

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10887 / November 13, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-20148

In the Matter of

JOHN G. STUMPF,

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), against John G. Stumpf (“Stumpf” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds¹ that:

¹ The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Summary

1. This proceeding relates to the actions of the former Chairman and Chief Executive Officer of Wells Fargo & Company (“Wells Fargo” or the “Company”), John G. Stumpf, who, in 2015 and 2016, signed and certified misleading statements to the investing public that misstated a key performance metric. Stumpf and Wells Fargo publicly stated on numerous occasions that a core business strategy for the Company, including its largest business unit, the Community Bank, was to “cross sell” to customers accounts and products that they needed and used. Wells Fargo published a Community Bank “cross-sell metric” in its Annual Reports, and in its quarterly reports, which Stumpf signed and certified when they were publicly filed with the Commission. In those reports, Wells Fargo described the cross-sell metric as measuring the number of accounts and products sold – and “used” – per retail bank household. Wells Fargo characterized its cross-selling strategy to investors as a key component of its financial success and publicly touted the Community Bank’s cross-sell metric as proof of its success at executing on this core business strategy.

2. In contrast to those public statements and disclosures about the purportedly “needs-based” selling, Wells Fargo’s Community Bank had employed a volume-based sales model that incentivized employees to sell to existing customers, often with little regard to actual customer need or expected use. By 2015, the Community Bank’s model had led to thousands of its employees engaging in unlawful or unethical sales misconduct, including selling a significant number of accounts and products that customers did not need, want, or use.

3. As Wells Fargo’s Chairman and CEO during the relevant time, Stumpf was required to certify the accuracy of the Company’s filings with the Commission, including certifying the accuracy of the disclosures contained in its annual and quarterly reports filed with the Commission with its Forms 10-K and 10-Q. Stumpf learned of facts that put, or should have put, him on notice about material inaccuracies in the Company’s statements about the Community Bank’s cross-selling strategy as well as the cross-sell metric it reported from the second quarter of 2015 through the second quarter of 2016. In attesting to the accuracy of the Company’s disclosures, Stumpf’s reliance on several senior officers, including the head of the Community Bank, who had assured Mr. Stumpf that the Company’s statements related to the cross-sell strategy and metric were accurate in all material respects, was unreasonable.

4. At that time, senior leadership at Wells Fargo, including Stumpf, learned of facts demonstrating the severity of the sales misconduct within the Community Bank and how it presented an ongoing conflict with the Company’s public statements about its core, cross-selling strategy. In particular, the information about the extent of the sales misconduct rendered Wells Fargo’s public statements about its cross-sell strategy, and its measurement of that strategy, false and misleading.

Respondent

5. **John G. Stumpf**, age 66, was Chief Executive Officer of Wells Fargo from 2007 until October 2016, and Chairman from 2010 until October 2016. Between December 2015 and August 2016, with the Company’s approval, Stumpf sold shares of Wells Fargo stock into the market and exercised certain of his Wells Fargo option grants to purchase shares of Wells Fargo securities, resulting in a net increase of his holdings of Company shares.

Other Relevant Entity

6. **Wells Fargo** is a publicly-traded financial services corporation headquartered in San Francisco, California, and organized under the laws of the State of Delaware. Wells Fargo's common stock is registered under Section 12(b) of the Securities Exchange Act of 1934 and quoted on the New York Stock Exchange (Ticker: WFC). Wells Fargo provides retail, commercial, and corporate banking services through three operating segments, the largest of which is its Community Bank. The Community Bank provides banking products targeted to individuals and small businesses, including checking and savings accounts, certificates of deposit, debit cards, bill pay, and global remittance products.

Background

Wells Fargo's Key "Cross-Sell" Performance Metric

7. In Wells Fargo's public disclosures set out in annual and quarterly reports, and discussed at meetings with investors, the Company repeatedly described its sales strategy of cross-selling to existing customers as "needs-based." For instance, in the second quarterly report for 2015, filed on Form 10-Q (on August 5, 2015) and certified by Stumpf, the Company stated: "Our cross-sell strategy is to increase the number of products our customers use by offering them all of the financial products that satisfy their financial needs. Our approach is needs based as some customers will benefit from more products, and some may need fewer."

8. In those same disclosures, Wells Fargo published the Community Bank's "cross-sell metric," which it described as measuring the success of its cross-sell strategy. For years, through 2014, Wells Fargo touted to investors the consistent growth of the cross-sell metric over time as demonstrative of its success at executing on its cross-selling strategy. Indeed, until mid-2014, Wells Fargo included the cross-sell metric – typically emphasizing its growth – in earnings releases and earnings calls that took place shortly after the close of a quarterly financial reporting period. Stumpf frequently provided stock market analysts who followed Wells Fargo's securities with information about the Company's reported success in delivering on its cross-sell strategy.

Attention to Sales Misconduct That Influenced the Cross-Sell Metric

9. In October 2013, the Los Angeles Times reported that Wells Fargo had fired approximately 30 employees in the Los Angeles, California area for sales-related misconduct. The article quoted a Wells Fargo bank spokesperson, who confirmed the firings. In forwarding the article to Stumpf, the head of the Community Bank, Carrie Tolstedt ("Tolstedt"), alerted him: "This is not a good article." Stumpf responded: "Not good." The Los Angeles Times followed up with a second, longer article in December 2013, which detailed practices such as bankers ordering credit cards without customers' permission, forging client signatures and begging their own family members to open "ghost accounts."

10. As Wells Fargo later acknowledged, the sales misconduct was widespread and varied. For several years, Wells Fargo bankers sold customers products and accounts that were never used by customers, as well as unwanted and unauthorized products, contrary to Wells Fargo's

purportedly needs-based cross-selling strategy. The Community Bank's onerous sales goals and accompanying management pressure led many of the employees to engage in the misconduct. More than 1,000 bankers were terminated annually for sales-related misconduct, and many more were disciplined for such conduct without being terminated. The employees who engaged in the misconduct did so repeatedly, causing a substantial number of unused or unwanted products to be inappropriately included in the Community Bank's cross-sell metric.

11. Shortly after the first Los Angeles Times article was published, Stumpf met with Tolstedt and some of her direct reports. Together, Tolstedt and her direct reports discussed with Stumpf the estimated number of employees who were fired by the Community Bank for sales misconduct, which was approximately 1,000 or more annually, or roughly one percent of the number of bankers. Based on his conversations with the Community Bank, Stumpf concluded that the number was not significant. He was also told by the leaders in the Community Bank that the persons who had engaged in the misconduct were acting on their own and not incentivized to do so by the bank's policies. Nevertheless, based on information from other sources, Stumpf had reason to question those initial conclusions, as well as the ongoing effect of the Community Bank's aggressive sales incentive structure and historical sales misconduct on Wells Fargo's cross-selling efforts.

12. In immediate response to the firings in Los Angeles and the related publicity, Wells Fargo's sales of new products to existing customers slowed measurably, as bankers grew concerned that their conduct would be more closely scrutinized and steps were taken at the bank to curb sales abuse. Furthermore, over the following months, Tolstedt reported to Stumpf that, as practices were put in place at the bank to improve sales quality, the number of new accounts sold had slowed. She also reported that growth in the cross-sell metric had flattened, that she expected it would decline over the coming months. By the second quarter 2014, Wells Fargo reported flattened growth in the cross-sell metric. By the third quarter 2014, Wells Fargo reported a decline in the Community Bank's cross-sell metric for the first time.

Wells Fargo's Board Begins Seeking Answers Regarding the Sales Practices Problem

13. As the Chairman of Wells Fargo's board of directors, Stumpf worked with board members and board committees to facilitate the governance of the Company, including the board's Risk Committee, which oversaw the risk assessment function of the Company. Stumpf considered the corporate risk function to be the "second line of defense" in the Company's risk management and compliance efforts, which was necessary to ensure that the "first line of defense" – the Community Bank – accurately assessed and addressed risks and operated soundly.

14. In late April 2015, the Risk Committee of the board of directors met, and during the meeting Tolstedt made a presentation – at the Risk Committee's request – regarding the sales misconduct issues that had surfaced in the media in late 2013. The board member who chaired the Risk Committee was dissatisfied with the presentation by Tolstedt and, shortly after the meeting, contacted Stumpf and the Chief Risk Officer of the Company to voice his dissatisfaction. The Risk Committee chairman believed that the presentation had lacked substance and downplayed the risk to the bank from sales misconduct. He also sought further factual information regarding the extent of the problem.

15. On May 4, 2015, the City of Los Angeles filed a lawsuit against Wells Fargo alleging that the Company had engaged in unlawful sales, including opening accounts without customer consent. The Risk Committee chair asked that Tolstedt return to make another presentation on sales practices as the first order of business at the next Risk Committee meeting. Thereafter, Stumpf informed Tolstedt that her next presentation at the meeting of the Risk Committee would be the following week, and that she should work with others to get relevant information to the committee members before the meeting.

16. In preparation for the Risk Committee meeting, Stumpf then met with Tolstedt and her team. He again was advised by them that about one percent of Community Bank employees were terminated for misconduct each year; approximately two-thirds of such employees were terminated for misconduct related to the manipulation of the Company's incentive compensation, including changing customer phone numbers in order to avoid unfavorable customer surveys, while the other one-third of such employee terminations related to sales misconduct impacting customers. Ms. Tolstedt and her team also provided to Stumpf drafts of documents that had been prepared for the Risk Committee in response to its questions regarding the scope of the sales practices violations first uncovered in late 2013. Stumpf provided a critique, instructing them that the Risk Committee would want more supporting information. He noted: "For example, how many team members did we terminate for sales practice violations in the past 12 months (after implementing our changes) versus prior periods. What percentage of the total relevant team member population were terminated for bad behavior. How do/did we make sure we made customers 'whole' when they were impacted? How many products were opened in 2013, 2014, first quarter of 2015 that were done without the knowledge of customers? How have we changed our reward programs, incentive programs, etc. to reduce the likelihood [of] 'gaming.' What are the changes we have made to date."

17. Later the same day, Stumpf informed the chair of the Risk Committee that he had finished his latest review with the team and warned that the information was incredibly complex. Without referencing the specific numbers, Stumpf also suggested that he felt better at that point knowing some of the facts, such as the percentage of persons Wells Fargo terminated due to "gaming of the system," and the percentage of those terminated who opened accounts that customers did not agree to, as opposed to persons who were terminated for interfering with the Company's control mechanism to audit customer satisfaction calls. However, Stumpf did not himself provide details of those percentages or the numbers of terminations. In response, the chair of the Risk Committee replied: "I see this as a preliminary informing of the committee with anticipation that you will address the matter fully with us when the time is right. Encouragement on your part to have the management team forthcoming and open would do wonders to keep the meeting on the right plain."

18. Though Stumpf did not attend the May 2015 Risk Committee meeting due to other business, he was contacted by the Committee chair shortly thereafter, who again voiced his dissatisfaction with the presentation. The chair, who received information during the presentation that understated the number of persons who were terminated for sales misconduct, nevertheless found the information that was presented to be alarming. He also believed that the presentation attempted to minimize the problems at the Community Bank. In response, Stumpf then directed the Company's Chief Risk Officer to take over responsibility from Tolstedt for addressing, scoping, and remediating the sales misconduct issue. The Chief Risk Officer, at the chair of the Risk Committee's request,

engaged an outside consulting firm to attempt to learn the scope and the cause of the sales misconduct.

19. In early June 2015, Stumpf learned from Wells Fargo's Chief Risk Officer that the bank's primary regulator expressed concerns regarding sales practices, and Stumpf was more formally notified by letter later that month that the regulator considered Wells Fargo's management and oversight of sales practices to be weak and in need of improvement, pointing specifically to an overall lack of transparency at the Community Bank regarding past investigations and ongoing control and monitoring.

**Stumpf Unreasonably Relies on Community Bank Head
and Others in Certifying Disclosures**

20. On several occasions following the October 2013 Los Angeles Times article, Community Bank senior leadership made statements and gave assurances to the Company's management, including Stumpf, that minimized the scope of the sales practices problem and led key gatekeepers to believe the root cause of the issue was individual misconduct rather than the sales model itself, and that the controls within the Community Bank were effective and reasonably designed to detect or prevent misconduct. Moreover, Community Bank senior leadership failed to fully inform Stumpf and other key gatekeepers of the significant risks that non-needs-based selling posed the Company.

21. Stumpf failed to ascertain that the assurances he received were credible and accurate.

22. For the second quarter 2015, which closed on June 30, 2015, Stumpf accepted and relied on sub-certifications of others, including the sub-certification provided by Tolstedt (dated August 5, 2015), in which she asserted that she had reviewed the draft Form 10-Q for accuracy, and that it did not contain any materially misleading statements or omissions.

23. Wells Fargo filed its second quarter 2015 report on Form 10-Q with the Commission on August 5, 2015. In it, Wells Fargo stated, among other things, that its "cross-sell strategy" was "needs based," and that the Community Bank's "retail banking household cross-sell was 6.13 products per household in May 2015, compared with 6.17 in May 2014." The Form 10-Q also incorporated by reference Wells Fargo's lengthier disclosures about the Community Bank's cross-sell metric contained in its 2014 Annual Report filed with its Form 10-K earlier in the year, including the claim that "For Community Banking the cross-sell metric represents the relationship of all retail products used by customers in retail banking households." Stumpf signed the 2015 second quarterly report on Form 10-Q and also certified the accuracy of the reported disclosures and other information in the quarterly report.

24. Wells Fargo's second quarter 2015 report on Form 10-Q was materially false and misleading, as it presented the cross-sell metric of 6.13 as purportedly calculated based on the products "used" by households and as measuring the success of a strategy that was based on Wells Fargo's customers' "needs." In truth, the metric was inflated by including accounts and products that were unauthorized, unneeded or unused.

25. During the following quarter, Wells Fargo's board of directors held meetings from October 27-28, 2015, and the Risk Committee of the board invited the consulting firm engaged by the Chief Risk Officer to make a presentation regarding its review of the sales misconduct issues. The Risk Committee also asked Tolstedt to attend and present at the meeting on the same topic. The consulting firm identified and reported to Wells Fargo's board weaknesses that needed to be addressed to manage the impact to the Community Bank from the sales practices risk, including the finding of a misalignment between the bank's messages related to customer relationships and its sales goals and performance expectations applied to its bankers. Exacerbating the issue, the firm concluded, was that customer complaints and ethics issues were frequently not captured in Wells Fargo's internal systems. The firm thus recommended, among other measures, that sales goal setting be reviewed and bankers be rewarded more on whether accounts were used, rather than on the number of products or accounts sold.

26. With respect to the presentation made by Tolstedt, the Risk Committee chair again found the presentation to be inadequate and to have minimized the sales misconduct problems. In December 2015, the Risk Committee chair, another board member, and Stumpf met, and the board members shared their negative opinions about Tolstedt to Stumpf and recommended that Tolstedt be replaced as head of the Community Bank.

27. Despite these growing concerns, for the third quarter 2015, which closed on September 30, 2015, Stumpf accepted and relied on sub-certifications of others, including the sub-certification from Tolstedt (dated November 4, 2015), in which she asserted that she had reviewed the draft Form 10-Q for the quarter for accuracy and that it did not contain any materially misleading statements or omissions.

28. Wells Fargo filed its third quarter 2015 report on Form 10-Q with the Commission on November 4, 2015. In it, Wells Fargo reiterated its claims that its cross-sell strategy was needs based, and announced that the Community Bank's cross-sell metric was "6.13 products per household in August 2015, compared with 6.15 in August 2014." Stumpf signed the 2015 third quarterly report on Form 10-Q and also certified the accuracy of the disclosures.

29. Wells Fargo's third quarter 2015 report on Form 10-Q was materially false and misleading. Like the prior quarterly report, it presented the cross-sell metric of 6.13 as purportedly calculated based on the products "used" by households, and inaccurately claimed that the figure measured the success of a strategy based on customers' "needs." In truth, the metric was inflated by accounts and products that were the result of sales misconduct and were not needed or wanted by customers.

30. Beginning in November 2015, Wells Fargo realigned aspects of its reporting structure and Tolstedt began reporting to the Chief Operating Officer, who in turn reported to Stumpf. In January 2016, Tolstedt and persons who reported to her made a presentation to Stumpf and the COO during a quarterly Community Bank update, recommending Wells Fargo begin reporting a new metric for the Community Bank – "active cross-sell." The Community Bank's recommendation had been prompted, in part, by questions Stumpf had raised in 2015 about the effects of idle accounts.

31. As explained to Stumpf and others, the active cross-sell proposal would include in the number of products counted (the numerator in the cross-sell ratio) only those that customers actively *used*. The presentation summarized “active cross-sell” as having the ability to “capture actual usage.” To illustrate, the presentation used the data that had been utilized by the Community Bank to report the cross-sell metric from 2013 to the figure in the third quarter 2015 Form 10-Q, and compared the former metric with the newly-proposed metric. For the third quarter 2015, it noted: “Current [Cross-sell]: 6.13 Active Cross-sell 5.17.” In addition to the active cross-sell presentation, Tolstedt and her team described other possible changes to the Community Bank’s reported cross-sell metric. One such change would redefine “household,” which represented the denominator in the cross-sell ratio. Under the new definition, the only households that would be included in the metric were those that had a primary checking account. This change, on its own, would have the effect of shrinking the denominator and thus making the cross-sell metric a larger number.

32. The Community Bank team’s presentation thus demonstrated that by restricting the cross-sell metric to products actually “used,” the cross-sell metric changed substantially. Tolstedt and her team further suggested that, unlike the then-reported cross sell metric that included inactive accounts, the “active cross-sell” metric would likely show growth much sooner. The team’s presentation was positively received, including by Stumpf and the COO.

33. The Community Bank team further explained that the “active cross-sell” metric potentially could be readied for public presentation during Wells Fargo’s 2016 Investor Day conference, scheduled for May 2016. The Investor Day conference was an important, day-long event hosted by Wells Fargo every other year. It was attended by numerous large investors and by securities industry analysts who followed Wells Fargo’s stock closely and who wrote about Wells Fargo in their communications with their own investor clients. The highest levels of management at Wells Fargo, including Stumpf, the COO, the Chief Financial Officer, and the heads of the business segments, such as the Community Bank, attended and provided details about business strategies.

34. Soon after the January 2016 presentation by the Community Bank on “active cross-sell,” Wells Fargo began to prepare its 2015 Annual Report to be filed with the Commission with its Form 10-K for the year ended December 31, 2015. The drafts of the Annual Report, which were provided to Stumpf and to Tolstedt who, along with others, provided her sub-certifications as to its accuracy, used the cross-sell metric that was inflated by “inactive” accounts.

35. In Wells Fargo’s 2015 Annual Report, filed with the Commission with the 2015 Form 10-K on February 24, 2016, the Company reiterated that its cross-sell strategy was to “offer[] customers the products and services they need, want and value” and that its “approach to cross-sell is needs-based.” Wells Fargo further stated: “One way we track the degree to which we are satisfying our customers’ financial needs is through our cross-sell metrics.” The 2015 Annual Report also stated: “For Community Banking the cross-sell metric represents the relationship of all retail products used by customers in retail banking households.” Wells Fargo further reported that its Community Bank’s “retail banking household cross-sell was 6.11 products per household in November 2015, compared with 6.17 in November 2014 and 6.16 in November 2013.” Stumpf signed the 2015 Form 10-K filed with the Annual Report, and he certified the accuracy of the reported disclosures and other related information contained in the report.

36. Wells Fargo's 2015 Annual Report filed with its Form 10-K was materially false and misleading. It presented the cross-sell metric of 6.11 per household as purportedly measuring "retail products used by customers in retail banking households" and as reflective of a "needs-based" cross-sell approach. In reality, by the Community Bank's own measure, the reported cross-sell metric included products that were not used by customers – as much as 18 percent compared with products and accounts actively used. Instead, the reported cross-sell metric was inflated by accounts and products that were the result of sales misconduct and were not needed, wanted, or used by customers.

37. From March through May 2016, the Community Bank team continued to refine the new "active cross-sell" metric, which they considered announcing during the 2016 Investor Day conference, and spoke internally with numerous persons at Wells Fargo, including from the finance department, the legal department, and media relations.

38. However, in May 2016, shortly before the Investor Day conference, the Community Bank removed the "active cross-sell" discussion from the prepared presentation for the conference. At approximately the same time, on May 4, 2016, Wells Fargo filed with the Commission its first quarterly 2016 report on Form 10-Q (for the period ended March 30, 2016), which Stumpf signed and certified, having received a sub-certification from Tolstedt and others as to the accuracy of the information regarding the Community Bank. In it, Wells Fargo again misleadingly described its cross-sell strategy as "needs-based" and reported the Community Bank cross-sell metric "was 6.09 products per household in February 2016, compared with 6.13 in February 2015."

39. Wells Fargo's first quarter 2016 report on Form 10-Q was materially false and misleading, as it presented the cross-sell metric of 6.09 as purportedly calculated based on the products "used" by households and as measuring the success of a strategy that was based on Wells Fargo's customers' "needs." In truth, the metric was inflated by accounts and products that were the result of sales misconduct and were not needed, wanted, or used by customers.

40. During the May 24, 2016 Investor Day conference, Stumpf, Tolstedt, and several other senior officers spoke. Tolstedt responded to questions about the Community Bank's declining cross-sell metric. One analyst who followed Wells Fargo's stock observed that the decline in the metric was "a bit of a change" for the Community Bank and asked whether the decline reflected either "an inevitable saturation" or "a need for new products." In response, Tolstedt acknowledged that there had been "headwinds." However, she attributed the decline in the cross-sell metric to strong checking account growth, and "the interest rate environment." Tolstedt did not mention that the reported metric continued to decline as "inactive" accounts – that is, unused products, unwanted products, and unauthorized products that were the result of sales misconduct – slowly rolled off the metric.

41. On July 12, 2016, Wells Fargo announced that Tolstedt was retiring at the year's end, and would leave her position as head of the Community Bank as of July 31, 2016. Wells Fargo's public announcement was also filed with the Commission on Form 8-K. Nevertheless, on August 4, 2016, Wells Fargo filed with the Commission its second quarterly 2016 report on Form 10-Q (for the quarter ended June 30, 2016), which Stumpf signed and certified, having received sub-certifications from Tolstedt and others as to the accuracy of the information regarding the Community Bank. In it, Wells Fargo maintained that its cross-sell strategy was "needs-based," but

disclosed a change in the cross-sell metric by including in the ratio a new definition of “households” that was limited to those that maintain a retail checking account. In other words, Wells Fargo made the first one of the changes that the Community Bank had proposed in January 2016 to the cross-sell metric, which had the effect of reporting a higher value for the cross-sell metric: “Our Community Banking cross-sell metrics, as revised for prior periods to conform to the current period presentation, were 6.28, 6.32, 6.31, 6.37 and 6.36 as of February 2016, May 2015 and November 2015, 2014 and 2013, respectively.” No mention was made of the “active cross-sell” metric.

42. Wells Fargo’s second quarter 2016 report on Form 10-Q was materially false and misleading, as it presented the cross-sell metric as purportedly measuring the success of a strategy that was based on its customers’ “needs.” In truth, the metric remained inflated by accounts and products that were the results of sales misconduct and that were not needed, wanted, or used by customers.

43. On September 8, 2016, three settlements with Wells Fargo were announced, each related to allegations of sales misconduct by bankers. First, the Consumer Financial Protection Bureau fined Wells Fargo \$100 million for unlawfully opening more than two million deposit and credit card accounts that may not have been authorized by consumers. Second, Wells Fargo agreed to pay an additional \$35 million penalty to the Office of the Comptroller of the Currency, the bank’s principal regulator, in an action also alleging sales misconduct by bankers. Third, Wells Fargo agreed to settle the lawsuit brought by the City of Los Angeles by paying \$50 million for similarly-described conduct.

44. Shortly after the announced settlements, on September 27, 2016, the independent directors of Wells Fargo’s board of directors announced that the Company had launched an investigation into the Company’s retail banking sales practices, and that it would take certain personnel actions relating to Stumpf and Tolstedt. The independent directors agreed with Stumpf that he would forfeit all of his outstanding unvested equity awards, valued at approximately \$41 million and that he also would not receive a bonus for 2016. In April 2017, the board additionally retroactively clawed back approximately \$28 million in previous equity awards from Stumpf.

45. On October 12, 2016, Wells Fargo announced the retirement of Stumpf from the Company, which included his position as CEO and as a member of the board of directors.

Violations

46. A statement or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988).

47. As a result of the conduct described above, Stumpf violated Section 17(a)(2) of the Securities Act, which proscribes obtaining money or property through misstatements or omissions about material facts, and Section 17(a)(3) of the Securities Act, which proscribes any transaction or course of business that operates or would operate as a fraud or deceit upon a purchaser of securities. A violation of these provisions does not require scienter and may rest on a finding of negligence. *See Aaron v. SEC*, 446 U.S. 680, 685, 701-02 (1980).

Respondent's Remedial Efforts

48. In determining to accept Stumpf's Offer, the Commission considered remedial acts undertaken by him and cooperation afforded the Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Stumpf's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Respondent Stumpf cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act.

B. Respondent shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$2,500,000.00 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying John G. Stumpf as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Monique C. Winkler, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, CA 94104.

C. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the penalties referenced in paragraph IV.B above. This Fair Fund shall be added to or combined with the Fair Fund established in the related administrative proceeding in *In the Matter of Wells Fargo & Company*, Administrative Proceeding File No. 3-19704 (Feb. 21, 2020). Amounts ordered to be

paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary