Securities Regulation Daily Wrap Up, TOP STORY—Wells Fargo to pay $3B to settle charges over fake accounts, (Feb. 21, 2020)

Securities Regulation Daily

Click to open document in a browser

By Anne Sherry, J.D.

The global settlement resolves civil and criminal allegations that Wells Fargo leadership encouraged bogus customer account openings while the bank told investors that its model was based on customer needs.

The SEC and DOJ announced that Wells Fargo will pay $3 billion to settle claims relating to its "fake accounts" scandal. The payment resolves a criminal investigation into false bank records and identity theft, the government's civil claims under FIRREA, and a newly filed SEC action for securities fraud. The latter accounts for $500 million of the total settlement. The Justice Department and Wells Fargo entered into a three-year deferred prosecution agreement on the criminal charges. Wells Fargo also asked the SEC to waive bad actor disqualification.

The charges center around Wells Fargo's longstanding former practice of pressuring employees to cross-sell financial products. To meet quotas of up to eight accounts per customer, employees resorted to creating 3.5 million new deposit and credit accounts without the authorization of the customer, an internal investigation found.

SEC action. According to the SEC's order instituting proceedings, Wells Fargo violated the antifraud provisions of the Exchange Act by touting its cross-selling strategy even though sales were inflated by the bogus accounts. The sales practices were also inconsistent with Wells Fargo's public disclosures, which told investors that its selling model was grounded in customers' needs. The SEC alleges that senior leadership within the Community Bank segment, which contributed the majority of Wells Fargo's revenue, were aware of "gaming" practices among employees resulting from management pressure to meet onerous sales goals. However, leaders not only failed to relieve the pressure, they also promoted or praised managers who tolerated and encouraged gaming. Wells Fargo admitted these facts as part of its deferred prosecution agreement with the federal prosecutors.

DOJ claims. The government's civil claims under the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) are predicated on Wells Fargo's maintenance of false bank records. The criminal charges arise out of the improper sales practices themselves. U.S. Attorney Nick Hanna characterized the scandal as "a complete failure of leadership at multiple levels within the bank." According to the Department's press release, the global settlement "appropriately addresses the severity of the defendants' conduct while avoiding the imposition of fines and penalties that are unnecessarily duplicative."

Prior settlements. In 2018 Wells Fargo agreed to pay $480 million to settle a private class action and another $575 million in a 50-state settlement of actions brought by state prosecutors. Previously, the Office of the Comptroller of the Currency, Consumer Financial Protection Bureau, and City of Los Angeles coordinated and settled charges against the bank. More recently, OCC announced that former CEO John Stumpf had agreed to pay a $17.5 million civil penalty and that OCC was taking action against other individuals, including seeking a $25 million penalty against former Community Bank head Carrie Tolstedt.

House FSC schedule. The House Financial Services Committee also announced its March schedule, to include a series of hearings entitled "Holding Wells Fargo Accountable." The full Committee will conduct hearings on March 10 and March 11 subtitled "CEO Perspectives on Next Steps for the Bank that Broke America's Trust" and "Examining the Role of the Board of Directors in the Bank's Egregious Pattern of Consumer Abuses." On March 25, the Subcommittee on Oversight and Investigations will convene for a hearing subtitled "Examining the Impact of the Bank's Toxic Culture on Its Employees."

Companies: Wells Fargo & Co.

MainStory: TopStory FraudManipulation PublicCompanyReportingDisclosure RiskManagement