

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

March 6, 2020

Memorandum

To: Members, Committee on Financial Services

From: FSC Majority Staff

Subject: March 11, 2020, “Holding Wells Fargo Accountable: Examining the Role of the Board of Directors in the Bank’s Egregious Pattern of Consumer Abuses”

The Committee on Financial Services (the “Committee”) will hold a hearing entitled, “Holding Wells Fargo Accountable: Examining the Role of the Board of Directors in the Bank’s Egregious Pattern of Consumer Abuses” on Wednesday, March 11, 2020, at 10:00 a.m. in Room 2128 Rayburn House Office Building. Witnesses for this one-panel hearing will be:

- **Ms. Elizabeth A. Duke**, Chair, Wells Fargo & Company
- **Mr. James H. Quigley**, Independent Chairman, Wells Fargo Bank, N.A

Purpose

The hearing will review the findings and recommendations of a report prepared by the Majority staff of the Committee entitled, “The Real Wells Fargo: Governance & Management Failures, Consumer Abuses, & Ineffective Regulatory Oversight.”¹

Witnesses Background

Ms. Duke is the current Chair of Wells Fargo’s Board of Directors. She has served in the position since January 2018. Previously, she served as Vice Chair of Wells Fargo’s Board of Directors from October 2016 to December 2017. Ms. Duke first joined Wells Fargo’s board in January 2015.² Prior to joining Wells Fargo’s board, Ms. Duke served as a board member of the Board of Governors of the Federal Reserve System from August 2008 to August 2013 and was chair of the Federal Reserve’s Committee on Consumer and Community Affairs.³

Mr. Quigley currently serves as a director of Wells Fargo and Chairman of Wells Fargo Bank.⁴ He has served on Wells Fargo’s board since October 2013. In addition to serving as chairman of Wells Fargo Bank, Mr. Quigley is also chairman of the board of Hess Corporation and a board member of Merrimack Pharmaceuticals, Inc.⁵

¹ The Committee Staff’s report has been distributed along with this memo.

² WFC, *Wells Fargo 2019 Proxy Statement* at 31, available at <https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/annual-reports/2019-proxy-statement.pdf>.

³ <https://www.wellsfargo.com/about/corporate/governance/duke/>.

⁴ WFC, *Wells Fargo 2019 Proxy Statement* at 19 and 34, available at <https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/annual-reports/2019-proxy-statement.pdf>.

⁵ *Id.* at 34.

Background

In 2016 and 2018, Wells Fargo Bank, N.A., and its holding company, Wells Fargo & Company (collectively, “Wells Fargo”) entered into five consent orders with the Consumer Financial Protection Bureau (“CFPB”), the Office of the Comptroller of the Currency (“OCC”), and the Federal Reserve System (“Federal Reserve”) to settle the regulators’ allegations of widespread consumer abuses and compliance failures within Wells Fargo. In February 2019, Chairwoman Waters, initiated an investigation into Wells Fargo’s progress toward designing and implementing the risk management reforms and customer remediation programs required by the five consent orders, which remain open as of the date of the investigative report. Specifically, the Committee staff’s investigation examined Wells Fargo’s compliance with the CFPB’s and OCC’s September 8, 2016 sales practices consent orders (collectively, “2016 Sales Practices Consent Orders”); the Federal Reserve’s February 2, 2018 risk management consent order (“2018 Federal Reserve Consent Order”); and the CFPB’s and OCC’s April 20, 2018 compliance risk management consent orders (collectively, “2018 Compliance Risk Management Consent Orders”).

On February 25, 2019, Chairwoman Waters formally scheduled Wells Fargo’s then- CEO and President, Timothy J. Sloan, to testify before the Committee on March 12, 2019.⁶ Chairwoman Waters specifically requested that Mr. Sloan’s testimony cover, among other things, “Wells Fargo’s efforts to remediate consumers affected by its various instances of wrongdoing,” and “Wells Fargo’s varied engagements with its regulators, including the bank’s compliance with its outstanding consent orders” with the CFPB, OCC, and Federal Reserve.⁷

During the March 12, 2019 Committee hearing, Mr. Sloan made several comments regarding Wells Fargo’s efforts to comply with the 2016 and 2018 consent orders. For example, in response to Chairwoman Waters’ question about the statuses of the remediation plans that Wells Fargo must submit for the CFPB’s and OCC’s approval under the 2018 Compliance Risk Management Consent Orders, Mr. Sloan, testified, “**We are in compliance with those plans**” (emphasis added).⁸ Additionally, in response to a question from Representative Nydia Velázquez regarding the status of the bank’s compliance with the 2018 Federal Reserve Consent Order, Mr. Sloan suggested that Wells Fargo had completed the governance reforms required by the Federal Reserve, stating, “[a]s part of the consent order with the Fed, they want us to improve the Board governance and oversight, **which we have done** (emphasis added).”⁹ Immediately following Mr. Sloan’s testimony, the OCC issued a written statement expressing its dissatisfaction with Wells Fargo’s progress towards complying with its consent orders. According to the Wall Street Journal, the OCC wrote:

We continue to be disappointed with [Wells Fargo’s] performance under our consent orders and its inability to execute effective corporate governance and a

⁶ Letter from Chairwoman Maxine Waters to Timothy Sloan, President & Chief Executive Officer, Wells Fargo (Feb. 25, 2019).

⁷ *Id.*

⁸ House Financial Services Committee, *Hearing on Holding Megabanks Accountable: An Examination of Wells Fargo's Pattern of Consumer Abuses*, 116th Cong at 6-7 (Mar. 12, 2019) (Serial No. 116-7), available at <https://www.govinfo.gov/content/pkg/CHRG-116hhrg36462/pdf/CHRG-116hhrg36462.pdf>.

⁹ *Id.* at 76.

successful risk management program. We expect National Banks to treat their customers fairly, operate in a safe and sound manner, and follow the rules of law.¹⁰

On March 13, 2019, the day after Mr. Sloan's testimony before the Committee, Wells Fargo announced in its annual proxy statement that the Company's board had awarded Mr. Sloan \$18.4 million in compensation for 2018, including a \$2 million performance bonus.¹¹ Following Wells Fargo's announcement, the Federal Reserve issued an emailed statement stating, "[t]he Federal Reserve does not approve pay packages. We expect boards of directors to hold management accountable."¹² Wells Fargo's board's decision to award Mr. Sloan a performance bonus for 2018—a year in which the Federal Reserve capped the Company's growth and other federal agencies fined the Company \$3 billion collectively—received public rebuke from lawmakers, who called for Mr. Sloan's resignation.¹³ On March 26, 2019, Mr. Sloan announced his decision to step down.¹⁴

On April 10, 2019, Chairwoman Waters and Representative Al Green, Chairman of the Subcommittee on Oversight and Investigations, sent document request letters to Wells Fargo, the OCC, the CFPB, and the Federal Reserve.¹⁵ In May 2019, Chairwoman Waters and Chairman Green sent document request letters to current and former Wells Fargo board members.¹⁶ The letters requested the production of records relating to the 2016 Sales Practices Consent Orders, the 2018 Federal Reserve Consent Order, and the 2018 Compliance Risk Management Consent Orders. Additionally, the letters to Wells Fargo and its board members requested the production of records relating to former-CEO Sloan's 2018 executive compensation.

¹⁰ Rachel Louise Ensign and Andrew Ackerman, *Regulator Slams Wells Fargo After CEO Testifies to Congress*, The Wall Street Journal (Mar. 12, 2019), available at <https://www.wsj.com/articles/wells-fargo-ceo-faces-aggressive-questions-from-congress-11552408186>.

¹¹ WFC, *Wells Fargo 2019 Proxy Statement* at 82, available at <https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/annual-reports/2019-proxy-statement.pdf>.

¹² Imani Moise, Pete Schroeder, *Wells Fargo CEO's pay raise draws rare Fed response*, Reuters (Mar. 13, 2019), available at <https://www.reuters.com/article/uk-wells-fargo-compensation/wells-fargo-ceos-pay-raise-draws-rare-fed-response-idUKKCN1QU35B>.

¹³ House Financial Services Committee, *Waters Blasts Wells Fargo for Bonus to Sloan, Calls for his Removal* (Mar. 14, 2019), available at <https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=402473>.

¹⁴ WFC, *Wells Fargo CEO and President Tim Sloan to Retire; Board of Directors Elects Allen Parker as Interim CEO and President* (Mar. 28, 2019), available at <https://newsroom.wf.com/press-release/corporate-and-financial/wells-fargo-ceo-and-president-tim-sloan-retire-board>.

¹⁵ Letter from Chairwoman Maxine Waters and Chairman Al Green to Jerome Powell, Chairman, Federal Reserve (Apr. 10, 2019); Letter from Chairwoman Maxine Waters and Chairman Al Green to Joseph Otting, Comptroller of the Currency, OCC (Apr. 10, 2019); Letter from Chairwoman Maxine Waters and Chairman Al Green to Director Kathleen Kraninger, CFPB (Apr. 10, 2019); Letter from Chairwoman Maxine Waters and Chairman Al Green to C. Allen Parker, Interim Chief Executive Officer and President, Wells Fargo (Apr. 10, 2019).

¹⁶ Letter from Chairwoman Maxine Waters and Al Green to Celeste Clark, Director, WFC (May. 1, 2019); Letter from Chairwoman Maxine Waters and Chairman Al Green to Donald James, Director, WFC (May. 1, 2019); Letter from Chairwoman Maxine Waters and Chairman Al Green to Elizabeth Duke, Chair of the Board of Directors, WFC (May. 1, 2019); Letter from Chairwoman Maxine Waters and Chairman Al Green to John Baker II, Director, WFC (May. 1, 2019); Letter from Chairwoman Maxine Waters and Chairman Al Green to Juan Pujadas, Director, WFC (May. 1, 2019); Letter from Chairwoman Maxine Waters and Chairman Al Green to James Quigley, Director, WFC (May. 1, 2019); Letter from Chairwoman Maxine Waters and Chairman Al Green to Maria Morris, Director, WFC (May. 1, 2019); Letter from Chairwoman Maxine Waters and Chairman Al Green to Ronald Sargent, Director, WFC (May. 1, 2019); Letter from Chairwoman Maxine Waters and Chairman Al Green to Suzanne Vautrinot, Director, WFC (May. 1, 2019); Letter from Chairwoman Maxine Waters and Chairman Al Green to Theodore Craver, Jr., Director, WFC (May. 1, 2019); Letter from Chairwoman Maxine Waters and Chairman Al Green to Wayne Hewett, Director, WFC (May. 1, 2019); Letter from Chairwoman Maxine Waters and Chairman Al Green to Karen Peetz, Director, WFC (May 10, 2019).

Key Findings of the Committee Staff Report

In response to Chairwoman Waters' and Chairman Green's April and May 2019 letters, Wells Fargo, its board members, and the regulators, collectively produced approximately 330,000 pages of records. In addition to reviewing these records, Committee staff received briefings from the Federal Reserve, OCC, CFPB, SEC, and Wells Fargo. Committee staff conducted interviews with key executives at Wells Fargo and the former chair of the board's risk committee. Additionally, Committee staff interviewed officials at the Federal Reserve, OCC, and CFPB. Committee staff's review of the records and witness interviews reveal the following:

- Financial regulators knew about serious, enterprise-wide deficiencies at Wells Fargo for years without alerting the public;
- Wells Fargo's board of directors failed to ensure that management could competently address the Company's risk management deficiencies;
- Wells Fargo and political appointees at the CFPB had backchannel communications regarding the CFPB's Compliance Risk Management Consent Order;
- Wells Fargo's board of directors allowed management to repeatedly submit materially deficient plans in response to the consent orders;
- Wells Fargo's board of directors and management prioritized financial and other considerations above fixing issues identified by regulators;
- Wells Fargo's board of directors did not hold senior management accountable for repeatedly failing to meet regulators' expectations under the consent orders;
- During the Committee's March 12, 2019 hearing, Wells Fargo's then-CEO Sloan gave inaccurate and misleading testimony about the status of Wells Fargo's compliance with the requirements of the 2018 Compliance Risk Management consent orders; and,
- The potential for widespread consumer abuse at Wells Fargo remains.

Policy Recommendations and Proposed Legislation

In consideration of Committee staff's findings and prior legislative proposals of Committee members, including Chairwoman Waters' Megabank Accountability and Consequences Act of 2017,¹⁷ the report includes below policy recommendations intended to enhance accountability in the banking industry, promote transparency and market discipline, strengthen consumer protections, and empower responsible workers. The following is a list of proposed legislation responsive to the Committee staff's findings and policy recommendations:

- **Megabank Accountability and Consequences Act.** This discussion draft would compel regulators to take more severe action against Wells Fargo, including removing negligent directors and either reducing Wells Fargo's size and/or activities, or to wind down the bank in an orderly fashion. The bill creates a legal framework that would compel recalcitrant regulators to escalate and utilize increasingly severe authorities to address any future recidivist megabank that extensively harms consumers.¹⁸

¹⁷ H.R.3937, 115th Congress, available at: <https://www.congress.gov/115/bills/hr3937/BILLS-115hr3937ih.pdf>; see also House Committee on Financial Services, *Waters Introduces Groundbreaking Legislation to Shut Down Abusive Megabanks Like Wells Fargo* (Oct. 4, 2017), available at: <https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=400815>.

¹⁸ This discussion draft builds off of Titles I and II of H.R.3937 (115th Congress), the Megabank Accountability and Consequences Act of 2017.

- **Megabank Board and Management Accountability Act.** This discussion draft would require the written attestation of senior officers and directors of megabanks to ensure they are complying with federal consumer protection laws, and it would enhance individual penalties for violating the law.¹⁹
- **Megabank Board Standards Act.** This discussion draft would require megabank boards to include directors with current and relevant banking and/or regulatory experience. Similar to prohibitions in the European Union,²⁰ megabank directors would be prohibited from serving on an excessive number of other company boards, and management would be barred from serving in key board leadership roles.
- **Consumer Abuse Remediation Enhancement (CARE) Act.** This draft would require megabanks, like Wells Fargo, to publicly disclose and remediate harmed consumers within a short timeframe when more than 50,000 consumers or consumer accounts are affected, or the amount of anticipated consumer remediation exceeds \$10 million.
- **Disclose Megabank Ratings Act.** This draft would require disclosure of Consumer Compliance ratings for megabanks, similar to Community Reinvestment Act exam disclosures. The bill would also require ratings, such as those for capital adequacy, asset quality, management, earnings, liquidity, and sensitivity to market risk (CAMELS), to be disclosed no later than two years after an exam.²¹
- **H.R. 3643, Accountability for Wall Street Executives Act (Porter).** The bill would clarify that state attorneys general have visitorial authority to conduct oversight of federally-chartered national banks and be able to issue subpoenas to inspect bank records and interview bank executives.²²
- **H.R. 3885, Wall Street Banker Accountability for Misconduct Act (Gabbard).** The bill would require a portion of bank executive compensation be set aside in a deferment fund that would be used to pay penalties for violations occurring during their tenure.²³
- **H.R. 4966, Greater Supervision in Banking (G-SIB) Act (Pressley).** The bill would require periodic testimony from megabank CEOs before Congress and would require banks to submit annual reports including, among other things, information about their size, complexity, employee wages, diversity, and enforcement actions taken.²⁴
- **H.R. 5318, Bank Merger Review Modernization Act (C. Garcia).** The bill would enhance the bank merger and acquisitional approval process by requiring the CFPB's approval, as well as strong CRA performance and risk management.²⁵

¹⁹ This discussion draft builds off of Title III of H.R.3937 (115th Congress), the Megabank Accountability and Consequences Act of 2017.

²⁰ See February 14, 2018, comment letter to the Federal Reserve from Jeremy Kress, Assistant Professor of Business Law, Stephen M. Ross School of Business, University of Michigan, available at https://www.federalreserve.gov/SECRS/2018/April/20180424/OP-1570/OP-1570_021418_131961_287654236656_1.pdf.

²¹ One example in statute of delayed reporting of sensitive bank information can be found in §1103(b) of the Dodd-Frank Act, which requires the Federal Reserve to disclose loans through the discount window on a delay of about two years, though it can be disclosed earlier if such disclosure would be in the public interest and would not harm the effectiveness or purpose of the loan. Also see Aaron Klein, *Why bank regulators should make their secret ratings public*, Brookings (Feb. 27, 2020), available at <https://www.brookings.edu/research/why-bank-regulators-should-make-their-secret-ratings-public/>.

²² <https://www.harris.senate.gov/news/press-releases/harris-porter-announce-bill-to-empower-state-ag-enforcement-of-banks>

²³ <https://gabbard.house.gov/news/press-releases/rep-tulsi-gabbard-bill-protect-american-taxpayers-hold-wall-street-executives>

²⁴ <https://pressley.house.gov/media/press-releases/rep-pressley-introduces-legislation-hold-big-banks-accountable>

²⁵ <https://chuygarcia.house.gov/media/press-releases/representative-garc-and-senator-warren-announce-introduction-bank-merger-review>