Banking and Finance Law Daily Wrap Up,CRIMES AND OFFENSES—Senators urge Wells Fargo to ‘clawback’ incentives from executives,(Sep. 19, 2016)

By Stephanie K. Mann, J.D.

Senator Elizabeth Warren (D-Mass), along with Senate Banking Committee Ranking Member Sherrod Brown (D-Ohio) and Sens. Jack Reed (D-RI), Bob Menendez (D-NJ), and Jeff Merkley (D-Ore), have sent a letter to Wells Fargo Chairman and CEO John G. Stumpf asking whether the bank will use its "clawback" authority to recover compensation it has paid to senior executives, including former Senior Executive Vice President of Community Banking Carrie Tolstedt. The letter comes in the wake of the Consumer Financial Protection Bureau's recent $185 million settlement with Wells Fargo, and the company's related decision to fire over 5,000 employees for creating more than two million checking and credit card accounts that may not have been authorized by customers.

The senators noted that Tolstedt, who led the Community Banking division through the time in which the misconduct occurred, received more than $20 million in annual bonuses between 2010 and 2015, bonuses justified by the company in certain instances because of the "strong cross-sell ratios" in her division. As the senators explain, "That is a direct reference to the extraordinary number of accounts created by her division, many of which were never authorized by customers." The senators also noted that Tolstedt retired in July, just two months before the settlement was announced, with a retirement package worth up to $125 million.

Clawback policies. The letter details the clawback provisions Wells Fargo implemented following the 2008 financial crisis, which were "designed to prevent exactly what happened with Ms. Toldstedt: shareholders and consumers bearing the burden of bank misconduct while senior executives walk away with multi-million dollar awards based on what the company later finds out are fraudulent practices."

According to the senators, a clawback of Toldstedt’s incentive rewards is warranted based upon the following Wells Fargo policies:

- "Incentive compensation was based on materially inaccurate financial information, whether or not the executive was responsible;"
- misconduct occurred "which has or might reasonably be expected to have reputational harm to the company;"
- misconduct caused "significant financial or reputational harm to the Company;"
- there was "improper or grossly negligent failure, including in a supervisory capacity, to identify, escalate, monitor, or manage, in a timely manner and as reasonably expected, risks material to the Company;" and

- "An award was based on materially inaccurate performance metrics."

Companies: Wells Fargo

LegislativeActivity: BankingOperations CrimesOffenses EnforcementActions