WELLS FARGO

James Strother
Executive Vice President,
General Counsel

Law Department
MAC A0194-275
45 Fremont Street, 27th Floor
San Francisco, CA 94105
[redacted]

March 6, 2009

Neil M. Barofsky
Special Inspector General
Office of the Special Inspector General -TARP
1500 Pennsylvania Ave., NW
Suite 1064
Washington, D.C. 20515-6143

Re: TARP Information Request to Wells Fargo & Company ("Wells Fargo")

Dear Mr. Barofsky:

This is in response to your February 6 letter to Howard Atkins requesting certain information about Wells Fargo's use of funds received from the Treasury Department's purchase of $25 billion of preferred securities, inclusive of a related Wells Fargo common stock warrant, made last October under the Troubled Asset Relief Program ("TARP") established under the Emergency Economic Stabilization Act ("EESA"), and Wells Fargo's plans to address executive compensation requirements associated with TARP funding.

We note at the outset that Wells Fargo was among the group of large financial institutions that agreed to accept the Treasury investment at the request of Secretary Paulson. As noted in your recent letter to Congressman Frank, TARP agreements generally do not require recipients to report or internally track TARP funds; there are no such requirements in Wells Fargo's agreement with the Treasury Department. We also note that Wells Fargo recently paid the Treasury Department a quarterly dividend of $371.5 million on its preferred stock investment.

Our responses below are prepared in accordance with the subsequent guidance posted February 26 on the Treasury Department website in the form of "Questions and Answers Regarding the February 6 SIG TARP Letter."

(1) <u>A narrative response specifically outlining (a) your anticipated use of TARP funds; (b) whether the TARP funds were segregated from other institutional funds; (c) your actual use of TARP funds to date; and (d) your expected use of unspent TARP funds. In your response please take into consideration your anticipated use of TARP funds at the time that you applied for such funds, or any actions that [you] have taken that you would not have been able to take absent the infusion of TARP funds.</u>

As publicly reported, Wells Fargo did not seek the Treasury capital investment under TARP; rather, we agreed to the investment at the request of the Secretary of the

Treasury. Thus, we had no specific plans for use of the TARP funds at the time they were provided by the Treasury Department.

Effective December 31, 2008, Wells Fargo & Company acquired Wachovia Corporation. Please note that amounts for 2008 indicated below do not include information for Wachovia because the acquisition was completed by Wells Fargo at the end of 2008. January 2009 information includes Wachovia.

The Treasury investment in Wells Fargo resulted in an equivalent increase in Wells Fargo's Tier 1 capital ratio. Wells Fargo has not specifically segregated this capital from other capital or other funds Wells Fargo has obtained through deposit-taking and other means of funding, including its successful public offering of its common stock in November 2008 which resulted in an additional $12.6 billion of common equity. In short, the TARP funds received through the Treasury investment are simply part of Wells Fargo's Tier 1 regulatory capital. The purpose of the Treasury investment was to provide Wells Fargo (and other banks that obtained similar investments) with additional capital to support additional lending as well as cushion against losses resulting from existing loans and other assets.

Throughout the current credit crisis, Wells Fargo has continued to extend credit to its consumer, small business and commercial customers. Despite the weak economy and difficult market conditions in many secondary markets, Wells Fargo extended over one-half trillion dollars in new loan commitments and mortgage originations in the last 18 months through the end of 2008. Despite the further deceleration of the economy and associated moderation in credit demand in the fourth quarter of 2008, Wells Fargo extended $22 billion in new loan commitments, $50 billion in first mortgage originations, and took $116 billion in new mortgage applications in the fourth quarter of 2008, up 40% from the third quarter of 2008. December 2008 mortgage applications of $63 billion were the fourth highest month in Wells Fargo's history. About two-thirds of mortgage applications in the fourth quarter were for refinances and about $40 billion of the applications we took were for home purchases, a relatively solid increase in a typically seasonally soft quarter. In total, Wells Fargo extended over $72 billion in new credit in the fourth quarter of 2008, almost three times the amount of capital it received from the U.S. Treasury. First mortgage originations remained strong in early 2009. Mortgage originations of $24 billion in January 2009 alone were almost equal to the amount of the investment by the U.S. Treasury.

Average consumer loans increased 4% in the fourth quarter from a year earlier. The growth Wells Fargo achieved in consumer credit extension was broad based including growth in first mortgages, credit cards, education loans, and unsecured personal credit. Growth in home equity lending and auto finance were more moderate with increases in credit extended in these products through the Bank's direct to consumer (retail) networks moderating reduced lending through higher risk indirect channels. Originations of home equity lines and loans remained relatively flat from December 2008 to January 2009. In

January 2009, education finance lending included $2.4 billion in originations, up 33% from January 2008.

Commercial loan growth at Wells Fargo increased 11% in the fourth quarter of 2008 from a year earlier and 10% (annualized) from the fourth quarter as compared to the third quarter, reflecting the Company's commitment to extend credit to all of its creditworthy customers at a time when many of Wells Fargo's competitors had retracted from commercial lending. Commercial loan growth at Wells Fargo in the fourth quarter continued to be broad-based by geography and by product type with growth for example in small business lending (up 8%), asset based lending, middle market commercial lending, commercial real estate (largely owner-occupied financing) and selected niches in large corporate lending. January 2009 commercial loan growth in the combined company was flat, with total average Wells Fargo and Wachovia commercial loan balances approximately the same as at the end of 2008; however, approximately $5.4 billion of new commercial loans and loan commitments were made in January.

Wells Fargo increased total loans outstanding (consumer and commercial) by approximately $10 billion in the fourth quarter of 2008, a 10% (annualized) growth rate over the prior quarter. This occurred at a time when aggregate loans among large U.S. banks grew less than 10%; thus, Wells Fargo's commitment to extending credit resulted in an increased market share of bank lending in the fourth quarter. Almost all of Wells Fargo's lending to both consumers and businesses is originated by Wells Fargo relationship officers through our direct origination channels. As a result, the principal driver of Wells Fargo loan growth has been needs-based selling to existing customers as well as growth in new customers. Wells Fargo added over 400,000 new household customers in the last year.

(2) Your specific plans, and the status of implementation of those plans, for addressing executive compensation requirements associated with the funding. Information provided regarding executive compensation should also include any assessments made of loan risks and their relationship to executive compensation; how limitations on executive compensation will be implemented in line with Department of Treasury guidelines; and whether any such limitations may be offset by other changes to other, longer-term or deferred forms of executive compensation.

As instructed in the Questions and Answers regarding your request letter, our response regarding executive compensation requirements is based on the guidelines on executive compensation made available on the Treasury Department website on February 26.

Effective October 27, 2008, the Human Resources Committee (the "Committee") of the Board of Directors of Wells Fargo amended its Benefit Plans with respect to its "Senior Executive Officers" (as defined by EESA) to comply with Section 111 of EESA. "Benefit Plans" include any plan or agreement to which any Senior Executive Officer is a party, that either (a) provide for incentive or bonus compensation based on the achievement of performance goals tied to or affected by Wells Fargo's financial results ("Financial Performance Plans") or (b) provide payments or benefits upon an "applicable severance from employment" within the meaning of EESA ("Involuntary Separation Pay Arrangements"). This amendment will remain in effect for the period that the Department of the Treasury holds a debt or equity position in Wells Fargo as required by Section 111 of EESA and the applicable Treasury regulations.

Under the terms of the Benefit Plans amendment, each Financial Performance Plan and Involuntary Separation Pay Arrangement was amended to (a) make Senior Executive Officer participants ineligible to receive compensation under such plan or arrangement to the extent the Committee determines the plan or arrangement includes incentives for such Senior Executive Officer(s) to take unnecessary and excessive risks that threaten the value of the financial institution; (b) require each Senior Executive Officer who participates in such plan or arrangement to forfeit any bonus or incentive compensation paid to the Senior Executive Officer based on statements of earnings, gains, or other criteria that are later proven to be materially inaccurate; and (c) prohibit Wells Fargo from making to each Senior Executive Officer who participates in such plan or arrangement, and make each such Senior Executive Officer ineligible to receive, any "golden parachute payment" in conjunction with the Senior Executive Officer's "applicable severance from employment," in each case within the meaning of Section 111 of EESA and applicable regulations.

In accordance with preliminary regulations issued by Treasury applicable to the TARP, on January 26, 2009, the Committee met with Wells Fargo senior risk officers to discuss and review whether any feature of incentive compensation arrangements with Wells Fargo's Senior Executive Officers would encourage a Senior Executive Officer to take "unnecessary and excessive" risks that could threaten the value of Wells Fargo. Following a review of these arrangements, the Committee concluded that adequate internal controls and policies existed that either would prevent or discourage the potential for excessive risk-taking. These controls and policies are summarized below.

- *Incentive compensation for Senior Executive Officers depends primarily on Wells Fargo's performance.* Although a Senior Executive Officer's business line performance is a factor in incentive compensation decisions, a Senior Executive Officer may not be rewarded even for exceptional business line performance if Wells Fargo as a whole has not also performed.

- *Wells Fargo's Sarbanes-Oxley internal certification program identifies business line deviations from financial reporting policies.* The internal certification program provides a reasonable and appropriate mechanism to identify any actions by a Senior Executive Officer that might enhance a Senior Executive Officer's business group performance, but that would deviate from corporate financial reporting policies.

- *Senior Executive Officer business lines are subject to an extensive internal control, compliance and reporting process to identify and correct undue risk* *taking.* At Wells Fargo, compliance teams are embedded within the business lines to perform continuous monitoring and self-testing, and expanding to internal audit review of business lines on a risk-based cycle. Wells Fargo's compliance and internal audit teams report all significant issues and delayed corrective actions to the Board.

- *Senior Executive Officer business line revenue growth performance based on lending activity is subject to extensive review for compliance with Wells Fargo's credit risk policies.* Wells Fargo's Risk Asset Review (RAR) group reports to the Board's Credit Committee and Chief Credit Officer and functions as a control over the creation of credit risk throughout Wells Fargo. RAR evaluates and rates each business line's credit administration (including underwriting, analysis, monitoring, problem loan management, and risk rating accuracy) to reinforce safe and sound lending practices, and reports its findings and ratings to senior management, and all significant findings, ratings and trends to the Board's Credit Committee.

- *Wells Fargo has adopted strong compensation recoupment policies.* More than two years ago, the Committee adopted a compensation recoupment or "clawback" policy to address compensation-related misconduct by any executive officer. This policy allows Wells Fargo to recover bonus and incentive compensation paid to any executive officer on the basis of having met or exceeded performance goals if that performance was due to fraud or other misconduct. In addition, as mentioned above, the Committee adopted the clawback policy mandated by the TARP regulations under which any bonus or incentive compensation paid to a Senior Executive Officer is subject to forfeiture if based on materially inaccurate financial statements or on other criteria later proven to be materially inaccurate.

- *Wells Fargo's Code of Ethics and Business Conduct prohibits, and disciplines (up to termination of employment), all employees, including Senior Executive Officers, for manipulating business goals for compensation purposes.*

On February 24, 2009, the Committee suspended Wells Fargo's Performance-Based Compensation Policy applicable to its Senior Executive Offices (the "Policy") and made certain compensation determinations regarding these officers. A copy of Wells Fargo's Form 8-K filing reporting this information is enclosed. The Committee determined that the Policy (an Internal Revenue Code Section 162(m) policy) was not needed while the EESA limitations, as amended by the American Recovery and Reinvestment Act of 2009 ("ARRA"), on the tax deductibility of SEO compensation were in effect, and suspended the Policy effective January 1, 2009. For purposes of 2008 compensation, the Committee further determined that because Wells Fargo had not met the performance goals under the Policy for 2008, none of the Senior Executive Officers would receive cash incentive compensation for 2008.

Wells Fargo initially established the Policy in 1994. Under the Policy prior to its suspension, the Committee established alternative performance goals using financial measures specified in the Policy and which directly related to the performance of Wells Fargo during the applicable performance period. The Committee reserved the right to exercise its discretion to reduce awards even if the performance goals had been met. Loan risks and other qualitative factors would influence the compensation awarded under the Policy to the extent such factors impacted the achievement of Wells Fargo's performance goals and the Committee's determination of appropriate compensation awards.

Also as reported in the enclosed Form 8-K, as permitted by the ARRA, restricted share rights ("RSRs") were granted to certain Senior Executive Officers based on their 2008 total annual compensation. Each RSR entitles the holder to receive one share of Wells Fargo common stock contingent upon vesting. The RSRs will vest in three installments: 30% on July 1, 2012, 30% on July 1, 2013, and 40% on July 1, 2014, provided that to the extent required by applicable law, no installment will vest during the period in which any obligation arising from financial assistance provided to Wells Fargo under TARP remains outstanding.

Please let us know if you have any questions regarding the responses set forth above.

Sincerely,

James Strother

James M. Strother
Executive Vice President and
General Counsel

CERTIFICATION

I, James M. Strother, certify that I have reviewed this response and supporting documents, and, based on my knowledge, this response and the supporting documents do not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading.

James Strother

James M. Strother

Enclosure (Form 8-K)

8-K 1 d8k.htm FORM 8-K

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (date of earliest event reported): February 24, 2009

WELLS FARGO & COMPANY
(Exact Name of Registrant as Specified in Its Charter)

Delaware	**001-02979**	**No. 41-0449260**
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(IRS Employer Identification No.)

420 Montgomery Street, San Francisco, California 94104
(Address of Principal Executive Offices) (Zip Code)

1-866-249-3302
(Registrant's Telephone Number, Including Area Code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))