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

DIVISION OF
CORPORATION FINANCE

January 23, 2018

Elizabeth A. Ising
Gibson, Dunn & Crutcher LLP
shareholderproposals@gibsondunn.com

Re: Wells Fargo & Company
Incoming letter dated December 7, 2017

Dear Ms. Ising:

This letter is in response to your correspondence dated December 7, 2017 concerning the shareholder proposal (the "Proposal") submitted to Wells Fargo & Company (the "Company") by Harrington Investments, Inc. (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence on the Proponent's behalf dated January 10, 2018. Copies of all of the correspondence on which this response is based will be made available on our website at http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Matt S. McNair
Senior Special Counsel

Enclosure

cc: Sanford Lewis
sanfordlewis@strategiccounsel.net

January 23, 2018

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: Wells Fargo & Company
Incoming letter dated December 7, 2017

The Proposal requests that the board issue a report to assess the feasibility of "requiring senior executives to enter a covenant appropriately integrated to employment, award, benefits, options, indemnification or compensation agreements, in which they would be required each year, regardless of their personal fault, to reimburse the corporation for a portion of any fine or penalty imposed on the corporation by federal or state regulators or courts for activities which posed a systemic risk or which were harmful to consumers."

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(10). Based on the information you have presented, it appears that the Company's public disclosures compare favorably with the guidelines of the Proposal and that the Company has, therefore, substantially implemented the Proposal. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on rule 14a-8(i)(10).

Sincerely,

Lisa Krestynick
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 proposal 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 and rules administered by the Commission, including arguments as to whether or not activities proposed to be taken would violate 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 adversarial procedure.

It is important to note that the staff'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 company's management omit the proposal from the company's proxy materials.

SANFORD J. LEWIS, ATTORNEY

January 10, 2018
Via electronic mail

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

Re: Shareholder Proposal to Wells Fargo and Company Regarding a Senior Executive Covenant establishing strict liability for a portion of penalties on Behalf of Harrington Investments, Inc.

Ladies and Gentlemen:

Harrington Investments, Inc. (the "Proponent") is beneficial owner of common stock of Wells Fargo and Company (the "Company") and has submitted a shareholder proposal (the "Proposal") to the Company. I have been asked by the Proponent to respond to the letter dated December 7, 2017 ("Company Letter") sent to the Securities and Exchange Commission by Elizabeth Ising of Gibson Dunn. In that letter, the Company contends that the Proposal may be excluded from the Company's 2017 proxy statement by virtue of Rule 14a-8(i)(10).

I have reviewed the Proposal, as well as the letter sent by the Company, and based upon the foregoing, as well as the relevant rules, it is my opinion that the Proposal must be included in the Company's 2017 proxy materials and that it is not excludable by virtue of those rules. A copy of this letter is being emailed concurrently to Elizabeth Ising.

SUMMARY

The Proposal requests that the Board of Directors issue a report to assess the feasibility, above and beyond matters of legal compliance, of requiring senior executives to enter a covenant appropriately integrated to employment, award, benefits, options, indemnification or compensation agreements, in which they would be required each year, regardless of their personal fault, to reimburse the corporation for a portion of any fine or penalty imposed on the corporation by federal or state regulators or courts for activities which posed a systemic risk or which were harmful to consumers.

The Proposal suggests an additional approach needed for incentives to prevent repetition of recent years' ethically challenged behavior by company employees. As is well known, in recent years, Wells Fargo employees opened two million accounts for customers without their permission. In addition, the Company enrolled about 570,000 auto loan borrowers in vehicle collateral production insurance although purchasers already had insurance, leading to roughly twenty thousand customers to default and have their cars repossessed due to the inability to afford insurance they did not realize had been added to what they owed.

P.O. Box 231 | Amherst, MA 01004 | 413 549-7333

Some analysts believe that ethical mismanagement by financial sector executives, including at Wells Fargo, is due to an expectation under current policies that individuals who are not directly involved in wrongdoing are unlikely to suffer financial consequences. In a fault based system, costs are only imposed on the few "bad apples" who can be proven to have taken inappropriate or unethical risks. In contrast, the Proposal's no-fault contractual agreement would require that a portion of penalties would be shared by numerous top employees. This would motivate all senior management to be on the alert for and take action to stop colleagues' misbehavior and unethical activities. It would also reduce the penalties that are otherwise imposed on the corporate treasury and therefore on the company's share owners.

In response to the Proposal, the Company's Human Resources Committee of the Board of Directors issued a statement noting that the Covenant approach might be "technically feasible" but that the board had objections to it, based on their preference for individual, fault based incentives. In addition, they had concerns about the impact on recruitment. The response also vaguely references some practical issues of implementation.

The report of the Human Resource Committee neither addresses the central purpose nor the guidelines of the Proposal, and therefore does not fulfill the requirements of substantial implementation. The report does not implement the essential purpose of the proposal in conducting a feasibility assessment of the prospects for integrating a proportional strict liability system applicable to all senior executives linked to creation of systemic risk or consumer harm. It does not fulfill the guidelines to assess whether a portion of penalties could be "appropriately integrated to employment, award, benefits, options, indemnification or compensation agreements". While an assessment of suitability and consistency with company compensation principles is appropriate, without a foundation of feasibility assessment that follows the guidelines of the proposal, the actions taken by the Board do not substantially implement the assessment contemplated by the Proposal.

In short, rather than providing a record of a feasibility assessment, the report of the Committee documents the Committee's disinclination to pursue a Covenant approach – more in line with an opposition statement than a feasibility assessment requested by the proposal. It would be an appropriate statement to appear as an opposition statement, but share owners should have the opportunity to vote on whether the board should conduct a true feasibility assessment of this approach to improving staff incentives, rather than rejecting it out of hand.

THE PROPOSAL

Whereas, our Company has engaged in business conduct that has been harmful to many stakeholders, especially our customers;

Whereas, our Company has paid out more than eleven billion dollars in fines and penalties since 2010, penalizing shareholders, while senior management and directors have largely escaped financial hardship and collective responsibility;

Whereas, our Company opened two million accounts for customers without their permission,

paid one hundred eighty million dollars in fines and penalties and reached a settlement to pay an additional 142 million dollars to customers through a class action lawsuit;

Whereas, our Company enrolled about 570,000 auto loan borrowers in vehicle collateral production insurance although purchasers already had insurance, leading to roughly twenty thousand customers to default and have their cars repossessed due to the inability to afford insurance they did not realize had been added to what they owed;

Whereas, additional lawsuits have been filed against our Company accusing Wells Fargo of racketeering and fraud, and recent history demonstrates a company legacy of ethically challenged behavior posing reputational risk to the company and systemic risk to the larger economy;

Whereas, Better Bankers, Better Banks: Promoting Good Business Through Contractual Commitment called for a covenant between financial executives and their bank, requiring personal liability for a portion of any fines and fraud based judgments the bank enters into, including legal settlements.

Resolved, that shareholders request the Board of Directors to issue a report by the end of 2018, at reasonable expense and excluding proprietary information, to assess the feasibility, above and beyond matters of legal compliance, of requiring senior executives to enter a covenant appropriately integrated to employment, award, benefits, options, indemnification or compensation agreements, in which they would be required each year, regardless of their personal fault, to reimburse the corporation for a portion of any fine or penalty imposed on the corporation by federal or state regulators or courts for activities which posed a systemic risk or which were harmful to consumers.

Supporting Statement
A no fault contractual agreement between Wells Fargo and its management may place individual responsibility on executives and their colleagues to curb behavior that creates systemic risk or substantially harms consumers, sharing a portion of the costs otherwise imposed on shareholders. Such a covenant between our bank and management could not only motivate senior management to be personally responsible for monitoring their own behavior, but also to be on the alert for colleagues' misbehavior and unethical activities.

BACKGROUND

Although it is the smallest of the four large companies now dominating US commercial banking, Wells Fargo has distinguished itself in the extent to which it has faced scandals over consumer deception and egregious business misconduct. Multiple lawsuits have been filed accusing the Company of racketeering and fraud; in 2016, the news broke that employees opened approximately two million accounts for customers without their permission; in 2017, another scandal broke, describing the bank's enrollment of about 570,000 auto loan borrowers in "extra" collision insurance unbeknownst to the borrowers, which lead 20,000 customers to default and have their cars repossessed.

All told, the Company has been required to pay more than $11 billion in fines and penalties since 2000. These fines have directly impacted investor returns. While a small fraction of penalties

have been imposed on selected employees, including some firings, shareholders have taken the lion's share of loss.

The Proponent believes that underlying the Company's failure to contain these losses is an incentive system that is based solely on finding fault with individual performance. In the book, *Better Bankers, Better Banks: PROMOTING GOOD BUSINESS THROUGH CONTRACTUAL COMMITMENT*[1] [hereafter: *Better Bankers*] the authors[2] assert that all of the big banks have a structural problem associated with their focus on fault-based incentives for their highest paid employees. In light of the outstanding ethical debacles associated with Wells Fargo, the analysis of this book seems particularly apropos to Wells Fargo.

According to *Better Bankers*:

> Bankers now have incentives to take inappropriate financial risks with their banks' money and with customers' and clients' money, and to take legal risks in areas such as institutional safety and soundness, proprietary trading, compliance with tax laws and anti–money laundering laws, transactions with customers and clients, transactions with third parties, and disclosure to investors.

The core concept presented in *Better Bankers* is that establishing personal liability of the highest-paid employees of banks that are not connected to fault will change the culture of the bank in a manner that is more appropriately risk averse:

> Personal liability should encourage bankers to reduce these risks and, since the liability is not fault based, to monitor each other's behavior to the same end.

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[1] Claire A. Hill and Richard W. Painter, *Better Bankers, Better Banks: PROMOTING GOOD BUSINESS THROUGH CONTRACTUAL COMMITMENT, University of Chicago Press, 2015.* All quotes herein are from Chapter 5.

[2] The authors**,** Claire A. Hill and Richard W. Painter are distinguished corporate law professors at the University of Minnesota. Claire A. Hill is professor and the James L. Krusemark Chair in Law at the University of Minnesota Law School, where she teaches corporate law, mergers and acquisitions, contracts, and a seminar in law and economics. She is the founding director of the Law School's Institute for Law and Rationality, and the associate director of its Institute for Law and Economics. She is also an affiliated faculty member of the University's Center for Cognitive Sciences. Before becoming a law professor, she practiced corporate law at several law firms including Milbank, Tweed, Hadley & McCloy in New York and Dickstein Shapiro in Washington D.C.
Richard W. Painter is the S. Walter Richey Professor of Corporate Law at the University of Minnesota Law School. Painter received his B.A., summa cum laude, in history from Harvard University and his J.D. from Yale University, where he was an editor of the Yale Journal on Regulation. Following law school, he clerked for Judge John T. Noonan Jr. of the United States Court of Appeals for the 9th Circuit and later practiced at Sullivan & Cromwell in New York City and Finn Dixon & Herling in Stamford, Conn. From February 2005 to July 2007, he was associate counsel to the president in the White House Counsel's office, serving as the chief ethics lawyer for the president, White House employees, and senior nominees to Senate-confirmed positions in the executive branch. Painter has also been active in law reform efforts aimed at deterring securities fraud and improving ethics of corporate managers and lawyers. A key provision of the Sarbanes-Oxley Act of 2002, requiring the SEC to issue rules of professional responsibility for securities lawyers, was based on earlier proposals Painter made in law review articles and to the ABA and the SEC. Professor Painter has on six occasions provided invited testimony before committees of the U.S. House of Representatives or the U.S. Senate on government ethics, securities litigation, and/or the role of attorneys in corporate governance.

The approach suggested by *Better Bankers* is a contrast to current practices, including the practices highlighted by the Company in response to its recent consumer fraud crisis.

> The May 2012 hearing of the House Financial Services Committee ……focused on…whether the SEC and other regulators should insist on an admission of wrongdoing in settlements. ….Testifying at the hearing, Richard Painter [coauthor of *Better Bankers*] told the committee that the problem with many SEC settlements was not the lack of admission of guilt as much as the fact that a penalty assessed against an entity is effectively paid by its shareholders. The shareholders neither caused the behavior that led to the fine nor were they responsible for preventing it. The officers, by contrast, are only affected by the penalty to the extent they are shareholders or indirectly, insofar as their bonuses are tied to earnings reduced by the penalty unless the directors take the rare step of removing them as a result of their behavior. They thus have less incentive to change their behavior or that of the bank than they would if they were personally liable for a portion of the fine.

Covenant banking as set forth in the proposal would give all senior executives a more appropriate incentive.

While a common objection[3] to the idea of such a covenant is that it might make it more difficult to recruit staff, the authors took a decidedly different perspective, finding that these highly paid positions will always be attractive to some people and not to others:

> …. personal liability ultimately should discourage people who are inclined to take inappropriate financial risks and legal risks from being bankers—and discourage banks from recruiting, retaining, or promoting such people. People who are disinclined to consider the interests of other people, and of society as a whole, are also less likely to become bankers if they have to internalize more of the associated costs.

The idea of the covenant approach set forth in *Better Bankers* is ultimately to change the culture within banks:

> Changed incentives and infusion of bankers with different attitudes and values should also change the influences that bankers have on each other.
>
> * * *
>
> Under covenant banking, highly compensated bankers would be responsible for other bankers' conduct. Monitoring other bankers' activities would therefore be a wise liability-avoidance strategy.
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> * * *
>
> A measured, if not conservative, attitude toward financial risk and a conservative attitude toward legal risk, including legal risks taken in relationships with customers, clients, investors, and other third parties, would become embedded in

[3] Including that of the Wells Fargo Human Relations Committee report.

> the institutional culture.

The authors suggest that in banks applying the covenant approach, it would appropriate to tailor it to the high earnings of some bankers (for instance, it might apply to all bankers whose income is in excess of $3 million per year), make the personal liability proportional to compensation but allowing the individual to retain an absolute amount, such as $2 million per year.

> Some measure of no-fault, strict personal liability would have a more desirable impact on individual incentives and the ethos of the banking industry. Bankers profit enormously from their banks' success in good times and would share in their banks' troubles in bad times.

Far from being an impractical approach, *Better Bankers* makes a compelling case that this is already a strategy well understood by the banking sector. The book highlights the consistency of the Covenant approach with how banks themselves manage risk in dealing with borrowers:

> Bankers are aware that personal guarantees reduce risky behavior: they already use this strategy in dealing with their own borrowers. Before bankers extend credit to riskier incorporated enterprises, particularly start-up companies, they often insist on personal guarantees from the principals, even those with relatively modest personal assets. Bankers know that companies whose managers have guaranteed corporate indebtedness will be managed more conservatively than companies whose managers have not made personal guarantees. A personal guarantee or joint venture agreement between the bank and its own highly paid bankers should help accomplish a similar objective with respect to how the bank itself is managed and operated.

Genuine consideration of the feasibility of a covenant system would need to consider issues like how far back to look in requiring bankers to pay for penalties. The book suggests that when it comes to exposure for penalties, the personal liability amounts would only be payable out of, and to the extent of, the past two years' and the next two years' compensation. Part of what makes the Covenant approach practical is the establishment of limitations on how much financial responsibility individual bankers would hold:

> Because this compensation reduction would be imposed regardless of fault, there should be some limitations, including perhaps a provision that no banker whose compensation is reduced because of the fine or judgment would make less than $250,000 per year, or $1 million over the specified four-year period, because of the clawback and automatic reduction. (The banker could make less than that for other reasons, including poor performance or being found by the bank to be responsible for the conduct that resulted in the fine or judgment.)

Better Bankers suggests that boards of directors have an interest in establishing these covenants to provide themselves with additional financial protection, but that ***investors*** have a LARGE interest in promoting these covenants.

> Institutional shareholders themselves, particularly pension funds investing the assets of "ordinary citizens," could promote covenant banking. Institutional investors are increasingly involved in questions of executive compensation, and they might add personal liability provisions to their list of concerns.

Notably, *Better Bankers* recommended that investors use Rule 14a-8 to advance the covenant banking approach:

> Shareholder ballot proposals, which the bank can be required to include in its proxy materials under SEC Rule 14a-8, could urge directors to implement covenant banking, and many shareholders may vote in favor of these provisions if they believe they are consistent with the long-term value of the bank. Proposals for reducing banker compensation on account of civil and criminal fines in particular might be attractive if shareholders believe that conduct yielding fines would be less likely and that, if it did occur, regulators and prosecutors might agree to impose smaller fines on banks that make individual bankers responsible for a substantial portion of those fines.

Thus, the proposal urges the Company to take bold steps to create a robust, company-wide, collective risk management culture.

In contrast, in the aftermath of its consumer fraud debacle, the Company's responses have had two principal focuses:

1) Penalizing key players with clawbacks, forfeitures, compensation adjustments and termination, and restructuring company leadership - determinations made by the Board of Directors[4]
2) Creating new oversight structures with Board committees - the Risk Committee, the Audit and Examination Committee and the Human Resources Committee - and an Office of Ethics, Oversight and Integrity; all are focused on reviewing and reporting.

The rationale for the current proposal is that these responses do not go far enough to enable the culture change that is needed to prevent future harm by the Company, and that adding strict personal liability to the mix, via the mechanism of contractual agreements for individual responsibility on behalf of the senior management team would go further to support needed

[4] Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers. On April 7, 2017, the Board of Directors (the "Board") of Wells Fargo & Company (the "Company") determined to claw back additional compensation from former Chairman and Chief Executive Officer John G. Stumpf and former Senior Executive Vice President and head of Community Banking Carrie L. Tolstedt. In Mr. Stumpf's case, the Company will claw back compensation of approximately $28 million (the value at the time of distribution in March 2016 of shares issued to him following vesting of his Performance Share award granted on March 8, 2013), which the Board may effect through compensation that would otherwise be paid to him. In Ms. Tolstedt's case, the Company will cause to be forfeited all of her outstanding stock options (valued at approximately $47 million based on the closing price of the Company's common stock on April 7, 2017).

cultural change. A key finding from the Board's Independent Investigation was that, amongst senior leadership, again and again, there was a "disinclination to see the problem as systemic".[5] The Proposal seeks an assessment of an approach consistent with the company's own findings, to consider steps to implement true systemic change.

ANALYSIS

A finding of substantial implementation of a proposal seeking a feasibility assessment requires fulfillment of the guidelines and essential purpose of the Proposal.

Staff decisions demonstrate that a "feasibility assessment" requires specific attention to the elements of the proposal and, in fact a feasibility assessment, and not merely a discussion of why existing policies are ample. Where a feasibility assessment was requested in a proposal, a company's general related disclosures were not "substantial implementation" because they did not constitute a "feasibility assessment."

For example, in *Wendy's International, Inc.* (February 8, 2005), the Company argued that its existing disclosures and practices amounted to substantial implementation of a proposal requesting *a report on the feasibility of the Company requiring its chicken suppliers to phase in controlled-atmosphere killing (*a slaughtering method considered more humane). The Company stated that its long-standing policies with respect to the humane treatment of animals and of working with suppliers to ensure humane animal handling and care were disclosed and adequately reflected on its website, and specifically that its online animal welfare program fact sheet explained how company protocols require review of housing, transportation, holding facilities and humane slaughter procedures, and discussed the factors suppliers would consider when evaluating new slaughter procedures. The Staff did not agree that these disclosures amounted to substantial implementation of the report requested by the Proposal, and denied exclusion.

In Kimberly-Clark Corporation (January 30, 2007), proponents sought a report *assessing the feasibility of phasing out the company's use of non-FSC (Forest Stewardship Council) certified fiber*. The Company argued that it had substantially implemented this proposal by disclosing *statistical information regarding the percentage of the Company's fiber purchases certified by various certification schemes*, as well as detailed information regarding the Company's use of recycled fiber in various products, in its sustainability report. Furthermore, the Company had also engaged an independent consulting firm and leading independent expert for market pulp supply data to assess the availability of FSC certified fiber in areas where the Company purchased its wood fiber, and the feasibility of the Company phasing out its use of non-FSC certified fiber within 10 years. The Company argued that its published sustainability report, and the contractual engagement of the consulting firm to prepare the feasibility study, amounted to substantial implementation of the proposal. The Staff disagreed, and found that exclusion of the proposal from proxy materials was not appropriate under Rule 14a-8(i)(10).

In *Lowe's Companies, Inc.* (March 10, 2017), the proposal requested that the company produce a report assessing the climate benefits and feasibility of adopting enterprise-wide, quantitative,

time-bound targets for increasing the company's renewable energy sourcing and/or production. Lowe's asserted that it had substantially implemented the proposal with the disclosure of the sustainability goals published in Social Responsibility Report, and its ongoing implementation of measures designed to address the reduction of greenhouse gas emissions. The Company's sustainability goals did not include any assessment of the feasibility of adopting targets for increasing renewable energy sourcing, instead addressing energy efficiency, reducing waste, and reducing carbon emissions. [1] Yet the Company argued that its efforts substantially implemented the proposal because the underlying goal, in the Company's view, was to reduce the Company's greenhouse gas emissions, and the strategy of increasing renewable energy sourcing was simply one possible approach to reach this goal that the Company did not choose. The Staff disagreed, noting that "based on the information you have presented, it does not appear that Lowe's public disclosures compare favorably with the guidelines of the proposal." Accordingly, the Staff concluded that the Company could not omit the proposal from its proxy materials in reliance on rule 14a-8(i)(10).

As the Company Letter notes, the Staff does concur with the exclusion of proposals under Rule 14a-8(i)(10) where the company *addressed each element requested in the proposal. Compared with the present proposal, the precedents cited by the Company demonstrate a more thorough response by companies and boards.* For example in *Hewlett-Packard Company* (December 18, 2013) the company's no action request went through the items of the proposal point by point and showed how each item was addressed. In *AT&T* (January 22, 2014) the company had already implemented the vesting policy requested by the proposal. In *TECO Energy Inc.* (February 21, 2013) a report posted on the company's website included information that matched the items requested in the proposal regarding conditions resulting from the company's mountaintop removal operations that could pose environmental or health harm and feasible measures to mitigate the harms. In *Target* (March 26, 2013) the company had already issued a sustainability report that substantially answered, by the many examples published, the request for senior management to state its philosophy regarding policies on "sustainable activities that have the potential to reduce Target's bottom line. The report specifically addressed the role of sustainable activities by detailing how environmental sustainability, safety and preparedness, guest well-being and responsible sourcing are core components of how the Company can build strong, healthy and safe communities to support lasting business success.

In the present instance, it is notable that the only real discussion in the Committee report of the elements of the proposal is the Committee literally quoting back the language of the proposal and stating that "it considered the feasibility" and then quoting the proposal. There is no detailed discussion or explication of the elements of the proposal – "a covenant appropriately integrated to employment, award, benefits, options, indemnification or compensation agreements, in which they would be required each year, regardless of their personal fault, to reimburse the corporation for a portion of any fine or penalty imposed on the corporation by federal or state regulators or courts for activities which posed a systemic risk or which were harmful to consumers."

Even where reports on the same topic have been prepared, Staff has rejected numerous challenges where the company failed to *actually perform* the action requested by the proposal. Staff has rejected numerous no-action requests based on Rule 14a-8(i)(10) where companies have taken more significant steps towards implementation of a proposal than

the Company has in this instance. See, e.g., *The Coca-Cola Co.* (Jan. 19, 2004) (Provision of information relating to stock option grants by race and gender to a third party, resulting in public report, insufficient where shareholders sought direct access to data); *3M Company* (March 2, 2005) (requesting implementation and/or increased activity on eleven principles relating to human and labor rights in China not substantially implemented despite company's comprehensive policies and guidelines, including those that set specific expectations for China-based suppliers).

The Company's actions do not constitute substantial implementation.

Contrary to the Company's assertions, the Human Resources Committee Report does not substantially implement the Proposal, either considering the essential purpose or the proposal's guidelines. The Company Letter notes:

> The Board of Directors (the "Board"), acting through its Human Resources Committee (the "Committee") (to which the Board has delegated authority to oversee the Company's incentive compensation risk management program and compensation practices for senior executives), assessed the feasibility, above and beyond matters of legal compliance, of [the proposal and issued a report containing its assessment. The Company has made the report available to stockholders on its website[2] (the "Report").

Notably, the Committee report merely mentions that the Covenant might be technically feasible and then shifts focus to whether the Committee found it to be appropriate. In order to argue that the Committee report constituted substantial implementation the Company Letter notes:

> In assessing feasibility, the Committee considered whether requiring the Covenant is both possible and suitable for the Company "above and beyond matters of legal compliance." The Committee then concluded, as disclosed in the Report, that "with respect to matters other than legal compliance (as requested by the [P]roposal), aspects of the Covenant may be technically feasible . . . ."

While making a reference to the idea that the approach may be "technically feasible" the Human Resources Committee report principally established the fact that the Committee prefers to stick with its current incentive and clawback system. It prefers to assign fault-based penalties on a case-by-case, discretionary basis. As such, the Committee Report reads as a reflexive adherence to the precise kinds of cultural and institutional biases that some believe landed the company in the substantial problems it has faced. Having concluded that "aspects of the Covenant may be technically feasible" the largest part of the assessment is focused on what would normally appear in an opposition statement – the committee/board's arguments as to why this approach should not be adopted by the Company:

> In considering the suitability of requiring the Covenant, the Committee assessed the practicability and appropriateness of the Covenant. The

> Report then discusses how the Committee assessed various policy implications of requiring the Covenant. Specifically, the Committee first analyzed the Covenant within the framework of the Company's established compensation principles and concluded that requiring the Covenant would contradict many of these principles. For example, requiring the Covenant would contradict the principle of "Pay for Performance" by precluding consideration of individual accountability and responsibility in requiring reimbursement. Additionally, requiring the Covenant would contradict the principle of "Attract and Retain Top Executive Talent" by making it more difficult to attract and retain skilled and experienced executive talent because executives could be penalized without connection to their own accountability and in a manner inconsistent with market practice. The Committee also analyzed the Covenant in light of the Company's existing clawback and forfeiture policies and provisions, which are "designed to . . . encourage the creation of long-term, sustainable performance and to discourage our executive officers from taking imprudent or excessive risks that would adversely impact our Company or harm our customers." The Committee then concluded, as disclosed in the Report, that the Covenant is not suitable for the Company because it "is neither practicable nor appropriate" for the Company.

The Company Letter having focused on a rationale against adoption of the approach in the proposal claims that this is now inappropriate for shareholder action:

> When a company has already acted favorably on an issue addressed in a stockholder proposal, Rule 14a-8(i)(10) does not require the company and its stockholders to reconsider the issue.

It should be reemphasized here, that the approach suggested by the Proposal is significantly different from the clawbacks and fault-based approach taken by the Company and defended by the Human Resources Committee report. While the company and its Human Resources Committee punished certain employees after assessing their role in the recent ethical and managerial failures of the company, as *Better Bankers* noted:

> Fault-based approaches are not sufficient. Bankers will not behave differently if they do not believe they are likely to be held personally liable, and there are many reasons bankers might doubt they will be held liable in a fault-based regime.

The baseline requirements for a feasibility study would entail studying and understanding the nuances of the proposal in order to determine whether it could be workable for the company. In this instance, instead of conducting a feasibility study, the committee came up with a set of objections – merely making a side reference to the idea that the approach might be "technically feasible." No such feasibility study was conducted. The actions and policies of the Human Resources committee in assigning fault based clawbacks and penalties against certain members of senior management do not fulfill the central purpose or guidelines of the proposal seeking

exploration of a strict liability framework that would more broadly apportion part of any relevant penalties. Accordingly, the proposal is not excludable pursuant to Rule 14a-8(i)(10).

While the Company asserts that the Proposal does not specify what factors should be considered as part of a feasibility assessment, in fact there is significant detail, and it is significantly lacking in the Company's report. Examining the language of the Proposal, we see that a feasibility study would necessarily address some particular elements set forth in the proposal:

> to assess the feasibility, above and beyond matters of legal compliance, of requiring senior executives to enter a covenant **appropriately integrated to employment, award, benefits, options, indemnification or compensation agreements, in which they would be required each year, regardless of their personal fault, to reimburse the corporation for a portion of any fine or penalty imposed on the corporation by federal or state regulators or courts for activities which posed a systemic risk or which were harmful to consumers.**

The Company Letter deploys a Webster's definition of "feasible" in a footnote to undermine the core concept of a feasibility assessment, noting that feasible could include the idea of something being "capable of being utilized or dealt with successfully" and then followed by the word "suitable". The first definition is whether it is "possible" which is closer to common understanding of a feasibility assessment. Note even the addition of the second definition of feasibility cited, the emphasis in the second definition is whether it is "capable of being utilized or dealt with successfully."[6] The closest the Committee came to this is their determination that the Covenant is "technically feasible." The best that can be said is that the committee rejected the idea as not consistent with the approach that they are taking, which is to focus on individual accountability and responsibility. But there was no discussion of or assessment of this technical feasibility. In contrast, the bulk of the report merely itemizes *arguments against* adopting the Covenant approach, not exploring feasibility.

The Human Resources Committee report does not describe any of these details, merely stating that the Committee considered it and then rejected it as not aligned with the other approaches being taken. In contrast to the Company's parsing definitions of "feasible," the proponent and other investors understand that a feasibility assessment is a necessary first step in identifying whether an idea may be viable. According to Investopedia:

> A feasibility study is an analysis of how successfully a project can be completed, accounting for factors that affect it such as economic, technological, legal and scheduling factors. Project managers use feasibility studies to determine potential positive and negative outcomes of a project before investing a considerable amount of time and money into it.
>
> A feasibility study tests the viability of an idea, a project or even a new business. The goal of a feasibility study is to place emphasis on potential problems that could occur if a project is pursued

[6] Footnote 3, page 3 of the Company Letter notes that in the Webster's II New College Dictionary: "Feasible" is defined as: (1) "Capable of being accomplished or brought about : possible"; and (2) "Capable of being utilized or dealt with successfully : suitable."

> and determine if, after all significant factors are considered, the project should be pursued. Feasibility studies also allow a business to address where and how it will operate, potential obstacles, competition and the funding needed to get the business up and running.[7]

The Committee quickly bypassed its feasibility assessment to jump to the conclusion that the Covenant is neither "practical nor appropriate."

The proponent notes that by failing to conduct an actual feasibility assessment, the committee jumped straight to the conclusion that that the recommended covenant is not appropriate, without considering the possible details of such a covenant. For instance, the Proposal does not specify a level of penalties that would be levied against senior executives on a strict liability basis. While we can understand that a severe penalty could prove a disincentive for recruitment and hiring, requiring some level of repayment of penalties that is calibrated and capped to be in alignment with pay scales would seem *quite* appropriate and not at all inconsistent with the compensation principles stated in the report. We see it, in particular, as going far to foster a risk management culture and encouraging the creation of long-term stockholder value. We believe that creating a balanced incentive system should in fact include an element of strict liability, and that this pay-for-performance of the entire executive team would provide a team incentive to manage these systemic and consumer protection risks. We are not in disagreement with the pay for performance portion of compensation, but rather think that a universally applicable covenant would also bring an added incentive for senior executive teamwork to reduce these systemic and consumer risks.

From dialogue the Company, the proponent learned that little attention was given by the Human Resources Committee in its assessment to the kinds of issues that proponents expected to be pivotal to a feasibility analysis, such as exploring finding limitations on the amount of exposure individuals might have, and the potential positioning of such incentives among the available tools and incentives. Instead, the Committee began with its assumption that the current system of discretionary performance-based incentives focused exclusively on those who are found to have had direct responsibility for relevant incidents or failures is adequate and that the Covenant system is *unnecessary*.[8]

In contrast to the approach provided by the Proposal, the Company's penalization of key employees and creation of new structures for oversight both are fault-based strategies, i.e. strategies intended to identify and address personal, individual responsibility *after* it occurred based on findings related to an individual's role. The resulting lack of shared responsibility throughout the management team, and the discretion with which penalties and clawbacks were assessed, leaves these responses inherently reactive, unpredictable, siloed, and therefore insufficient to *prevent* future harm.

As detailed in the Company's 2017 8K, the Company changed leadership at its Community Bank, terminated executives linked to inappropriate sales practices, instituted forfeitures and clawbacks, and made compensation adjustments with respect to senior leaders totaling more than $180 million - this was no small feat. However, these penalties fell to a limited number of leaders

[7] https://www.investopedia.com/terms/f/feasibility-study.asp#ixzz506siPMTQ

[8] The proponent also earned that to the knowledge of the company representatives, no members of the Human Resources Committee had read *Better Bankers* even though it is cited in the proposal.

considered by the Company to be at fault.

While the Company Letter asserts that it believes that these existing policies and provisions address the concerns underlying the shareholder proposal, the level of flexibility and focus on a few individuals fails to promote broad executive accountability.

In the Company's "Statement Regarding Board Investigation into the Community Bank's Retail Sales Practices," April 10, 2017, the Company identifies its problem as such:

> "Because of our decentralized operating model, our corporate leadership took too long to understand the seriousness and scope of the problem, and, as a result, the actions we took over the years to address it weren't adequate."
>
> * * *
>
> "It's clear from the Board's review that we had an incentive program and high-pressure sales culture in our Community Bank that over time drove behavior that in many cases was inappropriate and inconsistent with our values. Because of our decentralized operating model, our corporate leadership took too long to understand the seriousness and scope of the problem, and, as a result, the actions we took over the years to address it weren't adequate."

Other reports and aspects of this investigation describe the challenges as stemming from failure to work as a team in risk management. For example, regarding lack of senior management oversight, the Board's report states:

- Mr. Stumpf was Wells Fargo's principal proponent and champion of the decentralized business model and of cross-sell and the sales culture. His commitment to them colored his response when sales practice issues became more prominent in 2013 and subsequent years and led him to stand back and rely on the Community Bank to fix the problem, even in the face of growing indications that the situation was worsening and threatened substantial reputational harm to Wells Fargo.
- The former CEO was too late and too slow to call for inspection of or critical challenge to the basic [Community Bank] business model.
- The former CEO was aware that many doubted that [Ms. Tolstedt] remained the right person to lead the Community Bank in the face of sales practice revelations, including the Board's lead independent director and the head of its Risk Committee. Stumpf nonetheless moved too slowly to address the management issue.

This example is particularly telling of the breakdown in decision-making and action. Mr. Stumpf, as senior management, lacked proper oversight. Even with the important feedback received from the Risk Committee regarding Ms. Tolstedt's negative sales practices, Mr. Stumpf was not actually incentivized to address the management issue sufficiently. How will the new committees function differently to prevent similar challenges in the future?

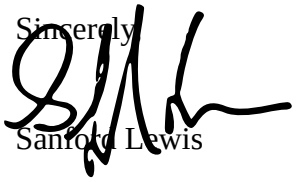
In the absence of collective risk accountability amongst senior executives, the structure for

handling significant challenges - that is, via the review and recommendations of Committees - stays the same.

CONCLUSION

Based on the foregoing, we believe it is clear that the Company has provided no basis for the conclusion that the Proposal is excludable from the 2018 proxy statement pursuant to Rule 14a-8. As such, we respectfully request that the Staff inform the company that it is denying the no action letter request. If you have any questions, please contact me at 413 549-7333 or sanfordlewis@strategiccounsel.net.

Sincerely,



Sanford Lewis

Cc: Elizabeth Ising
John Harrington
Mary Schaffner

GIBSON DUNN

Gibson, Dunn & Crutcher LLP

1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306
Tel 202.955.8500
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Elizabeth Ising
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Fax: 202.530.9631
EIsing@gibsondunn.com

December 7, 2017

VIA E-MAIL
Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *Wells Fargo & Company*
Stockholder Proposal of Harrington Investments, Inc.
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that Wells Fargo & Company (the "Company") intends to omit from its proxy statement and form of proxy for its 2018 Annual Meeting of Stockholders (collectively, the "2018 Proxy Materials") a stockholder proposal (the "Proposal") and statement in support thereof received from Harrington Investments, Inc. (the "Proponent").

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the Company intends to file its definitive 2018 Proxy Materials with the Commission; and

- concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("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 of the Division of Corporation Finance (the "Staff"). Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to this Proposal, a copy of that correspondence should be sent at the same time to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

THE PROPOSAL

The Proposal states:

> **Resolved**, that shareholders request the Board of Directors to issue a report by the end of 2018, at reasonable expense and excluding proprietary information, to assess the feasibility, above and beyond matters of legal compliance, of requiring senior executives to enter a covenant appropriately integrated to employment, award, benefits, options, indemnification or compensation agreements, in which they would be required each year, regardless of their personal fault, to reimburse the corporation for a portion of any fine or penalty imposed on the corporation by federal or state regulators or courts for activities which posed a systemic risk or which were harmful to consumers.

A copy of the Proposal and related correspondence from the Proponent is attached hereto as Exhibit A.

BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2018 Proxy Materials pursuant to Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal.

ANALYSIS

The Proposal May Be Excluded Under Rule 14a-8(i)(10) Because The Company Has Substantially Implemented The Proposal.

Rule 14a-8(i)(10) permits a company to exclude a stockholder proposal from its proxy materials if the company has substantially implemented the proposal. The Commission stated in 1976 that the predecessor to Rule 14a-8(i)(10) was "designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management." Exchange Act Release No. 12598 (July 7, 1976) (the "1976 Release"). Originally, the Staff narrowly interpreted this predecessor rule and granted no-action relief only when proposals were "'fully' effected" by the company. *See* Exchange Act Release No. 19135 (Oct. 14, 1982). By 1983, the Commission recognized that the "previous formalistic application of [the Rule] defeated its purpose" because proponents were successfully convincing the Staff to deny no-action relief by submitting proposals that differed from existing company policy by only a few words. Exchange Act Release No. 20091, at § II.E.6. (Aug. 16, 1983) (the "1983 Release"). Therefore, in 1983, the Commission adopted a revision to the rule to permit the omission of proposals that had been "substantially implemented." 1983 Release. The 1998 amendments to the proxy rules reaffirmed this position. *See* Exchange Act Release No. 40018 at n.30 and accompanying text (May 21, 1998).

Applying this standard, the Staff has noted that "a determination that the company has substantially implemented the proposal depends upon whether [the company's] particular policies, practices and procedures compare favorably with the guidelines of the proposal." *Texaco, Inc*. (avail. Mar. 28, 1991). In other words, substantial implementation under Rule 14a-8(i)(10) requires a company's actions to have satisfactorily addressed both the proposal's underlying concerns and its essential objective. *See, e.g*., *Anheuser-Busch Cos., Inc.* (avail. Jan. 17, 2007); *ConAgra Foods, Inc*. (avail. Jul. 3, 2006); *Johnson & Johnson* (avail. Feb. 17, 2006); *Talbots Inc*. (avail. Apr. 5, 2002); *Masco Corp*. (avail. Mar. 29, 1999).

The Board of Directors (the "Board"), acting through its Human Resources Committee (the "Committee") (to which the Board has delegated authority to oversee the Company's incentive compensation risk management program and compensation practices for senior executives),[1] assessed the feasibility, above and beyond matters of legal compliance, of requiring "senior executives to enter a covenant appropriately integrated to employment, award, benefits, options, indemnification or compensation agreements, in which they would be required each year, regardless of their personal fault, to reimburse the corporation for a portion of any fine or penalty imposed on the corporation by federal or state regulators or courts for activities which posed a systemic risk or which were harmful to consumers" (the "Covenant") and issued a report containing its assessment. The Company has made the report available to stockholders on its website[2] (the "Report"). A copy of the Report is attached hereto as Exhibit B.

The Report substantially implements the Proposal for purposes of Rule 14a-8(i)(10) because it implements the Proposal's essential objective of having a board-level assessment and report to stockholders on whether requiring the Covenant is feasible. In assessing feasibility, the Committee considered whether requiring the Covenant is both possible and suitable[3] for the Company "above and beyond matters of legal compliance." The Committee then concluded, as disclosed in the Report, that "with respect to matters other than legal compliance (as requested by the [P]roposal), aspects of the Covenant may be technically feasible . . . ." The Committee also advised the Board of its intent to publish the Report on the Board's behalf.

In considering the suitability of requiring the Covenant, the Committee assessed the practicability and appropriateness of the Covenant. The Report then discusses how the Committee assessed various policy implications of requiring the Covenant. Specifically, the Committee first analyzed the Covenant within the framework of the Company's established

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[1] *See* Wells Fargo & Company Human Resources Committee Charter, *available at* https://www08.wellsfargomedia.com/assets/pdf/about/corporate/human-resources-committee-charter.pdf.

[2] *See* Report of Human Resources Committee on the Feasibility of Implementing a No Personal Fault Senior Executive Covenant, *available at* https://www.wellsfargo.com/assets/pdf/about/corporate/human-resources-committee-report.pdf. The Report is also available as a link on the Company's Leadership and Governance webpage, *available at* https://www.wellsfargo.com/about/corporate/governance.

[3] *See* Webster's II New College Dictionary. "Feasible" is defined as: (1) "Capable of being accomplished or brought about : possible"; and (2) "Capable of being utilized or dealt with successfully : suitable."

compensation principles[4] and concluded that requiring the Covenant would contradict many of these principles. For example, requiring the Covenant would contradict the principle of "Pay for Performance" by precluding consideration of individual accountability and responsibility in requiring reimbursement. Additionally, requiring the Covenant would contradict the principle of "Attract and Retain Top Executive Talent" by making it more difficult to attract and retain skilled and experienced executive talent because executives could be penalized without connection to their own accountability and in a manner inconsistent with market practice. The Committee also analyzed the Covenant in light of the Company's existing clawback and forfeiture policies and provisions, which are "designed to . . . encourage the creation of long-term, sustainable performance and to discourage our executive officers from taking imprudent or excessive risks that would adversely impact our Company or harm our customers." The Committee then concluded, as disclosed in the Report, that the Covenant is not suitable for the Company because it "is neither practicable nor appropriate" for the Company.[5]

The Committee's assessment, as detailed in the Report posted on the Company's website, implements the matters requested in the Proposal. The Committee's actions implementing the Proposal thus present precisely the scenario contemplated by the Commission when it adopted the predecessor to Rule 14a-8(i)(10) "to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management." 1976 Release. The Proposal asks the Board to issue a report "assess[ing] the feasibility, above and beyond matters of legal compliance, of requiring [the Covenant]." The Board, acting through the Committee, conducted and reported on that assessment, which is detailed in the Report that is posted on the Company's website. When a company has already acted favorably on an issue addressed in a stockholder proposal, Rule 14a-8(i)(10) does not require the company and its stockholders to reconsider the issue. In this regard, the Staff has on numerous occasions concurred with the exclusion of proposals under Rule 14a-8(i)(10) that pertained to executive compensation where the company addressed each element requested in the proposal. For example, in *Wal-Mart Stores, Inc.* (avail. Mar. 25, 2015), the Staff concurred that the company could exclude under Rule 14a-8(i)(10) a stockholder proposal requesting inclusion of "employee engagement" as a metric in determining senior executives' incentive compensation where, as disclosed in the proxy statement, the company already provided that each executive officer's compensation under its annual incentive plan could be reduced by up to 15% based on the extent to which he or she contributed to diversity and inclusion. *See also General Electric Co.* (avail. Jan. 23, 2010) (concurring with the exclusion of a proposal requesting that the board explore with certain executive officers the renunciation of stock option grants where the board had conducted discussions with the executive officers on that topic); *AutoNation Inc.* (avail. Feb. 16, 2005) (concurring with the exclusion of a proposal requesting that the board seek stockholder approval

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[4] *See* Wells Fargo & Company's 2017 definitive proxy statement, *available at* https://www.sec.gov/Archives/edgar/data/72971/000119312517083591/d305364ddef14a.htm.

[5] In addition to implementing the Proposal's request for a report on the assessment "above and beyond matters of legal compliance" of requiring the Covenant, the Report references the potential legal implications of the Covenant in order to provide readers with a comprehensive overview of the implications of requiring the Covenant.

for future "golden parachutes" with senior executives where, after receiving the proposal, the company adopted a policy to submit any such arrangements to stockholder vote); *Intel Corp.* (avail. Mar. 11, 2003) (concurring that a proposal requesting Intel's board to submit to a stockholder vote all equity compensation plans and amendments to add shares to those plans that would result in material potential dilution was substantially implemented by a board policy requiring a stockholder vote on most, but not all, forms of company stock plans). *See also General Electric Co.* (avail. Dec. 24, 2009) (concurring with the exclusion of a proposal requesting that the company reevaluate its policy of, and prepare a report regarding, designing and selling nuclear reactors for the production of electrical power, in light of safety and environmental risks, where, in response to the proposal, the company made available on its website a report regarding its participation in the nuclear power business and its conclusion that nuclear power remained an important part of its energy business). Similarly, the Proposal has been substantially implemented by the Report by the Committee regarding its assessment of the feasibility of requiring the Covenant. Accordingly, the Proposal may be excluded under Rule 14a-8(i)(10) as substantially implemented.

We also note that the Proposal only requests an assessment of "the feasibility, above and beyond matters of legal compliance, of requiring senior executives to enter" into the Covenant. The Proposal does not specify what factors should be considered as part of this feasibility assessment. Moreover, the Staff consistently has concurred with the exclusion of similar proposals where companies published reports like the Report detailing various factors and matters that were considered. For example, in *The Dow Chemical Co.* (avail. Mar. 18, 2014, *recon. denied* Mar. 25, 2014), the Staff concurred with the exclusion of a proposal requesting that the company prepare a report "assessing the short and long term financial, reputational and operational impacts" of an environmental incident in Bhopal, India. The company argued that statements in a document included on its website providing "Q and A" with respect to the Bhopal incident substantially implemented the proposal. In making its determination, the Staff noted that "it appears that [the company's] public disclosures compare favorably with the guidelines of the proposal and that [the company] has, therefore, substantially implemented the proposal." *See also Target Corp. (Johnson and Thompson)* (avail. Mar. 26, 2013) (concurring with the exclusion of a proposal asking the board to study the feasibility of adopting a policy prohibiting the use of treasury funds for direct and indirect political contributions where the company had addressed company reviews of use of company funds for political purposes in a statement in opposition set forth in a previous proxy statement and five pages excerpted from a company report); *TECO Energy, Inc.* (avail. Feb. 21, 2013) (concurring with the exclusion of a proposal requesting a report on the environmental and public health effects of mountaintop removal operations, and the feasibility of mitigating measures, where the company had supplemented its sustainability report with a two-page report and four page table on the topic).

Further, the Staff has consistently granted exclusion when a proposal requests that the board take action and the board substantially implements the proposal through one of its committees. *See, e.g.*, *AT&T Inc.* (avail. Jan. 22, 2014) (concurring with the exclusion of a proposal that the board adopt a policy that in the event of a change of control, there shall be no acceleration of vesting of

any equity award granted to any senior executive when the human resources committee amended the relevant incentive plan); *Hewlett-Packard Co.* (avail. Dec. 18, 2013) (concurring with the exclusion of a proposal requesting that the board review and amend the company's human rights policies when the nominating and governance committee reviewed the human rights policies).

Accordingly, for the reasons set forth above, the Proposal may be excluded from the Company's 2018 Proxy Materials under Rule 14a-8(i)(10).

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2018 Proxy Materials.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8287, or Mary E. Schaffner, Senior Vice President and Senior Company Counsel, at (612) 667-2367.

Sincerely,

Elizabeth A. Ising

Enclosures

cc: Mary E. Schaffner, Senior Vice President and Senior Company Counsel
Willie J. White, Esq., Vice President and Senior Counsel
John Harrington, Harrington Investments, Inc.

EXHIBIT A

HARRINGTON
INVESTMENTS, INC.

August 14, 2017

Wells Fargo Company
Attn: Timothy J. Sloan,
Chief Executive Officer
420 Montgomery St.
San Francisco, CA 94104

RE: Shareholder Proposal

Dear Chief Executive Officer,

As a shareholder in Wells Fargo, I, representing Harrington Investments, Inc. (HII), am filing the enclosed shareholder resolution pursuant to Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934 for inclusion in Wells Fargo's Proxy Statement for the 2018 annual meeting of shareholders.

HII is the beneficial owner of at least $2,000 worth of Wells Fargo stock. HII has held the requisite number of shares for over one year, and plan to hold sufficient shares in Wells Fargo through the date of the annual shareholders' meeting. In accordance with Rule 14a-8 of the Securities Exchange Act of 1934, verification of ownership will be provided under separate cover. I or a representative will attend the stockholders' meeting to move the resolution as required by SEC rules.

If you have any questions, I can be contacted at (707) 252-6166.

Sincerely,

John C. Harrington

President
Harrington Investments, Inc.

1001 2ND STREET, SUITE 325 NAPA, CALIFORNIA 94559 707-252-6166 800-788-0154 FAX 707-257-7923
WWW. HARRINGTONINVESTMENTS.COM

Wells Fargo

Whereas, our Company has engaged in business conduct that has been harmful to many stakeholders, especially our customers;

Whereas, our Company has paid out more than $11 billion in fines and penalties since 2010, penalizing shareholders, while senior management and directors have largely escaped financial hardship and collective responsibility;

Whereas, our Company opened approximately two million accounts for customers without their permission, paid $180 million in fines and penalties and reached a settlement to pay an additional $142 million to customers through a class action lawsuit;

Whereas, our Company enrolled about 570,000 auto loan borrowers in vehicle collateral production insurance although purchasers already had insurance, leading to roughly twenty thousand customers to default and have their cars repossessed due to the inability to afford insurance they did not realize had been added to what they owed;

Whereas, additional lawsuits have been filed against our Company accusing Wells Fargo of racketeering and fraud, and recent history demonstrates a company legacy of ethically challenged behavior posing reputational risk to the company and systemic risk to the larger economy;

Whereas, Better Bankers, Better Banks: Promoting Good Business Through Contractual Commitment called for a covenant between financial executives and their bank, requiring personal liability for a portion of any fines and fraud based judgments the bank enters into, including legal settlements.

Resolved, that shareholders request the Board of Directors to issue a report by the end of 2018, at reasonable expense and excluding proprietary information, to assess the feasibility, above and beyond matters of legal compliance, of requiring senior executives to enter a covenant appropriately integrated to employment, award, benefits, options, indemnification or compensation agreements, in which they would be required each year, regardless of their personal fault, to reimburse the corporation for a portion of any fine or penalty imposed on the corporation by federal or state regulators or courts for activities which posed a systemic risk or which were harmful to consumers.

Supporting Statement

A no fault contractual agreement between Wells Fargo and its management may place individual responsibility on executives and their colleagues to curb behavior that creates systemic risk or substantially harms consumers, sharing a portion of the costs otherwise imposed on shareholders. Such a covenant between our bank and management could not only motivate senior management to be personally responsible for monitoring their own behavior, but also to be on the alert for colleagues' misbehavior and unethical activities.

charles SCHWAB

August 14, 2017

Wells Fargo Company
Attn: Timothy J. Sloan,
Chief Executive Officer
420 Montgomery St.
San Francisco, CA 94104

RE: Account ***
HARRINGTON INVESTMENTS INC
1001 2nd ST, STE 325
NAPA, CA

Dear Chief Executive Officer:

This letter is to confirm that Charles Schwab is the record holder for the beneficial owner of the Harrington Investments, Inc. account and which holds in the account 100 shares of common stock in the Wells Fargo Company. These shares have been held continuously for at least one year prior to and including August 14, 2017.

The shares are held at Depository Trust Company under the Participant Account Name of Charles Schwab & Co., Inc., number 0164.

This letter serves as confirmation that the account holder listed above is the beneficial owner of the above referenced stock.

Should additional information be needed, please feel free to contact me directly at 877-393-1951 between the hours of 11:30am and 8:00pm EST.

Sincerely,

Melanie Salazar
Advisor Services
Charles Schwab & Co. Inc.

HARRINGTON
INVESTMENTS, INC.

October 6, 2017

Wells Fargo Company
Attn: Timothy J. Sloan,
Chief Executive Officer
420 Montgomery St.
San Francisco, CA 94104

RE: Updated Shareholder Proposal

Dear Chief Executive Officer,

As a shareholder in Wells Fargo, I, representing Harrington Investments, Inc. (HII), am filing the enclosed updated shareholder pursuant to Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934 for inclusion in Wells Fargo's Proxy Statement for the 2018 annual meeting of shareholders. The enclosed resolution has been updated and is to replace the initial resolution submitted August 14, 2017, prior to the November 15, 2017 filing deadline.

HII is the beneficial owner of at least $2,000 worth of Wells Fargo stock. HII has held the requisite number of shares for over one year, and plan to hold sufficient shares in Wells Fargo through the date of the annual shareholders' meeting. In accordance with Rule 14a-8 of the Securities Exchange Act of 1934, verification of ownership has been previously provided with the initial shareholder proposal submitted August 14, 2017. I or a representative will attend the stockholders' meeting to move the resolution as required by SEC rules.

If you have any questions, I can be contacted at (707) 252-6166.

Sincerely,

John C. Harrington

President
Harrington Investments, Inc.

1001 2ND STREET, SUITE 325 NAPA, CALIFORNIA 94559 707-252-6166 800-788-0154 FAX 707-257-7923
WWW. HARRINGTONINVESTMENTS.COM

Wells Fargo

Whereas, our Company has engaged in business conduct that has been harmful to many stake holders, especially our customers;

Whereas, our Company has paid out more than $11 billion in fines and penalties since 2010, penalizing shareholders, while senior management and directors have largely escaped financial hardship and collective responsibility;

Whereas, our Company opened approximately 3.5 million accounts for customers without their permission, paid approximately $180 million in fines and penalties and reached a settlement to pay an additional $142 million to customers through a class action lawsuit;

Whereas, our Company enrolled about 800,000 auto loan borrowers in vehicle collateral production insurance although purchasers already had insurance, resulting in roughly 274,000 customers to default and nearly 25,000 auto repossessions due to the inability to afford insurance they did not realize had been added to what they owed;

Whereas, in August 2017, our Company agreed to a $108 million settlement regarding a whistleblower lawsuit for charging military veterans hidden fees to refinance their mortgages, and concealing these fees when applying for federal loan guarantees;

Whereas, additional lawsuits have been filed against our Company accusing Wells Fargo of racketeering and fraud, and recent history demonstrates a company legacy of ethically challenged behavior posing reputational risk to the company and systemic risk to the larger economy;

Whereas, Better Bankers, Better Banks: Promoting Good Business Through Contractual Commitment called for a covenant between financial executives and their bank, requiring personal liability for a portion of any fines and fraud based judgments the bank enters into, including legal settlements.

Resolved, that shareholders request the Board of Directors to issue a report by the end of 2018, at reasonable expense and excluding proprietary information, to assess the feasibility, above and beyond matters of legal compliance, of requiring senior executives to enter a covenant appropriately integrated to employment, award, benefits, options, indemnification or compensation agreements, in which they would be required each year, regardless of their personal fault, to reimburse the corporation for a portion of any fine or penalty imposed on the corporation by federal or state regulators or courts for activities which posed a systemic risk or which were harmful to consumers.

Supporting Statement

A no-fault contractual agreement between Wells Fargo and its management may place individual responsibility on executives and their colleagues to curb behavior that creates systemic risk or substantially harms consumers, sharing a portion of the costs otherwise imposed on shareholders. Such a covenant between our bank and management could not only motivate senior management to be personally responsible for monitoring their own behavior, but also to be on the alert for colleagues' misbehavior and unethical activities.

EXHIBIT B

Report of the Human Resources Committee on the Feasibility of Implementing a No Personal Fault Senior Executive Covenant

In 2017, Wells Fargo received a shareholder proposal asking the Board to issue a report assessing the feasibility, above and beyond matters of legal compliance, of requiring senior executives to enter into a covenant, integrated into employment, indemnification and/or compensation agreements, requiring senior executives to reimburse the Company for a portion of any fine or penalty imposed on the Company by regulators or courts for activities that posed a systemic risk or which were harmful to consumers, regardless of the senior executive's own personal fault (the "Covenant").

The Board, acting through its Human Resources Committee (to which the Board has delegated authority to oversee the Company's incentive compensation risk management program and practices for senior executives), has assessed the feasibility of implementing the Covenant. It determined that, with respect to matters other than legal compliance (as requested by the proposal), aspects of the Covenant may be technically feasible, but that implementing the Covenant is neither practicable nor appropriate for Wells Fargo for the reasons discussed below.

In considering the policy implications of the Covenant, the Human Resources Committee considered the Covenant in relation to our established compensation principles: (1) Pay for Performance; (2) Foster a Risk Management Culture; (3) Attract and Retain Top Executive Talent; and (4) Encourage Creation of Long-Term Stockholder Value. In particular, the Covenant is in contrast to the concept of linking compensation to individual performance (part of our Pay for Performance principle) because it does not contemplate individual accountability for the fine or penalty imposed. The Covenant also could make it more difficult to attract and retain skilled and experienced executive talent because executives could be penalized without connection to their own accountability and in a manner inconsistent with market practice.

The Committee also considered our existing clawback and forfeiture policies and provisions, which it believes address the concerns underlying the shareholder proposal while providing the Board of Directors appropriate flexibility to consider and promote executive accountability. The Company employs multiple clawback and forfeiture policies and provisions designed to (consistent with our Foster a Risk Management Culture compensation principle) encourage the creation of long-term, sustainable performance and to discourage our executive officers from taking imprudent or excessive risks that would adversely impact our Company or harm our customers. In 2016 and 2017, the Board took actions under our existing provisions to reduce and eliminate compensation based on the accountability of all those in senior management for the overall operational and reputational risk of our Company, directly in line with our Pay for Performance compensation principle.

The Committee also considered the legal implications of adopting the Covenant and determined that a covenant of the type contemplated by the shareholder proposal could raise material questions as to enforceability under local labor laws or as an impermissible penalty provision. The Committee noted that the question of whether any actual requirement would be enforceable in a given circumstance and given jurisdiction would be fact-specific.