



DIVISION OF  
CORPORATION FINANCE

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549-4561

February 19, 2010

Christopher J. Adam  
Senior Counsel  
Wells Fargo & Company  
Law Department  
MAC #F4030-010  
800 Walnut Street  
Des Moines, IA 50309

Re: Wells Fargo & Company  
Incoming letter dated December 23, 2009

Dear Mr. Adam:

This is in response to your letter dated December 23, 2009 concerning the shareholder proposal submitted to Wells Fargo by Human Life International, Inc. Our response is attached to the enclosed photocopy of your correspondence. By doing this, we avoid having to recite or summarize the facts set forth in the correspondence. Copies of all of the correspondence also will be provided to the proponent.

In connection with this matter, your attention is directed to the enclosure, which sets forth a brief discussion of the Division's informal procedures regarding shareholder proposals.

Sincerely,

Heather L. Maples  
Senior Special Counsel

Enclosures

cc: Rev. Thomas J. Euteneuer  
President  
Human Life International, Inc.  
4 Family Life Lane  
Front Royal, VA 22630

February 19, 2010

**Response of the Office of Chief Counsel**  
**Division of Corporation Finance**

Re: Wells Fargo & Company  
Incoming letter dated December 23, 2009

The proposal requests that the company list the recipients of corporate charitable contributions of \$5,000 or more on the company's website.

We are unable to concur in your view that Wells Fargo may exclude the proposal under rule 14a-8(i)(7). In arriving at this position, we note that the proposal relates to charitable contributions, which the Division has generally found to involve a matter of corporate policy which is extraordinary in nature and beyond a company's ordinary business operations. Moreover, in our view, the proposal does not pertain to specific types of organizations. Accordingly, we do not believe that Wells Fargo may omit the proposal from its proxy materials in reliance on rule 14a-8(i)(7).

Sincerely,

Julie F. Rizzo  
Attorney-Adviser

**DIVISION OF CORPORATION FINANCE  
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS**

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the Company in support of its intention to exclude the proposals from the Company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes administered by the Commission, including argument as to whether or not activities proposed to be taken would be violative of the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversary procedure.

It is important to note that the staff's and Commission's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly a discretionary determination not to recommend or take Commission enforcement action, does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the management omit the proposal from the company's proxy material.



Wells Fargo & Company  
Law Department  
MAC #F4030-010  
800 Walnut Street  
Des Moines, IA 50309

Christopher J. Adam  
Senior Counsel  
515.557.8167  
515.557.7602 (fax)

December 23, 2009

VIA E-MAIL ([shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov))

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549

RE *Stockholder Proposal Submitted by Human Life International, Inc.*

Dear Ladies and Gentlemen:

Wells Fargo & Company, a Delaware corporation ("Wells Fargo" or the "Company"), hereby notifies the Securities and Exchange Commission (the "Commission") of its intent to omit a stockholder proposal (the "Proposal") and supporting statement submitted by Human Life International, Inc. (the "Proponent") from its proxy statement and form of proxy (the "Proxy Materials") for Wells Fargo's 2010 Annual Meeting of Stockholders (the "2010 Annual Meeting") pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Wells Fargo hereby respectfully requests confirmation that the staff of the Division of Corporation Finance (the "Staff") will not recommend to the Commission that enforcement action be taken if Wells Fargo excludes the Proposal from its Proxy Materials for its 2010 Annual Meeting for the reasons set forth herein.

## **BACKGROUND**

The 2010 Annual Meeting is scheduled to be held on or about April 27, 2010. Wells Fargo intends to file its definitive Proxy Materials with the Commission on or about March 18, 2010 and to commence mailing those materials to its stockholders on or about such date.

Pursuant to Rule 14a-8(j) under the Exchange Act and *Staff Legal Bulletin No. 14D* (November 7, 2008), we have submitted this letter and its attachment (the Proponent's letter dated October 29, 2009 that sets forth the Proposal and its supporting statement) to the Commission by e-mail at [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov). A copy of this submission is also being sent simultaneously to the Proponent as notice of Wells Fargo's intent to omit the Proposal from its Proxy Materials for the 2010 Annual Meeting.

## THE PROPOSAL

The Proposal provides "[t]hat the shareholders request the Company to list the recipients of corporate charitable contributions of \$5,000 or more on the company website", but as discussed in this request letter, the introductory "Whereas" clause and supporting statement target Wells Fargo's support of specific types of organizations and causes.

A copy of the Proposal is attached to this letter as Exhibit A.

## BASIS FOR EXCLUSION OF THE PROPOSAL

Wells Fargo believes that the Proposal and its supporting statement may be excluded from its Proxy Materials for the 2010 Annual Meeting pursuant to Rule 14a-8(i)(7) because it pertains to Wells Fargo's ordinary business operations.

## ANALYSIS

### **The Proposal May Be Excluded Under Rule 14a-8(i)(7) because It Deals with Matters Related to the Company's Ordinary Business Operations.**

Rule 14a-8(i)(7) permits a company to exclude a proposal that "deals with a matter relating to the company's ordinary business operations." The purpose of the exclusion is to reserve to management and the board of directors the day-to-day operation of the company's business, and to avoid involving the stockholders in the details of the company's routine operations by way of the proxy process. Exchange Act Release 34-12999 (November 22, 1976).

In its 1998 release amending the shareholder proposal rule, the Commission explained that one rationale for the "ordinary business" exclusion is to permit companies to exclude proposals on matters that are "so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." Exchange Act Release No. 34-40018 (May 21, 1998). As a second rationale for the "ordinary business" exclusion, the Commission pointed to "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *Id.* The Commission noted that the second rationale may be implicated "where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies." *Id.* Wells Fargo believes that local decisions concerning the financial contributions the Company makes to nonprofit organizations in thousands of local communities

are the type of intricate decisions that fall squarely within the scope of the Company's ordinary business operations under the Commission's second rationale.

We recognize that on its face the language of the Proponent's resolution itself does not attempt to direct or prevent contributions by the Company to any particular nonprofit group; however, in its "Whereas" clause and supporting statement the Proponent reveals its motivation to:

- "voice their opinion on [the Company's] corporate giving strategy";
- guide "[the] Company's philanthropic decision making"; and
- create "enhanced feedback opportunities from which [the] Company could make more fruitful decisions."

The Proponent's supporting statement also focuses almost entirely on three specific nonprofit organizations and what it considers to be "controversial causes", including the fact that certain of "[t]hese organizations are very active in attempting to change the laws of California and other states to allow marriages between people of the same sex." Thus, when read with the remainder of Proponent's supporting statement and "Whereas" clause, Wells Fargo believes such stated intentions plainly confirm the Proponent's true objective with the Proposal is to campaign against same-sex marriage and abortion and conduct a stockholder referendum opposing any support by Wells Fargo of nonprofit organizations that the Proponent appears to disfavor, namely, groups that:

- perform abortions, including Planned Parenthood; and
- support marriage for same-sex couples, like the Human Rights Campaign and the Gay and Lesbian Alliance Against Defamation.

As a result, Wells Fargo believes that the Proposal falls within the scope of a long line of no-action letters affirming the Staff's position that stockholder proposals that seek to prohibit a company from making, or require a company to make, contributions to specific types of organizations are excludable under Rule 14a-8(i)(7) because they deal with ordinary business operations. See, e.g., *The Boeing Co.* (avail. Jan. 21, 2005) (proposal directing the company's "gift matching program" to include the Boy Scouts of America as an "eligible organization"); *Wachovia Corp.* (avail. Jan. 25, 2005) (proposal recommending that the board disallow the payment of corporate funds directed at Planned Parenthood and any other organizations involved in providing abortion services); *Bank of America Corp.* (avail. Jan. 24, 2003) (facially neutral proposal to refrain from making charitable contributions to Planned Parenthood and organizations that support abortion); *American Home Products Corp.* (avail. Mar. 4, 2002) (facially neutral proposal that the company form a committee to study the impact of charitable contributions on the business of the company); *Schering-Plough Corp.* (avail. Mar. 4, 2002) (facially neutral proposal that the company form a committee to study the impact of charitable contributions on the business of the company); and *The Walt Disney Co.* (avail. November 10, 1997) (facially neutral proposal that the company refrain from making any charitable contributions).

The fact that the Proponent's resolution itself is facially neutral does not change the analysis. Other recent precedent affirms the Staff's position that even where the language of a proponent's resolution does not target specific charities or types of charities a proposal is still excludable where the supporting statements, as is the case with current Proposal, make clear that the proposal in fact would serve as a shareholder referendum on corporate contributions to a particular charity or type of charity. *See, e.g., Johnson & Johnson* (avail. Feb. 12, 2007) (contributions to specific types of organizations); *Pfizer* (avail. Feb. 12, 2007) (contributions to specific types of organizations); *Wells Fargo & Co.* (avail. Feb. 12, 2007) (contributions to specific types of organizations); *Bank of America Corp.* (avail. Jan. 24, 2003) (supporting statement opposed abortion); *American Home Products Corp.* (avail. Mar. 4, 2002) (supporting statement opposed abortion); and *Schering-Plough Corp.* (avail. Mar. 4, 2002) (supporting statement opposed abortion). The proposal in *American Home Products*, using the same tactic employed by the Proponent, was an attempt to disguise a proposal aimed at a specific type of charitable contribution with a facially neutral proposal. Finding this proposal to be related to "charitable contributions directed to specific types of organizations," the Staff concurred that it could be omitted from the company's proxy materials in reliance on Rule 14a-8(i)(7). In reaching this decision, the Staff went beyond the face of the proposal in order to recognize the proponent's and the proposal's true objective.

Similarly, in *Johnson & Johnson* and *Pfizer*, the proponents submitted proposals that requested the board implement a policy listing all charitable contributions on their websites. Notwithstanding the facial neutrality of the resolutions, the preambles and supporting statements targeted specific kinds of charitable contributions, namely contributions to Planned Parenthood and organizations that support abortion and same-sex marriage. In both instances, the Staff concurred with the company that the applicable proposal was excludable under Rule 14a-8(i)(7).

In *Schering-Plough*, a facially neutral proposal requested that the company "form a committee to study the impact [that] charitable contributions have on the business of the company and its share value." The company argued that the proposal, along with its supporting statement, was "clearly designed to involve the company in the issue of abortion." The Staff concurred that the proposal could be omitted from the company's proxy materials in reliance on Rule 14a-8(i)(7) because the proposal related to the company's ordinary business operations (i.e., charitable contributions directed to specific types of organizations).

In *Walt Disney*, a facially neutral proposal requested that the company "refrain from making any charitable contributions." However, when read in combination with the proposal's supporting statement, it was clear that the proposal was directed at contributions to organizations advocating homosexual causes. Looking behind the face of the proposal in order to recognize the proponent's and the proposal's true objective, as was similarly done in *Johnson & Johnson*, *Pfizer*, *Wells Fargo*, *Bank of America*, *American Home Products* and *Schering-Plough*, the Staff concurred that the proposal could be omitted from the company's proxy materials in reliance on Rule 14a-8(c)(7) (the predecessor to Rule 14a-8(i)(7)) because the proposal related to the company's ordinary business operations (i.e., charitable contributions directed to specific types of organizations).

We are also aware that in certain circumstances the Staff has been unable to concur with the exclusion under Rule 14a-8(i)(7) of facially neutral shareholder proposals relating to charitable donations in which the companies argued that such proposals were actually directed to specific types of organizations. *See, e.g., PepsiCo., Inc.* (avail. Jan. 11, 2009) (Staff unable to concur with the exclusion under Rule 14a-8(i)(7) of a proposal to provide a report disclosing charitable contributions and related information); *Ford Motor Co.* (avail. Feb. 25, 2008) (Staff unable to concur with the exclusion under Rule 14a-8(i)(7) of proposal to list the recipients of corporate charitable contributions on the company's website); *General Electric Co.* (avail. Jan. 11, 2008) (Staff unable to concur with the exclusion under Rule 14a-8(i)(7) of a proposal requiring that the company provide a report disclosing the company's charitable contributions and related information). We believe that the current Proposal is clearly distinguishable in that arguably none of the proposals that were the subject of the foregoing Staff decisions so plainly and directly stated the proponent's desire to impact or influence the corporate giving strategies of those particular companies. Furthermore, the supporting statements to those proposals contained only brief or isolated references to a specific charitable organization or cause. By contrast, the preamble to the instant Proposal clearly states the Proponent's purpose is to guide the Company's philanthropic decision making that, coupled with its targeting of specific organizations and "controversial causes" in the supporting statement, have the collective effect of overshadowing the main thrust of the Proponent's underlying resolution.

We note in particular that in *Ford Motor* the language of proponent's resolution was similar to the current Proposal but that is where the similarity ends. The clear common thread to the supporting statement and preamble clauses made in that proposal was the proponent's desire to enhance that company's corporate image. On the other hand, in the instant Proposal the Proponent's preamble and supporting statement make abundantly clear the Proponent's desire to direct the Company's philanthropic decision making by conducting a stockholder referendum on contributions to specific nonprofit organizations. This is precisely the type of proactive involvement by stockholders by way of the proxy process in a routine matter relating to a company's ordinary business operations that Rule 14a-8(i)(7) is designed to curtail.

Wells Fargo invests in thousands of local communities in which we live and work because we believe our businesses will do well if those communities do well. At the same time we also value the diversity these same communities offer and in order to take full competitive advantage our corporate giving to local nonprofits embraces that same diversity. For example, in 2008 Wells Fargo, including former Wachovia Corporation, and the Wells Fargo Foundation and Wachovia Wells Fargo Foundation (which are private foundations supported by Wells Fargo and Wachovia contributions), gave \$226 million to roughly 22,000 nonprofit and community organizations, with most grants and contributions directed to local organizations that address specific needs of the local communities in which we do business. As a result, Wells Fargo's corporate giving programs work in close partnership with local stakeholders on the ground – who know their communities best – in order to identify local needs first-hand and to formulate appropriate, locally relevant responses to strengthen those communities. Therefore, we believe that whether Wells Fargo businesses decide to commence or cease contributions to a particular organization falls squarely within the scope of our ordinary day-to-day business operations under Rule 14a-8(i)(7).

Furthermore, we fully anticipate that like the Proponent most, if not all, of Wells Fargo's stockholders (undoubtedly a diverse group of stockholders who are bound to possess a wide range of personal philanthropic preferences and objectives) would favor nonprofits they consider equally deserving of Wells Fargo's financial support. However, permitting stockholders to effectively transform an otherwise facially neutral stockholder proposal into a referendum targeting Wells Fargo's support (or lack thereof) to specific nonprofit groups or causes is likely to generate numerable, opposing and potentially incendiary stockholder proposals each year. Stockholders as a group are simply not well-positioned to "micro-manage," through the proxy process, the local grant-making decisions Wells Fargo businesses make on a daily basis in the diverse communities in which we conduct business.

Similar to the facially neutral proposals involved in the letters cited above and because the Proponent's intent – to "voice their opinion on [the Company's] corporate giving strategy and to guide "[the] Company's philanthropic decision making in the future" – is clear on its face, we believe that we may omit the Proposal from the Proxy Materials pursuant to 14a-8(i)(7) as relating to Wells Fargo's ordinary business operations.

### CONCLUSION

For the reasons set forth above, Wells Fargo intends to omit the Proponent's Proposal from its Proxy Materials for its 2010 Annual Meeting. Wells Fargo respectfully requests confirmation that the Staff will not recommend any enforcement action to the Commission if the Proposal in its entirety is excluded from Wells Fargo's Proxy Materials. We would be happy to provide you with additional information and answer any questions you may have regarding this request. Please do not hesitate to contact either the undersigned (at (515) 557-8167) or Mary E. Schaffner (at (612) 667-2367) regarding this request.

Very truly yours,



Christopher J. Adam  
Senior Counsel

Attachment

cc: (via e-mail at [hli@hli.org](mailto:hli@hli.org) and overnight delivery)  
Rev. Thomas J. Euteneur  
President  
Human Life International, Inc.  
4 Family Life Lane  
Front Royal, VA 22630



# Human Life International®

PRO-LIFE MISSIONARIES TO THE WORLD

October 29, 2009

#### Board of Directors

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 Rev. Barnabas Laubach, OSB, STM  
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 Rudolf Ehmann, MD, Switzerland

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 Rev. Johnny Hunter  
 Rabbi Yehuda Levin  
 Vincent McGrath  
 Joseph Schedler  
 Debi Vinnege

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Argentina (3)	Germany	Puerto Rico
Australia	Ghana	Republic of
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Bahamas	Guatemala	Romania
Belarus	Honduras	Russia (2)
Belgium	Hong Kong	Serbia
Belize	Hungary	Singapore
Benin	India (5)	Slovakia
Bolivia	Indonesia	South Africa
Brazil	Ireland	South Korea
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Ecuador	Panama (2)	Ukraine
El Salvador	Paraguay	Uruguay (3)
France	Peru	Venezuela
	Philippines (3)	Vietnam
	Poland	Zimbabwe (2)
	Portugal	

John G. Stumpf, President & CEO  
 Wells Fargo & Co.  
 420 Montgomery Street  
 San Francisco, CA 94101-1205

RECEIVED  
 NOV 13 2009  
 JOHN STUMPF  
 JOHN ST

Dear Mr. Stumpf:

Human Life International, Inc. is the owner of 100 shares of Wells Fargo & Co. common stock. We have continuously owned them for more than one year and intend to hold them through the next annual meeting in 2010. At that meeting, we will offer the following resolution:

**Whereas**, charitable contributions should enhance the image of our company in the eyes of the public. Increased disclosure of these contributions would serve to create greater goodwill for our Company. It would also allow the public to better voice their opinion on our corporate giving strategy. Inevitably, some organizations might be viewed more favorably than others. This could be useful in guiding our Company's philanthropic decision making in the future. Corporate giving should ultimately enhance shareholder value.

**Resolved:** That the shareholders request the Company to list the recipients of corporate charitable contributions of \$5,000 or more on the company website.

#### Supporting Statement

Current disclosure is insufficient to allow the Company's Board and shareholders to evaluate the proper use of corporate assets by outside organizations and how those assets should be used, especially for controversial causes. For example, while our company has given money to such seemingly non-controversial groups like Habitat for Humanity, it has also given money to Planned Parenthood, which performs over 300,000 abortions every year. Whether one approves or disapproves of abortion, most would acknowledge that it is a controversial issue. Similarly, our Company has given millions of dollars to Gay, Lesbian, Bisexual and Transgender organizations like the Human Rights Campaign and the Gay and Lesbian Alliance Against Defamation. These organizations are very active in attempting to change the laws of California and other states to allow marriages between people of the same sex. While same sex marriage has its supporters, who could voice their support for the Company's funding decision, it also has its detractors. Homosexual relations have been proscribed by Christian, Jewish, Muslim and other religious traditions for hundreds, if not thousands of years. Other charities, too numerous to mention, present their own unique challenges. Fuller disclosure would provide enhanced feedback opportunities from which our Company could make more fruitful decisions. Unlike personal giving which can be done anonymously, corporate philanthropy should be quite visible to better serve the interests of the shareholders.

Sincerely,

*Rev. Thomas J. Euteneuer*  
 Rev. Thomas J. Euteneuer  
 President

TJE/lah

NATIONAL FINANCIAL  
Services LLC

200 Liberty Street  
One World Financial Center  
New York, NY 10281

October 23, 2009

WELLS FARGO & COMPANY  
WELLS FARGO CENTER  
6TH & MARQUETTE  
MINNEAPOLIS, MN 55479

Dear Sir or Madam:

This letter certifies that **HUMAN LIFE INTERNATIONAL INC** is currently the beneficial owner of 100 shares of WELLS FARGO & CO, and has held the position continuously with National Financial Services, LLC dating back to March 4, 2008.

Sincerely,



Lawrence Conover,  
Vice-President