October 5, 2016

The Honorable Janet Yellen
Chair
Board of Governors of the Federal Reserve System
1800 K Street NW
Washington, DC 20006

The Honorable Thomas J. Curry
Comptroller
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20429

The Honorable Martin J. Gruenberg
Chairman
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20219

The Honorable Rick Metsger
Chairman
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314

The Honorable Melvin Watt
Director
Federal Housing Finance Agency
400 7th Street SW
Washington, DC 20219

The Honorable Mary Jo White
Chair
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: Notice of Proposed Rulemaking on Incentive Based Compensation Arrangements

Dear Chair Yellen, Comptroller Curry, Chairman Gruenberg, Chairman Metsger, Director Watt and Chair White:

Recently, the Consumer Financial Protection Bureau ("CFPB"), Office of the Comptroller of the Currency ("OCC"), and the City and County of Los Angeles settled for a collective $185 million with Wells Fargo Bank, N.A. ("Wells Fargo") over the illegal practice of secretly opening more than two million unauthorized deposit and credit accounts on behalf of unsuspecting consumers.[1] Since the September 8, 2016, settlement, and in the wake of unprecedented public scrutiny and Congressional testimony before the U.S. Senate and House of Representatives, the Board of Directors at Wells Fargo has rescinded some of the compensation of Chairman and CEO John Stumpf and Senior Executive Vice President for Community Banking Carrie Tolstedt.[2] However, the executives still have benefited from millions of dollars in compensation and stock awards during the relevant period covered by the settlement.[3]

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[1] Consumer Financial Protection Bureau Press Release, *CFPB Fines Wells Fargo $100 Million for Widespread Practice of Secretly Opening Unauthorized Accounts*, September 8, 2016. Available at: http://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-fines-wells-fargo-100-million-widespread-illegal-practice-secretly-opening-unauthorized-accounts/

[2] Glazer, Emily. *Wells Fargo Claws Back Millions from CEO After Scandal.* Wall Street Journal. September 27, 2016. Available at: http://www.wsj.com/articles/wells-fargo-board-actively-considering-executive-clawbacks-1474985652

[3] Ibid

With the revelation of this shocking scandal in mind, we write today to request that you strengthen the Notice of Proposed Rulemaking ("Proposal") issued by your Agencies regarding incentive-based compensation arrangements pursuant to Section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank").

Specifically, we are concerned about the excessive level of discretion granted to covered institutions in terms of when the institution must exercise a "clawback" provision – or a contractual clause that would trigger when the institution would withhold, reduce or recoup senior executive bonus pay. The Proposal provides that clawbacks can, *but not must*, be triggered by: 1) misconduct that resulted in significant financial or reputational harm to the covered institution; 2) fraud; or 3) intentional misrepresentation of information used to determine the individual's incentive-based compensation.[4] We do not believe that strong public policy goals are served by giving large banks and other financial institutions the choice as to whether to clawback executive bonuses in the face of widespread misconduct such as the opening of more than 2 million unauthorized deposit and credit accounts. Given the reluctance of many boards of directors to punish peer-group members within the senior executive class, we believe that your Agencies should require clawbacks in these instances. Moreover, there is precedent for your Agencies moving away from a more discretionary approach, as the United Kingdom Prudential Regulation Authority's ("PRA") policy statement regarding clawbacks requires that "a firm must make all reasonable efforts to recover an appropriate amount corresponding to some or all vested variable remuneration" in cases involving employee misbehavior or a failure of risk management within the employee's business unit.[5]

Further, with regard to clawback provisions related to the first aforementioned instance of "misconduct that resulted in significant financial or reputational harm to the institution," the Proposal should be expanded to cover instances where the executive "participated in or was responsible for" that misconduct. Again, this language is drawn from the existing standard used in the United Kingdom by the PRA.[6] Indeed, as the Wells Fargo scandal from this month demonstrates, it is important to hold senior executives responsible even if they may not have directly engaged in the misconduct, but if their failure of oversight contributed to significant harm being caused by the covered institution, to the detriment of shareholders.

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[4] Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance 2 Corporation (FDIC); Federal Housing Finance Agency (FHFA); National Credit Union Administration (NCUA); and U.S. Securities and Exchange Commission (SEC). *Notice of Proposed Rulemaking and Request for Comment related to Incentive-Based Compensation Arrangements*. May 16, 2016. Available at: https://www.sec.gov/rules/proposed/2016/34-77776.pdf

[5] See Appendix 1, page 3, United Kingdom Prudential Regulatory Authority. *Clawback Policy Statement*, PS 7/14. July, 2014. Available at: http://www.bankofengland.co.uk/pra/Documents/publications/ps/2014/ps714.pdf

[6] Ibid

We understand that Wells Fargo, and other large financial institutions, have written to your agencies and advocated for a lighter-touch approach as you work to finalize the Proposal.[7] Indeed, Wells Fargo in particular has argued for the "ability to use discretion in applying the principles behind Section 956" and cautioned against a "prescriptive approach that is unrelated to risk-taking and that has unintended consequences." However, we believe it is in the best interest of shareholders, consumers and our wider economy for your Agencies to adopt a final Proposal that provides less optionality to covered institutions when it comes to holding senior executives accountable both for their actions and their failure of oversight over the employees that report to them. As this recent scandal emphasizes, stronger incentives are needed to ensure that financial institutions respond quickly and forcefully to illegal behavior within their workforce.

Sincerely,

[7] Letter from Hope A. Hardison, Senior EVP, Chief Administrative Officer and Director of Human Resources, Wells Fargo & Company to the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, the National Credit Union Association and the Securities and Exchange Commission dated July 22, 2016 regarding Notice of Proposed Rulemaking on Incentive-Based Compensation Arrangements (Docket Nos. OCC-2011-0001, 1536, RIN No. 7100 AE-50, RIN 3064-AD86, RIN 2590-AA42, File Number S7-07-16. Available at: http://www.federalreserve.gov/SECRS/2016/July/20160726/R-1536/R-1536_072216_130359_632909828766_1.pdf

Bill Foster