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

DIVISION OF
CORPORATION FINANCE

April 5, 2011

Michael J. Barry
Grant & Eisenhofer, P.A.
Chase Manhattan Centre
1201 North Market Street
Wilmington, DE 19801

Re: Wells Fargo & Company
Incoming letter dated March 24, 2011

Dear Mr. Barry:

This is in response to your letters dated March 24, 2011 and March 31, 2011 concerning the shareholder proposal submitted to Wells Fargo by the New York State Common Retirement Fund. We also have received a letter from Wells Fargo dated March 30, 2011. On March 14, 2011, we issued our response expressing our informal view that Wells Fargo could exclude the proposal from its proxy materials for its upcoming annual meeting. You have asked us to reconsider our position.

After reviewing the information contained in your letters, we find no basis to reconsider our position.

Sincerely,

Jonathan A. Ingram
Deputy Chief Counsel

cc: Mary E. Schaffner
Senior Company Counsel &
Assistant Secretary
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Michael J. Barry
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March 31, 2011

Ms. Meredith Cross, Director
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: Wells Fargo & Company
Reconsideration of Staff No-Action Letter Dated March 14, 2011

Director Cross:

This letter responds to the March 30, 2011, submission by Wells Fargo & Company (the "Wells Fargo" or the "Company") relating to the erroneous exclusion of the incentive compensation shareholder proposal submitted by our client, The Comptroller of the State of New York, The Honorable Thomas P. DiNapoli, in his capacity as Sole Trustee of the New York State Common Retirement Fund (the "Fund").

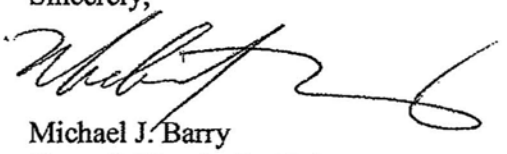
As an initial matter, the fact that the Company filed its definitive proxy materials on March 21, 2011, is not determinative. Issuers regularly file amended proxy materials on Form DEFA 14A to address changes in circumstances or identified deficiencies, and to the extent Wells Fargo improperly excluded the Fund's proposal from the Company's proxy materials, the Company should be required to correct this deficiency with a supplemental filing. The Company's mistaken reliance on what we believe to have been an incorrect determination by the Staff on the Company's request for a no-action letter should not relieve Wells Fargo of its obligation under Rule 14a-8 to publish the proposal if the Division determines that the Staff's initial decision was erroneous.

Nevertheless, to the extent that the Division may have some hesitancy in reversing the initial determination by the Staff due to potential logistical problems the Company may face in publishing supplemental proxy material, it is still appropriate to address the Fund's request for reconsideration. As set forth in my letter dated March 24, 2011, the Proposal submitted to Wells Fargo by the Fund addressed significant issues regarding the Board's management of risk in connection with its administration of the Company's incentive-based compensation plans. These

issues transcend the Company's "ordinary business" and merit consideration by the shareholders.[1] Particularly in view of the widespread acknowledgement that "the incentive compensation practices of financial firms were a contributing factor to the excessive build-up of risk that precipitated the recent global financial crisis,"[2] the Division should make clear that the Staff's incorrect determination in this case that Fund's proposal relates merely to the Company's "ordinary business" should not preclude shareholders from introducing similar proposals at Wells Fargo or any other issuer in the future, and the Staff's March 14, 2011 letter should not be given any precedential force or effect, persuasive or otherwise.

Thank you for your attention to this matter.

Sincerely,



Michael J. Barry
Grant & Eisenhofer, P.A.

cc: Gianna M. McCarthy
Elizabeth Ising, Esquire
Mary E. Schaffner, Esquire
Jay W. Eisenhofer, Esquire

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[1] *See* Staff Legal Bulletin No. 14E (October 27, 2009) (recognizing that "the board's role in the oversight of a company's management of risk is a significant policy matter regarding the governance of the corporation. In light of this recognition, a proposal that focuses on the board's role in the oversight of a company's management of risk may transcend the day-to-day business matters of a company and raise policy issues so significant that it would be appropriate for a shareholder vote.")

[2] See, Statement of Marc Steckel, Associate Director, Division of Insurance and Research, Federal Deposit Insurance Corporation, on Executive Compensation Oversight After the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, available at http://financialservices.house.gov/Media/file/hearings/111/09242010/Steckel%209_24_10.pdf

WELLS FARGO

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Mary E. Schaffner
Senior Company Counsel &
Assistant Secretary
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March 30, 2011

Via E-Mail to shareholderproposals@sec.gov

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

Re: Reconsideration Request by the New York State Common Retirement Fund

Ladies and Gentlemen:

This letter responds to the March 24, 2011, request by the Comptroller of the State of New York, as sole trustee of the New York State Common Retirement Fund (the "Proponent"), that the staff of the Securities and Exchange Commission's Division of Corporation Finance (the "Staff") reconsider its March 14, 2011 determination that Wells Fargo & Company (the "Company") could exclude a stockholder proposal submitted by the Proponent (the "Proposal") from its proxy statement and form of proxy for the Company's 2011 Annual Meeting of Stockholders (the "2011 Proxy Materials").

Please note that the Company filed the 2011 Proxy Materials with the Commission on March 21, 2011, seven days after the Staff's response and three days before the date of the Proponent's reconsideration request. Moreover, the Company has already completed distributing the 2011 Proxy Materials to the Company's approximately 921,900 stockholders. Requiring the Company to now solicit stockholders regarding the Proposal would involve significant effort and expense and would be confusing to stockholders. Specifically, after making inquiries to our transfer agent, financial printer and Broadridge, we believe that if the Staff grants the Proponent's reconsideration request and reverses its determination, the Company would incur additional costs of approximately $1.0 million for producing and distributing materials to the Company's stockholders notifying them of the inclusion of the Proposal. Significantly, re-soliciting the Company's stockholders to address the Proposal would cause stockholder confusion since some of the Company's stockholders have already voted their proxies.

The Company also disagrees with the Proponent's assertions that the Staff should reverse its decision concurring with the exclusion of the Proposal under Rule 14a-8(i)(7). We believe the Proponent's reconsideration request does not set forth any information or arguments that

were not already presented in the Proponent's January 18, 2011 letter to the Staff regarding the Proposal. Moreover, the Proponent's assertion in its reconsideration request that the 100 employees covered by the Proposal "presumably" can "impact" the Company's risk profile is insufficient to warrant reversing the Staff's position. As noted in the Company's no-action request, the Proposal relates to general compensation matters for a group of Company employees beyond senior executive officers and without regard to whether those individuals have any role in risk-taking activities and whether any demonstrated correlation exists between incentive compensation paid to those individuals and possible increased risk-taking activities. The Proposal's scope thus is not focused on those employees whose actions may (as stated in the Proposal) "lead to excessive and unnecessary risk-taking that may jeopardize the sustainability of the Company's operations," and therefore the Proposal is excludable under Rule 14a-8(i)(7).

If you have any questions regarding this request, please call the undersigned at 612-667-2367 or Elizabeth Ising, Esq. of Gibson, Dunn & Crutcher LLP at 202-955-8287.

Very truly yours,

Mary E. Schaffner
Senior Company Counsel &
Assistant Secretary

cc: Elizabeth Ising
Gibson, Dunn & Crutcher LLP

Michael J. Barry
Grant & Eisenhofer, P.A.

Gianna M. McCarthy
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March 24, 2011

Ms. Meredith Cross, Director
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: Wells Fargo & Company
Staff No-Action Letter Dated March 14, 2011

Director Cross:

We represent The Comptroller of the State of New York, The Honorable Thomas P. DiNapoli, in his capacity as Sole Trustee of the New York State Common Retirement Fund (the "Fund"), concerning the proposal submitted by the Fund to Wells Fargo & Company ("Wells Fargo" or the "Company") on November 18, 2010 (the "Proposal") seeking disclosure of specified information concerning the incentive compensation paid to Wells Fargo's 100 highest paid employees. By letter dated March 14, 2011, the Staff of the Division of Corporation Finance determined that Wells Fargo could exclude the Proposal under rule 14a-8(i)(7), as relating to Wells Fargo's ordinary business operations. A copy of the no-action letter is attached hereto. We respectfully submit that the Staff erred in its determination that the Proposal can be excluded as relating to the Company's "ordinary business" and ask that the Division of Corporation Finance (the "Division") reconsider its position.

The Proposal asks the Company to provide certain information regarding how the Company's Board of Directors (the "Board") considered and factored in issues relating to the Company's short and long term risks in establishing the incentive based compensation for the 100 highest paid employees of the Company. By focusing on this assessment of risk in the establishment of incentive-based compensation, the Proposal transcends the day-to-day business of the corporation, and involves "policy issues so significant that it would be appropriate for a shareholder vote." Exchange Act Release No. 40018 (May 21, 1998) ("1998 Release").

The Proposal at issue here transcends the Company's "ordinary business" in two respects. First, by focusing on how the Board evaluated and managed short and long term corporate risks in setting incentive-based compensation, the Proposal falls squarely within the type of shareholder proposal that the Division has determined should *not* be excluded under Rule 14a-8(i)(7). In Staff Legal Bulletin No. 14E (October 27, 2009), the Division recognized that issues involving "the board's role in the oversight of a company's management of risk is a significant policy matter regarding the governance of the corporation. In light of this recognition, a proposal that focuses on the board's role in the oversight of a company's management of risk may transcend the day-to-day business matters of a company and raise policy issues so significant that it would be appropriate for a shareholder vote." Based on this guidance, the Staff repeatedly has determined that proposals that concern a board's oversight of risk are not excludable under Rule 14a-8(i)(7). *See JPMorgan Chase & Co.*, 2010 WL 147304 (avail. March 19, 2010) (finding that proposal that requested a report on "the relationship between [a Bank's] policies regarding collateralization of derivatives transactions and systemic financial risk" is not excludable); *Bank of America Corp.*, 2010 WL 4922470 (Feb. 24, 2010) (same); *Citigroup, Inc.*, 2009 WL 4999640 (avail. Feb. 23, 2010) (same).

Second, by tying the company's incentive-based compensation to the Board's analysis of risk, the Proposal addresses issues relating to executive compensation that are at the forefront of active debates not only before the Commission itself, but among the investor community as a whole. It has been widely acknowledged that incentive-based compensation practices can misalign corporate interests and employee motivations, and can greatly impact the risk profile of a corporation. *See, Statement of Marc Steckel, Associate Director, Division of Insurance and Research, Federal Deposit Insurance Corporation, on Executive Compensation Oversight After the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010*, available at http://financialservices.house.gov/Media/file/hearings/111/09242010/Steckel%209_24_10.pdf ("Federal banking regulators, many academics, and others agree that the incentive compensation practices of financial firms were a contributing factor to the excessive build-up of risk that precipitated the recent global financial crisis."). The Commission in recent years has expanded the scope of mandatory disclosures relating to executive compensation. *See Executive Compensation and Related Person Disclosure*, 17 C.F.R. Parts 228, 229, 232, 239, 240, 245, 249, and 274, 12/29/2006, available at http://www.sec.gov/rules/final/2006/33-8732a.pdf. Recognizing that the existing disclosure rules were not enough, however, Section 951 of The Dodd-Frank Wall Street Reform and Consumer Protection Act authorized the Commission to adopt rules providing for a shareholder vote on executive compensation practices. 15 U.S.C. § 78n-1. If that were not enough, in giving the Treasury Department the authority to regulate the compensation of the 100 highest paid employees of corporations participating in the TARP program, Congress implicitly acknowledged that corporate compensation practices as they relate to these highest paid employees in particular impacts the underlying risk profile of a corporation. *See, 12 U.S.C. 5221, 31 U.S.C. 221, and 31 C.F.R. 30.11, TARP Standards for Compensation and Corporate Governance* ("TARP recipients that receive exceptional financial assistance must

also receive approval by the Special Master for all compensation structures for other employees who are executive officers (as defined under the Securities and Exchange Act, Rule 3b-7) or one of the 100 most highly compensated employees of a TARP recipient receiving exceptional assistance ..."). There can be little doubt, therefore, that a shareholder resolution seeking disclosure of information regarding how the Board considered the company's management of short and long-term risks in setting incentive based compensation paid to the top 100 highest paid employees addresses matters that go well beyond the day-to-day operations of the company.

In its March 14 Letter granting Wells-Fargo permission to exclude the Proposal under Rule 14a-8(i)(7), the Staff acknowledged that "the incentive compensation paid by a major financial institution to its personnel who are in a position to cause the institution to take inappropriate risks that could lead to a material financial loss to the institution is a significant policy issue." "However," the Staff determined, because "the proposal relates to the compensation paid to a large number of employees without regard to whether the employees are in such a position or are executive officers," the Proposal failed to raise any significant policy issues at all and could be excluded as relating to the Company's "ordinary business." Respectfully, the Staff missed the point.

The Proposal seeks disclosure of incentive based compensation paid to the top 100 highest paid employees precisely because by virtue of being the "highest paid," these employees presumably are the most valuable to the Company and in are positions that can impact the Company's long and short-term performance. Other than the Named Executive Officers whose information is disclosed in a company's proxy statement, shareholders are not in a position to identify with specificity the identity of employees whose jobs impact the Company's short or long-term risk profile. The identity of the "highest paid" employees, therefore, is used as a proxy for this analysis. With nearly 300,000 employees globally at Wells Fargo, the 100 highest paid certainly can be expected to be in positions capable of impacting the Company's risk profile. And, of course, the metric used in the Proposal is the same used by the Pay Czar Ken Feinberg in regulating the compensation practices of the TARP participants. The Staff's March 4 letter does not even acknowledge this point.

Moreover, the Proposal is specifically designed to ***avoid*** raising issues regarding individual employees, or any specific personnel decision. To this end, the Proposal ***does not*** request the Company to identify the names of any employees, the specific amounts of incentive payments made to any employees, or even the total compensation paid to any specific employees at all. Rather, the Proposal seeks only aggregate figures regarding incentive-based compensation, and an explanation from the Board regarding how the Company managed short and long-term risks in establishing this particular form of compensation.

Finally, and in light of the foregoing, we believe it is simply bad policy for the Securities Exchange Commission and its Division of Corporation Finance to find that a proposal that seeks disclosure of how a corporate board sought to manage a company's short and long term financial risks in setting incentive-based compensation relates to an issue that does not merit disclosure to shareholders. In view of the near-collapse of our nation's economy due in no insignificant part to financial institutions that failed to adequately manage short and long term risks, the issues raised by the Proposal necessarily transcends the Company's "ordinary business" and should not be excluded under Rule 14a-8(i)(7).

Thank you for your consideration. We look forward to prompt resolution of this matter.

Sincerely,

Michael J. Barry
Grant & Eisenhofer, P.A.

Enclosures

cc: Gianna M. McCarthy
Elizabeth Ising, Esquire
Mary E. Schaffner, Esquire
Jay W. Eisenhofer, Esquire

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

FAX TRANSMITTAL

PLEASE DELIVER THE FOLLOWING PAGES TO:

Name:	Elizabeth A. Ising (202) 530-9631 Michael J. Barry (302) 622-7100
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From:	Charles Kwon Division of Corporation Finance Telephone Number: Fax Number: (202) 772-9201

If you do not receive all pages, please telephone the above number for assistance.

March 14, 2011

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: Wells Fargo & Company
Incoming letter dated December 28, 2010

The proposal requests that Wells Fargo prepare a report to describe the board's actions to ensure that employee compensation does not lead to excessive and unnecessary risk-taking that may jeopardize the sustainability of the company's operations. It further states that the report must disclose specified information about the compensation paid to the 100 highest paid employees.

There appears to be some basis for your view that Wells Fargo may exclude the proposal under rule 14a-8(i)(7), as relating to Wells Fargo's ordinary business operations. In this regard, we believe that the incentive compensation paid by a major financial institution to its personnel who are in a position to cause the institution to take inappropriate risks that could lead to a material financial loss to the institution is a significant policy issue. However, the proposal relates to the compensation paid to a large number of employees without regard to whether the employees are in such a position or are executive officers. Accordingly, we will not recommend enforcement action to the Commission if Wells Fargo omits the proposal from its proxy materials in reliance on rule 14a-8(i)(7). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which Wells Fargo relies.

Sincerely,

Reid S. Hooper
Attorney-Adviser