



DIVISION OF
CORPORATION FINANCE

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

February 28, 2022

Elizabeth A. Ising
Gibson, Dunn & Crutcher LLP

Re: Well Fargo & Company (the "Company")
Incoming letter dated December 24, 2021

Dear Ms. Ising:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the National Legal and Policy Center for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests a report, published on the Company's website and updated semi-annually, that discloses, itemizes and quantifies all Company charitable donations, aggregated by recipient name and address each year for contributions that exceed \$999 annually.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(3). We are unable to conclude that you have demonstrated objectively that the Proposal is materially false or misleading.

We are unable to concur in 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 do not substantially implement the Proposal.

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2021-2022-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Paul Chesser
National Legal and Policy Center

December 24, 2021

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 the National Legal and Policy Center
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 2022 Annual Meeting of Shareholders (collectively, the “2022 Proxy Materials”) a shareholder proposal (the “Proposal”) and statement in support thereof (the “Supporting Statement”) submitted by the National Legal and Policy Center (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 2022 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 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 Proponent that if the Proponent elects 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: The shareholders request that Wells Fargo & Company provide a report, published on the company's website and updated semi-annually – and omitting proprietary information and at reasonable cost – that discloses, itemizes and quantifies all Company charitable donations, aggregated by recipient name & address each year for contributions that exceed \$999 annually.

This report shall include:

1. Monetary and non-monetary contributions made to non-profit organizations operating under Section 501(c)(3) and 501(c)(4) of the Internal Revenue Code, and any other public or private charitable organization;
2. Policies and procedures for charitable contributions (both direct and indirect) made with corporate assets;
3. Rationale for each of the charitable contributions.

To the extent reasonable and permissible, the report may include the type of information requested above for charities and foundations controlled or managed by the Company, including the Wells Fargo Foundation.

A copy of the Proposal and the Supporting Statement, as well as related correspondence with the Proponent, is attached hereto as Exhibit A.

BASES FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal properly may be excluded from the 2022 Proxy Materials pursuant to:

- Rule 14a-8(i)(10) upon confirmation that a report on charitable contributions is published on the Company's website (the "Report") because, combined with the Company's extensive existing disclosures, the Company will have substantially implemented the Proposal; and
- Rule 14a-8(i)(3) because the Proposal is materially false and misleading.

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ANALYSIS

I. **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 interpretation in Exchange Act Release No. 40018, at n.30 (May 21, 1998).

Under this standard, when a company can demonstrate that it already has taken actions to address the underlying concerns and essential objectives of a shareholder proposal, the Staff has concurred that the proposal has been “substantially implemented” and may be excluded as moot. 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).

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

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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. The Report, When Published, Will Substantially Implement The Proposal When Combined With The Company's Extensive Existing Disclosures

The Proposal requests that the Company publish a report regarding corporate and foundation charitable contributions. The Company already provides extensive disclosures regarding its charitable contributions on its website. In addition, the Company currently expects to publish the Report setting forth additional information on charitable contributions. The Report combined with the existing disclosures will substantially implement the Proposal because they will address the Proposal's essential objective consistent with Rule 14a-8(i)(10).

C. Supplemental Notification Following Publication Of The Report

We submit this no-action request before the Report has been published to address the timing requirements of Rule 14a-8(j). We will supplementally notify the Staff and the Proponent after publication of the Report on the Company's website, which we currently expect to occur by January 21, 2022. The Staff consistently has granted no-action relief under Rule 14a-8(i)(10) where a company has notified the Staff that it expects to take certain actions 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

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notified the Staff of its intention to omit a shareholder proposal under Rule 14a-8(i)(10) because shortly thereafter the company was expected to take action that would substantially implement the proposal, and the company supplementally notified the Staff of such action).

II. The Proposal May Be Excluded Under Rule 14a-8(i)(3) Because It is Materially False And Misleading

As discussed below, the Proposal is rendered materially false and misleading by asserting that the requested report on “charitable contributions” made by the Company and the Foundation would require disclosure of contributions made to non-profit organizations operating under Section 501(c)(4) of Internal Revenue Code, because the Proposal falsely characterizes Section 501(c)(4) organizations as “charitable organizations.”

Rule 14a-8(i)(3) provides that a company may exclude from its proxy materials a shareholder proposal if the proposal or supporting statement is “contrary to any of the Commission’s proxy rules, including [Rule] 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials.” Specifically, Rule 14a-9 provides that no solicitation shall be made by means of any proxy statement “containing any statement which, at the time and in light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading.” In Staff Legal Bulletin No. 14B (Sept. 15, 2004), the Staff stated that exclusion under Rule 14a-8(i)(3) may be appropriate where “the company demonstrates objectively that a factual statement is materially false or misleading.”

The Staff consistently has concurred with the exclusion under Rule 14a-8(i)(3) of entire shareholder proposals that contain statements that are materially false or misleading when those statements are central to the proposal. For example, in *General Magic, Inc.* (avail. May 1, 2000), the Staff concurred with the exclusion of a proposal requesting that the company make “no more false statements” to its shareholders because the proposal created the false impression that the company tolerated dishonest behavior by its employees when in fact the company had corporate policies to the contrary. *See also Ferro Corp.* (avail. Mar. 17, 2015) (concurring with the exclusion of a proposal requesting that the company reincorporate in Delaware based on misstatements of Ohio law, which improperly suggested that the shareholders would have increased rights if Delaware law governed the company instead of Ohio law); *General Electric Co.* (avail. Jan. 6, 2009) (concurring with the exclusion of a proposal under which any director who received more than 25% in “withheld” votes would not be permitted to serve on any key board committee for two years because the company did not typically allow shareholders to withhold votes in director elections); *Johnson & Johnson* (avail. Jan. 31, 2007) (concurring with the exclusion of a proposal where the proposal concerned an advisory vote to approve the compensation committee report because it contained misleading implications about Commission

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rules concerning the contents of the report); *State Street Corp.* (avail. Mar. 1, 2005) (concurring with the exclusion of a proposal requesting shareholder action pursuant to a section of state law that had been recodified and was thus no longer applicable); *Duke Energy Corp.* (avail. Feb. 8, 2002) (concurring with exclusion under Rule 14a-8(i)(3) of a proposal that urged the company’s board to “adopt a policy to transition to a nominating committee composed entirely of independent directors as openings occur” because the company had no nominating committee).

Here, the Proposal is framed as calling for a report on and refers repeatedly to requests for disclosure of “charitable donations,” with the Proposal titled “Request for Charitable Donation Disclosure,” the Resolved clause indicating that the requested report address “charitable donations” and the Supporting Statement referring repeatedly to “charitable contributions” and the “charitable use of corporate assets.” However, the body of the Proposal is misleading in stating that such a report would include information regarding contributions made to “other public or private charitable organizations,” including non-profit organizations operating under “Section 501(c)(4) of the Internal Revenue Code.”

Section 501(c) of the Internal Revenue Code of 1986, as amended (the “Code”), lists the types of organizations exempt from Federal income tax and explains the criteria used to determine when an organization qualifies for such exemption. As the Internal Revenue Service explains, a Section 501(c)(3) organization is “commonly referred to as a charitable organization” because such organizations “are eligible to receive tax-deductible contributions in accordance with . . . [S]ection 170” of the Code.¹ In order to qualify as a Section 501(c)(3) organization, the organization “must be organized and operated exclusively for exempt purposes set forth in [S]ection 501(c)(3)”² of the Code and “it may not attempt to influence legislation as a substantial part of its activities and it may not participate in any campaign activity for or against political candidates.”³ By contrast, a Section 501(c)(4) organization may attempt to influence legislation or participate in political campaign activity, and contributions to a Section 501(c)(4) organization “generally are not deductible as *charitable contributions* for federal income tax purposes” (emphasis added).⁴

¹ See Exemption Requirements – 501(c)(3) Organizations (last updated Sept. 7, 2021), available at <https://www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-501c3-organizations>.

² Those purposes are limited to operating for religious, educational, charitable, scientific, literary, public safety or educational purposes, to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals organizations.

³ *Id.*

⁴ See Donations to Section 501(c)(4) Organizations (last updated Sept. 23, 2021), available at <https://www.irs.gov/charities-non-profits/other-non-profits/donations-to-section-501c4-organizations>.

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Despite the legal distinction between Section 501(c)(3) and Section 501(c)(4) organizations, the Proposal misleadingly conflates the two types of organizations by referring to them collectively as “charitable organization[s]” that may receive “charitable contributions” from the Company or the Foundation. Moreover, the Proposal falsely characterizes Section 501(c)(4) organizations as among the “public and private charitable organization[s]” to which the Company makes charitable contributions. Thus, the Proposal creates the false impression for shareholders that donations to such Section 501(c)(4) organizations are tax deductible as charitable contributions for federal income tax purposes and therefore would be included in any report requesting disclosure of the Company’s “charitable donations” and “charitable contributions.” To the contrary, because contributions to Section 501(c)(4) organizations are generally *not* tax deductible as charitable contributions, such contributions are not “charitable,” as such term is contemplated by the Proposal. Because of the materially false and misleading language of the Proposal, shareholders would be misled into believing that contributions to Section 501(c)(4) organizations would be disclosed in the Proposal’s requested report.

For these reasons, the Proposal would impermissibly and materially mislead shareholders, like the proposals in *General Magic* and the other precedents discussed above. By requesting a report on “charitable contributions” to organizations that, while operating as non-profits, are not “charitable organizations” under the Code, the Proposal implies that contributions to Section 501(c)(4) organizations are the same as contributions to charitable organizations qualified under Section 501(c)(3) of the Code. As discussed above, under the Code, Section 501(c)(4) organizations are specifically excluded from the category of “charitable organizations” and therefore contributions to Section 501(c)(4) organizations do not qualify as “charitable contributions.” As a result, it would be inappropriate to include any such donations in a report on the Company’s and the Foundation’s *charitable* giving. To state otherwise is materially false and misleading to shareholders and violates Rule 14a-9. Because the scope of the Company’s charitable reporting disclosure is central to the Proposal, the misleading statements are material to investors’ understanding of the Proposal. Accordingly, the Proposal is excludable under Rule 14a-8(i)(3) for containing materially false and misleading statements that violate Rule 14a-9.

CONCLUSION

Based upon the foregoing analysis and further details to be provided supplementally as discussed above, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2022 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

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matter, please do not hesitate to call me at (202) 955-8287 or Mara Garcia Kaplan, Senior Vice President, Senior Company Counsel, Corporate Governance & Securities, at (651) 263-3117.

Sincerely,



Elizabeth A. Ising

Enclosures

cc: Mara Garcia Kaplan, Senior Vice President, Senior Company Counsel Corporate
Governance & Securities
Paul Chesser, National Legal and Policy Center

EXHIBIT A

From: Paul Chesser [REDACTED]
Date: Friday, Nov 05, 2021, 4:41 PM
To: Augliera, Anthony R (Legal) <anthony.augliera@wellsfargo.com>
Cc: Investor Relations <InvestorRelations@wellsfargo.com>, [REDACTED]
Subject: Shareholder resolution for 2022 annual meeting

Dear Mr. Augliera/Corporate Secretary,

Attached please find cover letter with enclosed shareholder proposal for consideration at Wells Fargo & Company's 2022 annual shareholder meeting. If you could confirm receipt of this, I would appreciate it.

Sincerely,

Paul Chesser
Director, Corporate Integrity Project
National Legal and Policy Center
nlpc.org
[REDACTED]

National Legal and Policy Center

"promoting ethics in public life"



November 5, 2021

Mr. Anthony R. Augliera
Deputy General Counsel & Secretary
Wells Fargo & Company
MAC# D1130-117
301 South Tryon Street, 11th Floor,
Charlotte, NC 28282

VIA FEDEX & EMAIL: anthony.augliera@wellsfargo.com,
investorrelations@wellsfargo.com

Dear Mr. Augliera/Corporate Secretary:

I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in Wells Fargo & Company's ("Company") proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the U.S. Securities and Exchange Commission's proxy regulations.

National Legal and Policy Center (NLPC) is the beneficial owner of 101 shares of the Company's common stock with a value exceeding \$2,000, which shares have been held continuously for more than a year prior to this date of submission. NLPC intends to hold the shares through the date of the Company's next annual meeting of shareholders. A proof of ownership letter is forthcoming and will be delivered to the Company.

The Proposal is submitted in order to promote shareholder value by requesting the Board of Directors to adopt a policy for full disclosure of its charitable contributions. Either an NLPC representative or I will present the Proposal for consideration at the annual meeting of shareholders.

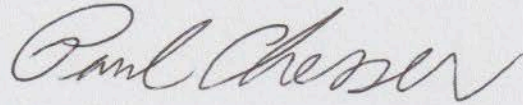
I am able to meet with the Company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the proposal. I can be reached at [REDACTED] or at [REDACTED]. I am available Monday through Friday from 9am to 5pm, Eastern Time.

Nat'l Headquarters: [REDACTED]

Phone: [REDACTED] Email: [REDACTED]

If you have any questions, please contact me at the above phone number. Copies of correspondence or a request for a "no-action" letter should be forwarded to me at [REDACTED]

Sincerely,

A handwritten signature in cursive script that reads "Paul Chesser".

Paul Chesser
Director
Corporate Integrity Project

Enclosure: "Request for Charitable Donation
Disclosure" proposal

Request for Charitable Donation Disclosure

RESOLVED:

The shareholders request that Wells Fargo & Company provide a report, published on the company's website and updated semi-annually – and omitting proprietary information and at reasonable cost – that discloses, itemizes and quantifies all Company charitable donations, aggregated by recipient name & address each year for contributions that exceed \$999 annually.

This report shall include:

1. Monetary and non-monetary contributions made to non-profit organizations operating under Section 501(c)(3) and 501(c)(4) of the Internal Revenue Code, and any other public or private charitable organization;
2. Policies and procedures for charitable contributions (both direct and indirect) made with corporate assets;
3. Rationale for each of the charitable contributions.

To the extent reasonable and permissible, the report may include the type of information requested above for charities and foundations controlled or managed by the Company, including the Wells Fargo Foundation.

SUPPORTING STATEMENT:

Wells Fargo & Company's assets belong to its shareholders. The expenditure or distribution of corporate assets, including charitable contributions, should be consistent with shareholder interests. Accordingly, the Company's policies and procedures for charitable contributions should be disclosed to shareholders.

Company executives exercise wide discretion over the use of corporate assets for charitable purposes. Absent a system of transparency and accountability for charitable contributions, Company executives may use Company assets for objectives that are not shared by and may be inimical to the interests of the Company and its shareholders.

Current disclosure is insufficient to allow the Company's Board, its shareholders, and its current and prospective customers to fully evaluate the charitable use of corporate assets.

There is currently no single source providing shareholders the information sought by this resolution.

From: Kaplan, Mara G. (Legal) <Mara.G.Kaplan@wellsfargo.com>

Sent: Thursday, November 11, 2021 2:02 PM

To: [REDACTED]

Cc: Richter, Tangela (Legal) <Tangela.Richter@wellsfargo.com>

Subject: Wells Fargo & Company / National Legal and Policy Center Letter & Proposal

Dear Mr. Chesser,

Please see the attached letter and enclosures, related to your letter and the proposal submitted on November 5, 2021.

Please confirm receipt of this correspondence by replying to this email.

Thank you,

-Mara

Mara Garcia Kaplan
Senior Vice President | Senior Company Counsel
Corporate Governance & Securities
Wells Fargo & Company

November 11, 2021

VIA OVERNIGHT MAIL AND EMAIL

Paul Chesser
National Legal and Policy Center

Dear Mr. Chesser:

I am writing on behalf of Wells Fargo & Company (the “**Company**”), which received on November 5, 2021, the shareholder proposal entitled “Request for Charitable Donation Disclosure” that you submitted on November 5, 2021 (the “**Submission Date**”) on behalf of the National Legal and Policy Center (the “**Proponent**”) pursuant to Securities and Exchange Commission (“**SEC**”) Rule 14a-8 for inclusion in the proxy statement for the Company’s 2022 Annual Meeting of Shareholders (the “**Proposal**”).

The Proposal contains certain procedural deficiencies, which SEC regulations require us to bring to your attention. Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended, provides that a shareholder proponent must submit sufficient proof of its continuous ownership of company shares. Thus, with respect to the Proposal, Rule 14a-8 requires that the Proponent demonstrate that the Proponent has continuously owned at least:

- (1) \$2,000 in market value of the Company’s shares entitled to vote on the Proposal for at least three years preceding and including the Submission Date;
- (2) \$15,000 in market value of the Company’s shares entitled to vote on the Proposal for at least two years preceding and including the Submission Date;
- (3) \$25,000 in market value of the Company’s shares entitled to vote on the Proposal for at least one year preceding and including the Submission Date; or

- (4) \$2,000 of the Company's shares entitled to vote on the Proposal for at least one year as of January 4, 2021, and that the Proponent has continuously maintained a minimum investment amount of at least \$2,000 of such shares from January 4, 2021 through the Submission Date (each an **"Ownership Requirement,"** and collectively, the **"Ownership Requirements"**).

The Company's stock records do not indicate that the Proponent is the record owner of sufficient shares to satisfy any of the Ownership Requirements. In addition, to date we have not received proof that the Proponent has satisfied any of the Ownership Requirements.

To remedy this defect, the Proponent must submit sufficient proof that the Proponent has satisfied at least one of the Ownership Requirements. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of either:

- (1) a written statement from the "record" holder of the Proponent's shares (usually a broker or a bank) verifying that, at the time the Proponent submitted the Proposal (the Submission Date), the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above; or
- (2) if the Proponent was required to and has filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, demonstrating that the Proponent met at least one of the Ownership Requirements above, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above.

If the Proponent intends to demonstrate ownership by submitting a written statement from the "record" holder of the Proponent's shares as set forth in (1) above, please note that most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company ("**DTC**"), a registered clearing agency that acts as a securities depository (DTC is also known through the account name of Cede & Co.). Under SEC Staff Legal Bulletin No. 14F, only DTC participants are viewed as record holders of securities that are deposited at DTC. You can confirm whether the Proponent's broker or bank is a DTC participant by asking the Proponent's broker or bank or by checking DTC's participant list, which is available at <http://www.dtcc.com/~media/Files/Downloads/client-center/DTC/alpha.ashx>. In these situations, shareholders need to obtain proof of ownership from the DTC participant through which the securities are held, as follows:

- (1) If the Proponent's broker or bank is a DTC participant, then the Proponent needs to submit a written statement from the Proponent's broker or bank verifying that the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above.
- (2) If the Proponent's broker or bank is not a DTC participant, then the Proponent needs to submit proof of ownership from the DTC participant through which the shares are held verifying that the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above. You should be able to find out the identity of the DTC participant by asking the Proponent's broker or bank. If the Proponent's broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through the Proponent's account statements, because the clearing broker identified on the account statements will generally be a DTC participant. If the DTC participant that holds the Proponent's shares is not able to confirm the Proponent's individual holdings but is able to confirm the holdings of the Proponent's broker or bank, then the Proponent needs to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements verifying that the Proponent continuously held Company shares satisfying at least one of the Ownership Requirements above: (i) one from the Proponent's broker or bank confirming the Proponent's ownership, and (ii) the other from the DTC participant confirming the broker or bank's ownership.

The SEC's rules require that any response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me at 90 S 7th St., Floor 17, MAC N9305-174, Minneapolis, MN 55402-3903. Alternatively, you may transmit any response by email at mara.g.kaplan@wellsfargo.com.

If you have any questions with respect to the foregoing, please contact me at 651-263-3117. For your reference, I enclose a copy of Rule 14a-8 as amended for meetings

that occur on or after January 1, 2022 but before January 1, 2023 and Staff Legal Bulletin No. 14F.

Sincerely,

Mara Garcia Kaplan

Mara Garcia Kaplan
Senior Vice President, Senior Company Counsel
Corporate Governance & Securities

cc Tangela Richter, Wells Fargo & Company, Executive Vice President,
Deputy General Counsel & Secretary

Enclosures

From: Paul Chesser [REDACTED]
Sent: Monday, November 15, 2021 12:44 PM
To: Kaplan, Mara G. (Legal) <Mara.G.Kaplan@wellsfargo.com>
Cc: Richter, Tangela (Legal) <Tangela.Richter@wellsfargo.com>; [REDACTED]
Subject: Re: Wells Fargo & Company / National Legal and Policy Center Letter & Proposal

Dear Mara,

This email responds to your email alleging a deficiency in the submission of our "Request for Charitable Donation Disclosure" proposal. I have attached a verification letter from Fidelity of our holdings.

If you could confirm receipt, I would appreciate it.

Sincerely,

Paul

Paul Chesser
Director, Corporate Integrity Project
National Legal and Policy Center
nlpc.org
[REDACTED]

January 21, 2022

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
Supplemental Letter Regarding Shareholder Proposal of the National
Legal and Policy Center
Securities Exchange Act of 1934—Rule 14a-8*

Ladies and Gentlemen:

On December 24, 2021, we submitted a letter (the “No-Action Request”) on behalf of Wells Fargo & Company (the “Company”) notifying the staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) that the Company intends to omit from its proxy statement and form of proxy for its 2022 Annual Meeting of Shareholders (collectively, the “2022 Proxy Materials”) a shareholder proposal (the “Proposal”) and statements in support thereof (the “Supporting Statement”) submitted by the National Legal and Policy Center (the “Proponent”). See Exhibit A.

The Proposal states:

RESOLVED: The shareholders request that Wells Fargo & Company provide a report, published on the company’s website and updated semi-annually – and omitting proprietary information and at reasonable cost – that discloses, itemizes and quantifies all Company charitable donations, aggregated by recipient name & address each year for contributions that exceed \$999 annually.

This report shall include:

1. Monetary and non-monetary contributions made to non-profit organizations operating under Section 501(c)(3) and 501(c)(4) of the Internal Revenue Code, and any other public or private charitable organization;
2. Policies and procedures for charitable contributions (both direct and indirect) made with corporate assets;
3. Rationale for each of the charitable contributions.

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To the extent reasonable and permissible, the report may include the type of information requested above for charities and foundations controlled or managed by the Company, including the Wells Fargo Foundation.

BASIS FOR SUPPLEMENTAL LETTER

As noted in relevant part in the No-Action Request, we respectfully request that the Staff concur in our view that the Proposal properly may be excluded from the 2022 Proxy Materials pursuant to Rule 14a-8(i)(10) because the Company published on its website a report on charitable contributions (the “Report”) that, when combined with the Company’s extensive other disclosures, means that the Company has substantially implemented the Proposal.

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 interpretation in Exchange Act Release No. 40018, at n.30 (May 21, 1998).

Under this standard, when a company can demonstrate that it already has taken actions to address the underlying concerns and essential objectives of a shareholder proposal, the Staff has concurred that the proposal has been “substantially implemented” and may be excluded as moot. 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).

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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).

In particular, the Staff has permitted the exclusion under Rule 14a-8(i)(10) where a company satisfied the essential objective of shareholder proposals requesting disclosure regarding a company’s charitable contributions even where the proposals had not been implemented exactly as proposed by the proponent. For example, in *Pfizer Inc.* (avail. Feb. 5, 2020), the Staff concurred with the exclusion under Rule 14a-8(i)(10) of a shareholder proposal requesting that the company disclose on its website the standards and rationale for the company’s charitable contributions and the recipients of donations of \$1,000 or more. In support of its argument that the company’s existing disclosures achieved the essential objective the proposal, Pfizer explained that information regarding the “bulk” of its charitable contributions was already disclosed on various publicly available webpages and that its existing website disclosure provided details regarding the types of programs the company supports, the application periods for grants, the types of programming for which funding was expected to be available, and the types of charity events that the company would and would not support. Although the company’s existing website disclosures did not provide the requested information for “any recipient who receives \$1,000 or more” of charitable contributions, the Staff concurred

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that Pfizer had substantially implemented the proposal. Similarly, in *PG&E Corp.* (avail. Mar. 10, 2010), the Staff concurred with the exclusion under Rule 14a-8(i)(10) of a proposal requesting a report disclosing, among other things, the “business rationale and purpose for each of the [company’s] charitable contributions” where the company referred to its website disclosures that described its policies and guidelines for determining the types of grants it would and would not fund, but did not disclose each charitable contribution made by the company. Although the proposal appeared to request specific disclosures regarding each and every charitable contribution made by the company, the Staff concluded that the company’s existing disclosures compared favorably to the proposal’s requests and concurred that the proposal had been substantially implemented. *See also, e.g., The Boeing Co.* (avail. Feb. 3, 2016) (concurring with the exclusion under Rule 14a-8(i)(10) of a proposal requesting a report on, among other matters, the intended purpose of each charitable contribution by the company, where Boeing disclosed the intended purpose of its charitable giving but did not disclose each contribution made by the company); *MGM Resorts Int’l* (avail. Feb. 28, 2012) (concurring with the exclusion under Rule 14a-8(i)(10) of a proposal requesting a report on the company’s sustainability policies and performance, including multiple objective statistical indicators, where the company published an annual sustainability report); *Exelon Corp.* (avail. Feb. 26, 2010) (concurring with the exclusion under Rule 14a-8(i)(10) of a proposal requesting a report disclosing the company’s policies and procedures for political contributions and its monetary and non-monetary political contributions where the company had adopted corporate political contributions guidelines).

B. The Proposal May be Excluded Pursuant to Rule 14a-8(i)(10) Because the Company Has Substantially Implemented the Proposal

The Proposal requests that the Company disclose information regarding “charitable donations” made by the Company and, to the extent reasonable and permissible, the charities and foundations controlled or managed by the Company, including the Wells Fargo Foundation (the “Foundation”). In addition, the Proposal requests that the Company disclose the policies and procedures for “charitable contributions” made by the Company and the Foundation, as well as the rationale for such charitable contributions. As described below, the Company has already achieved the essential objective of the Proposal, which is disclosure regarding the charitable giving standards of the Company and the Foundation, through its existing public disclosure and reporting.

The Company’s website contains extensive disclosure relating to the bulk of the charitable contributions of the Company and the Foundation, including the recipients’ names and addresses, amounts contributed, and information about recipients’ activities. Specifically, the

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Company's "Community Giving" webpage,¹ which is directly accessible from the Company's main website, provides access to the Wells Fargo Impact Map (the "Impact Map")² and various news stories about charitable contributions to individual organizations,³ and the Company's "Goals and Reporting" webpage,⁴ which is also directly accessible from the Company's main website, provides access to the Foundation's most recent Internal Revenue Service Form 990 ("Form 990").⁵ The Form 990 lists the Company's contributions to the Foundation as well as the names of all recipients of the Foundation's charitable contributions during 2020 and the dates and amounts of such contributions. The Impact Map complements and expands on the Form 990 by providing an interactive tool that allows readers to obtain detailed information about corporate and Foundation charitable contributions across the United States⁶ in 2020 by filtering donation recipients by geographical location and/or the particular cause that the recipient advances, such as small business growth, environment, housing affordability, financial health and social services. The Impact Map currently contains this information for thousands of organizations, which represent the bulk of the charitable contributions of the Company and the Foundation. The Impact Map provides the name, address and telephone number of each recipient and provides direct links to other recipients that are focused on the same cause or that operate nearby. Thus, the existing charitable contribution disclosure and reporting publicly available on the Company's website already "discloses, itemizes and quantifies" the bulk of the charitable contributions requested by the Proposal.⁷

¹ See Community Giving, available at <https://www.wellsfargo.com/about/corporate-responsibility/community-giving>.

² See Wells Fargo Impact Map, available at <https://welcome.wf.com/impact/map/>.

³ On the webpage *Wells Fargo Stories*, the Company includes a variety of news stories about charitable donation recipients, amounts donated, the rationale for the donations and links to the recipient's website. See <https://stories.wf.com/>. For example, the website includes a video discussing these details related to the Company's \$500,000 donation to the Northwest Native Development Fund (available at <https://welcome.wf.com/impact/organization/?search=8166059>) and an article discussing these details related to the Company's \$500,000 donation to World Central Kitchen (available at <https://stories.wf.com/wells-fargo-helps-chef-jose-andres-feed-first-responders-nyc-field-hospital>).

⁴ See Goals and Reporting, available at <https://www.wellsfargo.com/about/corporate-responsibility/goals-and-reporting>.

⁵ See Wells Fargo Foundation Form 990, available at <https://www08.wellsfargomedia.com/assets/pdf/about/corporate-responsibility/private-foundation-return.pdf>.

⁶ The vast majority of the charitable contributions made by the Company and the Foundation are in the United States.

⁷ As discussed in the No-Action Request, the Proposal's request for "charitable contributions" applicable to Section 501(c)(4) organizations is materially false and misleading under Rule 14a-8(i)(3). To that end, the Company has not made any charitable contributions to such organizations, and with respect to corporate contributions the Company already discloses information about related policies, rationale and certain

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The Company also provides robust disclosures regarding the policies and procedures for charitable contributions made by the Company and the Foundation. Specifically, the Community Giving webpage⁸ and Impact webpage⁹ describe the shared charitable contributions policy of the Company and the Foundation stating, “Wells Fargo is committed to building an inclusive, sustainable recovery for all through a focus on opening pathways to economic advancement, championing safe, affordable homes, empowering small businesses to thrive, and enabling a just, low-carbon economy.” The Community Giving webpage goes on to explain that the Company, “through [its] businesses and the [Foundation], align [their] resources and expertise to make a positive impact in communities, address complex societal issues, and help build a more inclusive, sustainable future for all.” The Community Giving webpage also provides detailed policy and procedural information in its “Resources” section related to Local Community Grants,¹⁰ navigating the Grant Process,¹¹ and Community Giving – Frequently Asked Questions.¹²

With respect to the policies and procedures for obtaining charitable support from the Company or the Foundation, the Grant Process webpage provides detailed procedural information. The Grant Process webpage describes the Company’s and the Foundation’s grant eligibility criteria, the grant application process and grant evaluation considerations. The Grant Process webpage also lists the types of programs that will not be eligible to receive funding. In addition, the Community Giving – Frequently Asked Questions webpage supplements the Grant Process webpage, by providing further details and guidance regarding the Company’s and the Foundation’s policies and procedures for charitable contributions. As a result, these disclosures enable shareholders to understand and assess whether charitable contributions by the Company and the Foundation are consistent with shareholder interests.

contributions on its website. See “Corporate political spending,” available at <https://www.wellsfargo.com/about/corporate-responsibility/government-relations/>. In addition, the Foundation is prohibited from making any charitable contributions or other monetary or non-monetary contributions to such organizations.

⁸ See Community Giving, available at <https://www.wellsfargo.com/about/corporate-responsibility/community-giving>.

⁹ See Impact, available at <https://welcome.wf.com/impact/>.

¹⁰ See Local Community Grants, available at <https://www.wellsfargo.com/about/corporate-responsibility/community-giving/local/>.

¹¹ See Grant Process, available at <https://www.wellsfargo.com/about/corporate-responsibility/community-giving/grant-process/>.

¹² See Community Giving – Frequently Asked Questions, available at <https://www.wellsfargo.com/about/corporate-responsibility/community-giving/giving-faqs/>.

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Finally, the Company already discloses the rationale for the bulk of the Company's and the Foundation's charitable contributions. As described on the Company's National Priorities webpage,¹³ the Company's national priorities pertaining to charitable contributions include programs addressing financial health, housing affordability, small business growth and sustainability and environmental justice. Each identified priority issue is accompanied by a policy statement, which addresses the Company's and Foundation's approach to each issue. The Company then lists the relevant priority for each of the charitable contributions disclosed on the Impact Map. As described previously, the Impact Map allows readers to filter charitable contributions by cause (e.g., small business growth, environment, financial health, housing affordability). Each profile contains a summary of the purpose of each organization, the rationale for each donation, and the address and telephone number for each organization. The Impact Map currently contains this information for thousands of organizations, which represent the bulk of the charitable contributions of the Company and the Foundation. In addition, for some organizations, the Impact Map includes a summary of the organization's history, updates on its progress and a short informational video. The Company also describes the rationale for its charitable contributions in its annual proxy statement, which is available on the Company's website.¹⁴

In light of these extensive public disclosures describing policies and standards for charitable contributions and disclosing recipients, amounts and addresses for the bulk of the covered charitable contributions, the Company has satisfied the essential objective of the Proposal. Accordingly, consistent with the disclosures and reporting in *Pfizer*, *PG&E* and the other well established precedent discussed above, the Proposal has been substantially implemented and may therefore be properly excluded under Rule 14a-8(i)(10).

¹³ See National Priorities, available at <https://www.wellsfargo.com/about/corporate-responsibility/community-giving/national/>.

¹⁴ See 2021 Notice of Annual Meeting and Proxy Statement, available at <https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/annual-reports/2021-proxy-statement.pdf>. For example, the Company notes: "Since the outbreak of the COVID-19 pandemic, Wells Fargo's actions to support its customers, communities, and employees have further demonstrated the Company's commitment to promoting critical public benefit issues and serving the interests of these stakeholders. Our actions to support individuals and communities experiencing hardship as a result of the COVID-19 pandemic have included fee waivers, payment deferrals, and other expanded assistance for customers; charitable donations from the Wells Fargo Foundation to help address food, shelter, small business, and housing stability, and to help public health organizations fighting to contain the spread of the COVID-19 pandemic; a commitment to donate all gross processing fees received in 2020 from funding of Paycheck Protection Program loans by creating the Open for Business Fund, which provides support to struggling small businesses, impacted by the COVID-19 pandemic; and supporting the well-being and safety of our employees, including through various safety measures and the provision of additional payments and benefits to certain employees."

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CONCLUSION

Based upon the foregoing analysis and the No-Action Request, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2022 Proxy Materials. In accordance with Rule 14a-8(j), a copy of this supplemental letter and its attachments is being sent on this date to the Proponent.

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 Mara Garcia Kaplan, Senior Vice President, Senior Company Counsel, Corporate Governance & Securities, at (651) 263-3117.

Sincerely,



Elizabeth A. Ising

Enclosures

cc: Mara Garcia Kaplan, Senior Vice President, Senior Company Counsel Corporate Governance & Securities
Paul Chesser, National Legal and Policy Center

EXHIBIT A

Request for Charitable Donation Disclosure

RESOLVED:

The shareholders request that Wells Fargo & Company provide a report, published on the company's website and updated semi-annually – and omitting proprietary information and at reasonable cost – that discloses, itemizes and quantifies all Company charitable donations, aggregated by recipient name & address each year for contributions that exceed \$999 annually.

This report shall include:

1. Monetary and non-monetary contributions made to non-profit organizations operating under Section 501(c)(3) and 501(c)(4) of the Internal Revenue Code, and any other public or private charitable organization;
2. Policies and procedures for charitable contributions (both direct and indirect) made with corporate assets;
3. Rationale for each of the charitable contributions.

To the extent reasonable and permissible, the report may include the type of information requested above for charities and foundations controlled or managed by the Company, including the Wells Fargo Foundation.

SUPPORTING STATEMENT:

Wells Fargo & Company's assets belong to its shareholders. The expenditure or distribution of corporate assets, including charitable contributions, should be consistent with shareholder interests. Accordingly, the Company's policies and procedures for charitable contributions should be disclosed to shareholders.

Company executives exercise wide discretion over the use of corporate assets for charitable purposes. Absent a system of transparency and accountability for charitable contributions, Company executives may use Company assets for objectives that are not shared by and may be inimical to the interests of the Company and its shareholders.

Current disclosure is insufficient to allow the Company's Board, its shareholders, and its current and prospective customers to fully evaluate the charitable use of corporate assets.

There is currently no single source providing shareholders the information sought by this resolution.