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Financial Reform Newsletter: September 29, 2016

The Wells Fargo Scandal: Why is the SEC AWOL, Again, And What are the Key Issues to Watch?; Finally, "Regulators Get It!", But Unfortunately Not US Regulators; Make Your Voice Heard and Submit Your Questions to the Presidential Debate Commission

The Wells Fargo Scandal: Why is the SEC AWOL, Again, And What are the Key Issues to Watch?

Every day theheadlines blare the latest revelations about the brazen, years long illegal conduct at Wells Fargo, including most recently the bank firing whistleblowers when they used the internal "ethics" hotline to report the wrongdoing and at least one emailing the CEO about it! Developments are happening so fast, it's hard to keep up, which is one reason Better Markets CEO Dennis Kelleher gave a speech this week that reviewed what we know so far and some of the key issues raised by these illegal business practices. He also focused on the SEC's noticeable absent from all of this, even though it is supposed to be the cop on the Wall Street beat. He used the Wells Fargo scandal to illustrate why the SEC must be reinvigorated and what people can do to help. [The full text of the speech can be found here.]

As the scandal continues to unfold, here are a few things to think about. First, it is difficult to see how the CEO survives. Either he knew about the years long illegal practices ripping off two million customers and accounts (which resulted in the termination of 5,300 employees over five years) or he didn't. Either way, it's pretty clear he should go. However, while some will claim getting rid of the CEO will be enough and try to move on, that should just be the beginning of the housecleaning at Wells Fargo. No one should accept anything less than a full public disclosure from an **independent** investigation of who **did** what when; who **knew** what when; and who was **responsible** for making sure it didn't happen. Only then can the appropriate sanctions for the right people and the right remedies for the bank be determined. This is a bank, after all, and anything less will look like a cover up and further erode the trust and confidence of its customers and the public.

Second, the scale and scope of the corporate breakdown here is as breathtaking as the illegal

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conduct. The bank has two chains of command: one, operational, focused on selling produc ts and generating revenue, and one legal, risk and compliance, focused on making sure those in operations do their jobs appropriately and legally. Both chains of command failed completely, for more than five years. This is not a CEO problem or even a Carrie Tolstedt problem. This is a systemic breakdown of the entire corporate structure and culture at Wells Fargo from the Board of Directors and CEO all the way down. It also includes the outside auditors, who are responsible not just for certifying the financial statements, but also for reviewing and judging the internal controls of the bank. Clearly, there was a massive breakdown of the internal controls and the auditors knew or should have known that and addressed it with the Audit Committee of the Board of Directors.

Third, above all else, individuals, including in particular, executives and supervisors up and down the chain of command must face meaningful personal punishment. Corporations paying puny fines with shareholders' money without admitting or denying facts or guilt is simply not a punishment and will not deter future crimes. In fact, this disreputable pattern enshrined by the SEC and DOJ ensures much more crime in the future because it rewards past crimes, thereby incentivizing future crimes. Yes, punishment must start with the CEO and the head of the business unit, but, if scores of other responsible or deficient executives, supervisors and staff are not severely punished, then the Wall Street crime spree will continue and the public disgust with Wall Street and Washington will get worse.

Finally, disgorgement, through claw backs or otherwise, must be the starting point for sanctioning individuals not the end point. If giving up their ill-gotten gains is the only sanction lawbreakers face, then there is in fact no punishment: disgorgement and claw backs just means wrongdoers don't get to keep the upside of their wrongdoing, but they suffer no downside. It's just status quo ante. That is why, at a minimum, **in addition to** claw backs and disgorgement, substantial fines paid by the individuals out of their own pockets and baring individuals from positions with public companies must be imposed and, where appropriate, civil and criminal actions must be brought. Then - and only then - will the Wall Street crime spree begin to abate. Then - and only then - with the trust and confidence of the American people in Wall Street and banking as well as in regulators and prosecutors begin to be restored.

Wells Fargo exec who headed phony accounts unit collected $125 million: More>>

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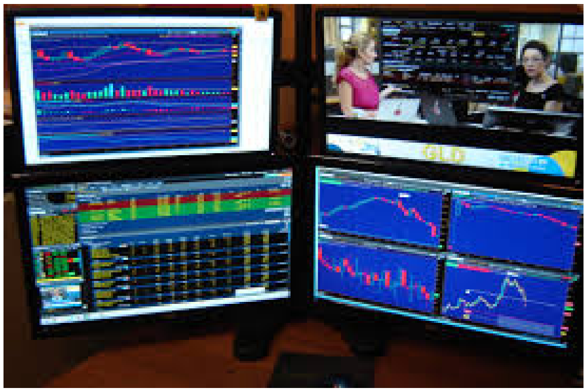
A longer spell on the 'naughty step' will benefit



Finally, "Regulators Get it!" on Predatory HFT and Stand Up to Industry "Sponsored" Comments and Research, but Unfortunately Not US Regulators:
[Themis Trading latest blog post](#) is a must read and nicely captures the reality non-US regulators see, but US regulators seem to miss over and over again:

> *"**Those are all sponsored comments**. We plan to have a detailed open consultation. We have an open mind. We will consult everyone," [the non-US regulator] said. **"We will do something. We are not worried about sponsored comments. You cannot browbeat us** just because you are powerful and noisy,"*

"Sponsored comments," like "sponsored research," is just a nice way of saying "purchased" or "bought and paid for." We call it "vending machine research": insert the money, pull the knob for what you want the "research" to say, and, viola, out comes a nice comment, White Paper, Policy Brief and articles of all types and varieties from seemingly authoritative sources, including often marquee names in academia (and, too often, without the purchaser disclosed). This type of lobbying pollutes the policy and rule making process as well as the public debate at every level. Remarkably, these comments and this research are often accepted as the "truth" by regulators and the media not to mention finance's allies in Congress and elsewhere.

We don't have a problem with anyone's research or comments per se. We have a problem with undisclosed conflicts of interest embedded in purchased research and comments masquerading as independent, unbiased work. We also have a problem with regulators, the media and others not being appropriately skeptical of such purchased research and weighting it accordingly. After all, there is a 100% correlation between the purchaser's views and the purportedly independent, unbiased research or comments being used to obtain a specific result from regulators and policy makers. That alone should cause very careful evaluation of the purchased products.

Themis Trading [concludes](#) their post by asking some of the key questions:

> "Why don't we experience the same investor-oriented bias in the United States? Who knows? Maybe it has something to do with revolving door influence... like, for example, Trading and Markets executives leaving the SEC - with intimate knowledge of the SEC's surveillance usage of MIDAS (Manoj Narang's system sold to the SEC) - and going to extremely large high frequency trading firms."

And, don't think purchased research and comments just happen in India. Here's [recent reporting by Politico's Influence](#) on two separate "astrotruf" campaigns targeting the CFPB:

> "The liberal group **Allied Progress** urged the Consumer Financial Protection Bureau to be on the lookout for suspiciously similar public comments on its proposed payday rule. Forty-three 'personal stories' contained the sentence, 'There are no other products out there that give you the freedom that a pay day loan can give you.' At least 18 read, 'It was a very efficient process and definitely the most reasonable option for me,' and at least 28 said, 'Medical bills can be very difficult to get under control and are very confusing. This loan was a great solution for me.' **Vice** [reported](#) that industry representatives at a retreat in the Bahamas discussed 'a team of three full-time writers' to work on comments. PI previously uncovered **Lincoln Strategy Group**'s [efforts](#) to undermine the CFPB's arbitration rule."

banks:
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Former Wells Fargo banker says pressure to sell products was 'living nightmare':
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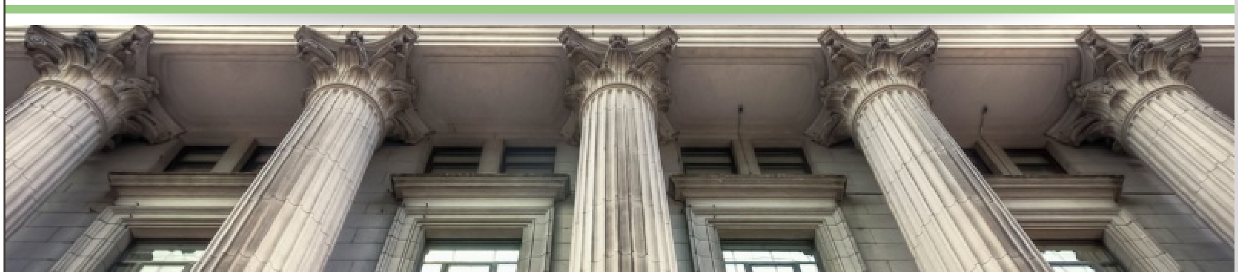
Make Your Voice Heard and Submit Your Questions to the Presidential Debate Commission

It's pretty rare, if no t impossible, for any moderator of a political debate to ask the all of the questions that voters want answered. But that may be changing. The broad-based, bipartisan and independent Open Debate Coalition announced that both ABC and CNN have agreed that the top 30 questions submitted and voted on by the public will be formally submitted to the networks and considered for inclusion in the October 9 Presidential town hall debate.

Make your voice heard by submitting a questions here.

OPEN DEBATE COALITION



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