

September 13, 2021

The Honorable Jerome Powell
Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, D.C. 20551

Dear Chairman Powell:

I write to urge the Federal Reserve Board of Governors (the Fed) to take immediate action in response to the repeated, ongoing, and inexcusable failure of Wells Fargo & Company (Wells Fargo) to eliminate abusive and unlawful practices that have cost consumers hundreds of millions of dollars.¹ Under Janet Yellen's leadership, the Fed placed Wells Fargo under an asset cap in 2018 due to its "widespread consumer abuses and other compliance breakdowns."² In the more than three years since then, numerous additional revelations have surfaced about Wells Fargo's continued unethical and anti-consumer conduct. These new revelations have once again made clear that continuing to allow this giant bank with a broken culture to conduct business in its current form poses substantial risks to consumers and the financial system.³ For this reason, the Fed should use its longstanding authority under the Bank Holding Company Act to revoke Wells Fargo's status as a financial holding company (FHC) and require that it separate its bank subsidiary from its other financial activities.⁴ Wells Fargo is an irredeemable repeat offender; the Fed must act.

Last week, the Office of the Comptroller of the Currency (OCC) issued a consent order regarding Wells Fargo Bank's ongoing problems related to mortgage foreclosures and the bank's failure to comply with past consent orders issued by the agency.⁶ Among other things, the order noted, "The Bank's inadequate

¹ The Hill, "Wells Fargo to pay \$250M fine for mortgage oversight lapses," Sylvan Lane, September 9, 2021, <https://thehill.com/policy/finance/571626-wells-fargo-to-pay-250m-fine-for-mortgage-oversight-lapses>.

² Board of Governors of the Federal Reserve System, "Responding to widespread consumer abuses and compliance breakdowns by Wells Fargo, Federal Reserve restricts Wells' growth until firm improves governance and controls. Concurrent with Fed action, Wells to replace three directors by April, one by year end," February 2, 2018, <https://www.federalreserve.gov/newsevents/pressreleases/enforcement20180202a.htm>.

³ Wells Fargo is a \$1.9 trillion dollar institution and the fourth-largest financial holding company in the United States. It is the parent company of dozens of subsidiaries that encompass multiple business lines. Securities and Exchange Commission, "Form 10-K Wells Fargo & Company, Exhibit 21, Subsidiaries of the Parent," February 23, 2021, <https://sec.report/Document/0000072971-21-000197/wfc-1231x2020xex21.htm>.

⁴ 12 U.S. Code § 1843(m)(4).

⁵ American Banker, "Fed should force Wells Fargo into being a simpler bank," Jeremy Kress, October 26, 2018, <https://www.americanbanker.com/opinion/fed-should-force-wells-fargo-into-being-a-simpler-bank>.

⁶ Office of the Comptroller of the Currency, "OCC Assesses \$250 Million Civil Money Penalty, Issues Cease and Desist Order Against Wells Fargo," September 9, 2021, <https://www.ots.treas.gov/news-issuances/news-releases/2021/nr-occ-2021-95.html>.

controls, insufficient independent oversight, and ineffective governance related to loss mitigation activities have caused the Bank's failure to timely detect, prevent, and quantify inaccurate loan modification decisions and impaired the Bank's ability to fully and timely remediate harmed customers."⁷ In other words, Wells Fargo has both failed to establish an effective program to prevent customers from foreclosing on their homes and has been unable to compensate consumers harmed by the bank's previous abusive practices.

This latest consent order comes after nearly two decades of scandals, which have resulted in multiple enforcement orders issued by financial regulators, including the OCC, the Fed, the Consumer Financial Protection Bureau (CFPB), and the Securities and Exchange Commission (SEC).

The bank was immersed in scandal in 2016 when investigations revealed that, beginning in "2002 ... employees used fraud to meet impossible sales goals. They opened millions of accounts in customers' names without their knowledge, signed unwitting account holders up for credit cards and bill payment programs, created fake personal identification numbers, forged signatures and even secretly transferred customers' money."⁸ Ultimately, this behavior, which revealed "complete failure of leadership at multiple levels within the bank," resulted in a \$3 billion settlement with the DOJ and SEC.⁹

Since 2016, numerous other examples of abusive and unlawful behavior by Wells Fargo have come to light, including activity that occurred following the imposition of the Fed's asset cap in February 2018. As the COVID-19 pandemic raged, an investigation by my staff during the summer of 2020 revealed that Wells Fargo had placed as many as 1,600 customers into forbearance on their mortgages without their consent, potentially affecting their ability to refinance mortgages, their credit reports, and consumer bankruptcy plans.¹⁰

Other examples of Wells Fargo's misconduct include the following:

- Between January 2008 and July 2015, Wells Fargo repossessed vehicles belonging to 450 members of the military in violation of the Servicemembers Civil Relief Act (SCRA).¹¹ And a second set of different SCRA violations came to light in a September 2016 settlement with the Department of Justice (DOJ) that brought the total number of servicemembers eligible for relief to 860.¹²
- Between January 2012 and July 2016, "[m]ore than 800,000 people who took out car loans from Wells Fargo were charged for auto insurance they did not need ... push[ing] roughly 274,000 Wells Fargo customers into delinquency and result[ing] in almost 25,000 wrongful

⁷ Office of the Comptroller of the Currency, "In the Matter of Wells Fargo Bank, N.A." Consent Order, 2021, <https://www.occ.gov/static/enforcement-actions/ea2021-035.pdf>.

⁸ New York Times, "The Price of Wells Fargo's Fake Account Scandal Grows by \$3 Billion," Emily Flitter, February 21, 2020, <https://www.nytimes.com/2020/02/21/business/wells-fargo-settlement.html>.

⁹ *Id.*

¹⁰ Letter from Senators Warren and Schatz to Wells Fargo CEO Charles Scharf, July 29, 2020, <https://www.warren.senate.gov/imo/media/doc/2020.07.29%20Letter%20to%20Wells%20Fargo%20on%20Forbearance%20Filings.pdf>.

¹¹ Department of Justice, "Justice Department Obtains \$5.4 Million in Additional Relief to Compensate Servicemembers for Unlawful Repossessions by Wells Fargo Dealer Services," press release, November 14, 2017, <https://www.justice.gov/opa/pr/justice-department-obtains-54-million-additional-relief-compensate-servicemembers-unlawful>.

¹² *Id.*

vehicle repossessions.”¹³ Active-duty servicemembers were among those harmed.¹⁴ Wells Fargo signed settlements with 50 states and Washington, D.C.,¹⁵ the OCC, and the CFPB¹⁶ to resolve those claims.

- In 2015, the OCC found deficiencies in Wells Fargo’s internal controls related to the Bank Secrecy Act (BSA) and Anti-Money Laundering (AML) rules in the Wholesale Banking Group. The consent order noted that “the Bank has failed to make acceptable substantial progress toward correcting previously identified BSA/AML problems that were previously brought to its attention.”¹⁷
- Wells Fargo employees in the bank’s Wholesale Banking Group reportedly changed information on business customers’ documents without authorization in 2017 and 2018,¹⁸ resulting in a DOJ investigation to determine whether “there is a pattern of unethical and potentially fraudulent employee behavior tied to management pressure.”¹⁹
- Wells Fargo disclosed in March 2018 that the bank’s wealth management business was under investigation to determine if the bank made “inappropriate referrals or recommendations, including with respect to rollovers for 401(k) plan participants, certain alternative investments, or referrals of brokerage customers to the company’s investment and fiduciary services business.”²⁰
- Wells Fargo has struggled to make whole the customers who were harmed by the company’s misdeeds. In 2018 the company sent out 38,000 “erroneous communications to customers that it forced to buy unneeded auto insurance.”²¹ It “sent refunds to people who weren’t the bank’s customers; notified those who were harmed of incorrect amounts to be paid; and told people of coming refunds even though they had never gotten the insurance.”²² It did not promptly provide refunds to “as many as 110,000 customers who were charged improper fees to extend interest-rate commitments they received from Wells Fargo on their mortgages.”²³ And it created a refund request process that required customers “to agree to a refund through the mail before sending them money,” despite its own estimates that “half or fewer” of

¹³ 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>.

¹⁴ *Id.*

¹⁵ American Banker, “Wells Fargo to pay state regulators \$575M over phony accounts, other scandals,” Rachel Witkowski, December 28, 2018, <https://www.americanbanker.com/news/wells-fargo-to-pay-state-regulators-575m-over-phony-accounts-other-scandals>.

¹⁶ CNN Business, “Wells Fargo fined \$1 billion for insurance and mortgage abuses,” Donna Borak, April 20, 2018, <https://money.cnn.com/2018/04/20/news/companies/wells-fargo-regulators-auto-lending-fine/index.html>.

¹⁷ *Id.*

¹⁸ Wall Street Journal, “Wells Fargo Employees Altered Information on Business Customers’ Documents,” Emily Glazer, May 17, 2018, <https://www.wsj.com/articles/wells-fargo-employees-altered-information-on-business-customers-documents-1526564170>.

¹⁹ Wall Street Journal, “Justice Department Probing Wells Fargo’s Wholesale Banking Unit,” Emily Glazer, September 6, 2018, <https://www.wsj.com/articles/justice-department-probing-wells-fargos-wholesale-banking-unit-1536244490>.

²⁰ Securities and Exchange Commission, Form 10-Q, Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the quarterly period ended May 31, 2018, Wells Fargo & Company, <https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/sec-filings/2018/first-quarter-10q.pdf>.

²¹ Wall Street Journal, “Wells Fargo Fumbles Efforts to Repay Aggrieved Customers,” Gretchen Morgenson and Emily Glazer, February 10, 2018, <https://www.wsj.com/articles/wells-fargo-struggles-to-repay-aggrieved-customers-1518295023>.

²² *Id.*

²³ *Id.*

affected customers would take the necessary steps to secure a refund.²⁴ In September 2018, the OCC rejected Wells Fargo’s plan for remunerating customers pushed into unneeded auto insurance, finding that the bank was not doing enough “to ensure it has found and compensated every affected driver.”²⁵

- A February 2019 report revealed that employees in the Wholesale Banking division of Wells Fargo “routinely falsified clients’ signatures and otherwise doctored paperwork,” beginning in 2016, to comply with a legal settlement with the OCC related to violations of anti-money laundering laws.²⁶
- In August 2019, reports identified multiple instances of Wells Fargo closing customers’ accounts without authorization and subsequently charging overdraft fees.²⁷
- In February 2020, the SEC announced charges against Wells Fargo’s investment adviser and broker dealer business lines for recommending certain investment products to retail clients from February 2012 through September 2019 “without having adequate compliance policies and procedures and without providing financial advisors proper training and supervision” of these products.²⁸

In addition to these scandals and the over \$5 billion in penalties the bank has been fined to date,²⁹ Wells Fargo has had to fire two Chief Executive Officers and multiple other senior executives.³⁰

The severity and frequency of the actions listed above indicate that additional fines and consent orders, and changes in governance at Wells Fargo have been unable to address the bank’s longstanding problems and its inability to meet regulatory requirements and treat its consumers honestly and fairly. I strongly supported the Fed taking the unprecedented step of imposing an asset cap in 2018,³¹ but it is clear that even with such a cap in place, Wells Fargo is simply ungovernable. I am therefore once again asking the Fed to further limit Wells Fargo’s ability to continue harming its consumers and undermining the safety and integrity of our banking system.

²⁴ *Id.*

²⁵ Reuters, “Exclusive: U.S. regulators reject Wells Fargo’s plan to repay customers - sources,” Patrick Rucker, September 11, 2018, <https://www.reuters.com/article/us-wells-fargo-insurance-exclusive/exclusive-u-s-regulators-reject-wells-fargos-plan-to-repay-customers-sources-idUSKCN1LR2LG>.

²⁶ The Capitol Forum, “Wells Fargo: Employees Doctored Signatures, Raising Possibility of Federal Penalties,” February 14, 2019. <https://thecapitolforum.com/wp-content/uploads/2019/02/Wells-Fargo-2019.02.14.pdf>.

²⁷ 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>.

²⁸ Securities and Exchange Commission, Consent Order, February 27, 2020, <https://www.sec.gov/litigation/admin/2020/34-88295.pdf>.

²⁹ Los Angeles Times, “Regulators are unhappy with how slowly Wells Fargo is repaying ripped-off consumers,” Hannah Levitt, August 31, 2021, <https://www.latimes.com/business/story/2021-08-31/regulators-are-unhappy-with-how-slowly-wells-fargo-is-repaying-ripped-off-consumers>.

³⁰ Board of Governors of the Federal Reserve System, “Responding to widespread consumer abuses and compliance breakdowns by Wells Fargo, Federal Reserve restricts Wells’ growth until firm improves governance and controls. Concurrent with Fed action, Wells to replace three directors by April, one by year end,” February 02, 2018, <https://www.federalreserve.gov/newsevents/pressreleases/enforcement20180202a.htm>.

³¹ Warren Statement on Fed Chair Yellen’s Regulatory Actions Against Wells Fargo, February 02, 2018, <https://www.warren.senate.gov/newsroom/press-releases/warren-statement-on-fed-chair-yellens-regulatory-actions-against-wells-fargo>.

Under the Bank Holding Company Act, financial holding companies (FHCs) like Wells Fargo are required to be “well capitalized” and “well managed.”³² When an FHC or one of its depository subsidiaries fails to meet these requirements, the Fed is required to provide notice to the FHC and give the institution an opportunity to correct its deficiencies.³³ If the holding company fails to correct its deficiencies within 180 days, the Fed may require the FHC to “divest control of any subsidiary depository institution,” or, if the FHC instead chooses, “to cease to engage in any activity” that is not permissible for a bank holding company.³⁴ This Fed authority ensures that the size and complexity of a company does not interfere with its ability to provide safe, fair, and transparent core banking services to its customers.³⁵

In order to remain “well managed,” an FHC must earn at least satisfactory scores on its CAMELS (Capital adequacy, Asset quality, Management, Earnings, Liquidity, and Sensitivity)³⁶ composite and management ratings used by banking supervisors.³⁷ These scores are confidential. But past reporting has indicated that Wells Fargo’s CAMELS rating was downgraded in 2017,³⁸ and it is inconceivable that Wells Fargo could have earned an upgraded CAMELS score given the sheer number and ongoing nature of scandalous and unlawful behavior at the bank since then.

The Fed must therefore act to protect consumers and the integrity of the banking and financial system and revoke Wells Fargo’s status as an FHC. The Fed should move quickly to require the company to “spin off or sell its investment bank and other nonbanking activities,”³⁹ and do so in a way that ensures customers can continue to have access to banking services without disruption or inconvenience.

This matter is of urgent importance. Earlier this year, media outlets reported that Wells Fargo is actively working to expand its investment bank, despite the firm’s asset cap.⁴⁰ Wells Fargo executives are seeking to compete with other giant Wall Street banks by, among other things, “lending to hedge funds looking to ramp up bets”⁴¹—the same activity that triggered \$10 billion in losses among megabanks earlier this year.⁴² Given Wells Fargo’s woefully inadequate internal controls, the firm cannot be trusted to conduct such risky activities in a safe and sound manner. In addition, I am concerned that Wells Fargo’s senior executives are focused on expanding risky investment banking activities instead of remediating consumer harms and improving lax internal controls. The Fed should immediately revoke Wells Fargo’s FHC status to ensure that its leaders focus all of their attention on fixing the bank’s numerous, chronic risk-management deficiencies.

³² 12 U.S. Code § 1843(l)(1)(C).

³³ 12 U.S. Code § 1843(m)(4).

³⁴ *Id.*

³⁵ Minnesota Law Review, “Solving Banking’s ‘Too Big To Manage Problem,’” Jeremy Kress, March 20, 2019, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3348593.

³⁶ 12 USC § 1841(o)(9).

³⁷ *Id.*

³⁸ Wall Street Journal, “Wells Fargo Earns New Ire from Bank Overseers,” Emily Glazer, January 5, 2018, <https://www.wsj.com/articles/wells-fargo-earns-new-ire-from-bank-overseers-1515187163>.

³⁹ American Banker, “Fed should force Wells Fargo into being a simpler bank,” Jeremy Kress, October 26, 2018, <https://www.americanbanker.com/opinion/fed-should-force-wells-fargo-into-being-a-simpler-bank>.

⁴⁰ Bloomberg, “Wells Fargo to Expand Investment Bank as Scharf Sets Strategy,” Hannah Levitt, January 4, 2021, <https://www.bloomberg.com/news/articles/2021-01-04/wells-fargo-to-expand-investment-bank-in-scharf-s-strategy-shift>.

⁴¹ *Id.*

⁴² Wall Street Journal, “Archegos Hit Tops \$10 Billion After UBS, Nomura Losses,” Margot Patrick and Quentin Webb, April 27, 2021, <https://www.wsj.com/articles/ubs-takes-surprise-774-million-archegos-hit-11619501547>.

Every new report of scandal and ongoing noncompliance by Wells Fargo represents a giant financial institution squeezing consumers to pad profits for its executives. The Fed must revoke Wells Fargo's FHC status and order the company to develop a plan to ensure that the 65 million customers that currently rely on Wells Fargo's consumer banking and lending services are protected through the transition.⁴³ Every single day that Wells Fargo continues to maintain these depository accounts is a day that millions of customers remain at risk of additional negligence and willful fraud. The only way these consumers and their bank accounts can be kept safe is through another institution—one whose business model is not dependent on swindling customers for every last penny they can get. The Fed has the power to put consumers first, and it must use it. By invoking its full authority to protect consumers and the financial system and requiring Wells Fargo to separate its consumer-facing banking arm from the rest of its financial activities, the Fed can ensure that Wells Fargo faces appropriate consequences for its longstanding ungovernable behavior.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Warren". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Sen. Elizabeth Warren

Chair, Senate Banking Committee, Subcommittee on Economic Policy

⁴³ Wells Fargo & Company 2020 Annual Report, <https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/annual-reports/2020-annual-report.pdf>.