

# United States Senate

WASHINGTON, DC 20510

September 15, 2016

John G. Stumpf  
Chairman and Chief Executive Officer  
Wells Fargo and Company  
420 Montgomery Street  
San Francisco, CA 94163

Dear Mr. Stumpf:

In the wake of Wells Fargo's September 8, 2016 settlement with federal and local authorities, we write to ask whether the Board of Directors will invoke Wells Fargo's clawback authority to recover any of the compensation the company has provided to its senior executives, including Carrie Tolstedt, the former Senior Executive Vice President of Community Banking.

Last week, the Consumer Financial Protection Bureau (CFPB) and other entities reached a \$185 million settlement with Wells Fargo after the discovery that employees in the Community Banking division had opened 1.5 million bank accounts and applied for almost 600,000 credit cards that may not have been authorized by customers.<sup>1</sup> Consumers who were scammed by Wells Fargo "were charged unexpected fees, received credit or debit cards in the mail that they did not request, or started hearing from debt collectors about accounts they did not recognize."<sup>2</sup>

This was not the work of a few rogue employees over the course of a few weeks. Wells Fargo had a long-standing, systemic problem created by stringent sales quotas and incentives imposed by senior management. According to the consent order with the CFPB, the creation of unauthorized accounts stretched back as far as 2011, and Wells Fargo has fired over 5,000 employees – 2% of its total workforce – for engaging in this conduct.<sup>3</sup> As CFPB Director Richard Cordray noted, "Wells Fargo built an incentive-compensation program that made it possible for its employees to pursue underhanded sales practices, and it appears that the bank did not monitor the program carefully."<sup>4</sup>

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

<sup>2</sup> Michael Corkery, *Wells Fargo Fined \$185 Million for Fraudulently Opening Accounts*, New York Times (Sept. 8, 2016), at <http://www.nytimes.com/2016/09/09/business/dealbook/wells-fargo-fined-for-years-of-harm-to-customers.html>.

<sup>3</sup> Consent Order, *In the Matter of Wells Fargo Bank, N.A.* (Sept. 8, 2016), ¶¶ 9-15, at [http://files.consumerfinance.gov/f/documents/092016\\_cfpb\\_WFBconsentorder.pdf](http://files.consumerfinance.gov/f/documents/092016_cfpb_WFBconsentorder.pdf).

<sup>4</sup> Prepared Remarks of Richard Cordray, Director of the Consumer Financial Protection Bureau, on the Wells Fargo Enforcement Action Press Call (Sept. 8, 2016), at <http://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-richard-cordray-director-consumer-financial-protection-bureau-wells-fargo-enforcement-action-press-call/>.

Ms. Tolstedt led the Community Banking division of the bank throughout the time this misconduct was occurring. In that role, she was ultimately responsible for the design and monitoring of the incentive program for Community Banking employees. She was also rewarded with more than \$20 million in annual bonuses between 2010 and 2015,<sup>5</sup> which Wells Fargo publicly justified in certain instances by noting the “strong cross-sell ratios” her division had achieved. That is a direct reference to the extraordinary number of accounts created by her division, many of which were never authorized by customers.<sup>6</sup>

Ms. Tolstedt announced her retirement from the bank on July 12<sup>th</sup> of this year. Ms. Tolstedt retired at age 56, just two months before Wells Fargo entered into the settlement with the CFPB and other entities.<sup>7</sup> Her retirement triggered an even more lucrative reward: as much as \$125 million in stock options and restricted stock shares.<sup>8</sup>

In the aftermath of the 2008 financial crisis – a crisis that resulted in part from flawed incentive compensation policies at big banks<sup>9</sup> – Wells Fargo instituted what the company described as “strong recoupment and clawback policies ... designed so that incentive compensation awards to our named executives encourage the creation of long-term, sustainable performance, while at the same time discourage our executives from taking imprudent or excessive risks that would adversely impact the Company.”<sup>10</sup> In other words, these clawback provisions are designed to prevent exactly what happened with Ms. Tolstedt: shareholders and consumers bearing the burden of bank misconduct while senior executives walk away with multi-million dollar awards based on what the company later finds out are fraudulent practices.

There appear to be multiple grounds on which to trigger the clawback provisions to recoup some or all of Ms. Tolstedt’s incentive rewards. According to the clawback policy, certain types of compensation can be recouped by the Board of Directors’ Human Resources Committee if, among other reasons:

- “Incentive compensation was based on materially inaccurate financial information, whether or not the executive was responsible”;

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<sup>5</sup> “Carrie Tolstedt,” at <http://executives.findthecompany.com/1/28910/Carrie-L-Tolstedt> (last accessed Sept. 15, 2016).

<sup>6</sup> Stephen Gandel, *Wells Fargo Exec Who Headed Phony Accounts Unit Collected \$125 Million*, *Fortune* (Sept. 12, 2016), at <http://fortune.com/2016/09/12/wells-fargo-cfpb-carrie-tolstedt/>.

<sup>7</sup> Wells Fargo’s Carrie Tolstedt to Retire at Year’s End (July 12, 2016), at [https://www.wellsfargo.com/about/press/2016/tolstedt-to-retire\\_0712/](https://www.wellsfargo.com/about/press/2016/tolstedt-to-retire_0712/).

<sup>8</sup> Stephen Gandel, *Wells Fargo Exec Who Headed Phony Accounts Unit Collected \$125 Million*, *Fortune* (Sept. 12, 2016), at <http://fortune.com/2016/09/12/wells-fargo-cfpb-carrie-tolstedt/>. Other estimates have placed the value of these stock options at \$95 million. See Matthew J. Belvedere, *If Ever There’s a Case for Clawbacks, Wells Fargo Is It: Ex-FDIC Chair* (Sept. 14, 2016), at <http://www.cnbc.com/2016/09/13/if-ever-theres-a-case-for-clawbacks-wells-fargo-is-it-ex-fdic-chair.html>.

<sup>9</sup> Financial Crisis Inquiry Commission, *The Financial Crisis Inquiry Report* (Jan. 2011), at 63, available at [http://fcic-static.law.stanford.edu/cdn\\_media/fcic-reports/fcic\\_final\\_report\\_full.pdf](http://fcic-static.law.stanford.edu/cdn_media/fcic-reports/fcic_final_report_full.pdf).

<sup>10</sup> Wells Fargo & Company, 2016 Proxy Statement (Mar. 16, 2016), at 47, available at <https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/annual-reports/2016-proxy-statement.pdf>.

- “Misconduct” has occurred “which has or might reasonably be expected to have reputational harm to the company;”
- “Misconduct” causes “significant financial or reputational harm to the Company;”
- There was “improper or grossly negligent failure, including in a supervisory capacity, to identify, escalate, monitor, or manage, in a timely manner and as reasonably expected, risks material to the Company”; or
- “An award was based on materially inaccurate performance metrics.”<sup>11</sup>

Any of these triggers – plus others in the company clawback policy – would appear to apply to Ms. Tolstedt’s awards. As former Federal Deposit Insurance Corporation Chair Sheila Bair recently said, “If you’re going to use clawbacks, this would be the situation.”<sup>12</sup>

We are therefore asking you provide us with the following information.

1. Will Wells Fargo take action to claw back any or all parts of Ms. Tolstedt’s incentive awards that were triggered by her retirement or that she received in the form of annual bonuses in any prior years?
2. Will Wells Fargo take action to claw back any or all parts of any other senior executive’s incentive compensation – including your own – as a result of the settlement with the CFPB and other entities?
3. Has Wells Fargo conducted any internal assessment of whether the clawback triggers created in 2013 and described in Wells Fargo’s proxy statements apply to Ms. Tolstedt’s incentive compensation that were triggered by her retirement, or that she received in 2016 or earlier years for any reason? Has the Human Resources Committee conducted such an analysis? If so, please provide us with a copy of this assessment.
4. Were you or any other Wells Fargo senior executives aware of the company’s potential liability for the creation of the false consumer accounts prior to Ms. Tolstedt’s decision to retire? Were these matters discussed by you, by the Board of Director’s Executive Compensation Committee, or by any other company officials in the context of the timing of her retirement or the compensation that she would receive as part of her retirement package? If so, please provide all communications regarding these discussions.

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<sup>11</sup> Id. at 47-48.

<sup>12</sup> Matthew J. Belvedere, *If Ever There’s a Case for Clawbacks, Wells Fargo Is It: Ex-FDIC Chair* (Sept. 14, 2016), at <http://www.cnbc.com/2016/09/13/if-ever-theres-a-case-for-clawbacks-wells-fargo-is-it-ex-fdic-chair.html>.


5. Although Ms. Tolstedt has announced her retirement, she plans to stay at the bank through the end of the year. Will Ms. Tolstedt be eligible for another annual incentive award, performance share award, or other long-term equity incentive award despite her announced retirement? If so, does the Board plan on offering Ms. Tolstedt such compensation?

We ask that you provide this information by Monday, September 19, so that we can address this issue at the Banking Committee hearing on Tuesday, September 20.

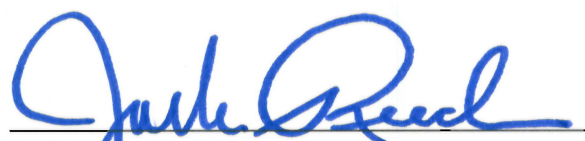
Sincerely,



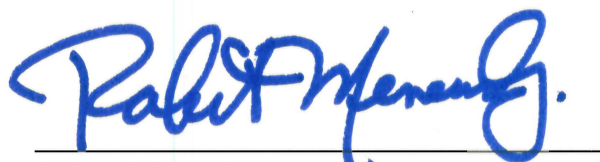
Elizabeth Warren  
United States Senator



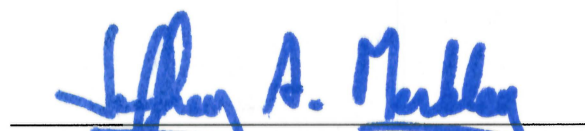
Sherrod Brown  
United States Senator



Jack Reed  
United States Senator



Robert Menendez  
United States Senator



Jeff Merkley  
United States Senator

Cc: Members of the Wells Fargo Board's Human Resources Committee

Lloyd H. Dean (Chair)  
John S. Chen  
Susan E. Engel  
Donald M. James  
Stephen W. Sanger