Banking and Finance Law Daily Wrap Up,TOP STORY—Wells Fargo fined record $100 million for opening unauthorized accounts,(Sep. 8, 2016)

By John M. Pachkowski, J.D.

Citing practices that dated back to the beginning of 2011, the Consumer Financial Protection Bureau and the Office of the Comptroller of the Currency have penalized Well Fargo Bank, N.A., for its widespread practice of secretly opening up two million unauthorized deposit and credit card accounts. The bank was fined $100 million by the CFPB for its illegal "cross selling" practices. According to the bureau, the fine represents the largest penalty imposed by the CFPB to date.

The CFPB noted that the bank's cross selling practices of offering many consumer financial products and services would have been "common and accepted business practice" if it were based on "efforts to generate more business from existing customers based on strong customer satisfaction and excellent customer service." However, the bureau found that the bank had compensation incentive programs for its employees that encouraged them to sign up existing clients for deposit accounts, credit cards, debit cards, and online banking, and the bank failed to monitor the implementation of these programs with adequate care. Therefore, the CFPB determined that the bank engaged in unfair, deceptive, or abusive acts or practices.

Redress. Besides the $100 million fine, which is payable to the CFPB's Civil Penalty Fund, under the terms of a consent order, Wells Fargo must also:

- pay full refunds to consumers, which are expected to total $2.5 million; and
- hire an independent consultant to conduct a thorough review of its sales procedures.

OCC action. The enforcement action by the OCC requires Well Fargo to pay a $35 million civil money penalty and restitution to customers who were harmed by the bank's unsafe or unsound sales practices. In assessing the civil money penalty, the OCC noted a number of factors came into play, including the bank's failure to develop and implement an effective enterprise risk management program to detect and prevent the unsafe or unsound sales practices, and the scope and duration of the practices. Under a separate Cease and Desist Order, Well Fargo must provide restitution to customers who were harmed by the bank's unsafe or unsound sales practices and also take steps to correct the deficiencies in the bank's risk management and oversight of the bank's sales practices.

Finally, Wells Fargo must pay another $50 million dollars to the City and County of Los Angeles.

Serves notice. Commenting on the bureau's action, CFPB Director Richard Cordray said, "Today's action should serve notice to the entire industry that financial incentive programs, if not monitored carefully, carry serious risks that can have serious legal consequences." In a press call, Cordray added, "Unchecked incentives can lead to serious consumer harm" and that the bank's practices were "violation of trust and an abuse of trust."

Commitment to customers. Wells Fargo issued a statement noting that it "reached these agreements consistent with our commitment to customers and in the interest of putting this matter behind us. Wells Fargo is committed to putting our customers' interests first 100 percent of the time, and we regret and take responsibility for any instances where customers may have received a product that they did not request." It added, "Our entire culture is centered on doing what is right for our customers. However, at Wells Fargo, when we make mistakes, we are open about it, we take responsibility, and we take action. Today's agreements are consistent with these beliefs."

Companies: Wells Fargo Bank, N.A.

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