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The Shame of Wells Fargo – Ethics and Leadership Failures

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ABSTRACT

On September 8, 2016, the unethical operating practices of Wells Fargo were exposed when it was found to have engaged in the widespread illegal practices to meet sales targets and boost bonuses. The second largest market cap financial institution in the world was found to have opened up over two (2) million illegal customer deposit and credit card accounts. This behavior by the formerly well-respected financial institution raises numerous questions regarding the ethical duties of fiduciaries to the stakeholders that they serve. Further, the bank is accused of setting unrealistic sales criteria, concealing their illegal customer account activity while at the same time profiting with big bonuses. This behavior looks and sounds, by all accounts, like self-dealing, conflict of interest and serious breaches of ethical conduct. It raises the question of the corporate ethics and the effectiveness of Corporate Codes of Ethics and Business Conduct and whether these Codes are indeed being taken seriously by Corporations. Additionally, Wells Fargo is accused of firing over 5,300 employees, some for refusing to go along with the illegal activity, some for not meeting the unrealistic targets and others for whistleblowing. These questionable practices in corporations present challenges for employees, investors, creditors, other stakeholders as well as accountants and auditors. This behavior also raises the question of whether the Sarbanes Oxley Act and other regulations which are currently in place are effective at protecting employees and other stakeholders.

In this paper, an examination is undertaken of the charges of unethical behavior against the CEO of Wells Fargo as well as its managers and employees. We examine "tone at the top" and leadership style that set impossible goals and pushed employees to behave unethically. At the same time, the Company failed to adequately protect its employees, customers, investors, creditors, the general public as well as the Company's reputation. To this end, we evaluate Wells Fargo's behavior in relation to various theories of moral theory and ethical behavior and to Wells Fargo's own Code of Ethics and Business Conduct.

The results of our discussion in this paper can serve as a starting point in highlighting the ethical dilemma associated with aggressive corporate strategies and the pressing need for expansion of the Sarbanes Oxley Act (SOX) and enhancement of other regulations as it applies to corporations.

Keywords: Ethics, moral theory, corrupt sales practices, whistleblowers, Sarbanes Oxley Act (SOX) and Code of Ethics & Business Conduct.

1. INTRODUCTION

Wells Fargo emerged from the 2008 financial crisis relatively unscathed and admired for not participating in a significant way with the scourge of sub-prime lending. Such accolades and respect have been shattered in light of recent revelations regarding the Wells Fargo account opening scandal and related abuse of employees and whistleblowers. Wells Fargo's business practices have exposed a complete ethical hollowness and contempt for ethical business practices that respect the rights of customers, employees, shareholders and the public at large.

This scathing scandal unfolded in 2016, involving the large, previously well-respected bank Wells Fargo, which admitted to the creation of approximately two (2) million unauthorized "customer" bank accounts and credit cards without the knowledge or permission of its customers. While that in itself is shocking, the bank went further and also 1) fired employees who did not comply with

this misguided and corrupt scheme 2) retaliated and fired whistleblowers who exposed the unethical business practices and 3) encouraged systematic collusion across a wide range of management to avoid detection of the abhorrent business practices.

At the core, the scandal involved aggressive business practices including placing unrealistic goals for opening of accounts upon regional managers and adopting performance bonuses for managers based upon these goals. Pressure was placed on the local tellers and various sales teams to meet these unrealistic goals in order to ensure their continued employment. This unethical and corrupt strategy incentivized unethical operating practices that were exposed and completely crumbled on September 8, 2016, when Wells Fargo was fined $185,000,000 "for the widespread illegal practice of secretly opening unauthorized deposit and credit card accounts," to meet sales targets and boost bonuses (Consumer Financial Protection Bureau, 2016). This fine was composed of $100 million imposed by the Consumer Financial Protection Bureau (CFPB), along with $50 million imposed by the Los Angeles City Attorney's Office and $35 million penalty from the Office of the Comptroller. It was the largest penalty ever imposed by CFPB, which said the order goes back to January 1, 2011.

In this article we present the case that Wells Fargo's predatory practices make the firm guilty of violating fundamental ethical business norms and expectations that customers, employees and various other stakeholders have in firms they trust and with which they conduct business. The primary focus here is to understand and explain the scandalous business practices at Wells Fargo and then to analyze and propose explanations for the deep rooted widespread organizational disdain of customers, employees, shareholders and the general public that would embrace such business practices that are clearly anathema to accepted business ethics generally. We conclude with lessons learned and make recommendations for further research to avoid such abuses in the future.

2. THE WELLS FARGO MATTER

Wells Fargo's actions were aggressive, widespread and pervasive within the organization.

2.1 Aggressive Sales Strategy

The top down, aggressive and relentless sales strategy employed by Wells Fargo's leadership can be encapsulated in the following vignette:

> "Wells Fargo's branch manager Rita Murillo came to dread the phone calls. Regional bosses required hourly conferences on her Florida branch's progress toward daily quotas for opening accounts and selling customers' extras such as overdraft protection. Employees who lagged behind had to stay late and work weekends to meet goals, Murillo said. Then came the threats: Anyone falling short after two months would be fired. 'We were constantly told we would end up working for McDonald's,' said Murillo, who later resigned. "If we did not make the sales quotas … we had to stay for what felt like after-school detention, or report to a call session on Saturdays" (Reckard, 2013).

This vignette, reported in December 2013 by the LA Times, came barely two months after Wells Fargo continued to be celebrated as the bank that was "riding high" after the financial crisis. As a result of not having been considered to be one of the villain financial firms that caused the 2008 sub-prime crisis, Wells Fargo enjoyed a wave of public trust and support. With a market cap over $250 billion and Total Assets in excess of $1.9 trillion, Wells Fargo was one of the largest financial institutions in the world. However, a report of Wells Fargo's business practices was prescient in stating:

> "As well as showing dexterity during the crisis, Wells also seems to be better at the nuts and bolts of banking. It does a good job of performing basic functions: opening an account can be an ordeal elsewhere but requires barely a pause at Wells. But why its customers are willing to provide it with vast amounts of deposits at almost no cost when better terms are available elsewhere is a bit of a mystery" (The Economist, 2013).

As we outline below, there is no mystery anymore. The events described below shatter the pretenses made by the Wells Fargo organization in their Code of Ethics which stated: "The Company is proud of the values with which it conducts business. It has and will continue to uphold the

highest levels of business ethics and personal integrity in all types of transactions and interactions."

2.2 Corrupt Sales Practice

The revelation that Wells Fargo was doing something wrong started with other workers in the bank doing something right. Calls from employees to Wells Fargo's ethics hotline brought to light a scandal for the $1.9 trillion bank that resulted in huge penalties, Congressional hearings, public outcry and repudiation. The phone calls would also lead to pink slips for the whistleblowers, with the fired workers alleging retaliation while at the same time Wells Fargo saying it doesn't tolerate retribution and that workers are encouraged to report unethical behavior.

To meet sales goals, employees created over two (2) million unwanted or fake customer accounts. Wells Fargo, like other financial institutions, engaged in cross-selling (employees at the bank called it "sandbagging") to entice existing customers to broaden the services and products they use at the bank. Employees are rewarded with incentives when customers open new accounts. While cross-selling is a common and accepted practice, it appears Wells Fargo was not adequately monitoring its cross-selling practices. Wells Fargo's violations, according to the Consumer Financial Protection Bureau, included:

- opening deposit accounts and transferring funds without authorization, with some customers incurring insufficient fund fees because money was no longer in the original account;
- applying for credit card accounts without customer consent, with some clients incurring fees and associated finance charges;
- issuing debit cards without consent, and then activating them by creating Personal Identification Numbers (PINs);
- using phony email addresses to sign customers up for online-banking services.

This unauthorized activity allegedly dates back to at least 2011.

The experience of one former employee, Angie Payden, a banker in a Wisconsin branch from 2011 to 2014, has been widely reported. She states as follows:

"Actions that I was forced to do as a banker included:

1. Opening travel checking accounts for customers by convincing them that it was unsafe to travel without a separate checking account and debit card~
2. Coercing customers to open credit card accounts to use as overdraft protection for their checking accounts when they were already struggling to keep their checking accounts balanced~
3. Witnessing other bankers and being pressured by management to add credit defense onto new credit applications without the customer's knowledge, which led to unnecessary monthly fees~
4. Closing and opening new accounts for customers by convincing them that there had been fraud on their existing accounts" (Cowley, 2016).

The experience of Angie Payden was confirmed by many other employees who described similar stories of high anxiety created by constant pressure from management to sign up customers by any means necessary or lose their jobs. Ex-workers also claimed that the bank targeted immigrants who spoke little English and older adults with memory problems. The pressure was relentless. One employee stated: "They would grill us every day; it was nonstop badgering and berating. It was verbal and mental abuse." Another said, "We would have conference calls with regional presidents and managers coaching us on how to word our selling points so the customer can't say 'no.' I felt like a cheat" (Scudder, 2017).

John Stumpf, the Chief Executive Officer of Wells Fargo, testified to the Senate Banking Committee that he learned about the unethical activity "later in 2013" (Puzzanghera, 2016) .

2.3 Avoiding Detection

Routine branch audits which would have likely detected the sales practice abuses failed to do so because of a systemic detection avoidance scheme:

"Managers and employees at the bank's roughly 6,000 branches across the U.S. typically had at least 24 hours' warning about annual reviews conducted

by risk employees, current and former Wells Fargo employees and executives said. That gave many employees time to cover up improper practices, such as opening accounts or signing customers up for products without their knowledge" (Glazer, 2017).

The type of collusion required to avoid detection, and described above, will be the subject of future research. At this point, what is clear is that certain managers of Wells Fargo operated with complete disdain for any commitment to even the most elementary ethics in business, which is to operate with integrity, while the firm presented itself to the public as a firm that abided by a thoughtfully crafted Code of Ethics.

2.4 Firing of Employees

In September 2016, Wells Fargo "confirmed to CNNMoney that it had fired 5,300 employees over the last few years related to the shady behavior….Employees went so far as to create phony PIN numbers and fake email addresses to enroll customers in online banking services." (Egan, 9/9/2016). This behavior related to 1.5 million in deposit accounts and over 565,443 in credit accounts opened without customer knowledge or consent for a total of over two (2) million phony accounts between 2011 and 2015.

2.5 Whistleblowers

The Wells Fargo whistleblower program provided EthicsLine, a phone line where employees could report inappropriate behavior, and remain anonymous. The bank's ethics code promises that Wells Fargo doesn't engage in, nor tolerate, retaliation of any kind against whistleblowers. We looked at two versions of Wells Fargo's ethics code, including a version filed with the Securities and Exchange Commission in 2009 (SEC, 2009) and a code introduced in the Fall of 2016 (Wells Fargo, 2016). It appears neither code was followed, with employees alleging they were fired and the victims of other retaliation for blowing the whistle on the unacceptable practices of bank employees.

2.5.1. The Yesenia Guitron Case

The specific circumstances involving employee Yesenia Guitron have been widely reported:

"Yesenia Guitron, a former banker, sued Wells Fargo in 2010 — three years earlier than the bank has admitted it knew about the sham accounts. Ms. Guitron became alarmed when, two months into her job at Wells Fargo, she noticed that a fellow banker at the company's St. Helena, Calif., branch was opening and closing customers' accounts without their permission. Intense sales pressure and unrealistic quotas drove employees to falsify documents and game the system to meet their sales goals, she wrote in her legal filing. Ms. Guitron said she did everything the company had taught employees to do to report such misconduct internally. She told her manager about her concerns. She called Wells Fargo's ethics hotline. When those steps yielded no results, she went up the chain, contacting a human resources representative and the bank's regional manager.

2.5.2 Wells Fargo's Response

After months of what Ms. Guitron described as retaliatory harassment, Wells Fargo responded by calling her into a meeting and telling her that she was being fired for insubordination.

In 2012, the United States District Court for the Northern District of California sided with Wells Fargo and ruled that even if its sales targets were unreasonable, the bank had the right to use them as an employment yardstick. Ms. Guitron appealed the decision and lost again - leaving her with a bill for more than $18,000 in court costs. 'She put her neck on the line' and they punished her, said Yosef Peretz, the lawyer who represented Ms. Guitron. 'She's a single mom with two kids, barely making it, and her reputation was poisoned. No one would hire her'" (Cowley, 2016).

3. MORAL THEORY

The moral analysis of Wells Fargo's business practices draws upon leading moral theories applied to business ethics: a) utilitarianism, b) deontology, c) justice and fairness and d) virtue ethics. Elements of each of these theories invariably overlap and may be utilized when attempting to resolve various ethical dilemmas.

Utilitarianism assesses a decision or action as ethical if the outcome maximizes social good. This theory "involves trade-offs between the benefits and

burdens of alternative actions" (Messier, *et al.* 2016). Hence, the morality of an action is to be judged based upon the consequences and moral actions where the impact of the action creates more social good or pleasure than pain. Utilitarianism judges that the aim of actions should be the largest possible balance of pleasure over pain or the greatest happiness of the greatest number. Stated another way, a morally good action is one that helps the greatest number of people. Clearly, the corrupt sales practices of Wells Fargo that benefited only those few employees and managers at the firm who met their sales objectives, while defrauding customers can only be concluded as being immoral and unethical. From a utilitarianism standpoint, the result of the misaligned and corrupt sales practices did not result in an outcome that maximized social good.

The Kantian moral calculus, a deontological analysis, considers the decision maker's rational motivation in judging whether a decision is ethical or not. Outcomes are not the basis for assessing morality. Human actions are judged to be moral if they are based on a rational motivation which is derived from one's sense of duty (N Bowie, 1998; NE Bowie, 1999). Duty, in part, is rooted in universal acceptance. While some may argue that the sales incentives are appropriate, the individuals involved must have understood that the actions they were taking were not right or appropriate as deception and dishonesty was involved.

An important aspect of justice as fairness is the social contract. John Rawls, who developed the theory of justice as fairness, uses the social contract to pose the question, "What principles of justice would free and rational people choose under a veil of ignorance?" The veil of ignorance is a tool Rawls developed to foster a deep understanding of the impact of one's position in society on the perspective that one brings to a "fairness" decision. To best consider what fairness is, individuals who set the principles should not know which position they themselves will occupy in society, meaning they do not know in advance how the principles which they develop will actually affect them. Consequently, individuals will be inclined to be fair in assigning rights and duties to everyone. Further, the Rawls difference principle rests upon the belief that inequalities of wealth and income work to the advantage of those who will be worst off (Frazer, 2007; Rawls, 1999). A system that rewards a few, who undertake reckless decision making by rewarding short term profits while accumulating risks, not only does not benefit the least well of members of society but as we now know – creates substantial harm to the majority.

Finally, virtue ethics focuses on moral character rather than motivations or consequences. A question to be considered is to what extent did raw self–interest and greed result in a situation where the drive for short-term profits overwhelmed other considerations. Would a virtuous person, with a deep, committed understanding of the responsibilities to customers and shareholders have taken a different view (Solomon, 1992, 2003)?

4. BY ITS OWN STANDARDS DID WELLS FARGO BEHAVE UNETHICALLY?

To determine whether Wells Fargo behaved unethically, we undertake an examination of the actions of Wells Fargo's employees against the backdrop of its own Code of Ethics.

4.1 Did Wells Fargo Employees Violate its Own Code of Conduct & Business Principles?

Businesses utilize Codes of Conduct to further an atmosphere of honesty in its workplace, and to proscribe employee behavior that while not necessarily illegal may be morally reprehensible (Behrman, 1981). These codes do not suggest proper behavior but generally provide broad-based statements of a company's responsibilities to its employees, its customers, its suppliers and the communities in which the company operates (Brewer, Garrison & Noreen, 2010).

The employees committing unethical acts may also have violated Wells Fargo's own ethics policy. Wells Fargo has formulated a policy for its workers that include a Code of Ethics and Business Conduct ("the Code"), that speak to the company's view of expected ethical standards on the job. A "Wells Fargo Team Member Code of Ethics and Business Conduct" (the Code) filed with the SEC in 2009 has clear instructions about handling unethical acts, and that retaliation of tipsters will not be tolerated.

A Corporation's Code applies to directors, officers and employees. Thus, Wells Fargo's Code clearly applied to John Stumpf as well as all of the managers and employees of each subsidiary of Wells Fargo.

It is clear that Wells Fargo expected high levels of ethical behavior from all of the people in the company. Hence, their illegal behavior and the front page reporting certainly violated its rule of thumb.

Section III D of the Code filed to the SEC in 2009 covers "Sales Incentive Programs" and states: "As part of Wells Fargo's sales culture, the company creates various incentive programs to reward producers of new business and to obtain new business. This section provides guidance for specific situations involving incentive programs. If any business practice being followed in your area does not meet these guidelines, you should refuse to participate and should report the inappropriate behavior to EthicsLine (see Section VII)", which outlines the steps for reporting on the EthicsLIne.

The document also states that team members "will be assigned a Code Administrator" and talks about team members participating "in Code training upon hire and annual Code certification."

In late 2016, the bank introduced a new Code of Ethics. The new Code seems to have less detail than the document filed with the SEC in 2009; for example, in the new 2016 Code, there is no longer a mention of Code Administrators. The 2009 document states simply "You may choose to use EthicsLine anonymously" while the 2016 version states, "Where allowed by local law, you may choose to remain anonymous." There is no mention of training, upon hire or annual certifications.

In "A message from Tim Sloan" in the new "Code of Ethics and Business Conduct," the bank's current CEO and President writes that he is "pleased to introduce" the document. The Code does not have a date, but Sloan signed his message as CEO and president, a position he did not attain until October 2016. Sloane also writes: "The Code works in conjunction with our Vision & Values, our Team Member Handbook, and our company policies to help you navigate situations and answer questions about what to do in specific circumstances. Keep in mind that the Code is not intended to be a comprehensive rulebook. Should you find yourself in doubt it is important for you to ask questions of your manager or through one of the resources listed in the Code, including the confidential EthicsLine."

The recent Code is more user-friendly than the document filed with the SEC in 2009. It includes photos, and even has a multi-colored matrix of questions to ask about "Making the right choice." In a section titled, "We do not tolerate retaliation," the bank addresses retaliation in one paragraph: "We do not engage in or tolerate retaliation of any kind against anyone for providing information in good faith about suspected unethical or illegal activities, including possible violations of this Code, violations of laws, rules, or regulations by others, or concerns regarding accounting, internal accounting controls, or auditing matters. If you think that you or someone you know has been retaliated against, contact any of the resources listed in this Code." Then it instructs employees "to learn more" and lists "Non-retaliation Policy Statement" but no link is provided in the online version of Wells' Code.

A full page of the Code, headed "Where to go for help" and "Our EthicsLine and how it works," is devoted to contact information and process for anyone who suspects an unethical or illegal act has occurred, or needs help making an ethical or compliance decision. The 2016 Code instructs users to contact the bank's EthicsLine, discuss the matter with any manager, contact the bank's Human Resources or the Office of Global Ethics and Integrity, or report concerns related to accounting, auditing and internal controls to the Audit & Examination Committee of the board. The other half of the page, titled "Our EthicsLine and how it works," explains how to contact the EthicsLine, who staffs it, and a promise that information shared at the EthicsLine will be kept confidential.

The section titled, "Deal fairly with our customers and others," states that the bank is committed to making products and services available to consumers "on a fair, transparent, and consistent basis, and to conducting business in a responsible manner." The Code then states that employees should "always remember":

- Products provided to our customers should be in the customer's best interest, must be

explained in a way that the customer can understand, and the terms and conditions must be thoroughly and accurately outlined.

- Steering a customer to an inappropriate or unnecessary product to receive sales credit may harm the customer and is a violation of the Code.
- Manipulating or misrepresenting sales, reporting, or customer information is a violation of the Code.
- Know the sales referral and compensation guidelines that are applicable to your role.
- Never engage in unfair, deceptive, or abusive acts or practices.

This section then lists the following responsibilities of team member:

- Offer customers enough information to allow them to consent to a product from an informed position.
- Record sales results accurately and completely.
- Compete fairly in the marketplace.
- Report sales activities that may not be in accordance with company policies.

Finally, this section further refers users who want "to learn more" to the Responsible Business Policy, and the Fair and Responsible Lending Policy. Again, no links are provided to these documents in the bank's online version of the Code.

4.2 Did the CEO Violate Wells Fargo's Ethical Standards?

The Wells Fargo's Code also relates to ethical standards. The violations of ethical standards include 1) Reporting known or suspected violations and 2) Accountability for violations.

4.2.1 Knowing Known or Suspected Violations

An examination of this area of Wells Fargo's Code states that the company's directors, CEO, senior financial officers and chief legal officer shall promptly report any known or suspected violation of the Code to the Chairman of the Company's Audit Committee. If the Company's Audit Committee or its designee determines that this Code has been violated, the employee may be removed from the office or dismissed. Violations of a Company's Code may constitute violation of law and may result in criminal penalties and civil liabilities. Furthermore, the Code requires employees to cooperate in internal investigations or misconduct.

In his testimony to the Senate Banking Committee, the CEO, John Stumpf stated that he became aware of the opening of fictitious account in 2013. It is evident that at that time, he had a duty to present more information regarding the illegal activity accounts activity to the Company's Audit Committee. It is unclear whether he did so or not. Failure to do so would constitute a clear violation of the Wells Fargo's Code. Notwithstanding this, there is no evidence of any disclosure related to illegal activity recorded in the notes to the financial statements.

4.2.2 Accountability for Violations

The Wells Fargo's Code empowers the Audit Committee or its designee to discipline any offending employee(s) with penalties which include removal from office, reassignment, dismissal or suspension. Violators may also be subject to criminal penalties and civil liabilities. Subsequent to the Congressional Committee's hearings, John Stumpf resigned as CEO of Wells Fargo. This raises the question of whether he willingly resigned or whether he was forced to resign.

The information regarding the opening of fictitious customer accounts was relevant, material and could reasonably be expected to influence the understanding, analyses, recommendations and decisions of intended financial statement users, yet it was not disclosed to the bank's clients and other financial statement users. Yet at the same time, the employees benefited from this activity. This was a clear conflict of interest. However, Wells Fargo did not mitigate their conflict of interest and did not advise the relevant persons that the conflict of interest existed. Hence an examination of the facts indicates that the behavior of Wells Fargo indeed violated their own as well as the Institute of Management's Accountants (IMAs) Credibility and Integrity standards which state that they were required to communicate the information fairly and objectively.

In addition, Wells Fargo was required to disclose any and all relevant information that could reasonably be expected to influence the decision of prudent persons.

5. DID WELLS FARGO VIOLATE THE SEC ACT OF 1934?

During the Congressional hearing, John Stumpf testified that he sold a significant portion of his stock position in Wells Fargo just prior to the hearing. The narrow question here is whether the alleged failure of John Stumpf to disclose Wells Fargo's illegal activity to investors was insider trading and an omission of a material fact. Insider trading in securities may occur when a person in possession of material nonpublic information about a company trades in the securities and makes a profit or a loss. This also leads to additional questions. Had investors known that Stumpf was aware of the illegal account opening and cross selling activity would they have also divested and/or declined to purchase the Wells Fargo's investment? Did the investors in fact rely upon omissions and affirmative untrue statements to their obvious detriment? Did the statements and course of conduct of Stumpf and the other defendants represent half-truths or were they patently false?

In order to establish a claim under SEC's Rule 10B-5 of the Act, plaintiffs must show manipulation or deception; materiality in connection with the purchase or sale of securities. To clear up any uncertainty with Section 10B-5, the SEC further enacted 10B5-1 in 2000 to address the issue of insider trading. This rule states that anyone trading with the benefit of insider information or withholding information from investors for personal gain would violate the rule and be subject to prosecution.

It is possible that the SEC may bring action in the United States District court to seek a civil penalty. The SEC must first prove manipulation or deception was involved in the transaction. Secondly, the SEC must prove materiality of nonpublic information. It may be difficult to prove that Stumpf was acting based on insider information since he states that the sale was pre-arranged. Nevertheless, the SEC can clearly prove that the share price of Wells Fargo's stock soared, which was partially as a result of the successful cross-selling activity and that Stumpf had taken $155 million in stock options between 2012 and 2015. As the Securities increased in value, Stumpf benefited financially from the transaction. Hence, under the SEC Act of 1934, short swing profits received by Stumpf may possibly be required to be disgorged.

6. DID WELLS FARGO VIOLATE THE SARBANES OXLEY ACT?

The Sarbanes Oxley Act passed by Congress in 2002, is in large part a restatement of the SEC laws as well as an aim to put the accountability in the lap of the corporation. The legislation was formed in direct reaction to several incidences of corporate management's abuse of their privileged position in order to obtain personal gain at the cost of shareholders and taxpayers. To make a determination of whether Stumpf may have violated the Sarbanes Oxley Act, we examine the actions of Stumpf with respect to the following tenets of the Act (http://definitions.uslegal.com/s/sarbanes-oxley/). These are as follows:

1. Companies must disclose all pertinent information that may in any way affect company finances, whether on or off the balance sheet.
2. CEO and CFO compensation, bonuses and profit sharing shall be reported to the public.
3. Insider trades must be made public immediately.
4. Violators shall pay higher fines and spend longer times in prison.
5. Whistleblowers protection.

A possible violation may relate to the tenet that "companies must disclose all pertinent information that may in any way affect the company's finances, whether or not on or off the balance sheet." This rule may be applicable here because of selling of stock and profiting while being aware of the illegal activity. The appearance of lack of independence that Stumpf portrayed was not very attractive.

A second possible violation may relate to the tenet that "compensation, bonuses and profit sharing shall be reported to the public." This is a specific violation since the bonuses emanating from the opening of fictitious accounts at Wells Fargo were part of the

management team's compensation package but were not reported to the public by Wells Fargo.

A third clause related to insider trades. It is clear that Stumpf disposed of a substantial portion of his shares of Wells Fargo's stock after becoming aware of the illegal activity. This may have violated the rules of SOX related to insider trading.

A fourth clause relates to imposition of stricter punishment and penalties for those found to be in violation of the SOX rules. It appears that Stumpf and other managers violated the nature and heart of the Sarbanes Oxley Act. However, it is not clear as to whether Stumpf's actions were to harm customers and stockholders. To date, Stumpf and other managers have paid back millions of dollars. Whether or not Stumpf and other managers will be found guilty of violating the relevant Sarbanes Oxley Act and will be subject to punishment and penalties remains to be determined by the relevant authorities.

A fifth and very important clause within the Sarbanes Oxley Act relates to protection for whistleblowers and retaliation against employees who refuse to go along with unethical and illegal behavior. The Sarbanes-Oxley Act, passed by Congress in 2002, protects employees at publicly traded companies who report fraud and violations of law to a supervisor or "internal corporate investigators," as well as Congress, regulators, or law enforcement agencies. Several employees were fired for refusing to engage in the illegal practice while others were fired after reporting the illegal practice. Still others say they were fired or demoted for staying honest and falling short of sales goals that they believed were unrealistic. This raises the question of whether the tenets in SOX are strong enough to offer appropriate protection to employees.

Also ousted were employees who stated that they were fired or demoted for pushing back on higher-ups' pressure to open new accounts, or for reporting coworkers who were participating in the unauthorized activities. Some workers also say Wells Fargo hurt their chances at future employment by writing negative comments on their Form U5 (FINRA's Uniform Termination Notice for Securities Industry Registration document for bankers and brokers) (Arnold, 2016). Concerns about the U5 forms prompted a letter to Wells Fargo from three U.S. Senators - two on the banking committee and the other on the finance committee (Warren, 2016). At least two lawsuits by penalized or terminated tipsters are seeking class-action status; Wells Fargo has said it disagrees with the allegations (Cowley, 2016). Wells Fargo also has said it is investigating whistleblowers' claims of retaliation, and has created a team to help former staffers who want to be rehired.

Even former human resources officials at the bank have corroborated fired tipsters' allegations, saying Wells Fargo had a process for retaliating against whistleblowers (Egan, Sept. 21, 2016).

In addition to the SOX of 2002, Section 922 (h) (1) of the Dodd-Frank Act also offers protection to employees from retribution after they blow the whistle, and even provides financial incentives for speaking up about fraud. Nevertheless, it is still a challenge to those who speak out against the wrongdoing of employers since it can result in demotion, termination and lengthy legal proceedings. And even if the whistleblower is successful, his/her reputation may be impaired or forfeited. Despite the current laws in place, it is clear that precedence for the protection of whistleblowers is still being established and still a work-in-progress.

7. CONCLUSION

The case against Wells Fargo has raised the question of the legal and ethical duties of fiduciaries to the stakeholders that they serve. It raises the question of how a bank that is supposed to have such high ratings as well as strong internal controls sanctioned the fabrication of over two (2) million fictitious accounts. Further, setting of unrealistic sales criteria, concealing this illegal customer account information while at the same time profiting with big bonuses looks and sounds, by all accounts, like self-dealing, conflict of interest and serious breaches of ethical conduct. In the interest of fairness, transparency is needed in financial transactions. Customers and investors have a right to know that their agents are acting in their best interest.

In this paper, an examination is made of the charges of unethical behavior against John Stumpf and Wells Fargo. The findings of this paper suggest that Stumpf appears to have acted unethically by violating Wells Fargo's own Code of Ethics and

Business Conduct. Also, Stumpf did not practice a "tone at the top" that protected whistleblowers. Also, the lack of top management's leadership style by setting impossible goals may have pushed employees to behave unethically. Furthermore, he may have engaged in conflict of interest activities and failed to adequately protect Wells Fargo's customers, investors, creditors and the general public. As a result, Wells Fargo's reputation was harmed, and the bank could be at risk of additional enforcement action by the SEC and other entities.

The ultimate decision regarding John Stumpf's liability and possible criminal culpability with respect to the alleged abuses in his position will be decided by the U.S. Courts, if legal action is taken. These abuses are real and egregious. Hence, it leads one to wonder when managers, CEOs, CFOs and others in positions of authority will decide to believe that their own Codes of Ethics are worth following. The activity of business must be a complete human activity with a profound appreciation for the complexity of short sighted profit seeking.

Undeniably, questionable practices in corporations raise questions of corporate ethics and can undoubtedly present challenges for employees, stakeholders as well as accountants and auditors. Hence, it is evident that there is a pressing need for enhanced requirements and an extension of the Sarbanes Oxley Act.

This paper can serve as a starting point in highlighting the unethical dilemma associated with aggressive corporate strategies and the urgent need for an expansion of SOX as it applies to corporations. It can undoubtedly lead to more informed and improved decision making internally by managers, corporate executives and compliance officers, as well as externally by government standard setters, policy makers, regulators, consumers, investors, creditors, the general public and a host of other interested parties as they seek to make more informed decisions regarding the ethical behavior and responsibility of corporate executives and employees.

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