

**THE SAGA OF OCC AND WELLS FARGO**

**By William M. Isaac\***

I've been following with great interest the brouhaha over whether the Comptroller of the Currency went soft on Wells Fargo & Co.'s alleged failure to install adequate anti-money-laundering controls. Some bankers and politicians complain that Wells Fargo received more favorable treatment due to its size and importance.

The background, as reported in the press, is that OCC examiners concluded that Wells Fargo had weaknesses in its anti-laundering program and recommended a *formal enforcement order* in a draft memo dated February 4, 2005. Wells Fargo's CEO, Dick Kovacevich, met with Acting Comptroller Julie Williams on February 9. The OCC staff then recommended in a memo dated April 12 that the agency take *informal* action.

The case raises a number of issues. One of the first issues that jumped out at me has to do with the manner in which we learned about all of this.

An anonymous OCC employee reportedly leaked these sensitive and confidential supervisory materials to Congress. I know that what I'm about to say is politically incorrect in the era of aggrandizing "whistleblowers," but I'm deeply troubled by the actions of the anonymous employee.

Bank examination materials are highly sensitive and need to be protected against unauthorized disclosure. Indeed, it's a criminal offense to disclose an exam report.

It's one thing for an agency employee to disagree with the treatment accorded a bank and send an anonymous letter complaining about favoritism. It's quite another thing for that employee to disclose confidential agency materials.

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The potential consequences of such behavior could be disastrous. When I was Chairman of the Federal Deposit Insurance Corporation at the height of the banking crisis in the 1980s, I was visited by the Washington bureau chief of this newspaper.

He showed me an internal FDIC memo that had been sent to him anonymously. The memo listed by name scores of banks that the FDIC expected might fail and their estimated failure dates.

After glancing at the memo, I indicated that it was the real deal and asked what he intended to do with it. He responded, “That’s why I’m here. We want to discuss that with you.”

I explained that if the newspaper published the memo every bank on the list would fail immediately, creating chaos. The FDIC simply could not manage that many failures at once, and widespread depositor panic would likely ensue.

The newspaper acted responsibly, writing about the contents of the leaked memo without identifying the banks. The system survived – no thanks to the whistleblower, who clearly didn’t care what havoc he or she wrought.

I’m uncomfortable making heroes out of government employees who leak confidential information they are charged with protecting. The examination process, which is based on mutual trust, will break down if this kind of behavior becomes prevalent.

An issue that has been receiving considerable attention in the Wells Fargo saga is whether the Comptroller backed away from a formal enforcement action due to the company’s size. Although I am not familiar with the detailed findings at Wells Fargo, what I do know suggests that the OCC’s treatment of Wells Fargo was appropriate.

Regulators have a variety of tools available to them when they find problems at banks – ranging from noting in exam reports matters that require attention to terminating deposit insurance. Any bank that has good management and a track record of running a

safe and sound business in compliance with laws and regulations, will nearly always be given the opportunity to correct problems without resort to a formal enforcement action.

Wells Fargo is one of the largest, most successful, and best managed banks in the nation. It has a long track record of outstanding performance. [In the interest of full disclosure, readers should know that I'm a shareholder in the company although my holdings are not material.]

Far from criticizing Dick Kovacevich for visiting with the Comptroller about any deficiencies, I regard it as an indication of an involved CEO committed to maintaining his bank's good standing. I would be surprised to learn that a chief executive did not consider such a visit an important use of his or her time. Moreover, when a respected CEO of a very successful bank promises to fix promptly any identified problems, he or she deserves the opportunity to do so before an enforcement action is taken.

Some speculate that the reason the Acting Comptroller might have pulled her punches is that Wells Fargo represents such a large source of fees to the OCC that the agency could not risk driving the bank to a state charter. Only the uninformed could give credence to this assertion. No bank experiencing problems is allowed to switch regulators until all outstanding issues are resolved to the satisfaction of its current regulators.

While I do not see a basis for criticizing the OCC's handling of Wells Fargo, I believe that the OCC gave Wells Fargo better treatment than it has been giving most banks experiencing Bank Secrecy Act and Anti-Money Laundering deficiencies. Most banks are not receiving the benefit of the doubt that Wells Fargo received – even though most should.

The regulators, for understandable reasons, are in something close to panic mode when it comes to supervising banks for BSA/AML compliance. Regulators have suffered through a great deal of criticism from Congress for lax enforcement of BSA/AML. And supervisory personnel have been fired or sent into exile for their perceived failure to be tough enough.

As a consequence, examiners in the field are very much inclined to shoot first and ask questions later. The climate in BSA/AML is reminiscent of the regulatory approach toward commercial real estate lending in the late 1980s and early 1990s, which exacerbated an already bad economic situation.

Criticizing the OCC for letting Wells Fargo off too easily misses the point and will almost certainly do more harm than good. We are already seeing plenty of evidence that the harsh regulatory approach is backfiring.

Banks and their advisors are hunkering down in response to the extreme actions being taken by regulators. They are filing “defensive” suspicious activity reports by the hundreds of thousands to avoid being accused of missing any. Too many SARS are every bit as problematic as too few.

The government needs to form a partnership with banks in order to conduct the war on terror more effectively. A successful partnership cannot be built on a foundation of fear, intimidation, and mutual lack of trust. It needs to be based on clearly articulated standards and expectations, effective two-way communication and cooperation, and mutual trust and respect.