

United States Senate

WASHINGTON, DC 20510

November 3, 2016

Timothy J. Sloan
President and Chief Executive Officer
Wells Fargo & Company
420 Montgomery Street
San Francisco, CA 94163

Dear Mr. Sloan:

We write today to inquire about a number of questions raised by Wells Fargo's filings with securities regulators related to the termination of employees during the massive, years-long scam in which your bank and its employees created over two million bank and credit card accounts without customer authorization.

Specifically, our staff has obtained data from a major securities industry regulator, the Financial Industry Regulatory Authority (FINRA), indicating that between 2011 and 2015, Wells Fargo filed reports on the terminations of over 200 employees related to the illegal behavior that ultimately resulted in the bank's September 2016 settlement with the Consumer Financial Protection Bureau (CFPB) and other regulators. These reports, known as Form U5s, confirm that Wells Fargo had ample information about the scope of fraudulent sales practices occurring at the bank long before the CFPB settlement, and they raise additional questions about Wells Fargo's response to this illegal activity. In addition, public reports indicate that Wells Fargo may have filed inaccurate or incomplete Form U5s for fired employees and that the bank may have done so to retaliate against whistleblowers. If this is the case, then it would appear that Wells Fargo concealed key information from regulators that may have revealed the bank's misdeeds long before the September 2016 settlement.

The new data about Wells Fargo's Form U5 filings are significant because five subsidiaries of Wells Fargo are subject to FINRA rules.¹ Currently available information suggests that the bank may have filed defamatory statements to retaliate against employees who questioned aggressive cross-selling practices and that those negative statements often dealt serious blows to the employees' careers. If Wells Fargo submitted false or incomplete information about the fired employees in its mandatory disclosures to FINRA, the bank may have violated FINRA rules and misled regulators about the scope of the fraud.

The remainder of this letter describes our concerns and outstanding questions.

FINRA Form U5 "Uniform Termination" Reports

Multiple Wells Fargo subsidiaries – including Wells Fargo Securities LLC, Wells Fargo Prime Services LLC, and Wells Fargo Advisors LLC - are member firms of FINRA, the

¹ See FINRA, "Firms We Regulate-W" (online at <https://www.finra.org/about/firms-we-regulate>).

financial industry's self-regulatory body responsible for "writing and enforcing rules governing ... securities firms [and]...examining firms for compliance with those rules."² Many of the bank's employees – such as those who were allowed to sell investment-related products – would therefore also be FINRA-registered representatives.

This is important because FINRA by-laws require registered firms to file a "Uniform Termination Notice for Securities Industry Registration," or a "Form U5," within 30 days of "a registered representative (RR) leav[ing] a firm for any reason," whether voluntarily or via termination.³

A Form U5 contains eight separate sections, including information on the reason for an employee's termination and details on any related internal review, regulatory action, customer complaint, or criminal investigation.⁴ In addition to providing "timely, complete and accurate" Form U5s, firms must also file amended Form U5s "when they learn of facts or circumstances that make a previously filed Form U5 inaccurate or incomplete."⁵ Amended Form U5s are due 30 days "after the member [firm] learns of the facts or circumstances giving rise to the amendment."⁶

It is essential that information within a Form U5 is accurate. FINRA, state securities regulators, investors, and other members of the securities industry rely on Form U5s to make hiring, licensing, and investment decisions. An inaccurate or incomplete Form U5 can adversely affect an employee's career prospects for years to come — even permanently. Form U5s must also be comprehensive. FINRA has made clear that firms "must provide sufficient detail when responding to Form U5 questions such that a reasonable person may understand the circumstances that triggered" a termination. Furthermore, "it is not sufficient for a firm to report only that a person[] was terminated because that person violated "firm policy[.]"⁷

False or incomplete reporting is a violation of FINRA standards, leaving firms subject to large fines or more onerous penalties.

Wells Fargo has a history of compliance problems related to U5 reporting. In 2011, the bank paid a \$1 million fine to FINRA for failing to meet requirements to report or amend U5 forms in a timely fashion when a "significant event" occurs, "including notification of a formal

² FINRA, "Firms We Regulate-W" (online at <https://www.finra.org/about/firms-we-regulate>); FINRA, "About FINRA" (online at <http://www.finra.org/about>).

³ See FINRA, *Rev. Form U5 (05/2009)* (online at <https://www.finra.org/sites/default/files/form-u5.pdf>); FINRA, "Terminate an Individual's Registration" (online at <http://www.finra.org/industry/terminate-individuals-registration>) ("When a registered representative (RR) leaves a firm *for any reason*, the firm must file a Form U5 [...]") (emphasis added).

⁴ FINRA, "Form U5 Uniform Termination Notice for Securities Industry Registration: General Instructions" (2009) (online at <http://www.finra.org/sites/default/files/AppSupportDoc/p015113.pdf>).

⁵ FINRA, *Regulatory Notice 10-39: Form U5—Obligation to Provide Timely, Complete, and Accurate Information on Form U5* (September 2010) (online at <https://www.finra.org/sites/default/files/NoticeDocument/p122040.pdf>).

⁶ FINRA Manual Contents, Article V, Sec. 3 (b) (online at http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=4620).

⁷ FINRA, *Regulatory Notice 10-39: Form U5—Obligation to Provide Timely, Complete, and Accurate Information on Form U5* (September 2010) (online at <https://www.finra.org/sites/default/files/NoticeDocument/p122040.pdf>).

investigation, customer complaints or arbitrations filed against the representative.”⁸ And in December 2011, an “incensed” FINRA arbitration panel required Wells Fargo to pay a former company banker \$500,000 after finding that the bank had, after a wrongful termination, made “defamatory statements” about him in his U5 report.⁹

Wells Fargo Filed Hundreds of Form U5 Reports with FINRA for Employees Fired During the Unauthorized Account Scandal

Information provided by FINRA to our staff indicates that Wells Fargo filed almost 18,000 Form U5s from 2011 to 2015.¹⁰ Almost 20% of these (3,354 out of 17,751) were for employees whose registrations with FINRA were terminated because the employees were listed as “discharged,” “permitted to resign,” or “other” (which could indicate a wide variety of explanations, including “failure to perform job duties”).¹¹

Wells Fargo has acknowledged terminating 5,300 employees for illegally opening checking accounts and credit card accounts without customer authorization between 2011 and 2016.¹² FINRA has informed our staff that it is working with Wells Fargo “to understand which of the 5,300 Wells Fargo employees cited in press reports as having been terminated for opening phony accounts and issuing unauthorized [credit cards] were also registered [with FINRA].”¹³

While the information is preliminary, FINRA provided our staff with important new data on Wells Fargo’s Form U5 filings during this period. According to FINRA, “slightly more than 600 of those 5,300 persons were registered at various times with [Wells Fargo Advisors, one of Wells Fargo’s FINRA-registered subsidiaries] between 2011 and early 2016, and ... 207 of them were specifically terminated for issues that fall within the scope of the CFPB order.”¹⁴ For the remaining 400 FINRA-registered employees fired by Wells Fargo, it is not clear if the bank filed Form U5s revealing different reasons for their termination or if Wells Fargo filed Form U5s at all. FINRA staff indicated that the agency’s review is “in its early stages,” and that FINRA is “awaiting additional information from Wells Fargo to further evaluate this data.”¹⁵ FINRA is also seeking additional information in a new “Review of Cross-Selling Programs,” a broad inquiry announced in October 2016.¹⁶

⁸ FINRA, “FINRA Fines Wells Fargo Advisors \$1 Million for Delays in Delivering Prospectuses to more Than 900,000 Customers” (May 5, 2011) (online at <http://www.finra.org/newsroom/2011/finra-fines-wells-fargo-advisors-1-million-delays-delivering-prospectuses-more-900000>).

⁹ Suzanne Barlyn, “Wells Fargo to Pay ‘Defamed’ Broker \$500,000,” *Reuters* (Dec. 12, 2011) (online at <http://www.reuters.com/article/us-wells-defame-idUSTRE7BC1FT20111213>).

¹⁰ E-mail correspondence between staff of Sen. Warren and FINRA staff (on file).

¹¹ *Id.*

¹² Matt Egan, “5,300 Wells Fargo employees fired over 2 million phony accounts,” *CNN Money* (online at <http://money.cnn.com/2016/09/08/investing/wells-fargo-created-phony-accounts-bank-fees/>).

¹³ E-mail correspondence between staff of Sen. Warren and FINRA staff (on file).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ FINRA, “Review of Cross-Selling Programs” (October 2016) (online at <http://www.finra.org/industry/review-cross-selling-programs>).

Additional public reports also indicate that Wells Fargo may have filed incomplete or inaccurate U5 reports for many fired employees. According to these reports, Wells Fargo terminated employees (in addition to the 5,300 employees that were fired for creating unauthorized accounts) for failing to meet the bank's aggressive sales quotas; others were terminated after reporting illegal activity to Wells Fargo management. In an unknown number of these cases, Wells Fargo may have filed Form U5s that did not accurately reflect the reasons why employees were fired.¹⁷

Last month, National Public Radio (NPR) interviewed a Wells Fargo employee who was fired after she reported her concerns about sales practices that resulted in the creation of unauthorized accounts to the bank ethics line.¹⁸ According to NPR, Wells Fargo filed a U5 with FINRA regarding her firing, but provided a vague and incomplete report of "failure to perform job duties."¹⁹ As a result of this report, the Form U5 prevented the former employee from obtaining other jobs in the banking industry, leading her to believe that "Wells Fargo had put some sort of black mark on her record somewhere."²⁰ Similarly, NPR reported that after spending months reporting fraudulent sales practices to his managers, another Wells Fargo employee was forced to quit—only to find out that Wells Fargo claimed on his Form U5 that he "admitted to opening accounts for customers without their authorization," a claim that was "not true."²¹ Additional NPR investigations revealed Wells Fargo employees in California, New Jersey, Florida, and Pennsylvania who reported problems to Wells Fargo management and either quit or were fired, only to have Wells Fargo file U5 reports that contained false and potentially defamatory information.²²

These accounts raise questions about the accuracy of Wells Fargo's Form U5s for employees who were fired for engaging in illegal activity and for employees who appear to have been fired for blowing the whistle on illegal activity at Wells Fargo. If Wells Fargo did not report all appropriate information on all relevant employees who were fired for misconduct – or misreported information to FINRA on employees who were fired for reporting illegal activities – then the bank may have deprived FINRA and other regulators of information that could have allowed them to uncover and stop the illegal activity at Wells Fargo well before the September 2016 CFPB settlement.

¹⁷ Stacy Cowley, "At Wells Fargo, Complaints About Fraudulent Accounts Since 2005," *New York Times* (October 11, 2016) (online at http://www.nytimes.com/2016/10/12/business/dealbook/at-wells-fargo-complaints-about-fraudulent-accounts-since-2005.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=second-column-region®ion=top-news&WT.nav=top-news&_r=1).

¹⁸ Planet Money, "Episode 728: The Wells Fargo Hustle," *National Public Radio* (October 7, 2016) (online at <http://www.npr.org/templates/transcript/transcript.php?storyId=497084491>).

¹⁹ *Id.*

²⁰ *Id.*

²¹ Chris Arnold, "Workers Say Wells Fargo Unfairly Scarred Their Careers," *National Public Radio* (October 21, 2016) (online at <http://www.npr.org/2016/10/21/498804659/former-wells-fargo-employees-join-class-action-lawsuit>); Planet Money, "Episode 732: Bad Form, Wells Fargo," *National Public Radio* (October 28, 2016) (online at <http://www.npr.org/templates/transcript/transcript.php?storyId=499805238>). Wells Fargo CEO Tim Sloan recently pledged in a companywide address that it "created a special HR team to assist former team members that are still eligible for rehire who left Retail Banking for performance reasons." See Companywide Address from CEO Tim Sloan, Oct. 25, 2016, <https://stories.wf.com/companywide-address-ceo-tim-sloan/>.

²² *Id.*

Questions about Wells Fargo's Form U5 Filings

Publicly available information and the data our staff obtained from FINRA paint a disturbing picture. Between 2011 and 2015, Wells Fargo reported to FINRA that hundreds of employees were fired for creating unauthorized accounts, but this new information raises questions about whether Wells Fargo may have taken retaliatory action by reporting defamatory information on whistleblowers' U5 reports and may have violated FINRA rules by reporting inaccurate information in these reports.

To address these concerns, we are therefore asking that you answer the following questions:

1. What was Wells Fargo's process for filing Form U5s? Which divisions of the bank were responsible for filing these forms and which individuals (both names and job titles) were responsible for filing for the period from 2011-2015?
2. As part of their reviews of internal controls within Wells Fargo, did internal compliance officers review individual U5s or conduct analyses of U5s and the reasons they were filed? Did Wells Fargo's independent auditor KPMG request any information about the U5s? Did Wells Fargo provide any information on or about the U5s to KPMG?
3. Has any internal review of individual U5s from 2005 to 2016 revealed any Form U5s that were filed with inaccurate information about employees? If so, how many? How many of those employees had also contacted their managers, the Wells Fargo EthicsLine, or through any other enumerated way²³ to report potential misconduct?
4. How many Form U5s were filed (for any reason) for the approximately 5,300 employees Wells Fargo has identified as terminated from 2011-2015 for actions related to the creation of unauthorized accounts? Please provide copies of each of these forms, with any and all personally identifiable information (or information that can be used to identify the individuals in question) redacted.
5. Please provide a statistical summary of the reason(s) stated as the grounds for termination on these reports. In how many cases did Wells Fargo report "failure to perform job duties," or similar descriptors, as the reason for termination?
6. Please provide a statistical summary of the dates that these Form U5s were filed.
7. Please provide a statistical summary explaining how many *amended* Form U5s were filed with FINRA by Wells Fargo upon the bank learning that employees were engaged in illegal sales practices, and the dates of these amended filings.
8. Wells Fargo has indicated that 5,300 employees were fired in relation to the unauthorized account scam. Aside from these 5,300, did Wells Fargo report on any other employee's Form U5s that they were fired or left the firm for issues related to the creation of unauthorized accounts? If so, please provide a statistical summary of the dates of and reasons for these terminations, and please provide copies of each of these forms, with any and all personally identifiable information – or information that can be used to identify the individuals in question – redacted.

²³ Wells Fargo, "Our Code of Ethics & Business Conduct" (online at <https://www08.wellsfargomedia.com/assets/pdf/about/corporate/code-of-ethics.pdf>), pg. 8.

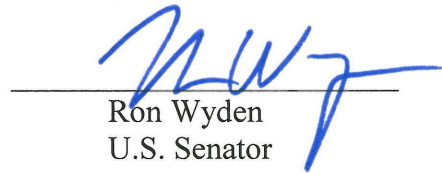
9. Did Wells Fargo provide any Form U5s containing information related to the creation of unauthorized accounts or disclose their existence to the CFPB or other federal or state regulators at any point prior to the September 2016 settlement?
10. How has Wells Fargo used Form U5s as part of its internal investigation(s) into illegal sales practices occurring within the bank?

We would appreciate accurate and complete answers to these questions by December 5, 2016. Thank you for your attention.

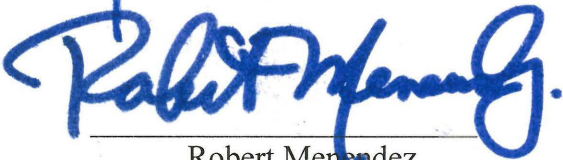
Sincerely,



Elizabeth Warren
U.S. Senator



Ron Wyden
U.S. Senator



Robert Menendez
U.S. Senator