



ASIC

Australian Securities & Investments Commission

Our Reference: 42390/16

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Level 5, 100 Market Street,
Sydney NSW 2000

GPO Box 9827, Sydney NSW 2001
DX 653 Sydney

Telephone: +61 2 9911 2000

Facsimile: +61 2 9911 2414

www.asic.gov.au

Misconduct in the selling of retail banking products

As you are aware, Wells Fargo Bank, N.A. (Wells Fargo) has recently agreed to pay fines of US\$100 million to the Consumer Financial Protection Bureau together with consumer restitution in respect to the creation of consumer accounts, by its staff, without consumers' consent or knowledge.

Given the serious and systemic misconduct identified at Wells Fargo, the Australian Securities and Investments Commission (ASIC) is keen to ensure that similar misconduct has not been occurring in Australia.

We acknowledge that the regulatory landscape in Australia differs from that in the U.S. For example, financial services licensees are required to proactively report significant breaches to ASIC, and external dispute resolution schemes also report to ASIC any systemic issues in relation to financial services licensees.

We also note that the Australian Bankers' Association is currently undertaking an independent review of product sales commissions and product-based payments made to bank staff and third parties with a view to making changes to address any existing practices that may lead to poor customer outcomes.

Notwithstanding the above, including the potential for future changes to incentive arrangements, ASIC requests that you conduct an independent review to provide assurance that similar misconduct has not occurred within your business. ASIC expects such an independent review to be carried out by either:

- The bank's independent internal audit function (the 'third line of defence'); or
- A suitably qualified independent professional services firm.

We have sent a letter in similar terms to several major banks in Australia. To ensure a degree of consistency across banks, we expect the independent review to look back at least three years and to include the following elements:

- a) Coverage of basic deposit products, credit cards and consumer credit insurance;
- b) A review of account and product on-boarding processes, with a focus on consumer acknowledgement and/or account activation controls;
- c) Analysis of consumer complaints in respect to accounts that the consumer believes they did not apply for and how these complaints were handled; and
- d) Consideration of the processes in place to proactively detect potential misconduct by employees arising from existing sales incentives, and how these processes are performing (e.g. the number of staff identified for review, and of those the number who have been disciplined or had their employment terminated in relation to the creation of false consumer accounts).

We expect this independent review to place the bank in a position to make a statement as to whether or not similar misconduct may have occurred in the course of the bank's financial services business, and to confirm the accuracy of that statement and the basis on which it is made.

We are available to discuss any aspect of these elements with you and we seek your initial response to this letter by Friday 9 December 2016. We expect you to confirm the scope of your review with us before proceeding.

We note that you may have already proactively commenced or conducted a review of this nature. To the extent that the review did not cover the elements noted above, or was not sufficiently independent, we expect that further work is done to provide ASIC with the assurance being sought.

We are making this request without the formal exercise of our statutory powers. Please advise immediately if you require ASIC to exercise its statutory powers to give effect to this review.

Please contact Felicity Natoli, Group Senior Manager – Deposits and Payments, on [REDACTED] if you would like to discuss this letter. You may also contact me on [REDACTED].

Yours sincerely

[REDACTED]
Michael Saadat
Senior Executive Leader
Deposit Takers, Credit and Insurers