Wells Fargo directors: Don’t blame us. Blame former execs, CEO

By Thomas Lee | April 11, 2017 | Updated: April 11, 2017 6:32pm

1

Photo: Paul Sakuma, Associated Press

FILE - This Jan. 19, 2010, file photo, shows the exterior of a Wells Fargo Bank in Palo Alto, Calif. The career of Carrie Tolstedt, the woman blamed in a new report for a sales scandal at Wells Fargo, was until recently an inspiration for other workers wanting to make it big in the industry. Tolstedt is blamed for high pressure sales practices at the bank that spiraled out of control and resulted in millions of accounts being opened fraudulently. (AP Photo/Paul Sakuma, File)

Perhaps the only shocking thing about the results from the Wells Fargo board of directors’ investigation into company fraud is how utterly unshocking it was.

The San Francisco bank released a 113-page report this week that looked into the creation of up to 2 million unauthorized accounts in the names of customers. But let me sum up the report for you in less than 20 words: The board didn't know anything; it was all the fault of former CEO John Stumpf and former executive Carrie Tolstedt.

The report felt less like a credible fact-finding inquiry than a perfunctory legal document to provide cover for the directors, who already face lawsuits for breach of fiduciary duty. Amazingly, the board did not even offer a cursory attempt to assume some measure of responsibility for the company's behavior.

Not even a "We're sorry that we didn't do a better job overseeing Wells Fargo."

Instead, we get this: "Sales practices were not identified to the board as a noteworthy risk until 2014. By early 2015, management reported that corrective action was working. Throughout 2015 and 2016, the board was regularly engaged on the issue; however, management reports did not accurately convey the scope of the problem."

A company spokesman referred me to previous statements issued by CEO Tim Sloan.

"We accept the board's findings as a critical part of our journey to rebuild trust," Sloan said Monday. "While we have already made significant progress in making things right with customers and addressing issues, including several issues identified in the investigation, the board's comprehensive findings provide another important opportunity to learn from our mistakes and take action to improve the way we operate, serve customers, and lead our team members."

First of all, let's just dispense with the notion the board did an "independent" investigation. According to the report, the inquiry was conducted by a four-director committee, "assisted by" the Shearman & Sterling law firm. In fact, Stuart Baskin, a partner in the law firm, is defending those four directors from a shareholder lawsuit filed by prominent local trial attorney Joe Cotchett against the Wells Fargo board. Could the company at least try to find a different lawyer?

In general, regulators and prosecutors view such company investigations with a "heavy dose of skepticism” because of these conflicting interests, said Jason de Bretteville, a former assistant U.S. attorney who now leads white collar criminal defense for the Stradling law firm in Newport Beach, Va.

That’s not to say that a board can’t effectively oversee any investigation. But given the scale and scope of the fraud, in which Wells Fargo fired its CEO, senior executives and 5,000 employees, the board members should have recused themselves and handed control to an outside committee of banking experts, said Eric Havian, a former federal prosecutor who represents whistle-blowers for the Constantine Cannon law firm in San Francisco.

The pervasive nature of the bank’s fraudulent culture is “as bad as it gets,” Havian said. For example, according to the report, it was only lower-level employees who tried to alert the company of fraud, he said. (Ian Minto, a former assistant branch manager in San Rafael, told me he reported such fraud in 2002, a good dozen years before the board said it first learned of the sales practices.)

Nowhere did the report refer to higher level managers and executives sounding the alarm, even though they must have known of the fake accounts, Havian said.

Without a truly independent investigation, any inquiry lacks credibility, he said, suggesting that the board is simply buying the result it wants.

“He who pays the piper pays for the tune,” Havian said. “We shouldn’t be surprised then that the board got such a free pass” from the investigation.

One interesting conclusion from the report was that the community banking division, the epicenter of the fraud, enjoyed too much autonomy.

“Corporate control functions were constrained by the decentralized organizational structure and a culture of substantial deference to the business units,” the report said.

It strains credulity to think that the board was unaware of these flaws. Often, the board chairman is the person who controls the flow of information to directors, said Randall Heron, a professor of finance at Indiana University’s Kelley School of Business.And in Wells Fargo’s case, John Stumpf had acted as both CEO and chairman.

But banking is a highly regulated industry, and Wells Fargo is awash in departments and committees whose sole purpose to promote compliance and identify risk. Yet the company just let the business units do whatever they wanted?

If true, that means the board was, at the very least, highly incompetent.

Perhaps that's why the report essentially absolved it of any responsibility.

"They are trying to protect their reputations," said Patricia Lenkov, president of Agility Executive Search in New York, who recruits potential candidates for boards. While directors are supposed to act in the best interests of shareholders, some will inevitably look to shield themselves from a scandal, she said.

"The fact that the board said they didn't know anything is hard to believe," Lenkov said. "I don't understand how that happens."

For Wells Fargo to truly fix itself, it needs to step up oversight of all of its businesses, said Michael Calhoun, president of the Center for Responsible Lending in Washington.

"The test for the company is whether they can create products that benefits consumers and helps the bottom line," Calhoun said.

Here's the problem: People who failed to prevent the fraud, including the board and CEO Sloan, a 30-year veteran at Wells Fargo and former chief operating officer, are still in charge. I asked Calhoun whether he trusts these people to reform the company.

"Everyone should watch their performance going forward," Calhoun said.

Thomas Lee is a San Francisco Chronicle columnist. Email: tlee@sfchronicle.com Twitter: @ByTomLee

Thomas Lee

Business Columnist