

December 27, 2019

**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*  
*Shareholder Proposal of Oliver and Jennifer Blackman*  
*Securities Exchange Act of 1934—Rule 14a-8*

Ladies and Gentlemen:

This letter is to inform you that our client, Wells Fargo & Company (the “Company”), intends to omit from its proxy statement and form of proxy for its 2020 Annual Meeting of Shareholders (collectively, the “2020 Proxy Materials”) a shareholder proposal (the “Proposal”) and statements in support thereof received from Client Yield Asset Management on behalf of Oliver and Jennifer Blackman (the “Proponents”).

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 2020 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponents.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”) provide that shareholder 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 Proponents that if they elect to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

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## THE PROPOSAL

The Proposal states:

RESOLVED: Shareholders of Wells Fargo & Company (the “Company”) request that the Board of Directors prepare a report on the impact of mandatory arbitration policies on the Company’s employees. The report shall evaluate the risks that may result from the Company’s current mandatory arbitration policy on claims of workplace sexual harassment. The report shall be prepared at reasonable cost and omit proprietary and personal information, and shall be made available on the Company’s website.

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

## BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may properly be excluded from the 2020 Proxy Materials pursuant to Rule 14a-8(i)(10) upon confirmation that the Company has published on the Company’s website the requested report on the impact of mandatory arbitration policies on the Company’s employees, including an evaluation of the risks that may result from the Company’s current mandatory arbitration policy on claims of workplace sexual harassment (the “Report”).

## ANALYSIS

### **The Proposal May Be Excluded Under Rule 14a-8(i)(10) As Substantially Implemented.**

#### *A. Background.*

Rule 14a-8(i)(10) permits a company to exclude a shareholder 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). Originally, the Staff narrowly interpreted this predecessor rule and concurred with the exclusion of a proposal 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 avoiding exclusion by submitting proposals that differed from existing company policy in minor respects. Exchange Act Release No. 20091, at § II.E.6. (Aug. 16, 1983) (“1983 Release”). Therefore, in the 1983 Release, the Commission adopted a revised interpretation of the rule to permit the omission of proposals that had been “substantially implemented,” and the Commission codified this revised

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interpretation in Exchange Act Release No. 40018, at n.30 (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.” *Walgreen Co.* (avail. Sept. 26, 2013); *Texaco, Inc.* (avail. Mar. 28, 1991).

At the same time, a company need not implement a proposal in exactly the same manner set forth by the proponent. In *General Motors Corp.* (avail. Mar. 4, 1996), the company observed that the Staff has not required that a company implement the action requested in a proposal exactly in all details but has been willing to issue no-action letters under the predecessor of Rule 14a-8(i)(10) in situations where the “essential objective” of the proposal had been satisfied. The company further argued, “[i]f the mootness requirement [under the predecessor rule] were applied too strictly, the intention of [the rule]—permitting exclusion of ‘substantially implemented’ proposals—could be evaded merely by including some element in the proposal that differs from the registrant’s policy or practice.” For example, the Staff has concurred that companies, when substantially implementing a shareholder proposal, can address aspects of implementation on which a proposal is silent or which may differ from the manner in which the shareholder proponent would implement the proposal. *See, e.g., Hewlett-Packard Co.* (avail. Dec. 11, 2007) (proposal requesting that the board permit shareholders to call special meetings was substantially implemented by a proposed bylaw amendment to permit shareholders to call a special meeting unless the board determined that the special business to be addressed had been addressed recently or would soon be addressed at an annual meeting); *Johnson & Johnson* (avail. Feb. 17, 2006) (proposal that requested the company to confirm the legitimacy of all current and future U.S. employees was substantially implemented because the company had verified the legitimacy of over 91% of its domestic workforce). Therefore, if a company has satisfactorily addressed both the proposal’s underlying concerns and its “essential objective,” the proposal will be deemed “substantially implemented” and, therefore, may be excluded as moot. *See, e.g., Quest Diagnostics, Inc.* (avail. Mar. 17, 2016); *Exelon Corp.* (avail. Feb. 26, 2010); *Anheuser-Busch Companies, Inc.* (avail. Jan. 17, 2007); *ConAgra Foods, Inc.* (avail. July 3, 2006); *Johnson & Johnson* (avail. Feb. 17, 2006); *Talbots* (avail. Apr. 5, 2002); *Masco Corp.* (avail. Mar. 29, 1999); *The Gap, Inc.* (avail. Mar. 8, 1996).

*B. Anticipated Publication Of The Report Will Substantially Implement The Proposal.*

The Report will substantially implement the Proposal because, as described above, the Report will address the Proposal’s underlying concerns and essential objective consistent with Rule 14a-8(i)(10). The Proposal requests that the Company’s Board of Directors (the “Board”) prepare the Report. The Board has previously delegated matters such as those covered by the Proposal to its Human Resources Committee (the “Committee”), which according to its Charter is responsible for overseeing “the Company’s human capital management, including talent

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management.”<sup>1</sup> As a result, the Committee is charged with overseeing publication of the Report. The Committee is scheduled to review the Report at an upcoming meeting, and the Company expects to then promptly publish the Report thereafter by January 30, 2020.

### *C. Supplemental Notification.*

We submit this no-action request now to address the timing requirements of Rule 14a-8(j). We will notify the Staff and the Proponent supplementally after publication of the Report on the Company’s website, which is expected to occur by January 30, 2020. The Staff consistently has granted no-action relief under Rule 14a-8(i)(10) where a company has notified the Staff of the actions expected to be taken that will substantially implement the proposal and then supplements its request for no-action relief by notifying the Staff after those actions have been taken. *See, e.g., United Continental Holdings, Inc.* (avail. Apr. 13, 2018); *United Technologies Corporation* (avail. Feb. 14, 2018); *The Southern Co.* (avail. Feb. 24, 2017); *Mattel, Inc.* (avail. Feb. 3, 2017); *The Wendy’s Co.* (avail. Mar. 2, 2016); *The Southern Co.* (avail. Feb. 26, 2016); *The Southern Co.* (avail. Mar. 6, 2015); *Visa Inc.* (avail. Nov. 14, 2014); *Hewlett-Packard Co.* (avail. Dec. 19, 2013); *Starbucks Corp.* (avail. Nov. 27, 2012); *DIRECTV* (avail. Feb. 22, 2011); *NiSource Inc.* (avail. Mar. 10, 2008); *Johnson & Johnson* (avail. Feb. 19, 2008) (each granting no-action relief where the company notified the Staff of its intention to omit a shareholder proposal under Rule 14a-8(i)(10) because the board of directors was expected to take action that would substantially implement the proposal, and the company supplementally notified the Staff of the board action).

## CONCLUSION

Based upon the foregoing analysis and further details to be provided supplementally regarding how the Report compares favorably to the Proposal, we believe that upon confirmation of publication of the Report, the Proposal will have been substantially implemented. Thus, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2020 Proxy Materials in reliance on Rule 14a-8(i)(10).

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](mailto:shareholderproposals@gibsondunn.com). If we can be of any further assistance in this

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<sup>1</sup> Available at <https://www.wellsfargo.com/assets/pdf/about/corporate/human-resources-committee-charter.pdf>.

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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, Vice President and Senior Counsel  
Molly Betournay, Clean Yield Asset Management

**EXHIBIT A**

November 8, 2019

Anthony R. Augliera  
Corporate Secretary  
Wells Fargo & Company  
MAC# D1130-177  
301 South Tryon Street, 11<sup>th</sup> Floor  
Charlotte, NC 28282

**RE: Shareholder proposal for 2020 Annual Meeting**

Dear Mr. Augliera,

Clean Yield Asset Management ("Clean Yield") is an investment firm based in Norwich, VT specializing in socially responsible asset management.

I am hereby authorized to notify you of our intention to file the enclosed shareholder resolution regarding mandatory arbitration with Wells Fargo & Company on behalf of our clients Oliver and Jennifer Blackman. Clean Yield submits this shareholder proposal for inclusion in the 2020 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934 (17 C.F.R. § 240.14a-8). Per Rule 14a-8, the Blackmans hold more than \$2,000 of Wells Fargo common stock, acquired more than one year prior to today's date and held continuously for that time. Our client will remain invested in this position continuously through the date of the 2020 annual meeting. Enclosed is verification from our client's custodian, Fiduciary Trust, of the position, and a letter from the Blackmans authorizing Clean Yield to undertake this filing on their behalf. We will send a representative to the stockholders' meeting to move the shareholder proposal as required by the SEC rules.

We would welcome discussion with Wells Fargo about the contents of our proposal.

Please direct any written communications to me at the address below or to [molly@cleanyield.com](mailto:molly@cleanyield.com). Please also confirm receipt of this letter via email.

Sincerely,



Molly Betourmay

Enclosures: Shareholder resolution, verification of ownership, and client authorization letter.

RESOLVED: Shareholders of Wells Fargo & Company (the "Company") request that the Board of Directors prepare a report on the impact of mandatory arbitration policies on the Company's employees. The report shall evaluate the risks that may result from the Company's current mandatory arbitration policy on claims of workplace sexual harassment. The report shall be prepared at reasonable cost and omit proprietary and personal information, and shall be made available on the Company's website.

#### SUPPORTING STATEMENT:

Workplace sexual harassment has become a significant social policy issue. A 2018 national survey found that 81 percent of women and 43 percent of men reported experiencing sexual harassment and/or assault in their lifetime. 38 percent of women and 13 percent of men said they experienced sexual harassment at the workplace (<https://tinyurl.com/y5r2egc9>).

We believe that the mandatory arbitration process is ill-suited to remedy sexual harassment claims by employees. The secrecy of proceedings and arbitrators' decisions means potential witnesses may not learn of claims or get the opportunity to testify. The Equal Employment Opportunity Commission (EEOC) has found that forced arbitration "can prevent employees from learning about similar concerns shared by others in their workplace" (<https://www.eeoc.gov/eeoc/systemic/review/>). According to a February 2018 letter from 56 attorneys general of the States, District of Columbia, and territories, arbitration perpetuates the "culture of silence that protects perpetrators at the cost of their victims" (<https://www.natlawreview.com/article/attorneys-general-support-ending-arbitration-workplace-sexual-harassment-claims>).

Tolerating harassment invites great legal, brand, financial, and human capital risk:

- Companies have incurred legal damages or paid settlements in the hundreds of millions of dollars and threat of lawsuits is increasing.
- Companies may experience reduced morale, lost productivity, absenteeism, turnover, and challenges recruiting and retaining talent.
- Sexual harassment claims have been shown to cause significant damage to company reputations. (<https://tinyurl.com/yaqxqvp5>)
- Companies that have lost leadership over harassment allegations include: CBS, Nike, Papa Johns, Texas Instruments, Uber, Walt Disney, and Wynn Resorts. Leadership turnover puts shareholder value at risk.

Institutional investors are increasingly focusing sexual harassment as an investment risk, many of whom may be clients of the Company. The Financial Times has reported on ways institutional

investors have “put asset managers under a microscope” on the issue of sexual harassment (<https://www.ft.com/content/1a481b4c-5ff6-11e8-9334-2218e7146b04>).

The Company settled a sexual harassment lawsuit with the SEC in 2014. In its investigation, the EEOC found that “although the offensive conduct was reported to management several times, Wells Fargo failed to act quickly to stop it” (<https://www.eeoc.gov/eeoc/newsroom/release/9-15-14b.cfm>). The Company requires that employee disputes be resolved through arbitration (Casares v. WELLS FARGO BANK, NA, Dist. Court, Dist. Of Columbia 2017).

In our view, it is no longer socially acceptable to deny victims of workplace sexual harassment their day in court. Many large employers including Microsoft, Google, and Facebook have recently rescinded their mandatory arbitration policies for sexual harassment claims. We believe the Board of Directors should evaluate the risks of the Company’s current mandatory arbitration policy and report to shareholders.

For these reasons, we urge you to vote FOR this proposal.



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TRUST

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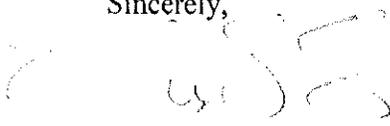
Molly Betournay  
Director of Social Research & Advocacy  
Clean Yield Asset Management  
[molly@cleanyield.com](mailto:molly@cleanyield.com)

Ref: Oliver & Jennifer Blackman JT Ten

Dear Molly,

As of November 8, 2019, Oliver P. & Jennifer Blackman Jt. Ten. held and has held continuously for at least one year, 2,000 (two thousand) shares of Wells Fargo common stock.

Sincerely,



Scott S. Sumner  
Vice President/Head of Custody

Fiduciary Trust Company

53 State Street, Boston, MA 02109 • 617-482-5270 • [fiduciary-trust.com](http://fiduciary-trust.com)

November 8, 2019

Molly Betournay  
Director of Research & Advocacy  
Clean Yield Asset Management  
16 Beaver Meadow Road  
P.O. Box 874  
Norwich, VT 05055

Dear Ms. Betournay:

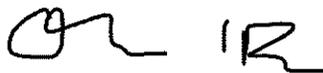
We hereby authorize Clean Yield Asset Management to file a shareholder resolution with our stock regarding mandatory arbitration at the Wells Fargo & Company 2020 annual meeting. Specifically, the proposal requests that the Wells Fargo Board of Directors prepare a report on the impact of mandatory arbitration policies on the Company's employees. The report shall evaluate the risks that may result from the Company's current mandatory arbitration policy on claims of workplace sexual harassment.

We confirm that we are the beneficial owner of more than \$2,000 worth of common stock in Wells Fargo (WFC) and have held this position continuously for more than a year. We will retain this position through the date of the company's annual meeting in 2020.

We specifically give Clean Yield Asset Management full authority to deal with any and all aspects of the aforementioned shareholder resolution. We understand that our names may be identified on the corporation's proxy statement as the filer of the aforementioned resolution.

Sincerely,

Oliver P. Blackman



Jennifer Blackman

