III. *"Learning from the Past, Transforming for the Future"*[1]*: The December 2018 Wells Fargo Settlement and Its Implications for the Future of the Bank*

A. Introduction

On December 28, 2018, the Attorneys General of all fifty states and the District of Columbia (Attorneys General) announced a $575 million settlement (Settlement) with Wells Fargo & Company (Wells Fargo, Bank) to resolve various lingering misconduct allegations regarding many of the Bank's practices over the past decade.[2] In addition to the monetary payment, Wells Fargo must identify all impacted customers, provide full remediation, and implement procedures to address and review consumer complaints regarding the alleged misconduct.[3] The Settlement marks the latest in a series of financial penalties and regulatory orders imposed on the Bank in recent times; in 2016, Wells Fargo was hit with a $185 million penalty from the Consumer Financial Protection Bureau (CFPB) (2016 Penalty) after investigators identified a scandal in which the Bank's employees had fraudulently opened over two million credit card and checking accounts without customer consent (Scandal).[4] The Bank faced more misconduct allegations throughout 2017 and 2018, triggering additional scrutiny from the CFPB, the Office of the

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[1] The title of this article is adapted from the title of Wells Fargo's Business Standards Report, released in January 2019. *See* WELLS FARGO & CO., LEARNING FROM THE PAST, TRANSFORMING FOR THE FUTURE (2019) (hereinafter Business Standards Report) (discussed *infra* Part D).

[2] Imani Moise, *Wells Fargo to Pay $575 Million in Settlement with U.S. States*, REUTERS (Dec. 28, 2018, 12:02 PM), https://www.reuters.com/article/us-wells-fargo-settlement-idUSKCN1OR19Q [https://perma.cc/62KD-ZQGD].

[3] Wells Fargo Settlement Agreement 9–11 (Dec. 28, 2018), available at https://www.iowaattorneygeneral.gov/media/cms/Wells_Fargo__Final_Executed_Settlem_86A203B7AEC89.pdf [https://perma.cc/6D8J-GE3E] (hereinafter Settlement Agreement).

[4] Bill Chappell, *Wells Fargo Fined $185 Million over Creation of Fake Accounts for Bonuses*, NPR: THE TWO-WAY, (Sept. 8, 2016, 1:02 PM), https://www.npr.org/sections/thetwo-way/2016/09/08/493130449/wells-fargo-to-pay-around-190-million-over-fake-accounts-that-sparked-bonuses [https://perma.cc/77XD-6AZW].

Comptroller of the Currency (OCC), and the Department of Labor.[5] All of these fines and penalties were followed by a cease and desist order in early 2018 from the Federal Reserve, which capped the Bank's total asset size as of the end of 2017 and prohibited it from growing further until it made significant improvements to its corporate governance program.[6] In total, Wells Fargo has incurred over $2 billion in fines and penalties over the past two years related to the Scandal and its aftermath.[7] As these regulatory actions have unfolded, Wells Fargo has attempted to re-brand itself with an apologetic public relations campaign emphasizing its core values and ethics.[8] Despite the

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[5] *See* Emily Glazer, *Wells Fargo Employees Altered Information on Business Customers' Documents*, WALL ST. J. (May 17, 2018, 9:36 AM), https://www.wsj.com/articles/wells-fargo-employees-altered-information-on-business-customers-documents-1526564170 (describing OCC investigation into Wells Fargo employees altering customer forms in violation of anti-money laundering laws); Gretchen Morgenson & Emily Glazer, *Wells Fargo's 401(k) Practices Probed by Labor Department*, WALL ST. J. (Apr. 26, 2018, 12:03 PM), https://www.wsj.com/articles/wells-fargos-401-k-practices-probed-by-labor-department-1524757138 (discussing investigations by the Department of Labor into whether Wells Fargo pushed participants in low-cost 401(k) plans to shift their funds into more expensive individual retirement accounts); Patrice Hendriksen, *CFPB and OCC Settle with National Bank for $1 Billion Over Auto and Mortgage Lending Practices*, GOODWIN PROCTER LLP: CONSUMER FIN. ENFORCEMENT WATCH (Apr. 21, 2018), https://www.enforcementwatch.com/2018/04/21/cfpb-and-occ-settle-with-national-bank-for-1-billion-over-auto-and-mortgage-lending-practices/ [https://perma.cc/Y2X6-X2DX] (outlining OCC and CFPB consent orders alleging that Wells Fargo violated Section 5 of the Federal Trade Commission Act and engaged in unfair, deceptive and abusive acts and practices).

[6] *See* Press Release, Bd. of Governors of the Fed. Reserve Sys., 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 (Feb. 2, 2018) (on file with the Federal Reserve), https://www.federalreserve.gov/newsevents/ pressreleases/ enforcement20180202a.htm [https://perma.cc/U8U9-9L7S] [hereinafter Fed Press Release] ("Until the firm makes sufficient improvements, it will be restricted from growing any larger than its total asset size as of the end of 2017.").

[7] Moise, *supra* note 2.

[8] Wayne Thompson, *New Brand Platform: Wells Fargo Building a 'Better' Company Every Day*, WELLS FARGO STORIES: INSIDE THE STAGECOACH (Apr. 17, 2017) https://stories.wf.com/new-brand-platform-wells-fargo-building-

new corporate image Wells Fargo has attempted to cultivate, whether it can move past its less-than-savory history as it works to adhere to various regulatory orders and restore customer trust remains to be seen.

This article will examine in detail the Settlement's allegations against and impositions on Wells Fargo, with an emphasis on ramifications for the Bank's future. Section B provides a succinct background of the alleged activities perpetrated by Wells Fargo and the penalties and orders levied by U.S. financial regulators prior to the Settlement.[9] Section C then reviews the Settlement in detail, framing it in the context of prior regulatory actions against the Bank. Section D discusses the future of Wells Fargo, taking into account its financial prospects, public opinion, and political pressures stemming from the Settlement. Section E provides a brief conclusion.

B. Background

1. The Fake Accounts Scandal and Initial Regulatory Response

On September 8, 2016, the CFPB announced it had issued a consent order (2016 CFPB Order) and imposed a $100 million fine on Wells Fargo Bank, N.A. as a result of the "widespread illegal practice of secretly opening unauthorized deposit and credit card accounts."[10]

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better-company-every-day/ [https://perma.cc/Y65S-3356] (announcing a "new integrated marketing campaign" highlighting the Bank's efforts to address issues revealed during the Scandal).

[9] The Scandal and resulting aftermath have been extensively documented in this Journal. *See e.g.*, Julia E. Class, *Together We'll Go Far . . . Away from Court: The Wells Fargo Scandal and the Limits of Its Mandatory Arbitration Agreements*, 37 REV. BANKING & FIN. L. 927 (2018) (discussing Wells Fargo's use of arbitration provisions to force customers impacted by the Scandal to resolve their claims via arbitration); Catherine Gallagher Fauver, *The Long Journey to "Adequate": Wells Fargo's Resolution Plan*, 36 REV. BANKING & FIN. L. 647 (2017) (mentioning the impact of the fake accounts scandal on Wells Fargo's "living will" required by Dodd-Frank); Merric Kaufman, *"Lions Hunting Zebras": The Wells Fargo Fake Accounts Scandal and its Aftermath*, 36 REV. BANKING & FIN. L. 434 (2017) (providing a play-by-play overview of the Scandal and its aftermath).

[10] Press Release, Consumer Fin. Prot. Bureau, Consumer Financial Protection Bureau Fines Wells Fargo $100 Million for Widespread Illegal Practice of Secretly Opening Unauthorized Accounts (Sept. 8, 2016), https://www.

Specifically, the CFPB determined that Wells Fargo employees had opened up to 1,534,280 deposit accounts and 565,443 credit card accounts without customer authorization.[11] Eight-five thousand of these deposit accounts incurred aggregate fees of $2 million, while 14,000 unauthorized credit card accounts incurred aggregate fees of $403,145, all charged to unwitting customers.[12] Additionally, Wells Fargo employees enrolled thousands of customers in online banking services and debit card programs without their consent.[13] After determining that Wells Fargo had violated Sections 1031 and 1036(a)(1)(B) of the Consumer Financial Protection Act of 2010 (CFPA), the CFPB mandated full remediation of impacted customers and payment of a $100 million fine to the CFPB, as well as $35 million to the OCC and $50 million to the City and County of Los Angeles.[14]

The outbreak of the Scandal and resulting regulatory response led to flurry of soul-searching and internal inquiry at the Bank, culminating in the April 2017 release of a 113-page "Sale Practices Investigation Report" undertaken by the independent directors on Wells Fargo's Board with the assistance of the law firm Shearman & Sterling.[15] The report identified the root cause of the employee misconduct as stemming from aggressive sales management goals and

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consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-fines-wells-fargo-100-million-widespread-illegal-practice-secretly-opening-unauthorized-accounts/ [https://perma.cc/BH8H-5AFR] (hereinafter "2016 CFPB Announcement").

[11] Wells Fargo Bank, N.A., CFPB No. 2016-CFPB-0015 para. 16 (2016) (hereinafter "2016 CFPB Order") ("Respondent's analysis concluded that its employees opened 1,534,280 deposit accounts that may not have been authorized and that may have been funded through simulated funding, or transferring funds from consumers' existing accounts without their knowledge or consent. That analysis determined that roughly 85,000 of those accounts incurred about $2 million in fees . . . .").

[12] *Id.* at 7.

[13] *Id.* at 1.

[14] *See* 2016 CFPB Order, *supra* note 11, at 1; 2016 CFPB Announcement, *supra* note 10.

[15] *See* INDEP. DIRS. OF THE BD. OF WELLS FARGO & CO., SALES PRACTICES INVESTIGATION REPORT (2017), https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/presentations/2017/board-report.pdf [https://perma.cc/N78G-DWCY] (hereinafter Shearman & Sterling Report).

decentralized corporate control functions.[16] The report also criticized inaction on the part of the Bank's Board of Directors (Board), highlighting its failure to centralize the corporate risk function, pursue aggressive monitoring and inquiry into reported sales-related misconduct, and advocate for a change in leadership of Wells Fargo Community Bank.[17] During the Scandal's fallout, both CEO John Stumpf and Head of Community Bank Carrie Toldstedt resigned and had millions in equity compensation clawed back; the Board also terminated four other Community Bank officers on top of the nearly 5,300 front-line employees fired between 2011 and 2016.[18] Despite widespread negative press and intense opposition from proxy advisors like Institutional Shareholder Services and large pension funds like Calpers, the entire fifteen-member Board survived a contentious shareholder re-election in 2017, with some members only squeaking by with barely over fifty percent of the vote.[19] However, the makeup of the Board shifted significantly as several members resigned at the end of 2017, and former Federal Reserve Board Governor Elizabeth Duke took over as chairperson.[20]

2. *Additional Misconduct*

Throughout 2017 and 2018, Wells Fargo attempted to put the Scandal behind it by making several high-profile organizational, operational, and governance changes while rolling out a slick, multi-

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[16] *Id.* at 4–8 (discussing a Wells Fargo Community Bank internal culture characterized by aggressive sales goals, de-centralized risk management, and excessive deference to leadership).

[17] *Id.* at 16–17 (concluding that the Board's performance "could have been improved in [those] three respects.").

[18] *Id.* at 8–10, 16.

[19] *See* Stacy Cowley, *Wells Fargo Shareholders Tepidly Re-elect Bank's Directors*, N.Y. TIMES (Apr. 25, 2017), https://www.nytimes.com/2017/04/25/business/dealbook/wells-fargo-board.html (reviewing the outcome of Wells Fargo's shareholder Board vote); Ross Kerber & Dan Freed, *High-stakes Vote on Wells Fargo Board also Tests Proxy Adviser ISS*, REUTERS (Apr. 21, 2017, 1:08 AM), https://www.reuters.com/article/us-wells-fargo-accounts-proxies-idUSKBN17N0DV [https://perma.cc/H69Y-D92G].

[20] *See* Stacy Cowley, *Wells Fargo Vice Chairwoman to Succeed Departing Chairman*, N.Y. TIMES (Aug. 15, 2017), https://www.nytimes.com/2017/08/15/business/dealbook/wells-fargo-board-elizabeth-duke.html (discussing the elevation of Elizabeth Duke to chairperson and the retirement of several other Board members).

faceted public relations campaign.[21] The Bank also reached a broad $142 million class-action settlement designed to resolve customer complaints pertaining to the Scandal.[22] Despite these efforts, more allegations and negative press continued to emerge at the Bank in 2018.[23] On February 2, the Federal Reserve issued Wells Fargo a cease and desist order, capping the firm's total asset size until the Bank took affirmative steps to shore up its risk management and corporate governance practices.[24] In the order, the Federal Reserve laid out a series of effectiveness standards related to Board oversight of corporate risk management and the functionality of operational risk management.[25] Just a month later, the Bank announced the departure of four additional Board members.[26] That same week, the Chair of the Federal Reserve publicly stated that Wells Fargo would have its growth limited for a "significant period."[27]

Though the Federal Reserve order did not include any direct monetary penalties, Wells Fargo incurred a series of expensive

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[21] *See* Thompson, *supra* note 8; discussion *infra* Part D (outlining subsequent public relations efforts by the Bank).

[22] *See* David Ng, *Judge Approves $142-Million Class-Action Settlement in Wells Fargo Sham Accounts Scandal*, L.A. TIMES (Jul. 9, 2017, 3:40 PM), https://www.latimes.com/business/la-fi-wells-fargo-settlement-20170709-story.html.

[23] *See, e.g.*, Glazer, *supra* note 5; Morgenson & Glazer, *supra* note 5.

[24] *See* Fed Press Release, *supra* note 6 ("[T]he Board's consent cease and desist order with Wells Fargo requires the firm to improve its governance and risk management processes, including strengthening the effectiveness of oversight by its board of directors."). *See also* Order to Cease and Desist Issued Upon Consent Pursuant to the Federal Deposit Insurance Act, Docket No. 18-007-B-HC (Feb. 2, 2018), https://www.federalreserve.gov/newsevents/pressreleases/files/enf20180202a1.pdf [https://perma.cc/CB7H-4BQA] (hereinafter Cease & Desist Order) (restricting the firm's total asset size to what it reported as of December 31, 2017, until certain criteria are met).

[25] *See* Cease & Desist Order, *supra* note 24, at 4–7 (requiring Wells Fargo to submit a written plan detailing action steps to be taken to address deficiencies in the Bank's risk management, corporate governance, and Board oversight mechanisms).

[26] Stacy Cowley, *Four Directors Will Leave Wells Fargo's Board*, N.Y. TIMES (Mar. 2, 2018), https://www.nytimes.com/2018/03/02/business/wells-fargo-board-members.html.

[27] *Id.* ("The new Fed chairman, Jerome H. Powell, said on Thursday that the regulator 'will not lightly lift' the restrictions on Wells Fargo. The company should expect to have its growth constrained for a 'significant period,' Mr. Powell said at a Senate Banking Committee hearing.").

settlements and fines throughout the remainder of 2018.[28] In April, the CFPB and OCC announced consent orders against the Bank totaling $1 billion, alleging misconduct involving force-placed insurance on auto loans and mortgage-interest-rate-lock extension fees, two products investigated as part of the Settlement.[29] The CFPB found the Bank had committed unfair acts and practices in violation of Sections 1031(c) and 1036(a)(1)(B) of the CFPA and mandated extensive remediation and compliance procedures in addition to a $500 million civil penalty.[30] The OCC found significant deficiencies in the Bank's "enterprise-wide compliance risk management program" amounting to unsafe or unsound practices in violation of Section 5 of the Federal Trade Commission Act and also hit Wells Fargo with a $500 million penalty.[31] Just one month later, in May, Wells Fargo reached a $480 million settlement in a class-action securities fraud lawsuit stemming from the Scandal.[32] Two months later, in August, the Department of Justice announced a $2.09 billion settlement with Wells Fargo related to residential mortgage loan fraud between 2005 and 2007.[33] Finally,

[28] *See infra* notes 29–33 and accompanying text (outlining each individual settlement, penalty, and fine).
[29] *See* Hendriksen, *supra* note 5 (outlining OCC and CFPB consent orders alleging that Wells Fargo violated Section 5 of the Federal Trade Commission Act and engaged in unfair, deceptive and abusive acts and practices); discussion *infra* Section C (reviewing the Settlement's findings regarding force-placed insurance on auto loans and mortgage-interest-rate-lock extension fees). *See generally* Wells Fargo Bank, N.A., CFPB No. 2018-BCFP-0001 (2018) (hereinafter 2018 CFPB Order); Wells Fargo Bank, N.A., OCC No. AA-EC-2018-16 (2018) (hereinafter 2018 OCC Order).
[30] *See* 2018 CFPB Order, *supra* note 29, at paras. 26, 39–59 (defining an unfair act or practice as "one that causes or is likely to cause substantial injury to consumers that is not reasonably avoidable and is not outweighed by countervailing benefits to consumers or competition" and laying out extensive remediation and compliance requirements for the Bank).
[31] *See* 2018 OCC Order, *supra* note 29, at 1, 5.
[32] *See* James F. Peltz, *Wells Fargo Agrees to Pay $480 Million to Settle Securities-Fraud Lawsuit over Fake Accounts*, L.A. TIMES (May 4, 2018, 4:15 PM), https://www.latimes.com/business/la-fi-wells-fargo-settlement-20180504-story.html.
[33] *See* Press Release, U.S. Dep't. of Justice, Wells Fargo Agrees to Pay $2.09 Billion Penalty for Allegedly Misrepresenting Quality of Loans Used in Residential Mortgage-Backed Securities (Aug. 1, 2018), https://www.justice.gov/opa/pr/wells-fargo-agrees-pay-209-billion-penalty-allegedly-misrepresenting-quality-loans-used [https://perma.cc/99D6-HM33] (discussing the Bank's systemic misrepresentation of mortgage loan quality in the

just two months before the Settlement, another round of regulatory scrutiny, this time from the OCC, resulted in the Bank suspending two senior executives.[34]

C. The Settlement Agreement

1. *Investigation Findings*

In the lead up to the Settlement, investigators dug into several product lines at Wells Fargo, including checking and savings accounts, credit cards, and online bill-pay.[35] Additionally, they reviewed sales practices involving renters and term-life insurance products offered by various insurance companies but marketed and sold by Wells Fargo Community Bank employees.[36] Finally, the investigation also covered miscellaneous auto insurance products, including "Collateral Protection Insurance" and "Guaranteed Asset/Auto Protection," as well as mortgage-interest-rate-lock extension fees charged by Wells Fargo's Home Mortgage Division.[37]

With regard to Wells Fargo's retail banking products, the Attorneys General found Community Bank employees carried out widespread abuses, including opening product accounts, transferring customer funds, and enrolling customers in bill-pay services, all without consent.[38] Altogether, over 3.5 million accounts and 528,000 online bill-pay enrollments may have resulted from these improper employee practices.[39] The Attorneys General also found that Community Bank employees submitted term life insurance policy applications and initial premium payments from customer checking and savings accounts without obtaining consent, while also making various mis-

lead up to the Financial Crisis and the resulting billions in losses that institutional investors suffered as a result of the fraud).

[34] *See* Emily Flitter, *Wells Fargo Suspends 2 Executives Amid Regulatory Review*, N.Y. TIMES (Oct. 24, 2018), https://www.nytimes.com/2018/10/24/business/wells-fargo-suspends-employees-sales.html.

[35] Settlement Agreement, *supra* note 3, at 1.

[36] *Id*.

[37] *Id.* at 2.

[38] *Id.* at 6 (discussing how the Wells Fargo sales and incentive compensation program spurred employees to undertake improper sales practices).

[39] *Id*.

representations regarding these referral products.[40] While cooperating with investigators, Wells Fargo identified over 6,500 such insurance policies.[41] Finally, the Attorneys General identified the Bank's sales goals and incentive compensation program as the primary factor which pressured employees to game the system fraudulently in an attempt to meet sales targets.[42]

Myriad misconduct issues also emerged in the Bank's Auto Insurance Division (Wells Fargo Auto). The Attorneys General found that the division "force-placed" collateral protection insurance (CPI) to Wells Fargo Auto finance customers if they failed to provide evidence of other insurance.[43] CPI carried an expensive annual premium and Wells Fargo Auto failed to properly monitor CPI customers, many of whom had sufficient insurance elsewhere and submitted complaints after cancelling or attempting to cancel CPI.[44] Altogether, approximately 850,000 auto finance customers were impacted by this auto-enrollment scheme.[45] The Attorneys General also found that Wells Fargo Auto failed to properly refund unearned portions of guaranteed asset/auto protection (GAP) insurance when customers paid off their financing arrangements early or cancelled their product.[46]

The Attorneys General alleged additional misconduct in the Wells Fargo Home Mortgage Division.[47] Wells Fargo offered mortgage borrowers the option to lock in a fixed interest rate while their loan application was pending; if the prospective borrower's loan did not close during the rate-lock period, Wells Fargo charged an exten-

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[40] *Id.* ("These policies either may have been opened without a Customer's consent, involved consensual employee gaming of the incentive compensation system, or involved a customer complaint of lack of consent . . . .").
[41] *Id*.
[42] *Id.*
[43] *Id.* (concluding that Wells Fargo failed to sufficiently monitor whether customers has existing insurance coverage before force-placing CIP).
[44] *Id.* at 7–8 ("Specifically, Wells Fargo Auto was required to cancel policies because the Auto Finance Customers maintained the necessary physical damage insurance, and therefore the CPI policies were unnecessary and duplicative for the entire CPI policy period . . . .").
[45] *Id.* at 8 ("Wells Fargo anticipates providing remediation totaling more than $385 million to approximately 850,000 identified accounts . . . .").
[46] *Id.* at 9.
[47] *Id.* at 9 (outlining specific misconduct in the Home Mortgage Division).

sion fee, unless the delay had been caused by the Bank itself.[48] Wells Fargo inconsistently applied this policy; as a result, over 110,000 borrowers may have been errantly charged extension fees.[49]

2. *Wells Fargo's Obligations Under the Settlement*

The Settlement imposed a series of corrective measures Wells Fargo must take, including: (i) identification and remediation of all impacted customers; (ii) creation and implementation of procedures for reviewing and responding to customer complaints and inquiries regarding the product lines identified in the Settlement; and (iii) establishment of a dedicated website, email address, and consumer response team to facilitate further follow-up by impacted customers.[50] The Bank must also provide regular status updates to the Attorneys General during the remediation process.[51] Finally, Wells Fargo must pay a $575 million penalty divided among the states and District of Columbia.[52]

Adding this significant penalty to the various other regulatory orders and legal settlements over the past two years, Wells Fargo has racked up over $2 billion in fines stemming from the Scandal since it broke in 2016—a hefty sum on paper.[53] However, those fines pale in comparison to the mammoth penalties many of the Bank's competitors have incurred since the Financial Crisis of 2008 (Financial Crisis): Citigroup, JPMorgan, and Bank of America each paid between $7 billion and $16.65 billion in recent years.[54] More pertinently, these fines appear inconsequential when compared to Wells Fargo's revenues and profit streams. To put the size of the Settlement's $575 million financial penalty into perspective, one need only look at Wells

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[48] *Id.* ("[I]f the mortgage loan did not close during the rate lock period and Wells Fargo caused the delay, Wells Fargo would extend the rate lock period without charging the Borrower a Rate Lock Extension Fee.").

[49] *Id.* ("Wells Fargo identified over 110,000 Borrowers that were charged Rate Lock Extension Fees during the effective time period . . . .").

[50] *Id.* at 10–11 (outlining the Bank's customer remediation requirements under the Settlement).

[51] *Id.* at 11 ("Wells Fargo will provide a report of ongoing remediation efforts . . . to the Attorneys General every six months . . . .").

[52] *Id.*

[53] Moise, *supra* note 2.

[54] BRIAN TAYAN, STANFORD UNIV. GRADUATE SCH. OF BUS. COR. GOVERNANCE RESEARCH INITIATIVE, THE WELLS FARGO CROSS-SELLING SCANDAL 11 (2018) (summarizing the aggregate fines incurred by several large, multinational banks post-Financial Crisis).

Fargo's financial performance over the past several years. Between the fourth quarter of 2012 and the first quarter of 2017, the Bank reported over $5 billion in profit *each quarter*, including the quarter after the 2016 Penalty.[55] It nevertheless rounded out 2017 with a tidy $22.1 billion in net income.[56] Prior to the Settlement in December 2018, Wells Fargo reported just over $6 billion in profits in the third quarter of 2018, with $22.4 billion in profits on top of $86.4 billion in revenues throughout all of 2018.[57] Although Wells Fargo stock underperformed in 2018 compared to its peers (dropping 24.5% against a 19.3% decline among major national and regional banks),[58] it rebounded slightly following the Settlement announcement and has remained stable since then.[59] Overall, the Settlement represents a modest drop in Wells Fargo's deep financial bucket. As a result, the question arises: will the Settlement serve as a sufficient deterrent to incentivize the Bank to continue to reform its internal culture, sales practices, and corporate governance?

D. The Future of Wells Fargo?

1. *Responses to the Settlement*

One month after the Settlement announcement, Wells Fargo released an extensive Business Standards Report (Report) acknowledging its errors while highlighting recent internal improvements implemented to "address[] [the] root causes" of the Scandal and other

[55] Geoff Colvin, *Inside Wells Fargo's Plan to Fix Its Culture Post-Scandal*, FORTUNE (June 11, 2017), http://fortune.com/2017/06/11/wells-fargo-scandal-culture/ [https://perma.cc/SN9D-W6BJ].

[56] Wells Fargo & Co., Exhibit 13 (Financials) of the 2017 Annual Report (Form 10-K) 41 (Mar. 1, 2018).

[57] Wells Fargo & Co., Quarterly Report (Form 10-Q) 2 (Nov. 6, 2018); Wells Fargo & Co., Exhibit 13 (Financials) of the 2018 Annual Report (Form 10-K) 46 (Feb. 27, 2019).

[58] Zacks Equity Research, *Wells Fargo Ends Sales Scandal Investigation with 50 States*, ZACKS INV. RES. (Dec. 31, 2018), https://www.zacks.com/stock/news/345100/wells-fargo-ends-sales-scandal-investigation-with-50-states [https://perma.cc/C3GB-VS7T].

[59] Wells Fargo's stock price was $45.78 on December 28, 2018 and has climbed gradually since then, to $50.55 by March 17, 2019. *See Wells Fargo & Co.*, MARKETWATCH, https://www.marketwatch.com/investing/stock/wfc (last visited Mar. 17, 2019).

associated misconduct.[60] The Bank released the Report in conjunction with a redesign of its company logo and a fresh public relations campaign entitled "This is Wells Fargo."[61] The 104-page document broadly covers the Bank's past challenges, current successes, and ongoing objectives, but most importantly functions as a straightforward corporate apology; in acknowledging the grave malfeasance of the Scandal, the Report bluntly states: "We are sorry that these errors occurred, have made changes to prevent them from happening again, and are remediating customers for financial harm."[62] These changes, nearly all of which were implemented prior to the Settlement, include the elimination of product sales goals for retail bank employees, overhauling of employee performance management and incentive programs, centralization of control functions such as Human Resources and Corporate Risk Management, realignment of business risk management and compliance structures, and restructuring of the Board's governance oversight, practices, and composition.[63]

Although Wells Fargo has gone to great lengths to address real and perceived deficiencies in its business practices, corporate oversight, and internal culture, the cavalcade of additional misconduct that emerged throughout 2017 and 2018 suggests that the Bank is not out of the woods yet. Though the Report is still young, some critics, like the Committee for Better Banks, a consumer advocacy and labor organization, have already attacked it as inadequate.[64] The Interfaith

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[60] *See* Business Standards Report, *supra* note 1, at 4.

[61] Deon Roberts, *After Scandals, Wells Fargo Unveils New Slogan, Refined Logo. See What it Looks Like.*, CHAR. OBSERVER (Jan. 24, 2019, 3:22 PM), https://www.charlotteobserver.com/news/business/banking/article225026785.html [https://perma.cc/J832-59QF]. *See* Press Release, Wells Fargo & Co., Wells Fargo Launches New Brand Campaign, 'This is Wells Fargo,' Focused on Customer Experience (Jan. 24, 2019), https://newsroom.wf.com/press-release/marketing-and-sponsorships/wells-fargo-launches-new-brand-campaign-wells-fargo [https://perma.cc/BJC2-7PHK].

[62] *See* Business Standards Report, *supra* note 1, at 63.

[63] *Id.* at 4. *See also* Kristin Broughton, *Wells Fargo Breaks Down Internal Audit Silos to Fend Off Scandals*, WALL ST. J. (Feb. 1, 2019, 5:49 PM), https://www.wsj.com/articles/wells-fargo-breaks-down-internal-audit-silos-to-fend-off-scandals-11549061368 (describing extensive changes made to the Bank's Internal Audit function, including a one-third increase in headcount since 2016).

[64] *See* Committee for Better Banks (@ForBetterBanks), TWITTER (Jan. 30, 2019, 2:30 PM), https://twitter.com/ForBetterBanks/status/ 1090693733358682112 [https://perma.cc/Q836-FVK7] ("We are skeptical about @WellsFargo's

Center on Corporate Responsibility, a shareholder advocacy organization which filed a 2018 resolution urging Wells Fargo to issue a comprehensive standards report,[65] acknowledged the Report as a positive step, but commented that "the company still has much work to do to redeem its credibility and restore customer trust."[66] Other observers have cynically noted that the release of a business standards report is a tried-and-true tactic that large financial institutions deploy when entangled in regulatory and public scrutiny.[67] However, at least one commentator has praised the Bank for its post-Scandal reforms, specifically with regard to changes in its internal audit division and risk management practices.[68]

'Business Standards Report' released today. We've heard from workers who also question Wells Fargo's commitment to fairness and transparency.").

[65] *See* Julie Wokaty, *Wells Fargo Agrees to Investor Demands for Report Detailing Root Causes of Ethical Lapses*, INTERFAITH CTR. ON CORP. RESP.: BLOGS (Mar. 6, 2018), https://www.iccr.org/wells-fargo-agrees-investor-demands-report-detailing-root-causes-ethical-lapses [https://perma.cc/9UZF-CCCL] (welcoming the Bank's announcement of work on the business standards report in response to ICCR's 2018 shareholder resolution). *See also* Gael O'Brien, *Where Wells Fargo Goes from Here*, BUS. ETHICS (Dec. 10, 2016), http://business-ethics.com/2016/12/10/where-wells-fargo-goes-from-here/ [https://perma.cc/5CM5-MZPN].

[66] Richard Craver, *Wells Fargo Releases Business Standards Report; Critics Not Won Over*, WINSTON-SALEM J. (Feb. 3, 2019), https://www.journalnow.com/business/wells-fargo-releases-business-standards-report-critics-not-won-over/article_2eb4b442-f370-589f-ad50-b3806a031198.html [https://perma.cc/S7XD-XKX4].

[67] *See* Caroline Hudson, *What Wells Fargo Standards Report Says About Bank's Post-Scandal Future*, CHAR. BUS. J. (Feb. 1, 2019, 2:35 PM), https://www.bizjournals.com/charlotte/news/2019/02/01/what-wells-fargo-standards-report-says-about-banks.html (outlining similar business standards reports released by Bank of America and JPMorgan Chase in 2014 and 2015).

[68] Richard Chambers, *Wells Fargo Further Empowers Internal Audit*, INTERNAL AUDITOR: BLOGS (Feb. 4, 2019), https://iaonline.theiia.org/blogs/chambers/2019/Pages/Wells-Fargo-Further-Empowers-Internal-Audit.aspx [https://perma.cc/X7Z6-6C3T] ("I am convinced that the changes undertaken by Wells Fargo — if embraced by management and nurtured by the board — will strengthen the organization and improve its risk management, governance, and control. If this happens, it may ultimately serve as a model for others to emulate.").

2. *Political Pressure on Wells Fargo*

Although no company wishes to suffer negative press coverage, public criticism and inquiries from prominent political figures can generate impacts more tangible than an embarrassing headline. In the aftermath of the Scandal, several high-profile politicians called for radical change at the Bank.[69] Senator Elizabeth Warren (D-Massachusetts) urged the Federal Reserve to invoke its authority to remove directors of bank holding companies pursuant to 12 U.S.C. § 1818(e) to sack twelve members of the Wells Fargo Board.[70] At least two Democratic members of the House of Representatives went further, calling explicitly for the breaking up of Wells Fargo.[71] Since the Settlement's release in December 2018, no politicians have explicitly attacked the agreement or the Report; however, the risk of political action persists, especially with the Democrats having retaken control of the House of Representatives.[72] In the days after the Settlement announcement, Senator Warren took to Twitter in a lengthy thread that documented various misconduct allegations levied against the Wells Fargo and repeated her call for the firing of CEO Tim Sloan.[73] Shortly after the 2018 midterm Congressional elections, Congresswoman Maxine Waters, now Chair of the House Financial Services Commit-

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[69] *See infra* notes 70–71and accompanying text (outlining the political attacks against Wells Fargo).

[70] *See* Letter from Senator Elizabeth Warren to Janet Yellen, Chair, Fed. Reserve Bd. of Governors 1, 4 (June 19, 2017), https://www.warren.senate.gov/files/documents/2017-6-19_Warren_Ltr_to_Fed.pdf [https://perma.cc/ZZ5C-S4Q6] (alleging the Board members violated Federal Reserve regulations and participated in unsafe and unsound practices).

[71] *See* Stephen Gandel, *This Congressman Wants Wells Fargo Broken Up*, FORTUNE (Sept. 28, 2016), http://fortune.com/2016/09/28/wells-fargo-broken-up/ [https://perma.cc/2WWU-7A4C]; Peter Schroeder, *Waters: I Want to Break Up Wells Fargo*, HILL (Sept. 29, 2016, 2:01 PM), https://thehill.com/policy/finance/298526-waters-i-want-to-break-up-wells-fargo [https://perma.cc/PE99-JEL5].

[72] *See* Jonathan Martin & Alexander Burns, *Democrats Capture Control of House; G.O.P. Holds Senate*, N.Y. TIMES (Nov. 6, 2018), https://www.nytimes.com/2018/11/06/us/politics/midterm-elections-results.html.

[73] *See* Elizabeth Warren (@SenWarren), TWITTER (Jan. 28, 2019, 9:01 AM), https://twitter.com/SenWarren/status/1089890010193629184 [https://perma.cc/P5ZQ-BBCM] ("I could go on but I don't need to: it's clear that Tim Sloan isn't the right person to try to clean up @WellsFargo. His hands are too dirty from overseeing years of scams and scandals.").

tee, called for further scrutiny of Wells Fargo's business practices, although she stopped short of re-asserting her earlier call to break up the Bank.[74] Although the political pressure on Wells Fargo has not reached the same fever pitch that emerged following the Scandal in 2016, one can imagine a future scenario where additional misconduct emerges, prompting a newly-empowered House Democratic majority to make an example of Wells Fargo.[75]

On March 12, 2019, the House Financial Services Committee had the opportunity to do just that when it called Sloan to testify about the Bank's repeated scandals and corporate governance and risk management reforms.[76] Sloan avoided any major missteps while testifying,[77] but came under fire after his testimony when news broke that he had received a five percent salary raise from 2017 to 2018.[78] In response, Congresswoman Waters issued a scathing indictment of Sloan's performance, stating: "Mr. Sloan shouldn't be getting a bonus,

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[74] *See* Jim Puzzanghera, *Maxine Waters to Take Aim at Wells Fargo and Deutsche Bank as New Head of House Financial Services Committee*, L.A. TIMES (Nov. 12, 2018, 1:05 PM), https://www.latimes.com/business/la-fi-maxine-waters-wells-fargo-trump-20181112-story.html.

[75] The reputational harm incurred by Wells Fargo as a result of the Scandal and its aftermath prompted the Bank's peers to preemptively distance themselves from the types of sales practices targeted by regulators lest they face similar political and regulatory scrutiny. *See, e.g.*, Kishanthi Parella, *Reputational Regulation*, 67 DUKE L.J. 907, 943 n.157 (2018) (describing precautionary actions taken by the Bank's competitors to "differentiate their practices from Wells Fargo's" following the Scandal as well as regulatory scrutiny into similar sales practices taking place at the Bank's peers).

[76] *See* Imani Moise & Pete Schroeder, *Wells Fargo CEO Avoids Major Stumble at Heated Congressional Hearing*, REUTERS (Mar. 12, 2019, 1:19 PM), https://www.reuters.com/article/wells-fargo-congress/wells-fargo-ceo-avoids-major-stumble-at-heated-congressional-hearing-idUSKBN1QT2B5 [https://perma.cc/4X8E-99W7].

[77] *Id.* ("While Sloan struggled to convince skeptical lawmakers that Wells Fargo has transformed its culture, he managed to navigate a hostile committee without a major stumble that would have compounded doubts about his leadership.").

[78] *See* Laura Stampler, *Wells Fargo CEO Got a 5% Pay Raise to $18.4 Million in Spite of Scandals*, FORTUNE (Mar. 14, 2019), http://fortune.com/2019/03/14/ wells-fargo-ceo-tim-sloan-5-percent-raise/ [https://perma.cc/2U9L-7UDX].

he should be shown the door."[79] Despite these harsh words, it remains unclear whether Congresswoman Waters or other members of Congress will go further and take concrete action against the Bank.

E. Conclusion

The Financial Crisis led to a series of internal corporate governance reforms at big banks and a more stringent regulatory scheme in the form of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, all designed to better protect consumers and ensure banks would move away from the high-flying, risk-taking culture that characterized the mid-2000s.[80] Wells Fargo arguably weathered the Financial Crisis far better than its peers, acquiring the distressed bank Wachovia in October 2008 for $15.1 billion without any support from the Federal Reserve.[81] In recent years, however, the Bank has found itself increasingly in the spotlight as it has struggled to rectify its internal culture and corporate governance issues that precipitated the Scandal, and satisfy various stakeholders who rightly objected to its actions.[82] Going forward, the Bank must meet numerous obligations under the consent orders and agreements reached over the past few years, including the Settlement, all while operating under

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[79] *See* Pete Schroeder (@peteschroeder), TWITTER (Mar. 14, 2019, 12:53 PM), https://twitter.com/peteschroeder/status/1106236900430544901 [https://perma.cc/Q5RY-23LX].

[80] *See* Brian R. Cheffins, *Financial Regulation and Comparative Corporate Governance*, 16 THEORETICAL INQUIRIES L. 1, 36–41 (2015) (chronicling post-Financial Crisis internal board reforms as a result of shareholder pressure and the demise of the celebrity CEO at large banks).

[81] *See see* Testimony of Scott G. Alvarez, Gen. Counsel, Bd. of Governors of the Fed. Reserve Sys., Before the Fin. Crisis Inquiry Comm'n, The Acquisition of Wachovia Corporation by Wells Fargo & Company (Sept. 1, 2010), https://www.federalreserve.gov/newsevents/testimony/alvarez20100901a.htm [https://perma.cc/X3R9-TUNC] ("The Federal Reserve did not provide any emergency financial assistance in connection with the Wells Fargo-Wachovia merger, nor was any financial assistance sought from the Federal Reserve as part of the Citigroup bid or either of the Wells Fargo bids."); *Wells Fargo to Buy Wachovia in $15.1 Billion Deal*, N.Y. TIMES: DEALBOOK (Oct. 3, 2008, 7:12 AM), https://dealbook.nytimes.com/2008/10/03/wells-fargo-to-merge-with-wachovia/ (outlining the details of the all-stock acquisition agreement).

[82] *See supra* Section B.II (discussing the Scandal, associated fall-out, and Wells Fargo's attempts to respond to all regulatory and public inquiries).

strict operational growth limitations set by the Federal Reserve.[83] Despite the release of its extensive Business Standards Report, whether Wells Fargo has truly "learn[ed] from the past" and "transform[ed] for the future" remains to be seen.[84]

Sam Burgess[85]

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[83] *See supra* Sections B.II, C.II (providing an overview of the Bank's obligations under the aforementioned consent orders and settlements).
[84] Business Standards Report, *supra* note 1.
[85] Student, Boston University School of Law (J.D. 2020).