

ATTORNEY GENERAL OF THE STATE OF NEW YORK
INVESTOR PROTECTION BUREAU

In the Matter of
Wells Fargo & Company

No. 18-121

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and between the Office of the Attorney General of the State of New York (“OAG”) and Wells Fargo & Company (“Wells Fargo”) (together, the “Parties”).

WHEREAS, the OAG conducted an investigation pursuant to New York General Business Law § 352 *et. seq.* (the “Martin Act”) and Executive Law § 63(12) and the common law of the State of New York into Wells Fargo’s representations to investors regarding its cross-selling business model and publicly reported cross-sell metrics;

WHEREAS, in the course of its investigation, the OAG subpoenaed and received millions of pages of Wells Fargo documents and took the testimony of Wells Fargo employees;

WHEREAS, the OAG, based on its investigation, finds that Wells Fargo’s representations to investors regarding its cross-sell strategy and cross-sell metrics violated the Martin Act, Executive Law § 63(12), and the common law of the State of New York;

WHEREAS, Wells Fargo neither admits nor denies the OAG’s Findings;

WHEREAS, the OAG finds that the relief and other provisions contained in this Agreement are appropriate and in the public interest. Therefore, the OAG is willing to discontinue its investigation of Wells Fargo’s representations to investors regarding its cross-sell strategy and cross-sell metrics and accept the terms of this Agreement pursuant to Executive Law

§ 63(15), in lieu of commencing a statutory proceeding for violations of the Martin Act, Executive Law § 63(12), and New York common law based on the conduct during the period January 4, 2011 through the present, described below;

NOW THEREFORE, in consideration of the mutual covenants, promises, and obligations of this Agreement, the Parties hereby agree as follows:

OAG's FINDINGS

1. Cross-sell is the process of selling additional financial products and/or services to customers. Cross-sell can include selling an existing checking account customer a credit card, or selling an existing credit card customer a mortgage. Wells Fargo used cross-sell as a marketing approach to increase profits. That is, the more a customer spent on Wells Fargo's products, the better the bank performed financially and the more its opportunities for revenue growth expanded.

2. Wells Fargo began to incorporate cross-sell into its business model as far back as the late 1990s, and subsequently sought to promote what it described as its superior cross-sell capabilities, along with the fundamental opportunity for revenue growth those capabilities represent.

3. In publicly filed documents, Wells Fargo represented to investors that its "vision is to satisfy all our customers' financial needs" and its "primary strategy" to achieve this vision is to cross-sell: "to increase the number of products our customers buy from us and to offer them all of the financial products that fulfill their needs."

4. Wells Fargo represented to investors its ability to increase revenues and better serve its customers by pursuing its purportedly superior cross-sell strategy; it also reported cross-sell

metrics (figures purportedly intended to reflect the number of Wells Fargo products held by customers) that increased over time.

5. At the same time, Wells Fargo failed to disclose to investors that employees in its Community Bank division engaged in sales practice misconduct including opening some 3.5 million possibly fraudulent deposit, credit and line of credit accounts without the knowledge or consent of its customers.

6. In order to encourage its employees to cross-sell, Wells Fargo pressured employees to meet strict and unrealistic sales goals, and used incentive compensation plans tied to meeting the sales goals. From employees at the branch level up through the chain of command in the Community Bank division, those that met and surpassed sales targets were eligible for rewards such as promotions and bonuses. Those employees who did not meet the sales targets faced pressure from management, lower compensation, and possible termination.

7. As a result of its cross-sell driven sales culture, certain Wells Fargo employees engaged in the following misconduct without customer knowledge or consent: opened deposit accounts; transferred funds from customers' authorized accounts in order to temporarily fund unauthorized accounts; used email addresses not belonging to customers to enroll customers in on-line banking services; requested debit cards and created personal identification numbers (PINs) in order to activate them; and submitted applications for and obtained credit cards.

8. In a June 2011 email, one member of the incentive compensation team acknowledged this misconduct by Wells Fargo employees, stating that "I've asked bankers... why people cheat... it's because their manager tells them they'll be fired if they don't hit their minimums."

9. Beginning as early as 2011, Wells Fargo's Board of Directors received reports that described increasing numbers of allegations of sales practice misconduct by its employees. In

Congressional testimony, Wells Fargo's former CEO stated that he personally became aware of "widespread fraud" by Wells Fargo employees in 2013.

10. During the period second quarter 2007 through fourth quarter 2013, the number of reported allegations of sales practice misconduct by employees "steadily increased." Further, a review of Wells Fargo's internal investigations which resulted in employee terminations for sales practice-related misconduct found that employees "frequently claimed that sales pressure drove them" to engage in such misconduct.

11. Between 2011 and 2015, Wells Fargo terminated approximately 5,367 employees across 43 states for "engaging in unethical sales practices" such as those described herein. Wells Fargo's former CEO testified before Congress that "5,000 people don't just do 5,000 random things on their own."

12. In July 2012, the former head of Wells Fargo's Corporate Security group told senior internal auditors that "our data continues to highlight a concerning trend in the area of Sales Integrity . . . we need to continue to escalate this with senior leadership." He further stated that the former head of risk for the Community Bank division "often challenges" Audit and Corporate Security Audit & Examination reporting verbiage and minimizes "the negative information being submitted to executive management."

13. Wells Fargo employees sent communications to senior management describing sales practice misconduct, such as that described herein. For example, former employees who maintained they were "unjustly fired" sent a letter to Wells Fargo's then CEO in March 2011 alleging that certain sales practices that violated Wells Fargo policy were widespread.

14. In another communication, an anonymous November 2013 email purportedly from Los Angeles/Orange County employees sent to executive management and a mailbox monitored on

behalf of the Board asserted that the fraudulent conduct was pervasive, and included “gaming,” “falsification,” and other “unethical behavior” by regional management.

15. On September 8, 2016, the extent of Wells Fargo’s sales practices-related misconduct was revealed to investors when Wells Fargo announced that it had agreed to pay a total of \$185 million to three government regulators in connection with the sales practice-related misconduct of employees in its Community Bank division.

16. Following the September 8, 2016 announcement of settlements, the price of Wells Fargo’s common stock suddenly and significantly decreased, and investors suffered hundreds of millions of dollars of losses due to Wells Fargo’s failure to disclose earlier the extent of its sales practices-related misconduct.

17. In an October 2016 internal email, Wells Fargo’s then Chief Risk Officer stated that the Community Bank division had a “culture problem,” and “[o]ur people opened unauthorized accounts,” and “we allowed a poorly designed and poorly managed compensation system to be established and then didn’t kill it soon enough.”

18. Based on the foregoing, the OAG finds that Wells Fargo’s representations to investors regarding its cross-selling business model and publicly reported cross-sell metrics violated New York General Business Law § 352 *et seq.*, Executive Law § 63(12), and the common law of the State of New York.

RELIEF

19. Payment: Wells Fargo shall pay to the State of New York a penalty in the amount of \$65,000,000. Payment shall be made by electronic funds transfer within ten (10) business days of the effective date of this Agreement, pursuant to written payment processing instructions to be provided by the OAG.

20. Subject to the limitations in Paragraph 28, in consideration of this Payment, the OAG agrees not to bring any claims or causes of action of any kind against Wells Fargo, its present and former direct or indirect parents, subsidiaries, or affiliates, or any of its officers, directors, employees, managers, or agents for conduct arising out of Wells Fargo's public reporting of its cross-sell metrics or representations or omissions by Wells Fargo and its employees regarding cross-selling, Wells Fargo's cross-sell metrics, Wells Fargo's cross-selling business model, or Wells Fargo's sales practices, investigations into sales practices, or public allegations concerning sales practices.

MISCELLANEOUS

Subsequent Proceedings

21. Wells Fargo agrees and acknowledges that the OAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Agreement, for violations of the Agreement, or if this Agreement is voided pursuant to paragraph 31, and Wells Fargo agrees and acknowledges that in such event:

- a. any statute of limitations or other time-related defenses are tolled from and after the date of this Agreement;
- b. the OAG may use statements, documents, or other materials produced or provided by Wells Fargo prior to or after the effective date of this Agreement;
- c. any civil action or proceeding must be adjudicated by the courts of the State of New York, and Wells Fargo irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue to such an action; and

d. evidence of a violation of this Agreement shall constitute prima facie proof of a violation of the applicable law pursuant to Executive Law § 63(15).

22. If a court of competent jurisdiction determines that Wells Fargo has violated this Agreement, Wells Fargo shall pay to the OAG the reasonable costs, if any, of obtaining such determination and of enforcing this Agreement, including without limitation legal fees, expenses, and court costs.

Effects of Agreement

23. This Agreement is not intended for use by any third party in any other proceeding.

24. All terms and conditions of this Agreement shall continue in full force and effect on any successor, assignee, or transferee of Wells Fargo. Wells Fargo shall include in any such successor, assignment or transfer agreement a provision that binds the successor, assignee or transferee to the terms of the Agreement. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the OAG.

25. This Agreement is made without any trial or adjudication or court finding on any issue of fact or law, and is not a final order of any court or governmental authority.

26. Nothing contained in this Agreement shall be construed to provide that Wells Fargo or any of its affiliates or current or former employees shall be subject to any disqualifications contained in the federal securities laws, the rules and regulations thereunder, the rules and regulations of self-regulatory organizations or various states' securities laws, including any disqualifications from relying upon registration exemptions or safe harbor provisions. In addition, this Agreement is not intended to form the basis for any such disqualifications.

27. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

28. Any liability based on claims of state regulatory agencies having specific regulatory jurisdiction that is separate and independent from the regulatory and enforcement jurisdiction of the OAG is specifically reserved and not released by this Agreement; additionally nothing in this Agreement shall be construed to bar the Consumer Frauds Bureau or any other agency or department of the State of New York from asserting and recovering on consumer claims brought on behalf of the State of New York, individually or as part of any multi-state Attorney General investigation.

29. Any failure by the OAG to insist upon the strict performance by Wells Fargo of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and the OAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Agreement to be performed by Wells Fargo.

Communications

30. All communications, if any, pursuant to this Agreement must reference No. 18-121, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery, express courier, or email at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

If to Wells Fargo, to:

David J. Rice
Wells Fargo & Company
301 S. College Street
Charlotte, North Carolina 28202
(704) 374-6611

With a copy to:

Nicolas Bourtin
Christopher M. Viapiano
Sullivan & Cromwell LLP
125 Broad Street
New York, New York 10004
(212) 558-4000

If to the OAG, to:

Cynthia Hanawalt, or in her absence, to the person holding the title of Bureau Chief, Investor Protection Bureau
Office of the Attorney General
28 Liberty Street
New York, NY 10005

Representations and Warranties

31. The OAG has agreed to the terms of this Agreement based on, among other things, the representations made to the OAG by Wells Fargo and its counsel and the OAG's own factual investigation as set forth in Findings, paragraphs 1-18, *supra*. Wells Fargo represents and warrants that neither it nor its counsel has made any material representations to the OAG that are inaccurate or misleading. If any material representations by Wells Fargo or its counsel are later found to be inaccurate or misleading, this Agreement is voidable by the OAG in its sole discretion.

32. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Agreement has been made to or relied upon by Wells Fargo in agreeing to this Agreement.

33. Wells Fargo represents and warrants, through the signatures below, that the terms and conditions of this Agreement are duly approved. Wells Fargo further represents and warrants

that the signatory to this Agreement is a duly authorized officer acting at the direction of the Board of Directors of Wells Fargo.

General Principles

34. Unless a term limit for compliance is otherwise specified within this Agreement, Wells Fargo's obligations under this Agreement are enduring. Nothing in this Agreement shall relieve Wells Fargo of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

35. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that Wells Fargo violates this Agreement after its effective date.

36. This Agreement may not be amended except by an instrument in writing signed on behalf of the Parties to this Agreement.

37. In the event that any one or more of the provisions contained in this Agreement shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement.

38. Wells Fargo acknowledges that it has entered into this Agreement freely and voluntarily and upon due deliberation with the advice of counsel.

39. This Agreement shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

40. This Agreement and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

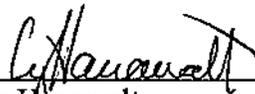
41. This Agreement may be executed in multiple counterparts by the Parties hereto. All counterparts so executed shall constitute one agreement binding upon all Parties, notwithstanding

that all Parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Agreement, all of which shall constitute one agreement to be valid as of the effective date of this Agreement. For purposes of this Agreement, copies of signatures shall be treated the same as originals. Documents executed, scanned and transmitted electronically shall be deemed originals for purposes of this Agreement and all matters related thereto; scanned signatures shall have the same legal effect as original signatures.

42. The effective date of this Agreement shall be October 18, 2018.

Dated: October 18, 2018
New York, New York

BARBARA D. UNDERWOOD
Attorney General of the State of New York
28 Liberty Street
New York, NY 10005

By: 
Cynthia Hanawalt
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