, 2018, <https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/sec-filings/2018/third-quarter-10q.pdf>.


President and Chief Executive Officer Timothy J. Sloan and Mr. Shrewsberry, Wells Fargo reported an increase in primary consumer checking accounts and service charges in 2016 and 2017.<sup>18 19</sup> I am deeply concerned that these figures misleadingly include accounts that Wells Fargo account holders believed were closed.

While making these statements, Wells Fargo executives were aware of the problems with its account closing protocols. Since the second quarter of 2017, the quarterly 10-Q forms submitted by Wells Fargo have referenced an ongoing Consumer Financial Protection Bureau (CFPB) investigation into whether customers were unduly harmed associated with the company's practices associated with freezing and closing consumer deposit accounts.<sup>20</sup>

The Commission should investigate whether by trumpeting these inflated numbers of accounts at a time when investors were worried about customers leaving the bank, Wells Fargo and its senior executives committed securities fraud by making an untrue statement of material facts to investors. As you know, Section 17(a) of the Securities Act of 1933,<sup>21</sup> Section 10(b) of the Securities Exchange Act of 1934,<sup>22</sup> and SEC Rule 10b(5)<sup>23</sup> prohibit companies from misleading investors about facts that could affect their business and their stock price.

Over the last three years, Wells Fargo customers all across the bank have been victims of more than a dozen scams, which have been the subject of numerous government enforcement actions and are evidence of a reckless lack of compliance by the bank. The SEC should join the efforts to ensure that Wells Fargo and its senior executives are held accountable for their massive, years-long string of frauds.

Sincerely,



Elizabeth Warren  
United States Senator

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<sup>18</sup> Securities and Exchange Commission, Wells Fargo & Company, Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the fiscal year ended December 31, 2016, <https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/sec-filings/2016/10k.pdf>.

<sup>19</sup> Securities and Exchange Commission, Wells Fargo & Company, Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the fiscal year ended December 31, 2017, <https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/sec-filings/2017/10k.pdf>.

<sup>20</sup> Securities and Exchange Commission, Wells Fargo & Company, Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the quarterly period ended June 30, 2017, <https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/sec-filings/2017/second-quarter-10q.pdf>

<sup>21</sup> 15 U.S. Code § 77q

<sup>22</sup> 15 U.S.C. § 78j(b)

<sup>23</sup> 17 CFR § 240.10b-5.