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Too Big to Care: Promoting Ethics When Ethics Are Not Profitable

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[1] Accompanying teaching note not included in this version.

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Abstract

Beginning in 2002, Wells Fargo began opening fraudulent accounts for unsuspecting customers. Stakeholders at every level either participated in, ignored, or tolerated the bank's behavior that defrauded consumers on a massive scale. These unethical and well-documented schemes spanned more than a decade. Using public sources, this case recounts the events and ethical lapses that unfolded over the multiyear investigation of the Wells Fargo fraudulent accounts scandal and illuminates the general systemic failures of corporate culture and governance, public regulation, and market responses to promote ethical business practices. This case provides the opportunity to consider what means for fostering ethical conduct might exist if a corporation can be big enough and rich enough that civil, criminal, regulatory, and market forces cannot deter unethical corporate practices, and if the market does not punish the corporation for a culture that promotes fraud.

Keywords: business ethics, individual ethical norms, corporate ethical responsibility, ethical consumerism, Wells Fargo

1. Introduction

To meet intense pressure for increased sales, Wells Fargo and its employees began opening unauthorized accounts, issuing unauthorized credit cards, and writing unauthorized insurance policies for unsuspecting customers. From 2002 to 2009, millions of unauthorized accounts from hundreds of thousands of customers were generated and Wells Fargo profited richly. When finally caught, Wells Fargo evaded and dodged until lawsuits, government investigations, and internal audits made further obfuscation impossible. After its exposure in 2012 and subsequent years of investigation, enforcements, lawsuits, and public contrition, Wells Fargo suffered little more than temporary embarrassment from a decade of unethical and illegal behavior. The bank emerged in 2017 with a temporary asset cap on its trillions, two $500 million fines from two government agencies (the total fines were for additional fraudulent behavior in home and auto loans), and a few hundred million in settlements. It suffered no loss of market share, no significant loss of share price or equity, or no market consequence that would dissuade its practices. No executive or manager went to jail. Directors and all but a few executives kept their jobs. A fraction of its offending line employers and managers left or were fired, but so were more than a few of its whistleblowers. Its systems failed to prevent the fraud.

This case does not question whether Wells Fargo acted unethically. It did. Rather, the purpose of this case to examine how it acted unethically for so long, managed to evade accountability, and the failure of existing systems that did not dissuade the bad behavior. The bank, through its officers and directors, its management, and employees, might have intervened early on with self-discipline. The government may have attended to its responsibilities for oversight more closely, regulated the practices more precisely, and prosecuted those perpetrating the fraud more aggressively. If the market responded to promote ethical practice, Wells Fargo's competitors may have used the moment more competitively to claim its market share. Consumers and new clients could have removed their business and penalized Wells Fargo for its fraudulent practices. However, these legal and market forces have not been sufficient to deter unethical behavior, and consumers' preference to avoid disruption to the daily business of their lives appears to minimize their efforts to hold the bank accountable.

This leads to a significant dilemma. If a corporation can be big enough and rich enough that civil, criminal, regulatory, and market forces cannot deter unethical corporate practices, and if the market does not punish the corporation for a culture that promotes fraud, what means remain to encourage ethical development and change at a corporation too big to care? With this question in mind, we turn to the examination of the Wells Fargo case.

2. Wells Fargo Creates Millions of Fraudulent Accounts

The Long History of Misbehavior at Wells Fargo

In 2013, the egregious behavior of Wells Fargo, one of the largest financial institutions in the world, came under public scrutiny. The ensuing investigations revealed that from 2002 to 2009, Wells Fargo employees created up to 3.5 million unauthorized deposit and credit card accounts,[2] including more than 500,000 unauthorized credit card applications for existing bank customers.[3] These accounts generated substantial fees paid to the bank. By 2017, Wells Fargo agreed to refund customers $6.1 million in addition to hundreds of millions in settlements and fines, a slight fraction of its profits.[4] Table 1 provides a summary timeline to accompany this

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[2] Egan, M. (2017, August 31). Wells Fargo uncovers up to 1.4 million more fake accounts. *CNN Money*. Retrieved from http://money.cnn.com/2017/08/31/investing/wells-fargo-fake-accounts/index.html

[3] Koren, J. R. (2016, September 8). Wells Fargo to pay $185 million settlement for 'outrageous' sales culture. *Los Angeles Times*. Retrieved from http://www.latimes.com/business/la-fi-wells-fargo-settlement-20160907-snap-story.html

[4] Egan, M. (2017, August 31). Wells Fargo uncovers up to 1.4 million more fake accounts. *CNN Money*. Retrieved from http://money.cnn.com/2017/08/31/investing/wells-fargo-fake-accounts/index.html

narrative and discussion of the major events, the corporate practices, their exposure, and the bank's responses. As the story unfolds, consider the ethical behavior and decisions made by individuals within various stakeholder groups. How did individual judgements play a role in allowing the bank to thrive in spite of breached ethical standards?

[Insert Table 1 near here]

The "Gr-eight" initiative

In 1998, Wells Fargo merged with Norwest to leverage a larger customer base.[5] The following year it launched an ambitious initiative to increase sales; internally, this was the "Gr-eight" initiative.[6] Wells Fargo reported that retail customers held three accounts on average and that it hoped to increase that number to eight. Alongside this initiative was the rise of a banking executive who came to Wells Fargo through the Norwest merger, John Stumpf. At the time of the merger, Stumpf was regional president for Norwest Bank Texas. He had been instrumental in Norwest's acquisition of 30 banks in Texas, building $13 billion in total assets.[7] Following the merger, Stumpf led the newly formed Southwestern Banking Group, which included Texas, New Mexico, and Arizona. Stumpf continued to advance at Wells Fargo during the next decade, taking on greater regional and organizational responsibility. In 2007 Wells Fargo named Stumpf its CEO.[8]

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[5] Glazer, E. (2016, September 16). From 'gr-eight' to 'gaming,' a short history of Wells Fargo and cross-selling. *The Wall Street Journal*. Retrieved from https://blogs.wsj.com/moneybeat/2016/09/16/from-gr-eight-to-gaming-a-short-history-of-wells-fargo-and-cross-selling/

[6] The Wells Fargo fake account scandal: A timeline. *Forbes* (n.d.). Retrieved from https://www.forbes.com/pictures/fkmm45eegei/eight-is-great/#3bb96e053d6b

[7] John G. Stumpf Biography–Chairman, President, and CEO–Wells Fargo. (2012, December 13). Wellsfargo.com. Retrieved from https://web.archive.org/web/20121213150723/https://www.wellsfargo.com/about/corporate/executive_officers/stumpf

[8] Wells Fargo Chairman, CEO John Stumpf retires; Board of directors elects Tim Sloan CEO, director; Appoints Lead Director Stephen Sanger Chairman, Director Elizabeth Duke Vice *Chair*. (2016, October 12) Wells Fargo Newsroom. Retrieved from https://www.wellsfargo.com/about/press/2016/ceo-john-stumpf-retires_1012/

During this time, employees began to question certain sales practices. Notably, in 2007, a Wells Fargo employee who had been transferred from a branch after raising sales concerns addressed a letter to Stumpf that warned of widespread "unethical (and illegal) activity" and "routine deception and fraudulent exploitation of our clients."[9] The employee copied Stumpf on a second letter addressed to the directors' audit and examination committee that made similar warnings of "illegal and unethical activity and fraud…ongoing to this day."[10] Later that year, Wells Fargo revised its Sales Quality Manual to include a section on "Customer Consent," which stressed that employees must obtain a customer's "express consent and agreement," a phrase underlined and in bold in the manual, for every line of credit opened.[11] The manual also instructed employees that customers must "request issuance of a Business ATM/Check Card," and it cautioned that splitting a customer deposit into multiple accounts to boost incentive metrics is a "sales integrity violation."[12]

Conversely, Stumpf's mantra to employees, "Eight is Great," intensified the company-wide goal of getting eight Wells Fargo products into the hands of customers.[13] Employees struggled to enroll enough customers to meet these demanding quotas and satisfy bank managers. In spite of the admonition in the manual, managers and employees began opening or continued opening new deposit and credit card accounts for existing customers without their knowledge. These accounts charged additional fees to customers. Employees would transfer funds from

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[9] Egan, M. (2016, October 18). Letter warned Wells Fargo of 'widespread' fraud in 2007–exclusive. *CNN Money*. Retrieved from http://money.cnn.com/2016/10/18/investing/wells-fargo-warned-fake-accounts-2007/index.html
[10] Ibid.
[11] Egan, M. (2017, September 26). Wells Fargo workers: Fake accounts began years ago. *CNN Money*. Retrieved from http://money.cnn.com/2016/09/26/investing/wells-fargo-fake-accounts-before-2011/index.html
[12] Ibid.
[13] The Wells Fargo fake account scandal: A timeline. *Forbes* (n.d.). Retrieved from https://www.forbes.com/pictures/fkmm45eegei/eight-is-great/#3bb96e053d6b

customers' existing accounts into newly created accounts. The bank then would charge customers for overdrafts or insufficient funds remaining in their original accounts.[14]

A Few Employees Speak Out

Not all employees played along. One employee called attention to the company's deceptive sales practices and in 2008, won a federal whistleblower suit against Wells Fargo. The suit addressed fake brokerage accounts that violated SEC rules and triggered Sarbanes-Oxley whistleblower protections. The U.S. Department of Labor found there was reasonable cause to believe Wells Fargo violated whistleblower protection laws by transferring the employee after he flagged illegal activity.[15] Nevertheless, in 2009, the bank launched its "Jump into January" sales program, which continued to increase pressure on bankers to meet aggressive sales goals during a typically slow month.[16]

In 2010, the Department of Labor's Occupational Health and Safety Administration (OSHA) received two complaints from former Wells Fargo employees who claimed the company retaliated against them for complaining about the bank's practices.[17] OSHA held the complaints for six months without taking any action, then closed the cases after the two complainants decided to file federal lawsuits against Wells Fargo.[18]

[14] Egan, M. (2016, September 9). 5,300 Wells Fargo employees fired over 2 million phony accounts. *CNN Money*. Retrieved from http://money.cnn.com/2016/09/08/investing/wells-fargo-created-phony-accounts-bank-fees/index.html

[15] Egan, M. (2016, October 18). Letter warned Wells Fargo of 'widespread' fraud in 2007–exclusive. *CNN Money*. Retrieved from http://money.cnn.com/2016/10/18/investing/wells-fargo-warned-fake-accounts-2007/index.html

[16] Glazer, E. (2016, September 16). How Wells Fargo's high-pressure sales culture spiraled out of control. *The Wall Street Journal*. Retrieved from https://www.wsj.com/articles/how-wells-fargos-high-pressure-sales-culture-spiraled-out-of-control-1474053044

[17] Villarreal, M. and Wagner, L. (2016, November 22). Dozens of Wells Fargo employees filed whistleblower complaints with Feds, new data shows. NBC Bay Area. Retrieved from http://www.nbcbayarea.com/news/local/Dozens-of-Wells-Fargo-Employees-Filed-Whistleblower-Complaints-with-Feds-New-Data-Shows--402566925.html

[18] Ibid.

During that same period, the Office of the Comptroller of the Currency (OCC), an independent bureau within the Department of the Treasury, established to ensure safe and sound banking practices, met with Carrie Tolstedt, head of Wells Fargo's community banking division. The community banking division was the epicenter of the deceptive sales practices. Examiners pressed Tolstedt about 700 whistleblower complaints that workers were gaming the bank's sales goal system to boost their pay.[19] Tolstedt told the examiners that the high number of complaints was a result of the bank's culture of encouraging valid complaints. After that meeting, the OCC examiners apparently investigated no further.[20] That same year, the Wells Fargo board named Stumpf chairman.[21]

Despite mounting signs of wider deception, the sales practices continued. In 2011, Wells Fargo conducted employee-satisfaction surveys, which included significant responses from employees that they were not comfortable with what managers asked them to do. Further, a former administrative assistant to a regional bank president filed a state lawsuit against Wells Fargo alleging that she reported "fraudulent banking practices" as early as November 2005, involving "bank employees forging customer signatures and fraudulently opening accounts."[22] She claimed that the bank "instituted a four-year campaign of retaliation" that included attacking her job performance and public criticism. The bank settled the suit in 2012.[23]

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[19] Koren, J. R. (2017, April 19). U.S. bank regulator was suspicious about Wells Fargo's sales practices but did little about it. *Los Angeles Times*. Retrieved from http://www.latimes.com/business/la-fi-occ-wells-fargo-20170419-story.html

[20] Ibid.

[21] Abate, T. (2009, September 23). John Stumpf taking reins as Wells Fargo chairman. SF Gate. Retrieved from http://www.sfgate.com/business/article/John-Stumpf-taking-reins-as-Wells-Fargo-chairman-3216794.php

[22] Wells Fargo employees have a history of suing the bank. (2016, September 29). *Fortune*. Retrieved from http://fortune.com/2016/09/29/wells-fargo-employees-sue/

[23] Ibid.

In response to other suits, Wells Fargo launched its own investigation in 2012 within Tolstedt's community banking unit's risk division to monitor activities and tendencies of sales people.[24] The bank's inspection and audit practices failed to detect the false accounts. Wells Fargo's retail-bank risk executives, working as auditors, would travel district circuits to inspect branches. Retail-bank executives usually would receive notice of the inspections one to three days in advance, and branch managers would receive a day's advance notice.[25] This notice allowed employees to cover up improper practices. Sometimes, bank managers would meet with operations staff to address any issues that they found in advance of the next audit. Wells Fargo employees have admitted forging, witnessing forgery, and shredding papers related to the unauthorized accounts.[26]

Individual leaders can exert influence on mitigating employee unethical behavior. However, employees are equally capable of discerning right from wrong when responding to the signals and priorities of leadership. Despite protocols and policies, unethical behavior can persist in a culture that does not reward ethical behavior and punish bad behavior.

Exposed

Despite the escalating internal challenges, in November 2012, Stumpf accepted the honor of Banker of the Year by *American Banker*, which noted that Wells Fargo "has become the big bank least tarnished by the scandals and reputational crises washing over its biggest rivals."[27]

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[24] Glazer, E. (2016, September 16). From 'gr-eight' to 'gaming,' a short history of Wells Fargo and cross-selling. *The Wall Street Journal*. Retrieved from https://blogs.wsj.com/moneybeat/2016/09/16/from-gr-eight-to-gaming-a-short-history-of-wells-fargo-and-cross-selling/

[25] Glazer, E. (2017, January 24). At Wells Fargo, bank branches were tipped off to inspections. *The Wall Street Journal*. Retrieved from http://www.wsj.com/articles/at-wells-fargo-bank-branches-were-tipped-off-to-inspections-1485253800

[26] Ibid.

[27] Aspan, M. (2013, November 21). Wells Fargo's John Stumpf, the 2013 banker of the year. *American Banker*. Retrieved from https://www.americanbanker.com/news/wells-fargos-john-stumpf-the-2013-banker-of-the-year

The next month, the *Los Angeles Times* published an article highlighting aggressive sales tactics around the city.[28] This was the beginning of Well Fargo's national exposure and public scrutiny of its sales practices. The article explained how "employees have opened unneeded accounts for customers, ordered credit cards without customers' permission and forged client signatures on paperwork." [29] Bank officials denied reports of an overbearing sales culture, but branch managers in California had filed five lawsuits alleging that the bank failed to pay them overtime for extra hours spent laboring to meet sales targets. Two other lawsuits in California, by a Wells Fargo employee and a customer, alleged that bank employees opened accounts or credit lines for customers without their authorization.[30]

Subsequently, in 2013, the bank fired about 200 people, mostly in Southern California, for questionable sales tactics, and it began revamping its compliance program and incentive compensation.[31] Stumpf claimed that he and other senior managers only realized these problems in 2013, despite clear indications that they knew much earlier.[32] In 2014, the OCC asked Wells Fargo to hire consultants to analyze its issues. Wells Fargo hired Skadden, Arps, Slate, Meagher & Flom LLP and Accenture PLC to investigate.[33] That year the bank reformed its sales goals and

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[28] Reckard, E. S. (2013, December 21). Wells Fargo's pressure-cooker sales culture comes at a cost. *Los Angeles Times*. Retrieved from http://www.latimes.com/business/la-fi-wells-fargo-sale-pressure-20131222-story.html
[29] Reckard, E. S. (2013, December 21). Wells Fargo's pressure-cooker sales culture comes at a cost. *Los Angeles Times*. Retrieved from http://www.latimes.com/business/la-fi-wells-fargo-sale-pressure-20131222-story.html
[30] Ibid.
[31] Glazer, E. (2016, September 16). From 'gr-eight' to 'gaming,' a short history of Wells Fargo and cross-selling. *The Wall Street Journal*. Retrieved from https://blogs.wsj.com/moneybeat/2016/09/16/from-gr-eight-to-gaming-a-short-history-of-wells-fargo-and-cross-selling/
[32] Cowley, S. (2016, October 11). At Wells Fargo, complaints about fraudulent accounts since 2005. *The New York Times*. Retrieved from https://www.nytimes.com/2016/10/12/business/dealbook/at-wells-fargo-complaints-about-fraudulent-accounts-since-2005.html
[33] Glazer, E. (2016, September 16). From 'gr-eight' to 'gaming,' a short history of Wells Fargo and cross-selling. *The Wall Street Journal*. Retrieved from https://blogs.wsj.com/moneybeat/2016/09/16/from-gr-eight-to-gaming-a-short-history-of-wells-fargo-and-cross-selling/

incentive compensation to stem bad behavior. In 2015, Wells Fargo call centers reduced sales quotas and adjusted an application that had required employees to pitch customers.[34]

In May 2015, the City of Los Angeles sued Wells Fargo over these allegations of unauthorized accounts.[35] After filing the suit, the city attorney received more than 1,000 calls and email messages from customers as well as current and former Wells Fargo employees about the allegations.[36] Wells Fargo began preparing to make amends, hiring PricewaterhouseCoopers LLP to quantify how much remediation the bank would need to reimburse customers and to identify patterns in fraudulent activity.[37] In November, 2015, the San Francisco Federal Reserve pressed Wells Fargo to answer for the allegations.[38] Throughout the next two years, details of the long history of fraudulent practices unfolded.

In September 2016, federal regulators disclosed that Wells Fargo employees had created millions of unauthorized bank and credit card accounts without customer knowledge since at least 2011.[39] The Consumer Finance Protection Bureau (CFPB), which was created in the wake of the Great Recession to provide consolidated accountability for enforcing federal consumer financial laws and protecting consumers in the financial marketplace, found that these practices were widespread throughout Wells Fargo. Investigations also revealed that bank employees submitted applications for 565,443 credit card accounts without their customers' knowledge or

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[34] Ibid.

[35] Protecting Consumers—Wells Fargo. (n.d.). The Office of Los Angeles City Attorney Mike Feuer. Retrieved from https://www.lacityattorney.org/allegations-against-wells-fargo

[36] Ibid.

[37] Glazer, E. (2016, September 16). From 'gr-eight' to 'gaming,' a short history of Wells Fargo and cross-selling. *The Wall Street Journal*. Retrieved from https://blogs.wsj.com/moneybeat/2016/09/16/from-gr-eight-to-gaming-a-short-history-of-wells-fargo-and-cross-selling/

[38] Glazer, E. (2015, November 30). At Wells Fargo, how far did bank's sales culture go? *The Wall Street Journal*. Retrieved from https://www.wsj.com/articles/at-wells-fargo-how-far-did-banks-sales-culture-go-1448879643

[39] Egan, M. (2016, September 9). 5,300 Wells Fargo employees fired over 2 million phony accounts. *CNN Money*. Retrieved from http://money.cnn.com/2016/09/08/investing/wells-fargo-created-phony-accounts-bank-fees/index.html

consent after 2011, generating significant revenue by multiplying annual fees, interest charges, and overdraft-protection fees .[40] The CFPB fined Wells Fargo $100 million. The Los Angeles City Attorney fined the bank $50 million, and the OCC added $35 million in fines.[41] Although it did not admit the allegations, Wells Fargo abolished all sales goals in retail banking business and paid the fines. Stumpf issued a public apology. “We regret and take responsibility for any instances where customers may have received a product that they did not request,” Wells Fargo said in the statement.[42]

That month, federal investigators and prosecutors commenced investigations in New York and California.[43] The U.S. House of Representatives’ Financial Services Committee opened investigation into the bank’s misconduct.[44] Three Utah residents sued the bank in one of the earliest class actions against Wells Fargo.[45] Stumpf announced that the bank would expand its internal reviews to include 2009 and 2010.[46] Two former Wells Fargo employees sued the bank in California state court, seeking to represent employees or former employees who worked for the bank and who were demoted, forced to resign, or terminated for not meeting “impossible”

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[40] Ibid.

[41] Egan, M. (2016, September 9). 5,300 Wells Fargo employees fired over 2 million phony accounts. *CNN Money*. Retrieved from http://money.cnn.com/2016/09/08/investing/wells-fargo-created-phony-accounts-bank-fees/index.html

[42] Wells Fargo issues statement on agreements related to sales practices. (2016, September 8). Wells Fargo Newsroom. Retrieved from https://newsroom.wf.com/press-release/corporate-and-financial/wells-fargo-issues-statement-agreements-related-sales

[43] Del Quentin, W. and Puzzanghera, J. (2016, September 14). Justice Department is investigating Wells Fargo sales tactics. *Los Angeles Times*. Retrieved from http://www.latimes.com/business/la-fi-wells-fargo-investigation-20160914-snap-story.html

[44] Committee opens investigation of Wells Fargo. (2016, September 16). Financial Services Committee Press Release. Retrieved from https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=401022

[45] Blake, P. (2016, September 19). Wells Fargo hit with potential class-action lawsuit after accounts scandal. ABC News. Retrieved from http://abcnews.go.com/Business/wells-fargo-hit-potential-class-action-lawsuit-accounts/story?id=42198894

[46] Glazer, E., & Rexrode, C. (2016, September 20). Wells Fargo CEO testifies before senate banking committee. *The Wall Street Journal*. Retrieved from https://www.wsj.com/articles/wells-fargo-ceo-testifies-before-senate-banking-committee-1474390303

quotas.[47] Days later, six former Wells Fargo employees filed a federal class action lawsuit for $7.2 billion or more for workers nationwide who were fired or demoted after refusing to open fake accounts.[48] In view of the facts, bank directors announced that Stumpf would not receive bonuses or $41 million worth of promised compensation nor his usual salary as they launched an independent investigation and that Tolstedt would not receive a bonus or severance pay and would forgo her shared compensation of $19 million.[49]

Once exposed, Wells Fargo claimed to have fired more than 5,300 employees in five years for creating unauthorized accounts.[50] The vast majority of these were line employees in branches; around 10% of those fired worked at the branch manager level or above. Only one held a high-level management position.[51] After news of the practices erupted into a national scandal, the bank claims to have boosted oversight, monitoring, and accountability to prevent future unethical practices. These efforts include investing millions in staffing, mystery shops by a third party, unannounced branch inspections on employee sales behavior, and an increase in branch visits by its internal auditors.[52] Additionally, the bank stated it had piloted a surprise sales-practices inspection system to ensure that employees did not come under undue pressure. It also

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[47] Former employees file class action against Wells Fargo. (2016, September 25). CNBC. Retrieved from https://www.cnbc.com/2016/09/25/former-employees-file-class-action-against-wells-fargo.html

[48] Egan, M. (2016, September 27). Fired Wells Fargo workers fight back with federal lawsuit. *CNN Money*. Retrieved from http://money.cnn.com/2016/09/26/investing/wells-fargo-fake-accounts-worker-lawsuit/index.html

[49] Blake, P. (2016, November 3). Timeline of the Wells Fargo accounts scandal. ABC News. Retrieved from http://abcnews.go.com/Business/timeline-wells-fargo-accounts-scandal/story?id=42231128

[50] Cowley, S. (2016, October 11). At Wells Fargo, complaints about fraudulent accounts since 2005. *The New York Times*. Retrieved from https://www.nytimes.com/2016/10/12/business/dealbook/at-wells-fargo-complaints-about-fraudulent-accounts-since-2005.html

[51] Ibid.

[52] Glazer, E. (2017, January 24). At Wells Fargo, bank branches were tipped off to inspections. *The Wall Street Journal*. Retrieved from http://www.wsj.com/articles/at-wells-fargo-bank-branches-were-tipped-off-to-inspections-1485253800

implemented a "Risk Score" to measure operational integrity that would be factored into employees' compensation.[53]

In October 2016, Stumpf retired as CEO and Chairman.[54] Soon after, the California Attorney General launched a criminal investigation into whether bank employees committed false impersonation and identity theft between 2011 and 2015.[55] In an effort to limit its legal responsibility, in November 2016, Wells Fargo attempted to thwart one of the class action suits by forcing arbitration.[56] In December, the bank claimed that it continued to reimburse customers and that it had refunded $3.26 million to customers with suspect account activity.[57] Those refunds went to 130,000 customers. This amount did not reflect the potential loss as a result of overdrafts, negative credit exposure, and other expenses to the customer associated with being a victim of this fraudulent behavior by Wells Fargo.[58] In March 2017, the bank reached a $110 million preliminary settlement to compensate customers, and in April it increased its settlement to $142 million.[59]

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[53] Ibid.

[54] Wang, C. (2016, October 12). Wells Fargo CEO Stumpf retires effective immediately; Tim Sloan to take over. CNBC. Retrieved from https://www.cnbc.com/2016/10/12/wells-fargo-ceo-stumpf-to-depart-dj-citing-source.html

[55] Blake P., & Chadbourn, M. (2016, October 19). Wells Fargo facing criminal investigation in California. ABC News. Retrieved from http://abcnews.go.com/Business/wells-fargo-facing-criminal-investigation-california/story?id=42922933

[56] Egan, M. (2016, November 25). Wells Fargo tries to kill fake account lawsuit. *CNN Money*. Retrieved from http://money.cnn.com/2016/11/25/investing/wells-fargo-lawsuit-forced-arbitration/index.html

[57] Thompson, W. (2016, December 27). Wells Fargo teams continue remediation work. Wells Fargo Stories. Retrieved from https://stories.wf.com/wells-fargo-teams-continue-remediation-work/

[58] Hiltzik, M. (2017, March 21). Customers still seem wary of doing business with Wells Fargo—with good reason. *Los Angeles Times*. Retrieved from http://www.latimes.com/business/hiltzik/la-fi-hiltzik-wells-struggle-20170321-story.html

[59] Koren, J. R. (2017, April 21). Wells Fargo ups sham-account settlement to $142 million, making more customers eligible. *Los Angeles Times*. Retrieved from http://www.latimes.com/business/la-fi-wells-settlement-plan-20170421-story.html

In April 2017, Wells Fargo blamed the scandal on CEO Stumpf and the community banking executive, Tolstedt, clawing back $47 million from her and $28 million from Stumpf.[60] The board of directors published a lengthy report that found evidence of "mass terminations" of employees for opening unauthorized accounts and other misconduct going back to "at least 2002."[61]

Reactions

Wells Fargo was remiss in its oversight, but the government also missed opportunities to spot the fraud and intervene. The OCC admitted that its basic oversight of Wells Fargo was lax. Examiners missed many opportunities to address fraudulent practices prior to a $185 million settlement with the bank in 2016.[62] Data provided by OSHA indicated that Wells Fargo and the U.S. government knew about widespread concerns at the bank beginning in 2010, including apparent efforts by bank management to suppress and silence employees from exposing these sales tactics. OSHA's preliminary analysis shows the administration received 65 retaliation complaints against Wells Fargo across the country from 2010 to September 2016; 63% of these retaliation claims were under statutes that protect employees from retaliation for reporting suspected bank or securities fraud and consumer financial fraud.[63]

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[60] Egan, M. (2017, April 10). Wells Fargo claws back $75 million from former CEO and top exec. *CNN Money*. Retrieved from http://money.cnn.com/2017/04/10/investing/wells-fargo-board-investigation-fake-accounts/index.html?iid=EL

[61] Independent directors of the board of Wells Fargo & company. (2017, April 10). Sales Practices Investigation Report. Retrieved from https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/presentations/2017/board-report.pdf

[62] Koren, J. R. (2017, April 19). U.S. bank regulator was suspicious about Wells Fargo's sales practices but did little about it. *Los Angeles Times*. Retrieved from http://www.latimes.com/business/la-fi-occ-wells-fargo-20170419-story.html

[63] Villarreal, M., & Wagner, L. (2016, November 22). Dozens of Wells Fargo employees filed whistleblower complaints with Feds, new data shows. NBC Bay Area. Retrieved from http://www.nbcbayarea.com/news/local/Dozens-of-Wells-Fargo-Employees-Filed-Whistleblower-Complaints-with-Feds-New-Data-Shows--402566925.html

Recognizing its insufficiencies, in 2017, the OCC issued a report, "Lessons Learned Review of Supervision of Sales Practices at Wells Fargo." Also in 2017, the OCC stripped examiner Bradley Linskens of his supervisory authority over Wells Fargo that began in 2006. Part of OCC since 1993 and responsible for a staff of 60, Linskens's operation did not detect or intervene in the problematic practices at Wells Fargo.[64]

In an open letter to Wells Fargo shareholders in April 2017, the California State Treasurer called the bank's behavior "morally repugnant" and urged shareholders to vote against the seven board members up for reelection.[65] However, later that month, at the company's annual meeting, shareholders reelected the bank's board members with scant support but demanded to know why the board did not act sooner to stop employees' practice of opening accounts without customers' permission.[66]

In August 2017, Wells Fargo admitted in regulatory filings that its review of potentially unauthorized accounts could reveal a "significant increase" in the number of fraudulent incidents.[67] It later announced that it had found up to 3.5 million potentially fake bank and credit card accounts.[68] It had also discovered a new problem; thousands of customers were also enrolled in online bill pay without their authorization. The review found 528,000 potentially unauthorized online bill pay enrollments.[69] That same month, the board chairman and two

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[64] Wilking, R. (2017, April 7). U.S. regulator removes top examiner for Wells Fargo. CNBC.com. Retrieved from https://www.cnbc.com/2017/04/07/us-regulator-removes-top-examiner-for-wells-fargo-sources.html

[65] Chiang, J. (2017, April 19). An open letter to the shareholders of Wells Fargo. Retrieved from http://www.treasurer.ca.gov/news/releases/2017/20170419/wells-fargo-open-letter-shareholders.pdf

[66] Koren, J. R. (2017, April 25). Wells Fargo investors send 'message of dissatisfaction' in narrow board vote. *Los Angeles Times*. Retrieved from http://www.latimes.com/business/la-fi-wells-fargo-vote-20170424-htmlstory.html?14931396514575

[67] Cowley, S (2017, August 4). Wells Fargo may have found more fake accounts created by employees. *The New York Times*. Retrieved from https://www.nytimes.com/2017/08/04/business/dealbook/wells-fargo-fraud-accounts.html

[68] Egan, M. (2017, August 31). Wells Fargo uncovers up to 1.4 million more fake accounts. *CNN Money*. Retrieved from http://money.cnn.com/2017/08/31/investing/wells-fargo-fake-accounts/index.html

[69] Ibid.

veteran directors announced plans to resign. Subsequently, shareholders elected three new directors.[70]

In September 2017, the California Legislature approved Senate Bill 33 to stop banks from using arbitration clauses to shield themselves from lawsuits over sham accounts.[71] In October, the State Treasurer extended sanctions against Wells Fargo.[72] On October 19, Wells Fargo's new CEO Timothy Sloan stated, "We will never again lose sight of what is most important—you, our customer."[73]

Market Apathy

What role, if any, did individual consumers play in influencing ethical corporate behavior at Wells Fargo? Many customers sued Wells Fargo for creating unauthorized accounts. Millions more continue to entrust their money to Wells Fargo and to patronize its services. Too often, customers justify continued support of an unethical brand based on inconvenience or the rationalization that one's individual behavior is inconsequential. Consumer's espoused ethical beliefs and attitudes do not always translate into ethical purchasing behavior.

Ultimately, the government imposed a temporary asset cap on Wells Fargo until it could show improved compliance and ethical systems, but its market share and stock price continue to rise with the market. Its brand thrives despite massive bad press and political criticism. A few

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[70] Koren, J. R. (2017, August 15). Wells Fargo chairman, two directors to step down amid continuing fallout from sham accounts scandal. *Los Angeles Times*. Retrieved from http://www.latimes.com/business/la-fi-wells-fargo-chairman-20170815-story.html

[71] Koren, J. R. (2017, September 6). California Legislature approves arbitration measure spurred by the Wells Fargo scandal. *Los Angeles Times*. Retrieved from http://www.latimes.com/business/la-fi-wells-fargo-arbitration-bill-20170906-story.html?ito=792

[72] Darmiento, L. (2017, October 16). State Treasurer John Chiang extends sanctions on Wells Fargo for another year. *Los Angeles Times*. Retrieved from http://www.latimes.com/business/la-fi-wells-fargo-sanctions-20171016-story.html

[73] Wells Fargo. (2017, October 19). Sloan: 'We will never again lose sight of what is most important–you, our customer' [video]. Retrieved from https://stories.wf.com/wells-fargo-ceo-message-to-customers/?cid=intpart_oprgvd_em_eng_1710_104870 https://www.wellsfargo.com/commitment]

executives retired a little less rich than they would have been, but directors continue directing. Offending branch employees lost their jobs, but only after several whistleblowers did. It is questionable whether Wells Fargo's repentant responses are legitimate as additional financial scandals continue to emerge at the profitable, growing Wells Fargo.

The third largest bank in the United States, Wells Fargo has a different business model from other large banks.[74] Other financial institutions derive a significant portion of their revenue from trading and investment banking; however, Wells Fargo's revenue mix is heavily dependent on consumer and business banking transactions.[75] Home and auto loans, credit and debit cards, and consumer accounts and the interest and fees they generate are critical to Wells Fargo's financial performance. While Wells Fargo has long dominated the residential mortgage market, increased competition from nonbank lenders, such as Quicken Loans and PHH Mortgage, have continued to erode the bank's share of loans, resulting in a drop to 12.55% market share in 2016 from 24.2% market share in 2011.[76] However, despite competitive challenges to this important segment of the bank's revenue stream and the massive consumer deception produced by improper sales practices, the bank's annual revenue experienced little volatility, as illustrated in Table 2. As noted earlier, news of the scandal first appeared the in media in 2012. While the bank's revenue declined 3% in 2013, those declines were quickly turned around with gains occurring in subsequent years (see Figure 1).

[Insert Table 2 near here]

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[74] Mergent. (2017, November 17). North America Banking Sectors. Retrieved from https://www.mergentindustryreports.com/

[75] Frankel, M. (2017, April 20). How Wells Fargo & Company makes most of its money. *The Motley Fool*. Retrieved from https://www.fool.com/investing/2017/04/20/how-wells-fargo-company-makes-most-of-its-money.aspx

[76] Lerner, M. (2017, February 23). The mortgage market is now dominated by non-bank lenders. *The Washington Post*. Retrieved from https://www.washingtonpost.com/realestate/the-mortgage-market-is-now-dominated-by-nonbank-lenders/2017/02/22/9c6bf5fc-d1f5-11e6-a783-cd3fa950f2fd_story.html?utm_term=.b0ef11c12dcd

[Insert Figure 1 near here]

While one may not know what would have happened to the stock had the fraud not occurred or not been uncovered, it would appear investor confidence in Wells Fargo stock experienced only momentary setbacks in response to the initial allegations in 2013 and subsequent admissions in 2016 as demonstrated in Figure 2.

[Insert Figure 2 near here]

On February 2, 2018, the Federal Reserve imposed asset and growth caps on Wells Fargo; the asset cap is $1.95 trillion, where its assets stood at the end of 2017. The cap is in place until the bank "sufficiently improves its governance and controls."[77] In response, Sloan, commented at a Credit Suisse industry conference, "We're absolutely open for business." [78] Wells Fargo shares lost 14% in response to the announcement but rebounded relatively quickly throughout the month.[79]

On March 1, 2018, the new chair of the Federal Reserve, Jerome H. Powell, responded to pointed questions from Senator Elizabeth Warren about the effect of the growth caps.[80] Senator Warren pressed for assurances that the Fed would remain vigilant and tough on Wells Fargo in its oversight role. Chairman Powell answered that that Fed "would not lightly lift" the caps.[81] He declared that the Fed would only consider lifting the caps after seeing Wells Fargo implement

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[77] Fed orders Wells Fargo to halt growth over compliance issues. (2018, February 2). Reuters. Retrieved from https://www.reuters.com/article/us-usa-wells-fargo-fed/fed-orders-wells-fargo-to-halt-growth-over-compliance-issues-idUSKBN1FM2V9

[78] Trying to calm investors, Wells Fargo CEO stresses on stability. (2018, February 13). Reuters. Retrieved from https://www.reuters.com/article/us-wells-fargo-fed/trying-to-calm-investors-wells-fargo-ceo-stresses-on-stability-idUSKCN1FX24P

[79] Ibid.

[80] Federal Reserve Chair Powell on Monetary Report. (2018, March 1). C-SPAN Video Testimony, 1:20:19-1:25:37. Retrieved from https://www.c-span.org/video/?441687-1/federal-reserve-chair-powell-testifies-banking-committee

[81] Puzzanghera, J., & Koren, J. R. (2018, March 1). Fed chief says Wells Fargo needs to make 'significant' reforms before growth cap is lifted. *Los Angeles Times*. Retrieved from http://www.latimes.com/business/la-fi-wells-fargo-federal-reserve-20180301-story.html

plans and make progress to ensure "that the company has made these really significant measures and suffered a significant period of a growth cap."[82] Senator Warren was not satisfied and insisted that the Fed should not lift the cap until it has resolved its problems, not merely made progress, and she urged the entire Federal Reserve Board to vote on lifting caps when the time came to consider it.[83]

3. Conclusion: The Buck Stopped Nowhere

For more than a decade, Wells Fargo engaged in wide-spread, systemic schemes to create fraudulent accounts for existing customers, then profited on these accounts without customer approval. These well-documented schemes were unethical and expansive. Until exposed by the *Los Angeles Times* in 2013,[84] Wells Fargo dodged attempts by employees to object, report, and sue the bank to stop the bad practices. However, even after admitting these ethical breaches, Wells Fargo suffered relatively few and relatively inexpensive consequences, hardly anything that could be a real deterrent to future ethical breaches. It paid judgments that are miniscule compared to its assets, avoided intrusive regulation, maintained its market-share, grew its stock price, and kept its customers. Marketing aside, Wells Fargo built its ethical lapses into the cost of doing business, and it continues to thrive.

In a massive, complex, corporation operating with millions of customers in a regulated industry, the ethical buck may not stop anywhere. If no one ultimately bears moral and legal responsibility for ethical behavior and if everyone feels the pressure to produce constantly increasing growth and profits, ethics and discipline may drift out of corporate culture. If ethics

[82] Ibid.
[83] Ibid.
[84] Koren, J. R. (2017, September 8). It's been a year since the Wells Fargo scandal broke—and new problems are still surfacing, *Los Angeles Times*. Retrieved from http://www.latimes.com/business/la-fi-wells-fargo-one-year-20170908-story.html

matter at all, determining who can and who should hold such a corporation accountable for honest practices is essential for avoiding future breaches. Perhaps the way forward is to hold individuals personally accountable by imposing costly incentives on individuals for their unethical conduct. If ethics are to matter at all to a corporation, then ethics must matter to individuals. When one accommodates an unethical act, they are condoning it. In fact, there are limitations to organizations promotion of ethical business. It is the countless individual decisions and relationships within the vast community of the corporate entity that ensure an ethical corporate culture.

Tables

Table 1

Wells Fargo Crisis Summary Timeline

1999	– Wells Fargo & Norwest merger
	– Launch of “Gr-eight” Initiative
2002-2009	Wells Fargo employees create millions of unauthorized accounts
2007	– John Stumpf named CEO
	– Customer consent requirement added to Wells Fargo Sales Quality Manual
2008	– Employee whistleblower reports on nefarious sales practices
	– Employee wins federal whistleblower suit against Wells Fargo
2009	– “Jump into January” sales initiative launches
2010-2016	OSHA receives 65 retaliation complaints against Wells Fargo over 6-year period
2010	– John Stumpf named Chairman
	– OCC meeting with Carrie Tolstedt investigating 700 whistleblower complaints
2011	– Employee-satisfaction surveys reveal management pressure to open fraudulent accounts
2012	– Retaliation claim settled with employee alleging fraudulent banking practices
	– John Stumpf named Banker of Year by *American Banker*
	– *Los Angeles Times* article exposed Wells Fargo’s aggressive sales tactics
2013	– Internal investigation results in firing of 200 employees in Carrie Tolstedt’s division
2014	– Wells Fargo hires outside consultants to investigate issues at request of OCC
	– Reforms to sales goals and incentive compensation instituted
2015	– City of Los Angeles sues Wells Fargo over alleged unauthorized accounts
	– San Francisco Federal Reserve pressed Wells Fargo for answers to allegations
2016	– Federal regulators disclose Wells Fargo employees opened millions of unauthorized accounts
	– Wells Fargo issues apology statement and pays $185 million settlement, but does not admit to allegations
	– John Stumpf makes public apology and abolishes all retail banking sales goals
	– Federal class action suit for $7.2 billion launched by Wells Fargo employees
	– $41 million bonus+ compensation to John Stumpf and $19 million bonus+ compensation to Carrie Tolstedt withheld
	– John Stumpf retires as CEO & Chairman
	– California Attorney General launched criminal investigation of bank employees
2017	Payouts continue and claw backs ensue; additional fake accounts discovered
	– Wells Fargo pays out $3.2 million to reimburse consumers with suspect account activity
	– Wells Fargo settles consumer class action suit for $142 million
	– Wells Fargo blames and claws back $28 million from John Stumpf and $47 million from Carrie Tolstedt
	– Wells Fargo board re-elected by shareholders, despite California State Treasurer urgency for removal
	– Wells Fargo reveals up to 3.5 million potential fraudulent accounts created
	– OCC Wells Fargo examiner stripped of supervisory authority
	– California Legislature approved Senate Bill 33, stopping use of arbitration from sham account lawsuits

Table 2

Wells Fargo Revenue, 2008-2018

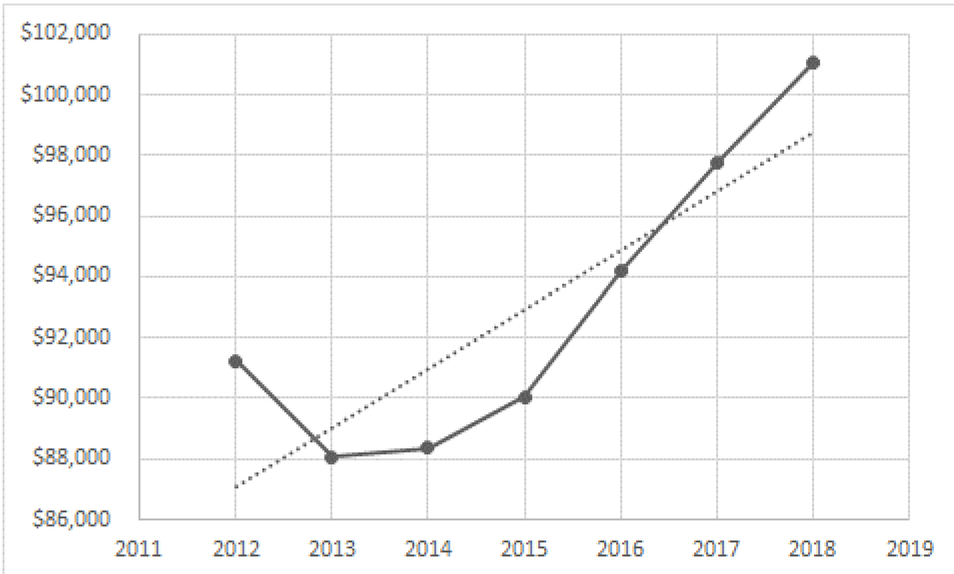
Year	Revenue (millions)
2008	$52,389
2009	$98,636
2010	$93,249
2011	$87,597
2012	$91,247
2013	$88,069
2014	$88,372
2015	$90,033
2016	$94,176
2017	$97,741
2018	$101,060

Note. Data sourced from Nasdaq.com.

Figures

Figure 1

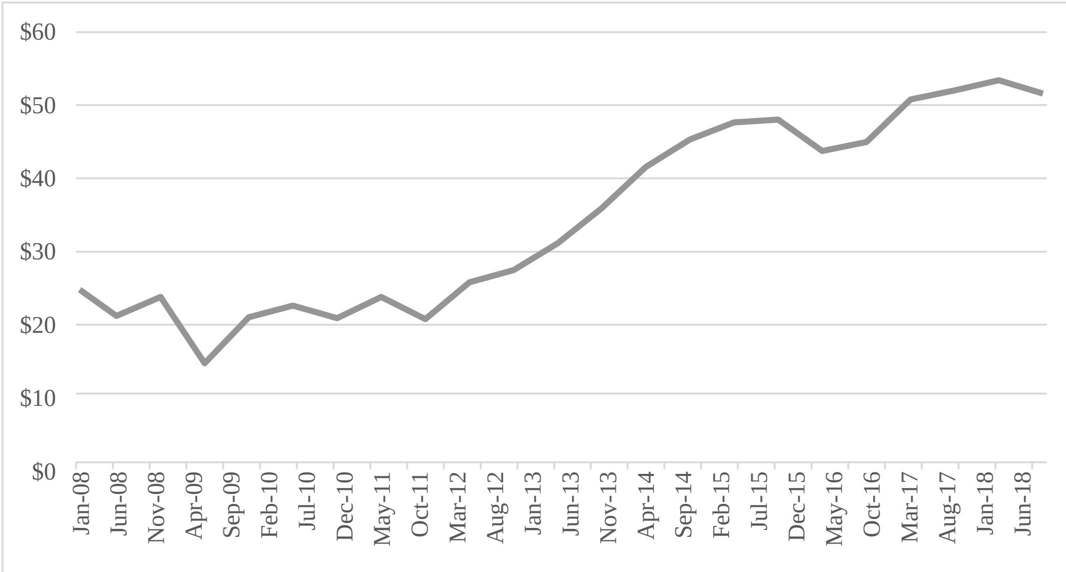
Wells Fargo Revenue, 2012 - 2018 (millions)



Note. Data for the graph was sourced from Nasdaq.com. Trendline depicted in dotted line.

Figure 2

Wells Fargo Simple Moving Average (2008–2017)



Note. The simple moving average (SMA) was calculated using the closing stock price on the 1st of each month. Data on Wells Fargo closing stock prices retrieved from Yahoo Finance.