> statement delivered to stockholders pursuant to Section 14(a) of the Exchange Act. Whether an individual is the principal executive officer or among the three highest compensated executive officers other than the principal executive officer or principal financial officer shall be determined pursuant to the executive compensation disclosure rules under the Exchange Act. To the extent "covered employee" under Section 162(m) of the Code (including, without limitation, by subsequent interpretation or amendment) includes additional individuals with respect to the Company, such additional individuals shall also be Covered Executive Officers for purposes of this Policy.

Thus, the Proposal's reference to the Performance Policy being "applied to the 100 most highly-compensation employees" is materially false and misleading because the Performance Policy does not apply to that larger group of employees.

The Proposal is comparable to other proposals the Staff has concurred are excludable under Rule 14a-8(i)(3). For example, in Johnson & Johnson (publicly available January 31, 2007), the Staff considered a stockholder proposal asking the company's board to adopt a policy that stockholders be given the opportunity to vote on an advisory management resolution to approve the compensation committee report in the proxy statement. The proposal at issue implied that stockholders would be voting on the company's executive compensation policies; however, under amended Commission rules the compensation committee report no longer contained that information. Accordingly, the Staff concurred that the proposal was materially false or misleading and concurred in the exclusion of the proposal under Rule 14a-8(i)(3). See also Ryland Group, Inc. (publicly available February 7, 2008); (same); WellPoint Inc. (publicly available February 12, 2007) (same); Sara Lee Corp. (publicly available September 11, 2006) (same). The Staff also has concurred with the exclusion of stockholder proposals related to other matters where the proposals were materially false and misleading. See General Electric Co. (publicly available January 6, 2009) (permitting exclusion under Rule 14a-8(i)(3) of a proposal requesting that the board adopt a policy to ensure that a director who receives greater than 25% withheld votes will not serve on key board committees for two years after the annual meeting where the company had adopted majority voting); Duke Energy Corp. (publicly available February 8, 2002) (permitting exclusion under Rule 14a-8(i)(3) of a proposal that urged the company's board to "adopt a policy to transition to a nominating committee composed entirely of independent directors as openings occur" because the company had no nominating committee); General Magic, Inc. (publicly available May 1, 2000) (permitting exclusion under Rule 14a-8(i)(3) as false and misleading of a proposal that requested the company "make no more false statements" to its stockholders because the proposal created the false impression that the company tolerated dishonest behavior by its employees when in fact, the company had corporate policies to the contrary).

As discussed above, the Proposal indicates that the Performance Policy, which the Proposal seeks to amend, would apply to Well Fargo's "named executive officers and the 100 most highly-compensation employees." However, as previously disclosed by the Company and discussed in the proxy statement for Wells Fargo's 2009 Annual Meeting of Stockholders, the HRC suspended the Performance Policy effective January 1, 2009, so it does not apply to Wells

Fargo's named executive officers. Moreover, the Performance Policy by its terms does not apply to "the 100 most highly-compensation employees." Therefore, consistent with the precedent cited above, Wells Fargo believes that it may omit the Proposal under Rule 14a-8(i)(3) because the Proposal is materially false and misleading in violation of Rule 14a-9.

Conclusion

For the reasons set forth above, Wells Fargo respectfully submits that it may properly omit the Proposal from its 2010 Proxy Materials and requests that the Staff indicate that it will not recommend enforcement action to the Commission if Wells Fargo omits such Proposal.

In accordance with Staff Legal Bulletin No.14D (November 7, 2008) ("SLB 14D"), this letter, including Exhibit A, is being submitted by e-mail to shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), a copy of this letter is being sent concurrently to the Proponent.

Rule 14a-8(k) and SLB 14D provide that stockholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the Staff. Accordingly, I am taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff regarding the Proposal, a copy of that correspondence should concurrently be furnished to the undersigned pursuant to Rule 14a-8(k) and SLB 14D.

If you have any questions regarding this request, please call the undersigned at (704) 383-9631.

Very truly yours,

Kathryn V. Purdom

Kathryn V. Rurdom
Senior Counsel

Enclosure

cc: Charles Jurgonis, AFSCME Employees Pension Plan

EXHIBIT A

AFSCME
We Make America Happen

EMPLOYEES PENSION PLAN

November 18, 2009

<u>VIA OVERNIGHT MAIL and FAX (651) 450-1033</u>
John G. Stumpf, President and CEO
Wells Fargo & Company
420 Montgomery Street
San Francisco, California 94104

<u>VIA MAIL, EMAIL and FAX (612) 667-6082</u>
Laurel A. Holschuh, Senior Vice President and Corporate Secretary
Wells Fargo & Company
MAC #N9305-173, Sixth and Marquette
Minneapolis, Minnesota 55479

Dear Mr. Stumpf and Ms. Holschuh:

On behalf of the AFSCME Employees Pension Plan (the "Plan"), I write to give notice that pursuant to the 2009 proxy statement of Wells Fargo & Company (the "Company") and Rule 14a-8 under the Securities Exchange Act of 1934, the Plan intends to present the attached proposal (the "Proposal") at the 2010 annual meeting of shareholders (the "Annual Meeting"). The Plan is the beneficial owner of 45,573 shares of voting common stock (the "Shares") of the Company, and has held the Shares for over one year. In addition, the Plan intends to hold the Shares through the date on which the Annual Meeting is held.

The Proposal is attached. I represent that the Plan or its agent intends to appear in person or by proxy at the Annual Meeting to present the Proposal. I declare that the Plan has no "material interest" other than that believed to be shared by stockholders of the Company generally. Please direct all questions or correspondence regarding the Proposal to me at (202) 429-1007.

Sincerely,

Charles Jurgonis
Plan Secretary

Enclosure

American Federation of State, County and Municipal Employees, AFL-CIO
TEL (202) 775-8142 FAX (202) 785-4606 1625 L Street, NW, Washington, DC 20036-5687

RESOLVED that stockholders of Wells Fargo & Company ("Wells Fargo") urge the Human Resources Committee (the "Committee") to make the following changes to the Performance Policy ("PP") as applied to named executive officers and the 100 most highly-compensated employees:

1. An award under the PP (a "Bonus") that is based on financial measurements (a "Financial Metric") whose performance measurement period ("PMP") is one year or shorter shall not be paid in full for a period of three years ("Deferral Period") following the end of the PMP;
2. The Committee shall develop a methodology for (a) determining what proportion of a Bonus should be paid immediately, (b) adjusting the remainder of the Bonus over the Deferral Period to reflect performance on the Financial Metric(s) during the Deferral Period and (c) paying out the remainder of the Bonus during and at the end of the Deferral Period; and
3. The adjustment(s) described above should not require achievement of new performance goals but should focus on the quality and sustainability of the performance on the Financial Metric(s) during the Deferral Period.

The changes should not violate any existing contractual obligation of Wells Fargo or the terms of any compensation or benefit plan currently in effect and should not have the effect of reducing amounts already awarded or earned.

SUPPORTING STATEMENT

As long-term stockholders, we are concerned that short-term incentive plans can encourage employees to manage for the short term and take on excessive risk. The PP is based upon return on equity for the fiscal year. The current financial crisis illustrates what can happen when key employees are rewarded without any effort to ensure that short-term performance is sustainable.

We think incentives matter not only for senior executives, but also for other highly-compensated employees, such as traders, whose decisions can have a large impact on the company. Our focus on the 100 most highly-compensated employees is based on the Treasury Department's requirement that companies receiving "exceptional financial assistance" seek approval for the compensation structures of executive officers and the 100 most highly-compensated employees.

This proposal urges that the PP be changed to encourage a longer-term orientation. The proposal asks that the Committee develop a system for holding back some portion of each bonus based on short-term financial metrics for three years and adjusting the unpaid portion to account for performance during that period. The Committee would have discretion to set the terms and mechanics of this process.

A bonus deferral system is gaining significant support internationally. In September 2009, the G-20 endorsed the Principles for Sound Compensation Practices, which recommend that a substantial portion of variable compensation be deferred over a period of at least three years.

France already requires that at least 50% of bankers' bonuses be deferred for three years. The U.K.'s Financial Services Authority has adopted a remuneration code mandates that two-thirds of senior employees' bonuses be deferred over three years.

We urge support FOR this proposal.