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# The OCC Issues "Lessons Learned" Review of its Supervision of Sales Practices at Wells Fargo

On April 19, 2017, the Office of the Comptroller of the Currency ("OCC") released its "Lessons Learned Review of Supervision of Sales Practices at Wells Fargo." The report results from Comptroller Thomas Curry's directive for an "independent review" of the Wells Fargo supervisory record to "identify any supervision gaps and lessons learned to improve the OCC's supervisory processes going forward."

The OCC report mirrors some of the themes of the Wells Fargo investigation report, which we have discussed in a prior memorandum.<sup>2</sup> According to the OCC report, examiners missed opportunities to probe more deeply into sales practices problems, search for root causes, and demand more timely corrective action. The report likely will prompt the OCC and other banking agencies to bolster their efforts, such as by engaging in more detailed testing and investigation into root causes, taking a stricter approach to remediation and deadlines, making greater efforts to accept and review whistleblower complaints, and strengthening procedures for launching horizontal reviews after problems are identified at one institution.

Below we describe some of the OCC report's key findings and "lessons learned."

#### **Key Findings Regarding Deficiencies in the Supervisory Process**

- The report concludes that the "OCC did not take timely and effective supervisory actions" after the bank and the OCC identified "significant issues" with complaint management and sales practices.
- The report finds that while sales practices were identified in OCC core assessment conclusions since at least 2010, there were "supervision gaps or deficient OCC processes that could have improved the timeliness and effectiveness of supervision of sales practices." These deficiencies include untimely and ineffective supervision of complaints and whistleblower cases, untimely and ineffective supervision of incentive programs, ineffective Matter Requiring Attention ("MRA") communication and follow-up, and ineffective supervision of reputation risk.
- For instance, the report finds that in reviewing consumer complaints, employee complaints received through the bank's EthicsLine, and whistleblower cases relating to problematic sales practices, the OCC examiners did not evaluate root causes, such as aggressive incentives or weak preventive controls. The report notes, for example, that examiners were focused too heavily on bank processes (e.g., the adequacy of the whistleblower process) at the expense of "what those processes were actually

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reporting" (e.g., the large number of EthicsLine cases involving the gaming of sales incentives). As a result, the examiners did not design corrective actions to correct root causes. The report concludes that there were "several missed opportunities" to perform "comprehensive analysis and take more timely action beginning in 2010."

- The report finds that the examiners had plans in earlier years to perform incentive plan sampling and testing, but these plans were never executed, and there appeared to be many missed opportunities for earlier supervisory responses. Also, the report notes that in 2010 the examiners stated that they were "aware of no assessment of the risks and controls associated with the corporate goal of cross-selling eight products per household," yet they did not take appropriate supervisory action in response.
- The report finds that examiners lacked an effective system for managing the whistleblower complaints it received regarding sales practices. There was no "end-to-end process for whistleblower cases that includes a central repository to capture and monitor these cases to timely resolution, accountability checkpoints, and systemic analysis."
- The report points to an MRA that the OCC issued in 2009 requiring that the bank establish an "enterprise-wide system for complaint management." This MRA had the following "communication deficiencies": it was not addressed to the Board, it was not listed as an unsafe and unsound practice, and it did not identify root causes or responsible parties. This MRA remained outstanding for seven years, and the OCC failed to escalate the issue to resolve it; it was eventually incorporated into the 2016 OCC consent order.

### **Lessons Learned for Improving Supervision**

The report concludes that the OCC's supervision of the bank since 2010 provides "meaningful lessons learned" relating to effective bank supervision. The report identifies nine "lessons learned" for the OCC's Large Bank Supervision unit, including:

- The OCC should implement a process to ensure "periodic, comprehensive" analysis of complaints and whistleblower cases, which includes testing, analysis of systemic root causes, and appropriate follow up.
- When a major issue is identified, the OCC should "evaluate the need for a horizontal survey or analysis of other large banks to determine if the issue is systemic."
- The OCC should improve processes to "evaluate systemic root causes of reputation risk."

- The OCC should improve its follow-up and validation of MRAs. For example, examiners should ensure that "concerns are followed through to effective correction action," rather than incorporated into more process-oriented MRAs that delay corrective actions.
- The OCC should develop an "enterprise-wide whistleblower process" and update "external-facing interfaces" to inform the public or other governmental agencies about how to communicate whistleblower information to the OCC. The review shows that the OCC would have benefited from having "well-developed whistleblower protocols in place to research each individual case, document resolution of those cases, and analyze potential systemic risk."

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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See Lessons Learned Review of Supervision of Sales Practiced at Wells Fargo (Apr. 19, 2017), available <a href="here">here</a>. The OCC report was issued by the Office of Enterprise Governance and the Ombudsman.

See Paul, Weiss Client Memorandum "Lessons Learned from the Wells Fargo Sales Practices Investigation Report" (Apr. 18, 2017), available <a href="here">here</a>. We have also described CFPB's guidance on steps that regulated entities should take in managing sales and other compensation incentives. See Paul, Weiss Client Memorandum "The CFPB Issues Guidance on Effective Compliance Oversight Over Sales and Other Incentives" (Dec. 1, 2016), available <a href="here">here</a>.