WELLS FARGO

July 22, 2016

Via Electronic Mail

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Secretary
Board of Governors of the Federal Reserve System
20th Street & Constitution Avenue NW
Washington, DC 20551
Docket No. 1536
RIN No. 7100 AE-50

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Docket ID OCC-2011-0001

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File Number S7-07-16

Re: Notice of Proposed Rulemaking on Incentive-Based Compensation Arrangements (Docket Nos. OCC-2011-0001, 1536, RIN No. 7100 AE-50, RIN 3064-AD86, RIN 2590-AA42, File Number S7–07–16)

Ladies and Gentlemen:

Wells Fargo & Company appreciates the opportunity to comment on the Notice of Proposed Rulemaking and Request for Comment on Incentive-Based Compensation Arrangements by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, the National Credit Union Administration and the U.S. Securities and Exchange Commission.[1]

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[1] 81 Fed. Reg. 37, 670 (June 10, 2016).

Wells Fargo is a diversified, community-based financial services company that provides banking, insurance, investments, mortgage and consumer and commercial finance services to 70 million customers in more than 130 countries around the world. Founded in 1852 and headquartered in San Francisco, we are one of the nation's largest financial institutions, serving one in three U.S. households and employing approximately one in 600 working Americans.

Wells Fargo has long believed in strong and effective risk management practices, which help us to better serve our customers, maintain and improve our position in the market and protect the long-term safety, soundness and reputation of our institution. Wells Fargo has been, and continues to be, fully committed to the principles behind Section 956 of the Dodd-Frank Act. We support and have implemented safeguards against incentive-based compensation practices that threaten safety and soundness, provide excessive compensation or could lead to material financial loss. We have done this while successfully attracting and retaining high quality talent, which is a key factor to our strong risk management.

We have worked, and are continuing to work, diligently alongside the Agencies to improve and evolve our incentive-based compensation practices. We believe this concerted and collaborative effort has resulted in compensation programs that effectively balance risk and align incentives with our corporate Vision and Values and implement the principles-based 2010 Interagency Guidance on Sound Incentive Compensation Policies (the "2010 Guidance"). Our experience and insight into effective incentive-based compensation risk management is the basis for our comments, which we hope will be helpful and informative to the Agencies as they develop the Final Rule.

We are writing to highlight several areas of particular interest to Wells Fargo, and to illustrate the tangible impacts and what we believe could be unintended consequences that the Proposed Rule would likely have on us and our diverse businesses. Additionally, we address a few of the Agencies' requests for comments and offer potential alternative approaches for the Final Rule. We have also worked with several trade organizations in reviewing the Proposal and support the principles and share many of the concerns articulated in the comment letters filed by The Clearing House Association, L.L.C., the Securities Industry and Financial Markets Association and the Financial Services Roundtable. We welcome further dialogue with the Agencies.

1. We believe a principles- and risk-based approach is effective in balancing risk while providing flexibility to tailor incentive programs for businesses and roles.

Since 2010, we have used a principles- and risk-based approach to balance risk in incentive compensation programs across our highly diverse businesses (comprising about 80 distinct businesses and more than 270,000 team members) and range of roles (as varied as securities traders and Home Mortgage Consultants). In line with the 2010 Guidance, we have used a principles-based approach to identify those team members who could have a material impact on the safety and soundness of Wells Fargo and to establish

compensation arrangements that manage specific underlying risks and differentiate among diverse risk profiles.

As an example, Wells Fargo has applied a principles- and risk-based approach to our securities trader compensation programs. A key component of our approach is the use of discretion to holistically evaluate performance in making incentive compensation decisions. This discretionary approach embeds risk management into the program and discourages inappropriate risk taking. We also have implemented a sliding scale deferral framework and have incorporated downward adjustment, forfeiture and clawback features. These features are tailored to the time horizon, decision-making authority and risks associated with each role. We believe these programs effectively balance risk.

We identify material risk takers and balance risk and reward in our incentive compensation arrangements through our Incentive Compensation Risk Management Program, which is overseen by the Human Resources Committee of our Board of Directors to ensure independent governance. We believe our ICRM Program has allowed us to achieve both our risk management objectives and our other compensation goals, including maintaining pay for performance, attracting and retaining talent and aligning team member compensation with stockholder interests. In consultation and partnership with our regulators, we are continuing to make significant progress and achievement in our ICRM Program framework to reinforce our risk culture by promoting and rewarding appropriate behaviors, in line with our Vision and Values, as well as by holding team members accountable for unfavorable risk outcomes.

2. We are concerned unintended consequences may result from the Proposed Rule's framework, which does not distinguish based on varying levels of risk and does not align with the core objective of Section 956.

Unlike the principles-based approach in the 2010 Guidance, the Proposed Rule imposes a prescriptive, "one size fits all" framework, which does not distinguish based on varying levels of risk or focus on risk takers who can truly have a material impact on the safety and soundness of Wells Fargo. In this respect, we believe the Proposed Rule does not align with the core objective of Section 956, which is to prohibit incentive-based compensation practices that encourage inappropriate risks, provide excessive compensation or could lead to material financial loss.

As discussed below, we believe implementation of an approach that is not appropriately tied to risk could lead to numerous unintended consequences in light of (a) inconsistent treatment of businesses across the industry, without consideration of their risk profiles; (b) inclusion of Covered Persons who do not pose material risks; and (c) prescriptive compensation restrictions that deviate from industry compensation practices without a measurable increase in risk balancing and with a negative impact on talent and risk culture. We suggest some alternative approaches below, each of which we believe would enhance the Proposed Rule and align with the core objective of Section 956.

A. Inconsistent Treatment of Businesses Across the Industry Without Regard to Risk Profile

The Proposal requires an entity-by-entity and consolidation approach that will result in inconsistent regulation of similar businesses across the industry by imposing different requirements that are not based on the individual entities' risk profiles. Under the Proposed Rule, smaller businesses within a larger financial institution will be subject to compensation prescriptions that are significantly different than those imposed on their comparable non-bank competitors within the financial industry and other industries, which could be much larger and have higher risk profiles. These smaller entities will be treated differently than their competitors, not based on risk, but rather based solely on the nature of the ownership structure of the institutions with which they are affiliated. For example, although our Asset Management or Insurance Brokerage businesses have lower risk profiles than many of their larger non-bank competitors, they would be subject to the stricter enhanced requirements of the Proposed Rule.

We believe this inconsistent treatment of businesses across the industry would result in multiple undesirable regulatory outcomes. Inconsistent treatment could create an un-level playing field, driving high-quality talent away from Systemically Important Financial Institutions, such as Wells Fargo, to less regulated institutions or outside the industry (*e.g.*, technology roles). This will impact our risk management practices, including in emerging areas such as cyber security. Growth of activity in less regulated areas also could lead to increased systemic risk through the expansion of "shadow banking", where services are provided outside the purview of financial regulators. The growth of "shadow banking" would also negatively impact customers and communities, which have benefited from Wells Fargo's high level of oversight and our robust risk management standards.

The un-level playing field created by the Proposed Rule could reduce the benefits of Wells Fargo's business model. Wells Fargo's business model relies on having a diverse set of businesses in multiple industry segments that perform differently in various economic environments. We believe the balanced and diversified revenue generated within Wells Fargo, particularly from those businesses that do not materially impact capital, lessens our exposure to economic cycles, thereby reducing Wells Fargo's overall risk profile. For example, 47% of our second quarter 2016 revenue came from noninterest income with significant contribution from our advisory businesses such as Wealth and Investment Management and Insurance Brokerage. This diverse business model is key to our strong capital generation and stable returns on capital.

The unintended consequences discussed above can be illustrated within Wells Fargo. While we are continuing to simplify our organization as part of our resolution planning process, we still have numerous subsidiaries, about 130 of which would be

subject to restrictions under the Proposal, regardless of their risk profiles.[2] Although the majority (85%) of these subsidiaries have assets corresponding to Level 3 institutions and are engaged in lower risk activities, they would be required under the Proposal to comply with the most stringent restrictions. In short, treating all $1 billion or larger subsidiaries of Wells Fargo as Level 1 institutions bears no relationship to risk; in our case, $1 billion is about 0.05% of the enterprise's consolidated assets.

➢ *Alternative Approaches*

For the Final Rule, we suggest a two-pronged risk-based approach as an alternative to the Proposal, as described below:

- First, for purposes of applying the enhanced compensation requirements, we recommend treating each covered subsidiary based on its own asset size, such that a smaller, immaterial subsidiary of a Level 1 parent is not automatically treated as a Level 1 Covered Institution. This would create more consistency in regulation for smaller subsidiaries relative to their competitors in the industry. Within Wells Fargo, this approach would be more consistent with the inherent individual riskiness of our smaller subsidiaries.

- Second, for identification of risk takers and for governance purposes, we believe the optimal alternative approach would be to apply the Proposal on a consolidated basis at the enterprise level, with one regulator regulating the Covered Institution, measuring materiality and risk-taking on a consolidated basis and recognizing one set of senior executive officers ("SEOs") and significant risk takers ("SRTs") for that Covered Institution, inclusive of those of its subsidiaries that create material risk at the enterprise level.

In the absence of treating each subsidiary based on its own asset size, we suggest Covered Institution subsidiaries be limited to "material entities" as defined for resolution planning purposes (or as could be specifically defined based on a different risk-based measurement, such as asset size of the subsidiary relative to the enterprise's consolidated assets). The "material entities" definition is a known group that is already linked to a regulatory structure used by the Federal Reserve and the Federal Deposit Insurance Corporation. Material entities are, by definition, those entities whose failure could pose risk of material financial distress or failure for the top-tier parent.

[2] Under the Proposed Rule's entity-by-entity approach, Wells Fargo would need to identify hundreds of senior executive officers, some of whom are six levels deep in the organization and, thus, inconsistent with the fundamental concept of being a senior leader of the company.

B. Inclusion of Covered Persons Not Linked to Material Risk Taking

The Proposal's prescriptive approach, particularly the relative compensation test to identify SRTs impacted by its prescriptive compensation requirements, is not a risk-based approach. Compensation levels do not necessarily correlate to the materiality of risk taking. As a result, we believe that for many institutions, the proposed approach will capture a broad number of roles that do not pose material risks.

For Wells Fargo, with a significant proportion of roles in retail businesses and approximately 57% of our team members in non-exempt positions, the impact of the 5% threshold in the relative compensation test would be broad and would permeate deep into our organization. Some of our SRTs would be as far as ten levels removed from our Chief Executive Officer, and over 80% would be five or more levels removed. In most instances, team members who are five or more levels deep in the organization do not have the ability to expose Wells Fargo to risks that could lead to material financial loss.

Based on the risk profiles of the roles and businesses covered by the Proposal, we estimate that only around 30% of the Wells Fargo team members considered to be SRTs under the Proposal would be material risk takers who individually could impact the safety and soundness of the company (such as securities traders and underwriters). The majority (around 70%) of team members captured as SRTs are currently not considered material risk takers based on the risk profiles of their roles. Specifically:

- About 20% of the SRTs are in non-risk taking roles, including staff roles that may prevent and oversee risk but do not generate risk. Examples of these include roles in risk/compliance, legal, marketing, analytics, human resources and technology.

- The remaining 50% of proposed SRTs are in roles that either (a) do not make decisions on credit or market risk and individually do not create material risks for Wells Fargo's capital (such as Home Mortgage Consultants) or (b) serve as agents for clients and whose decisions may affect our clients, but do not impact the safety and soundness of Wells Fargo or its capital (such as Financial Advisors, Insurance Brokers, and Wealth and Investment Management Portfolio Managers). This later group (b) accounts for the majority of team members in this category.

Under the Proposed Rule, however, these types of roles would be subject to the same incentive compensation requirements and restrictions as risk-taking roles that could have material impact on our capital. Furthermore, many of these proposed SRTs who do not pose material risk to Wells Fargo's safety and soundness are already subject to rules and regulations that address their primary risks (*e.g.,* customer protection) and impose a strict control environment. Managing the intersection of multiple regulatory requirements for specific roles, attainable under a principles-based approach, becomes increasingly unworkable with prescriptive requirements from various rules. Specific examples include:

- Our Home Mortgage Consultants, who do not make decisions on the underwriting of loans and, given the nature and small size of their transactions, individually have no material impact on the safety and soundness of Wells Fargo, are already subject to multiple regulatory requirements imposing a stringent control environment and compensation requirements specifically designed to mitigate their primary risks, including the Truth in Lending Act and multiple consumer protection laws such as the Fair Lending Act and the Unfair, Deceptive and Abusive Acts or Practices Act.

- Financial Advisors, Wealth and Investment Management Portfolio Managers and other advisory roles within Wealth and Investment Management act on behalf of clients and do not take risks impacting Wells Fargo's capital. The risks associated with these roles, which relate to protecting the best interests of our customers, are already addressed by multiple regulators, including the Securities and Exchange Commission, the Financial Industry Regulatory Authority and the Department of Labor.

As described above, the Proposed Rule would subject team members at various levels of our company to its prescriptive compensation restrictions without regard to risk. While we recognize that the concept of the exposure test for SRTs is to some degree risk-based, the approach outlined in the Proposed Rule for this test does not distinguish among the types or risk-profiles of assets (*e.g.*, lower risk treasury assets vs. higher risk emerging market equities) or investments that a team member has the authority to commit or expose on behalf of Wells Fargo. The example provided in the Proposal to determine market risk exposure for securities traders is not aligned with existing practices in the banking industry and would create a compliance burden without any incremental risk benefit compared to a principles-based approach.

In addition, to maintain internal parity and consistency between those team members who are subject to the compensation restrictions imposed on SRTs and those who are not classified as SRTs, we would likely expand the Proposal's prescriptive requirements significantly beyond 5% of our population, thereby creating the unintended consequence of subjecting many more team members to the requirements without regard to risk. To avoid having team members performing similar roles and with similar risk profiles being subject to different compensation structures, and to avoid having any one team member's compensation structure change year-over-year, we believe it would be necessary to cover entire populations. For example, for our relationship management roles in our Wealth and Investment Management advisory businesses, about 15% of the roles would be categorized as SRTs under the Proposed Rule and, to ensure parity and equal treatment for internal purposes, we may need to apply the prescriptions to the compensation of the remaining 85%.

➢ *Alternative Approaches*

We believe the industry and the financial system would be best served by a Final Rule that continues with a principles-based approach that reflects the risk profile of each institution and that relies on the existing "Material Risk Taker" categories under the 2010 Guidance. Material risk-takers could be determined on a consolidated basis, with the proposed SEO group comprised of Category 1 material risk-takers, the proposed SRT group comprised of Category 2 material risk-takers and the proposed Covered Person group comprised of Category 3 material risk-takers. We suggest persons who could not expose the institution to material risk (either individually or as part of a group) not be subject to the Final Rule. This approach is consistent with the core objective of Section 956 and, in our experience, has been effective in addressing risk.

We recommend specifically excluding from the Final Rule certain categories of team members because they are not in material risk-taking functions and in many cases are already highly regulated. We are concerned that unnecessarily including them as Covered Persons would undermine our ability to retain the talent necessary to appropriately manage risk in service of our customers, or would dramatically increase the cost of retaining such talent. We urge that the Final Rule exclude staff and control functions whose expertise is not limited to the financial services industry (*e.g.,* technology, cybersecurity, data, analytics, marketing, risk/compliance, human resources, legal, etc.), especially given that these team members are mobile across industries. We also propose the Final Rule exclude commission-based roles and revenue sharing-based roles that individually do not expose the Covered Institution to material risk (*e.g.*, at Wells Fargo, these roles include Home Mortgage Consultants, Financial Advisors, Insurance Brokers and Wealth and Investment Management Portfolio Managers). Finally, we recommend excluding team members who are already subject to comprehensive compensation prescriptions under another country's regime.

C. <u>Prescriptive Compensation Restrictions Without Measurable Increase in Risk Balancing and With Potentially Negative Impact on Talent and Risk Culture</u>

We believe certain compensation prescriptions, when put into practice, will be at odds with good performance management and compensation practices, and in some cases may appear punitive and not linked to risk-taking. Further, many of the Proposed Rule's requirements, including the lengthy mandatory deferral and clawback treatment, and the potential required deferral for commission-based staff and the imposition of specific leverage limits, differ from industry compensation practices.

Wells Fargo has extensive experience utilizing target-based incentive plans with corresponding maximum opportunity limits. For many roles, the targets and limits are effective risk balancing features. However, the Proposed Rule applies prescriptive requirements, regardless of risk profile, resulting in compensation structures that would not be aligned with many of our current incentive compensation programs or industry practices, particularly for commission-based plans and revenue sharing programs.

Changing the structure may jeopardize our existing risk-balancing approach and effective performance management, increase our legal exposure and create other risks.

Requiring compensation targets and leverage limitations for all SRTs would not address the goal of avoiding excessive risk taking to gain incentives and could potentially have other risk and cost impacts. For example, as noted above, Wells Fargo's commission-based plans and revenue-sharing programs, which cover non-material risk takers such as Financial Advisors, Insurance Brokers and Wealth and Investment Management Portfolio Managers, currently do not have targets. If the Final Rule requires such targets to be established, it would jeopardize the principle of pay for performance by requiring arbitrary targets and corresponding leverage limits on compensation opportunities. Setting a plan's target too low could have the unintended consequence of paying more compensation with less linkage to performance. Setting the target too high could have the unintended consequence of creating an incentive for inappropriate risk-taking to achieve the performance hurdles. Overall, a prescriptive approach to compensation targets and leverage limitations would limit our flexibility to manage our workforce commensurate with the risk profiles of the different roles within our organization, thus leading to the talent and systemic risks described in Sections 2A and 2B above.

We are also concerned about the length of the proposed deferral and clawback periods, which are not linked to the horizon of risk for most roles and, therefore, are inconsistent with a risk-based approach. Under the Proposal, compensation will be at risk for more than a decade, which is not aligned with the average horizon of credit risk and associated capital or earnings at risk, which generally range from three to five years. The burden of tracking compensation for more than a decade for a significant population, combined with the legal challenges of potentially clawing back compensation, would not meaningfully contribute to risk-balancing of incentive compensation.

Overall, we believe Wells Fargo's team members are fundamental to our risk management practices and risk culture. We are concerned the Proposed Rule would have unintended negative consequences by increasing talent and operational risk as well as impacting our effective performance management process through the imposition of inflexible compensation requirements that would not be applied uniformly across the industry based on risk profile. Negative consequences for talent and risk culture would be an undesirable outcome and inconsistent with the principles outlined in the OCC's Heightened Expectations[3] and the core objective of Section 956.

➢ *Alternative Approaches*

We believe the core objective of Section 956 would be best served by building on the 2010 Guidance and continuing with a principles-based approach to tailoring incentive

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[3] Office of the Comptroller ("OCC") Guidelines Establishing Heightened Standards for Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches. 12 C.F.R. pt. 30, App. D (2016).

compensation structures to the inherent risk of particular roles, rather than applying a prescriptive, "one size fits all" approach regardless of the level, type and time horizon of risk. We do not believe a prescriptive approach has an incremental benefit in risk balancing and we are concerned that it could undo much of the progress we have made in the past five years under the 2010 Guidance.

If the Agencies continue to believe certain prescriptive requirements are appropriate, we recommend several areas be carved out from the Final Rule. First, we urge the Final Rule exclude commissions, and (as noted in Section 2B above) the applicable team members receiving such compensation, from the definition of incentive-based compensation and thus from the enhanced requirements. Excluding commissions from incentive-based compensation would also be consistent with the Department of the Treasury's 2009 interim final rule on TARP Standards for Compensation and Corporate Governance[4], which included a carve-out exempting "certain commission compensation for sales to, and investment management services for, unrelated parties" from the definition of "bonus" because this kind of commission payment is "characteristically...viewed as a component of base salary rather than bonus compensation."

Second, we recommend that incentive plans without targets (*e.g.,* revenue sharing plans) be expressly permitted (and not be required to have targets generated solely for regulatory purposes) and the proposed leverage limits not be a requirement.

Third, instead of imposing a single deferral percentage for SRTs, we recommend a sliding scale deferral framework (similar to a tax table) that is commensurate with the relevant SRT's level of risk taking and decision-making authority. Such a sliding scale would be more consistent with a risk-based approach. Similarly, we recommend modifying the deferral, forfeiture and clawback requirements to allow Covered Institutions to adopt a principles-based approach that would be commensurate with the applicable risk level, type and horizon.

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In conclusion, we believe it is critical that Covered Institutions, in partnership with their supervising Agencies, have the ability to use discretion in applying the principles behind Section 956. Instead of establishing a prescriptive approach that is unrelated to risk-taking and that has unintended consequences, including those outlined above, we suggest the Agencies build on the 2010 Guidance and prohibit only those specific arrangements that are incompatible with appropriate, long-term compensation practices and risk-alignment, with a focus on compensation programs for material risk takers.

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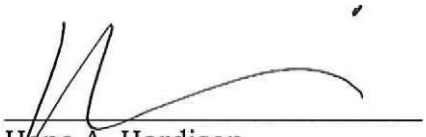
4 74 Fed. Reg. 28,394 (June 15, 2009).

Thank you for considering our comments. We look forward to meeting with the Agencies to discuss these issues. Should you have any questions or need further information, please do not hesitate to contact me.

Respectfully submitted,



Hope A. Hardison
Senior EVP, Chief Administrative Officer and
Director of Human Resources

cc:

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