October 4, 2017

Dear Chairman Gruenberg:

We write to urge the Federal Deposit Insurance Corporation (FDIC) to specially examine Wells Fargo, N.A. (Wells Fargo) to determine whether it is appropriate to terminate its deposit insurance in light of the bank's pattern of law breaking. Courts and multiple agencies have found – and Wells Fargo has admitted – that the bank has repeatedly "violat[ed] laws or regulations."[1] In addition, Wells Fargo's prudential regulator, the Office of the Comptroller of the Currency (OCC), has found the bank's violations constitute "unsafe or unsound practices."[2] By statute, either of these criteria is sufficient grounds for termination of a bank's deposit insurance.[3]

A brief recitation of Wells Fargo's recent misconduct makes it clear that the company's egregious and repeated violations of law require a timely and serious response from its regulators. Absent such a response, regulators risk signaling that they will permit persistent lawbreaking as part of a viable business model. Recent legal violations by the bank include:

- *Fake accounts.* According to Wells Fargo itself, the bank opened at least 3.5 million deposit accounts and other products without customer authorization.[4] This widespread wrongdoing was the result of the management practices of the bank, especially the use of inappropriate sales requirements and incentives for bank branch workers. The OCC issued an order regarding this conduct at the same time as the Consumer Financial Protection Bureau (CFPB). In its order, the OCC concluded the conduct constituted "(1) deficiencies and unsafe or unsound practices in the Bank's risk management and oversight of the Bank's sales practices, and (2) unsafe or unsound sales practices by the Bank,"[5] thereby triggering the cease and desist order and civil money penalties.[6] The widespread falsification of records within the company calls into question whether the bank's "books and records are so incomplete or inaccurate"[7] that immediate action is justified.

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[1] 12 U.S.C. § 1818(a)(1)(iii).

[2] 12 U.S.C. § 1818(a)(1)(i)-(ii)

[3] 12 U.S.C. § 1818(a).

[4] https://www.wsj.com/articles/wells-fargos-sales-scandal-tally-grows-to-around-3-5-million-accounts-1504184598

[5] https://www.occ.gov/news-issuances/news-releases/2016/nr-occ-2016-106b.pdf

[6] 12 U.S.C. § 1818.

[7] 12 U.S.C. § 1818(c)(3).

- *Selling toxic mortgages*. Wells Fargo originated toxic mortgages that it then sold Fannie Mae,[8] Freddie Mac,[9] and FHA.[10] The bank paid more than $2.6 billion for saddling those entities with losses from the poorly underwritten mortgages.

- *Mortgage servicing abuses*. Wells Fargo violated mortgage servicing regulations, leading to illegal foreclosures and resulting in more than $7 billion in settlements with the Department of Justice[11] and the OCC.[12] Before the OCC order was terminated Wells Fargo was fined an additional $70 million for violations of the consent order.[13]

- *Illegal repossession of servicemembers' vehicles.* Wells Fargo settled allegations by the Department of Justice that the bank seized more than 400 cars from active-duty servicemembers without a court order, which is required by federal law.[14]

- *Improper automotive insurance charges.* Wells Fargo has disclosed it charged 490,000 customers for unnecessary, duplicative auto insurance.[15] Tens of thousands of customers may not have received mandatory refunds of supplemental "GAP" insurance when they paid off their vehicle loans before the insurance expired.[16] These practices resulted in the illegal repossession of 25,000 cars.[17]

- *Illegal overdraft charges*. A federal court found Wells Fargo illegally reordered customers' withdrawals and checks to maximize the number of overdrafts.[18] The court found that these "practices were adopted solely to maximize the number of overdraft

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[8] http://www.fanniemae.com/portal/media/corporate-news/2013/6059.html

[9] http://freddiemac.mwnewsroom.com/press-releases/freddie-mac-announces-settlements-totaling-more-th-otcqb-fmcc-1055926

[10] https://www.justice.gov/opa/pr/wells-fargo-bank-agrees-pay-12-billion-improper-mortgage-lending-practices

[11] https://d9klfgibkcquc.cloudfront.net/Consent_Judgment_WellsFargo-4-11-12.pdf

[12] https://www.occ.gov/news-issuances/news-releases/2011/nr-occ-2011-47k.pdf; https://www.occ.gov/static/enforcement-actions/ea2013-132.pdf

[13] https://occ.gov/news-issuances/news-releases/2016/nr-occ-2016-61.html

[14] https://www.justice.gov/opa/pr/justice-department-reaches-4-million-settlement-wells-fargo-dealer-services-illegally

[15] https://newsroom.wf.com/press-release/consumer-lending/wells-fargo-announces-plan-remediate-customers-auto-insurance

[16] https://www.nytimes.com/2017/08/07/business/wells-fargo-insurance.html?mcubz=3

[17] *Id.*

[18] *Gutierrez v. Wells Fargo Bank, N.A.*, 730 F. Supp. 2d 1080 (N.D. Cal. 2010) (subsequent history omitted).

items assessed on customers (over all other possible orderings) and for the sole purpose of increasing revenue."[19]

- *Illegal student loan servicing.* The CFPB found that Wells Fargo charged student loan customers illegal fees, did not provide them required information to allow them to manage their accounts, and failed to correct inaccurate credit report information.[20]
- *Overcharges for identity protection products*. Wells Fargo settled allegations by the OCC that it charged customers for identity protection services they did not receive.[21]

This conduct is made even more concerning by Wells Fargo's actions to undermine discovery of such violations and their magnitude. Wells Fargo executives, including Former Wells Fargo CEO John Stumpf, appear to have failed to disclose problems they were in fact aware of during congressional hearings in September 2016. Stumpf was asked directly about fraudulent activity in areas outside of branch sales practices, and he responded without mentioning any problems related to auto insurance,[22] despite Wells Fargo's subsequent admission that it discovered the auto-insurance problems in July 2016.[23] Separately, the Department of Labor has twice found that Wells Fargo retaliated against employees for reporting violations of consumer protection laws.[24] These actions to conceal, rather than remedy, misconduct further undermine trust in the bank and raise the question of what other violations have not yet been discovered.

* * *

Whatever the ultimate cause of these violations – gross mismanagement, a toxic corporate culture, or growth that has left the bank too big to manage – the agencies' current approach to enforcement has failed. Pairing modest fines with promises to sin no more have not compelled Wells Fargo's board and management to make the necessary reforms to stop the bank's recidivism. Violations of customers' rights should not remain a mere cost of doing business and source of public embarrassment. An entity that has repeatedly and egregiously violated the public trust should not continue to enjoy the full faith and credit of the United States to guarantee its financial obligations. Moreover, a bank with a pattern mismanagement and failure of internal controls is more likely to pose a higher risk of default due to losses from civil and criminal

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[19] *Id.* at 1126.

[20] https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-wells-fargo-illegal-student-loan-servicing-practices/

[21] https://www.occ.gov/static/enforcement-actions/ea2015-051.pdf

[22] http://www.fairarbitrationnow.org/wp-content/uploads/Letter-Requesting-Additional-Wells-Fargo-Hearings.pdf

[23] *Id.*

[24] https://www.osha.gov/news/newsreleases/national/04032017; https://www.osha.gov/news/newsreleases/region9/07212017

liability, poorly underwritten assets, and a failure to maintain accurate and reliable books and records.

It is therefore incumbent on the FDIC, as Wells Fargo's deposit insurer and backup prudential regulator, to initiate consideration of termination of the bank's deposit insurance.

Sincerely,

AFL-CIO

Americans for Financial Reform

Rootstrikers Project of Demand Progress

Allied Progress

Center for Popular Democracy

Communication Workers of America

U.S. PIRG