

Congress of the United States

Washington, DC 20510

June 14, 2022

The Honorable Michael Hsu
Acting Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th St. SW
Washington, DC 20219

Dear Acting Comptroller Hsu,

We write regarding a disturbing May 4, 2022 *Capitol Forum* report about unchecked fraud and abuse at TD Bank, which is currently seeking approval for a \$13.4 billion bid for First Horizon.¹ The report indicates that TD Bank's behavior, incentivized by a "points system" that rewarded employees for placing profits over fair service for consumers and included the creation of enrollment of customers in new accounts and services like overdraft protection without their permission.² The report also indicates that a 2016-2017 investigation by the Office of the Comptroller of the Currency (OCC) initially detected this misconduct, but that President Trump's Acting Comptroller Keith Noreika swept it under the rug and allowed TD Bank to avoid accountability.³ As TD Bank seeks approval from your agency to increase their market share and become the sixth-largest bank in the U.S.,⁴ the OCC should closely examine any ongoing wrongdoing and block any merger until TD Bank is held responsible for its abusive practices.

In 2016, Wells Fargo was accused of creating millions of accounts for their customers without their consent or knowledge, leading to billions paid in civil and criminal probes, the resignation of Wells Fargo CEO John Stumpf, and the imposition of a growth cap by the Federal Reserve.⁵ The new report found that TD Bank uses similar tactics, which were uncovered in the OCC's industrywide probe following the revelations about Wells Fargo practices.⁶ TD Bank used a point system that incentivized employees to open as many accounts and push as many customers

¹ Capitol Forum, "TD Bank/First Horizon: Faulty Accounts Didn't Draw Fines From Trump Officials; Workers Say Suspect Practices Persist As Deal Approvals Sought," May 4, 2022, <https://thecapitolforum.com/td-bank-first-horizon-faulty-accounts-didnt-draw-fines-from-trump-officials-workers-say-suspect-practices-persist-as-deal-approvals-sought/>.

² *Id.*

³ *Id.*

⁴ Reuters, "Sullivan & Cromwell, Simpson Thacher guide TD Bank's First Horizon acquisition," Chinekwu Osakwe, February 28, 2022, <https://www.reuters.com/legal/transactional/sullivan-cromwell-simpson-thacher-guide-td-banks-first-horizon-acquisition-2022-02-28/>.

⁵ NPR, "Wells Fargo CEO John Stumpf Resigns Amid Scandal," Richard Gonzales, October 12, 2016, <https://www.npr.org/sections/thetwo-way/2016/10/12/497729371/wells-fargo-ceo-john-stumpf-resigns-amid-scandal>; Forbes, "Wells Fargo Forced To Pay \$3 Billion For The Bank's Fake Account Scandal," Jack Kelly, February 24, 2020, <https://www.forbes.com/sites/jackkelly/2020/02/24/wells-fargo-forced-to-pay-3-billion-for-the-banks-fake-account-scandal/?sh=111f3f8242d2>.

into overdraft protection as possible, threatening employees with lost bonuses or even firings if goals were not met.⁷ According to former TD Bank employees, the system also led to bank employees opening accounts in consumers' names even after the consumer declined – and even reporting account fraud or “fictitious problems” to consumers to encourage them to open up even more accounts.⁸

The OCC's 2017 investigation found that TD Bank was “one of a handful of retail financial institutions that had systemic problems in its account opening, verification and sales processes” and that its “problematic account practices stretched across retail branches from Maine to Florida.”⁹ But under former Acting Comptroller Noreika – who had previously represented TD Ameritrade, Wells Fargo, and other major financial institutions in lawsuits prior to serving as Acting Comptroller and represented TD Bank after leaving the OCC¹⁰ the OCC failed to issue a fine or even require public disclosure of these practices.¹¹ Instead, according to the *Capitol Forum* report, the agency opted to handle the problems as a “Matter Requiring Attention,” a private reprimand that would not materially impact TD Bank's business practices.¹²

The *Capitol Forum* report indicated that TD Bank employees revealed in May that these practices persist.¹³ According to employees, “the company still expects its branch workers to nudge customers into accounts, cards and loans that they don't need” and to “strong-arm customers into signing up for overdraft protection, earning bonus points for every new account that carries the service.”¹⁴

The OCC's decision under Mr. Noreika to allow TD Bank's rampant fraud and abuse to go unpunished, even after the agency's troubling findings in its own investigation of the bank, has the potential to undermine the OCC's authority and put consumer finances at risk.¹⁵ The Biden Administration has previously stated its intentions to review regulations governing big bank mergers, and you have previously called for further public participation in the process.¹⁶

⁶ Capitol Forum, “TD Bank/First Horizon: Faulty Accounts Didn't Draw Fines From Trump Officials; Workers Say Suspect Practices Persist As Deal Approvals Sought,” May 4, 2022, <https://thecapitolforum.com/td-bank-first-horizon-faulty-accounts-didnt-draw-fines-from-trump-officials-workers-say-suspect-practices-persist-as-deal-approvals-sought/>.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ The Intercept, “SWAMP WATCH: TRUMP'S TOP BANKING REGULATOR HEADS BACK TO HIS WALL STREET CLIENTS,” David Dayen, January 9, 2018, <https://theintercept.com/2018/01/09/keith-noreika-occ-trump-simpson-thacher/>.

¹¹ Capitol Forum, “TD Bank/First Horizon: Faulty Accounts Didn't Draw Fines From Trump Officials; Workers Say Suspect Practices Persist As Deal Approvals Sought,” May 4, 2022, <https://thecapitolforum.com/td-bank-first-horizon-faulty-accounts-didnt-draw-fines-from-trump-officials-workers-say-suspect-practices-persist-as-deal-approvals-sought/>.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ The Intercept, “SWAMP WATCH: TRUMP'S TOP BANKING REGULATOR HEADS BACK TO HIS WALL STREET CLIENTS,” David Dayen, January 9, 2018, <https://theintercept.com/2018/01/09/keith-noreika-occ-trump-simpson-thacher/>.

¹⁶ Bloomberg Law, “Bank Mergers Face More Public Hearings, Scrutiny Under Biden,” Evan Weinberger, May 24, 2022, <https://news.bloomberglaw.com/banking-law/bank-mergers-face-more-public-hearings-scrutiny-under-biden>.

Accordingly, the OCC should act to rebuild public trust by (1) releasing the results of the 2017 investigation into TD Bank, (2) reviewing the decision to forego penalties and treat TD Bank's behavior only as a "Matter Requiring Attention;" and (3) preventing TD Bank from consolidating any new mergers until this pattern of behavior is addressed.

Thank you for your attention to this matter.

Sincerely,



Elizabeth Warren
United States Senator



Katie Porter
Member of Congress



Jesús G. "Chuy" García
Member of Congress



Al Green
Member of Congress