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Too Big to Care: Promoting Ethics When Ethics Are Not Profitable

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Abstract. Beginning in 2002, Wells Fargo began opening fraudulent accounts for unsuspecting customers. Stakeholders at every level either participated in, ignored, or tolerated the bank's behavior that defrauded consumers on a massive scale. These unethical and well-documented schemes spanned more than a decade. Using public sources, this case recounts the events and ethical lapses that unfolded over the multiyear investigation of the Wells Fargo fraudulent accounts scandal and illuminates the general systemic failures of corporate culture and governance, public regulation, and market responses to promote ethical business practices. This case provides the opportunity to consider what means for fostering ethical conduct might exist if a corporation can be big enough and rich enough that civil, criminal, regulatory, and market forces cannot deter unethical corporate practices, and if the market does not punish the corporation for a culture that promotes fraud.

Keywords: business ethics, individual ethical norms, corporate ethical responsibility, ethical consumerism, Wells Fargo.

1. Introduction

To meet intense pressure for increased sales, Wells Fargo and its employees began opening unauthorized accounts, issuing unauthorized credit cards, and writing unauthorized insurance policies for unsuspecting customers. From 2002 to 2009, millions of unauthorized accounts from hundreds of thousands of customers were generated and Wells Fargo profited richly. When finally caught, Wells Fargo evaded and dodged until lawsuits, government investigations, and internal audits made further obfuscation impossible. After its exposure in 2012 and subsequent years of investigation, enforcements, lawsuits, and public contrition, Wells Fargo suffered little more than temporary embarrassment from a decade of unethical and illegal behavior. The bank emerged in 2017 with a temporary asset cap on its trillions, two $500 million fines from two government agencies (the total fines were for additional fraudulent behavior in home and auto loans), and a few hundred million in settlements. It suffered no loss of market share, no significant loss of share price or equity, or no market consequence that would dissuade its practices. No executive or manager went to jail. Directors and all but a few executives kept their jobs. A fraction of its offending line employers and managers left or were fired, but so were more than a few of its whistleblowers. Its systems failed to prevent the fraud.

This case does not question whether Wells Fargo acted unethically. It did. Rather, the purpose of this case to examine how it acted unethically for so long, managed to evade accountability, and the failure of existing systems that did not dissuade the bad behavior. The bank, through its officers and directors, its management, and employees, might have intervened early on with self-discipline. The government may have attended to its responsibilities for oversight more closely, regulated the practices more precisely, and prosecuted those perpetrating the fraud more aggressively. If the market responded to promote ethical practice, Wells Fargo's competitors may have used the moment more competitively to claim its market share. Consumers and new clients could have removed their business and penalized Wells Fargo for its fraudulent practices. However, these legal and market forces have not been sufficient to deter unethical behavior, and consumers' preference to avoid disruption to the daily business of their lives appears to minimize their efforts to hold the bank accountable.

This leads to a significant dilemma. If a corporation can be big enough and rich enough that civil, criminal, regulatory, and market forces cannot deter unethical corporate practices, and if the market does not punish the corporation for a culture that promotes fraud, what means remain to encourage ethical development and change at a corporation too big to care? With this question in mind, we turn to the examination of the Wells Fargo case.

2. Wells Fargo Creates Millions of Fraudulent Accounts

The Long History of Misbehavior at Wells Fargo

In 2013, the egregious behavior of Wells Fargo, one of the largest financial institutions in the world, came under public scrutiny. The ensuing investigations revealed that from 2002 to 2009, Wells Fargo employees created up to 3.5 million unauthorized deposit and credit card accounts,[1] including more than 500,000 unauthorized credit card applications for existing bank customers.[2] These accounts generated substantial fees paid to the bank. By 2017, Wells Fargo agreed to refund customers $6.1 million in addition to hundreds of millions in settlements and fines, a slight fraction of its profits.[3] Table 1 provides a summary timeline to accompany this narrative and discussion of the major events, the corporate

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2. Koren, J. R. (2016, September 8). Wells Fargo to pay $185 million settlement for 'outrageous' sales culture. *Los Angeles Times*. Retrieved from http://www.latimes.com/business/la-fi-wells-fargo-settlement-20160907-snap-story.html