



**CITY AND COUNTY OF SAN FRANCISCO**

**OFFICE OF THE CONTROLLER**

**Ben Rosenfield**  
**Controller**

**Todd Rydstrom**  
**Deputy Controller**

**Nadia Sesay**  
**Director**  
**Office of Public Finance**

**MEMORANDUM**

**TO:** Honorable Mayor Edwin M. Lee  
Honorable Members, Board of Supervisors

**FROM:** Ben Rosenfield, Controller  
Nadia Sesay, Public Finance Director

**SUBJECT:** City Relationships with Wells Fargo Bank, N.A.

**DATE:** Wednesday, December 7, 2016

This memo will review the City's existing and potential business relationships with Wells Fargo Bank ("Wells Fargo"), and recommend an appropriate course of action for the City given the recent revelations about fraudulent and unethical consumer banking practices (as further described below). The conduct of Wells Fargo contradicts the City's commitment to financial integrity, accountability, and sound financial practices. Based upon our review, staff therefore considers the following set of actions to be a reasonable response, and comparable to or stronger than recent actions taken by Los Angeles, Santa Clara, and Santa Cruz Counties:

1. Suspension for two years of Wells Fargo's provision of broker/dealer, commercial banking, and commercial paper dealer services to the City;
2. Removal of Wells Fargo from consideration for two years for the provision of securities investments and counterparty/repurchase agreements;
3. Staff will monitor the numerous ongoing investigations as well as remediation efforts by Wells Fargo, and may make additional recommendations as necessary; and
4. As an outgrowth of this review, our office will work with the Treasurer and other City departments to more broadly explore and incorporate elements of the Treasurer's social responsibility requirements into other financial service procurement processes.

## Background:

On September 8, 2016, the United States Consumer Financial Protection Bureau (CFPB) issued a Consent Order (Administrative Proceeding 2016—CFPB—0015) determining that San Francisco-based Wells Fargo Bank, N.A. engaged in unethical and illegal banking practices. The CFPB found, among other things, that Wells Fargo employees (i) opened unauthorized deposit accounts for existing customers and transferred funds between these accounts, all without their customers' knowledge or consent; (ii) submitted applications for credit cards in their customers' names using their personal information without their knowledge or consent; (iii) enrolled consumers in online banking services they did not request; and (iv) ordered and activated debit cards using consumer information without their knowledge or consent. Those practices affected up to 2 million Wells Fargo customers. These corrupt practices lead to the largest CFPB fine in history of \$185 million (together with \$2.6 million in customer refunds), and the termination/resignation of the Wells Fargo Chief Executive Officer. In a recent regulatory filing, Wells Fargo indicated that it was under investigation by the Securities and Exchange Commission. As well, it has been reported that Wells Fargo is also under investigation by the U.S. Justice Department and the California Attorney General.

The findings contained in the CFPB Consent Order raise serious questions about the banking practices of Wells Fargo, as well as concerns regarding its internal controls. As a result of the CFPB Consent Order and widely publicized Congressional hearings, and multiple states, counties and cities across the U.S. have announced suspensions of business relationships with Wells Fargo, including the State of California and major cities such as Seattle and Chicago. The San Francisco Treasurer's Office also announced on September 23, 2016 that it was suspending Wells Fargo from participation in the City's Bank On San Francisco program, which is a City program encouraging un-banked individuals and families to open bank accounts.

As a major national financial institution, Wells Fargo offers a broad range of services, and operates three separate divisions for its different lines of business:

- The *Wealth and Investment Management* division provides investment and retirement products and wealth management services to a variety of clients. This division does not provide services to the City.
- The *Community Banking* division is the bank's consumer finance arm. The fraudulent practices noted by the CFPB took place in this division. The City's sole relationship with the Community Banking division was its partnership with Wells Fargo in the City Treasurer's Bank on San Francisco program; this relationship was suspended on September 23, 2016.
- Wells Fargo's *Wholesale Banking* division provides financial services to government and institutional customers, and it is this division of Wells Fargo with which the City maintains the vast majority of its business relationships. These relationships range from trustee services, fiscal agent services, letters of credit, commercial banking,

broker/dealer services, commercial paper dealer services, and underwriting. A detailed description of each of these services follows:

### **Inventory of Existing Relationships Between the City and Wells Fargo**

Currently the City obtains the following products and services from Wells Fargo:

- **Trustee Services.** Wells Fargo acts as the trustee for the City's Lease Revenue Bonds Series 2008-1 and 2008-2. The bank receives approximately \$4,750 annually for these services.
- **Commercial Paper Dealer.** Wells Fargo is a dealer for the Series 1 & 2 Commercial Paper program, but currently no commercial paper in those series has been assigned to Wells Fargo. Similarly, the Public Utilities Commission (PUC) has Wells Fargo as a dealer on its Wastewater Commercial Paper program, but currently no commercial paper has been assigned to Wells Fargo.
- **Liquidity & Credit Support.** Wells Fargo provides liquidity and letters of credit for a number of City transactions, including the Airport's \$100 million Commercial Paper program, and \$100 million for Issue 36A, and \$75 million for the PUC's Wastewater Commercial Paper program.
- **Bond Fiscal Agent.** Wells Fargo serves as Fiscal Agent for six different series of Special Tax Revenue Bonds for the San Francisco Office of Community Investment and Infrastructure (OCII).
- **Commercial Banking.** The City Treasurer has a consolidation account with Wells Fargo for Home Banking payments, and is currently developing a transition plan to suspend this banking relationship. OCII has four commercial accounts with Wells Fargo, and expects to close at least two of these accounts in the near future.
- **Surety and Escrow Agent.** Wells Fargo serves as an escrow agent for one Public Works and two Public Utilities Commission construction contract: the War Memorial Veterans Building Replacement Project, the Calaveras Dam Replacement Project and the Harry Tracy Water Treatment Plant Project. Escrow and surety services typically are not direct relationships between the City and Wells Fargo; they are indirect connections through a third party, such as a construction firm with which the City may have a contractual agreement.
- **Underwriting/Remarketing and Investment Banking.** Wells Fargo is a qualified underwriter in the City's Underwriting and Investment Banking Services pool, and regularly submits bids on the City's competitive bond financings. As a qualified underwriter in the City's Underwriting and Investment Banking Service pool, Wells Fargo

is considered for underwriter services for negotiated sales. Wells Fargo currently serves as Remarketing Agent for the Airport's \$40.6 million Issue 36B.

- **Broker/Dealer Services.** Wells Fargo has been among the listed broker/dealers that the City Treasurer can use for the purchase and sale of investment securities on behalf of the City. Wells Fargo's participation in this area of service for the City is currently suspended. Additionally, the San Francisco Employees' Retirement System (SFERS) contracts with fund managers who must satisfy a "best execution" requirement to achieve the lowest transaction brokerage costs, and Wells Fargo is sometimes chosen as the lowest cost brokerage provider. Recent commissions to Wells Fargo average approximately \$3,600 on an annualized basis. These fees are paid by fund managers to Wells Fargo and other brokerage houses, and not by SFERS itself.
- **Capital Management.** The City and County of San Francisco Deferred Compensation Plan (SFDCP) does business with a firm called Galliard Capital Management, which is an independently operated subsidiary of Wells Fargo Bank, N.A. Fees to Galliard are paid by plan participants, and not by the City. Galliard was selected as a fund manager through a competitive RFP bid process in 2013, and is currently under contract for a 5-year term. Galliard at times houses some funds under its management with its parent company Wells Fargo as a custodial institution, which it is able to do at a savings to plan participants due to its subsidiary relationship.

#### **Other Financial Services – No Existing City Relationship with Wells Fargo**

- **Securities Issuer.** The City Treasurer has the authority to approve the purchase of debt securities issued by Wells Fargo, in which the proceeds would serve to finance the company's operations. Despite the company's debt rating being one of the highest in the financial services sector, the company has repeatedly failed the City's social responsibility criteria screen. As a result, Wells Fargo has never qualified as an Approved Issuer and as such, the City has no investment in Wells Fargo debt securities.
- **Counterparty/Repurchase Agreement Provider.** The City Treasurer can enter into repurchase agreements with financial institutions, including Wells Fargo, on a short-term basis primarily to fund liquidity needs. The City Treasurer currently has no agreements with Wells Fargo.

#### **Recommended Next Steps**

The conduct of Wells Fargo, as detailed in the CFPB Consent Order, contradicts the City's commitment to financial integrity, accountability, and sound financial practices. Accordingly the City must evaluate whether to suspend indefinitely certain of its business relationships with Wells Fargo, and to evaluate the potential impact to the City of such action. If sanctions are thought to be warranted, the fiscal impact of suspending or severing a particular business relationship must be considered. Given the nature of certain services, there may be little, if any,

impact on the City and its operations. In other cases, there may be a significant disruption of City operations or a significant financial costs (i.e. including the costs of obtaining replacement services) if the City determined to suspend an existing Wells Fargo contract.

On September 8, 2016, the City of Los Angeles entered into a Settlement Agreement (the “Los Angeles Agreement”) with Wells Fargo in connection with the fraudulent and unethical business practices described above. Under the Los Angeles Agreement, Wells Fargo was suspended from certain business activities and agreed to implement a set of remediation measures within two years, including a detailed compliance and risk management plan designed to deter, detect and remedy improper sales practices nationwide. After a review of the Los Angeles Agreement, staff believes that the remediation measures outlined in the Los Angeles Agreement are appropriate. The Los Angeles Agreement requires that every six months for the next two years, Wells Fargo must provide audit reports about the bank’s compliance with the agreement.

In the light of the potential disruptions of City operations, or potential significant cost, staff is not recommending suspending all existing Wells Fargo contracts. We believe that as long as Wells Fargo is performing its services in accordance with its respective agreements those contracts, if any should remain in place. Accordingly, we are not recommending initiating debarment proceedings against Wells Fargo. The City may nonetheless consider suspending for two years the following categories of business relationships with Wells Fargo:

- Broker/dealer services for investment securities with the City Treasurer (already suspended)
- Commercial banking
- Commercial paper dealer services

The length of time Wells Fargo would be suspended from these service areas is largely structured around the remediation period set forth in the CFPB Consent Order, and the view that it is possible to suspend the bank from these services without a significant financial or administrative burden to the City.

Additionally, the following categories of financial services are not currently being provided to the City by Wells Fargo, but the City Treasurer may decide to remove Wells Fargo from consideration for providing these services for the next two years, also without significant cost:

- Securities issuer
- Counterparty/Repurchase agreement provider

There are other financial services categories where it would be financially imprudent or administratively very difficult to suspend or remove Wells Fargo. The following categories of services are currently provided by Wells Fargo on existing City transactions, and would not be advisable or practicable to sever for the full remaining term of the transactions:

- Fiscal agent and
- Surety and escrow agent agreements
- Trustee services

Lastly, the following categories of services currently being provided, or which may in the future be provided to the City by Wells Fargo, should also not be suspended, as it could impose significant fiscal costs on the City to do so:

- Liquidity and Credit Support - Currently there is a limited supply of highly rated letter of credit providers, and removing a highly rated entity with the size and liquidity of Wells Fargo from consideration for this service would constitute a significant limitation on the pool of potential credit providers with whom the City could work, and would be likely to significantly raise transaction and financing costs for the City.
- Underwriting for City debt issuances - Wells Fargo has consistently participated in San Francisco's competitive bond sales, and if the City were to bar Wells Fargo from bond underwriting, it could potentially require the City to pay higher interest rates on hundreds of millions of dollars of debt anticipated to be sold for its various bond programs over the next several years. The exact cost is unknown, and depends on prevailing rates when the bonds are issued, but may be significant.

As the proposed City actions are informed to a certain degree by the Los Angeles Agreement, staff will continue to monitor Wells Fargo's efforts at remediation, and recommend other actions as appropriate.

Staff recommends that the City only suspend the categories of services from Wells Fargo that would not create significant adverse practical and financial impacts to City business (e.g., where there are no commercially reasonable alternatives to Wells Fargo participation), and going forward, consider adding social responsibility criteria to all of its banking solicitations. Taking the combination of the steps outlined above would allow the City to make clear its disapproval of the Wells Fargo's unethical practices, without creating significant disruptions to City financial operations or capital planning. It is hoped that the proposed Wells Fargo sanctions would create a deterrent for unethical behavior in the future for the City's banking partners. The recommendations outlined in this memo are not intended to apply to SFERS or SFDCP, as those entities have an independent fiduciary responsibility. Similarly, any action taken by the Treasurer would be determined by the Office of the Treasurer in their independent fiduciary capacity.

Below is a table summarizing the City's business relationships with Wells Fargo, with an assessment of the potential impact, reflecting financial burden to the City as well as administrative difficulty, of suspending each type of relationship:

Wells Fargo Services	Types of Services	Relationship with City & County			Impact to City		
		Suspended	Existing	New	Low	Medium	High
Wholesale Banking Services	Broker-Dealer	X			X		
	Underwriting & Investment Banking		X	X			X
	Credit Support		X	X			X
	Trustee		X			X	
	Fiscal Agent		X			X	
	Commercial Banking		X		X		
	Counterparty or Repurchase Agreement				X		
	Securities Issuer				X		
	Escrow Agent/Surety		X			X	
Community Banking	Consumer Banking	X			X		

**Additional Considerations**

While Wells Fargo is not being debarred, the City will provide due process to Wells Fargo should it believe it should be entitled to continue providing all services. In that situation, Wells Fargo may request a hearing. At the hearing, Wells Fargo would be required to identify the specific “Improper Sales Practices” (CFPB Consent Order § III, 3 f (1)-(5)) that took place in San Francisco and on accounts held by San Francisco residents (“San Francisco Affected Customers”). It must identify all San Francisco Affected Customers who incurred fees or others charges as a result of Improper Sales Practices (Consent Order § VIII, 48.), provide the Redress Plan for San Francisco Affected Customers, and evidence that all San Francisco Affected Customers have been repaid consistent with the Consent Order. (Consent Order § VIII et seq. & § VIII, 51 (a)-(f).) It also must provide the Independent Consultant’s Report and Compliance Plan, and evidence that it has been implemented as to San Francisco and San Francisco Affected Customers pursuant to terms of the Consent Order. (Consent Order § VI et seq.) The Hearing Officer can request testimony and other evidence to verify the requirement information, and may determine whether Wells Fargo has or has not taken necessary steps sufficient to allow its suspension to be lifted.

As an outgrowth of discussions of banking practices, the City should consider incorporating social responsibility provisions more broadly in its financial services contracting processes. The City Treasurer already incorporates some criteria for “Socially Responsible Banking” in its Request for Proposal (RFP) questionnaire for Banking & Payment Services, requiring submitting banks to provide metrics and data in a number of categories, including mortgage activity, loans to minority businesses, consumer lending policies, and community investment.

Working with City Treasurer and affected departments, the City will work to more broadly adopt such policies in future banking solicitations, as well as adding additional language including a requirement for banks to affirm their commitment to fair and ethical practices, and allowing the City to suspend agreements for a breach of the RFP provisions. This approach is one that can be replicated in solicitations for other banking services, such as fiscal agent, escrow, trustee, and underwriting. We will provide an update to the Mayor and Board of Supervisors as our work to develop these changes is completed.

CC: Angela Calvillo, Clerk of the Board  
Harvey Rose, Budget and Legislative Analyst  
Mawuli Tugbenyoh, Mayor's Liaison to the Board of Supervisors  
Melissa Whitehouse, Mayor's Budget Director  
Todd Rufo, Director, Office of Economic Workforce Development  
José Cisneros, Treasurer  
Pauline Marx, Chief Assistant Treasurer  
Harlan Kelly, General Manager, Public Utilities Commission  
Ivar Satero, Director, San Francisco International Airport  
Ed Reiskin, Director of Transportation  
Elaine Forbes, Executive Director, Port of San Francisco  
Jay Huish, Executive Director, San Francisco Employees' Retirement System  
Tiffany Bohee, Executive Director, OCII  
Mark Blake, Deputy City Attorney



**City and County of San Francisco\***  
**Well Fargo Bank , N. A.**

<b>Department</b>	<b>Service Category</b>	<b>Description</b>	<b>Amount</b>
OPF	Trustee	Lease Revenue Bonds (Moscone West Convention), Series 2008-1, 2008-2	99,062,000
OPF	Commercial Paper Dealer	Lease Revenue Certificates of Participation Commercial Paper Series 1&2	N/A
OPF	Credit Provider	Direct Placement Revolving Certificates of Participation (Transbay Transit Center Project)	160,000,000
SFO	Letter of Credit Provider	Commercial Paper	100,000,000
SFO	Letter of Credit Provider	Issue 36A	100,000,000
SFO	Remarketing Agent	Issue 36B	40,620,000
PUC	LOC	Wastewater	75,000,000
PUC	Commercial Paper Dealer	Wastewater	N/A
PUC	Escrow Agent	Water Contract # WD-2596	914,519
PUC	Escrow Agent	Water Contract # WD-2551	21,890,223
TTX	Commercial Banking	Consolidation Account for Home Banking Payments	TBD
TTX	Broker/Dealer	Purchase/Sale of Securities	N/A
OCII	Bond Fiscal Agent	CFD#6 Special Tax Revenue Bonds Series 2005A, Mission Bay South	13,145,000
OCII	Bond Fiscal Agent	CFD#6 Special Tax Revenue Bonds Series 2005B, Mission Bay South	5,196,000
OCII	Bond Fiscal Agent	CFD#6 Special Tax Revenue Bonds Series 2013A, Mission Bay South	76,055,000
OCII	Bond Fiscal Agent	CFD#6 Special Tax Revenue Bonds Series 2013B, Mission Bay South	16,830,000
OCII	Bond Fiscal Agent	CFD#6 Special Tax Revenue Bonds Series 2013C, Mission Bay South	21,601,000
OCII	Bond Fiscal Agent	CFD#4 Special Tax Revenue Bonds Series 2002A, Mission Bay North	19,565,000
OCII	Commercial Banking	South Beach Harbor Operating Account	3,128,000
OCII	Commercial Banking	Fillmore Garage Operating Account	56,000
OCII	Commercial Banking	Jessie Square Garage Operating Account	1,444,000
OCII	Commercial Banking	Flex Spending Account	18,000

\* This list is preliminary, subject to changes/additions as received from other city agencies.