



DIVISION OF
CORPORATION FINANCE

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

March 8, 2024

Lori Zyskowski
Gibson, Dunn & Crutcher LLP

Re: Wells Fargo & Company (the "Company")
Incoming letter dated December 29, 2023

Dear Lori Zyskowski:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the American Conservative Values ETF (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(b)(1)(i) and Rule 14a-8(f). In our view, the Proponent's original proof of ownership letter covers the one-year period required by Rule 14a-8(b)(1)(i)(C).

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/2023-2024-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Michael Ross
Alliance Defending Freedom

December 29, 2023

VIA ELECTRONIC SUBMISSION

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 American Conservative Values ETF
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 2024 Annual Meeting of Shareholders (collectively, the “2024 Proxy Materials”) a shareholder proposal (the “Proposal”) received from American Conservative Values ETF (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 2024 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 such 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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BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2024 Proxy Materials pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1) because the Proponent failed to provide the requisite proof of continuous share ownership in response to the Company's proper request for that information.

BACKGROUND

The Proposal was submitted to the Company by William E. Flaig Jr. on behalf of the Proponent on November 13, 2023 (the "Submission Date") via FedEx and was received by the Company on November 15, 2023. *See Exhibit A.* Mr. Flaig's submission did not include any documentary evidence of the Proponent's ownership of Company shares, among other deficiencies. In addition, the Company reviewed its stock records, which did not indicate that the Proponent was a record owner of Company shares.

Accordingly, the Company properly sought verification of share ownership and other documentary support from the Proponent.¹ Specifically, the Company sent the Proponent a letter, dated November 28, 2023, identifying the proof of ownership deficiency, notifying the Proponent of the requirements of Rule 14a-8 and explaining how the Proponent could cure the procedural deficiency (the "Deficiency Notice"). The Deficiency Notice, attached hereto as Exhibit B, provided detailed information regarding the "record" holder requirements, as clarified by Staff Legal Bulletin No. 14F (Oct. 18, 2011) ("SLB 14F") and Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L"), and attached a copy of Rule 14a-8, SLB 14F, and SLB 14L. Specifically, the Deficiency Notice stated:

- the ownership requirements of Rule 14a-8(b);
- that, according to the Company's stock records, the Proponent was not a record owner of sufficient shares;
- the type of statement or documentation necessary to demonstrate beneficial ownership under Rule 14a-8(b), including "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"; and

¹ The Proponent's submission also included procedural defects under Rule 14a-8 concerning its availability to engage regarding the Proposal. The Company also identified these defects in the Deficiency Notice, and they were subsequently corrected.

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- that any response had to be postmarked or transmitted electronically no later than 14 calendar days from the date the Proponent received the Deficiency Notice.

The Company sent the Deficiency Notice to the Proponent via email on November 28, 2023, which was within 14 calendar days of the Company's receipt of the Proposal. *See Exhibit C.*² On December 4, 2023, Mr. Flaig replied to the Company's email transmitting the Deficiency Notice and provided a letter from Citibank N.A., also dated December 4, 2023 (the "Citibank Letter"), verifying ownership of 8,127 Company shares as of the Submission Date. *See Exhibit D.* The Citibank Letter also verified "beneficial ownership from November 14, 2022 to November 13, 2023 of at least \$25,000 in market value of" Company shares. As discussed in more detail in the analysis below, the Citibank Letter contained a procedural deficiency: it did not provide verification that the Proponent satisfied any of the continuous ownership requirements of Rule 14a-8(b)(1) for any of the full time periods set forth in the rule because it verified ownership of more than \$25,000 in market value of the Company's shares for a period of 364 days preceding and including the Submission Date. On December 4, 2023, the Company confirmed via email that it received the Proponent's correspondence, but did not comment on its content. *See Exhibit E.*

Accordingly, the Company again sought verification of share ownership from the Proponent. Specifically, and in accordance with SLB 14L, the Company sent the Proponent a letter, dated December 6, 2023 (the "Second Deficiency Notice," and together with the First Deficiency Notice, the "Deficiency Notices"), which made clear it was addressing the specific deficiency in the Citibank Letter, reiterated the requirements of Rule 14a-8, explained how the Proponent could cure the procedural deficiency, and requested that any response to the Second Deficiency Notice be postmarked or transmitted electronically no later than 14 calendar days from the date the Second Deficiency Notice was received. The Second Deficiency Notice also included a copy of Rule 14a-8, SLB 14F, and SLB 14L. Specifically, the Second Deficiency Notice stated:

The Citibank Letter is insufficient because while it verifies ownership of 8,127 Company shares as of November 13, 2023, and beneficial ownership of at least \$25,000 in market value of Company shares from November 14, 2022 to November 13, 2023, the Citibank Letter does not verify continuous ownership of the Company shares for the one-year period preceding and including the Submission Date. To remedy this defect, and as described in the [] Deficiency Notice, the Proponent must submit sufficient proof that it has satisfied at least one of the Ownership Requirements. . . .

² The Company also transmitted a courtesy hard copy via overnight delivery on November 29, 2023, within 14 calendar days of the Company's receipt of the Proposal. *See Exhibit D.*

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The Company sent the Deficiency Notice to the Proponent via email and overnight delivery on December 6, 2023. *See Exhibit F.* Mr. Flaig provided an initial response to the Company's internal counsel on December 6, 2023 acknowledging receipt of the Second Deficiency Notice. *See Exhibit G.* On December 7, 2023, Mr. Flaig sent a second email to Company's internal counsel and included a letter from Citibank, N.A. dated December 7, 2023 (the "Second Citibank Letter," and together with the Citibank Letter, the "Broker Letters"). The Second Citibank Letter again verified ownership of 8,127 Company shares as of the Submission Date, and "beneficial ownership from November 14, 2022 to November 13, 2023 of at least \$25,000 in market value of" Company shares. The Second Citibank Letter further confirmed continuous beneficial ownership "for the above time frame" (i.e., November 14, 2022 to November 13, 2023). *See Exhibit H.* As of the date of this letter, the Company has not received any further proof of ownership from the Proponent.

ANALYSIS

The Proposal May Be Excluded Under Rule 14a-8(b) And Rule 14a-8(f)(1) Because The Proponent Failed To Provide Sufficient Proof Of Its Continuous Ownership Of The Company's Shares To Satisfy The Ownership Requirements Of Rule 14a-8(b).

The Company may exclude the Proposal under Rule 14a-8(f)(1) because the Proponent failed to substantiate its eligibility to submit the Proposal in compliance with Rule 14a-8(b). Rule 14a-8(b) 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; or
- (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 (each an "Ownership Requirement," and collectively, the "Ownership Requirements").

Each of the Ownership Requirements were specifically described by the Company in the Deficiency Notices.

Rule 14a-8(f) provides that a company may exclude a shareholder proposal if the proponent fails to provide evidence of eligibility under Rule 14a-8, including the beneficial ownership requirements of Rule 14a-8(b), provided that the company timely notifies the proponent of the problem and the proponent fails to correct the deficiency within the required

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time. SLB 14 specifies that when the shareholder is not the registered holder, the shareholder “is responsible for proving his or her eligibility to submit a proposal to the company,” which the shareholder may do by one of the ways provided in Rule 14a-8(b)(2). *See* Section C.1.c, SLB 14. SLB 14F provides that proof of ownership letters may fail to satisfy Rule 14a-8(b)(1)’s requirement if they do not verify ownership “for the entire one-year period preceding and including the date the proposal [was] submitted.” This may occur if the letter verifies ownership as of a date before the submission date (leaving a gap between the verification date and the submission date) or if the letter verifies ownership as of a date after the submission date and only covers a one-year period, “thus failing to verify the shareholder’s beneficial ownership over the required full one-year period preceding the date of the proposal’s submission.” SLB 14F. The guidance in SLB 14F remains applicable even though Rule 14a-8 has since been amended to provide the tiered ownership thresholds described above. In each case, consistent with the Staff’s guidance in SLB 14F and as required by Rule 14a-8(b), a shareholder proponent must submit adequate proof demonstrating such proponent’s continuous ownership of the requisite amount of company shares for the requisite time period. In SLB 14L, the Staff reminded companies that they “should identify any specific defects in the proof of ownership letter.”

As discussed in the “Background” section above, the Broker Letters—which verified continuous ownership of more than \$25,000 in market value of the Company’s shares for a period of 364 days preceding and including the Submission Date—failed to satisfy any of the Ownership Requirements. The Broker Letters therefore did not contain adequate documentary evidence of the Proponent’s continuous ownership of Company shares for any of the requisite time periods set forth in Rule 14a-8(b). Accordingly, as established above, the Company satisfied its obligation under Rule 14a-8 by transmitting to the Proponent in a timely manner the Deficiency Notices, which specifically sets forth the information and instructions listed above and attached copies of Rule 14a-8, SLB 14F, and SLB 14L. *See Exhibits B, F.* However, despite the clear explanation in the Deficiency Notices that the Proponent had to provide the requisite documentary support within the time period specified and as required by Rule 14a-8(f)(1), the Proponent failed to do so. As such, the Proposal may be excluded.

Under well-established precedent, the Broker Letters were insufficient because they failed to satisfy any of the Ownership Requirements set forth under Rule 14a-8(b)(1) and described in the Deficiency Notices. The Staff has consistently concurred with the exclusion of proposals pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1) where, after receiving proper notice from a company, the proof of ownership submitted failed to establish that as of the date the shareholder submitted the proposal the shareholder had continuously held the requisite amount of company securities for the entire required period. For example, in *Walgreens Boots Alliance, Inc.* (avail Nov. 8, 2022), the company received a broker letter verifying the proponent’s ownership of shares of company common stock as of August 10,

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2022, two days later than the proposal's submission date of August 8, 2022. The broker letter further verified ownership of 50 shares in the company for the continuous period from August 10, 2019 to August 10, 2022 (i.e., for two years and 363 days preceding and including the submission date). In response to a timely deficiency notice, the proponent did not provide further evidentiary proof. The Staff concurred with the exclusion of the proposal under Rule 14a-8(f) because the proponent did not comply with Rule 14a-8(b)(1)(i). In *Cheniere Energy, Inc.* (avail. Apr. 7, 2022), the company received a broker letter verifying the proponent's ownership of shares of company common stock as of the date the letter was sent (August 3, 2021). However, the broker letter was silent regarding the proponent's continuous ownership for the applicable period in connection with the submission of the proposal, and also silent regarding the proponent's ownership on the date the proposal was sent to the company (July 13, 2021), which the company clearly identified in its deficiency notice that was sent to the proponent 14 days after company received the proposal. The Staff concurred with the exclusion of the proposal under Rule 14a-8(f) because the proponent "did not comply with Rule 14a-8(b)(1)(i)" noting, "the proof of ownership . . . did not meet the requirements of Rule 14a-8(b)(1)(i) because it did not demonstrate ownership for the requisite period of time." See also *Ansys Inc.* (Mar. 15, 2023) (concurring with the exclusion of a proposal where the proponent's proof verified continuous ownership for a period of two years and 363 days preceding and including the submission date); *Visa Inc.* (Nov. 8, 2022) (concurring with the exclusion of a proposal where the proponent's proof verified continuous ownership for a period of two years and 227 days preceding and including the submission date); *Amazon.com, Inc.* (avail. Apr. 2, 2021) (concurring with the exclusion of a proposal where the proponent's proof established continuous ownership of company securities for the 13 months preceding November 30, 2020, but the proponent submitted the proposal on December 17, 2020); *Exxon Mobil Corp.* (avail. Feb. 26, 2021) (concurring with the exclusion of a proposal where the proponent's proof established continuous ownership of company securities for the 12 months preceding November 30, 2020, which was one day less than the required one-year period where the proponent submitted the proposal on December 1, 2020); *United Parcel Service, Inc.* (avail. Jan. 28, 2016) (concurring with the exclusion of a proposal where the deficiency notice was sent to the proponent 14 days after the company received the proposal and the proponent's proof did not establish ownership for the entire one year period preceding the submission date); *Starbucks Corp.* (avail. Dec. 11, 2014) (concurring with the exclusion of a proposal where the proponent's proof established continuous ownership of company securities for one year as of September 26, 2014, but the proponent submitted the proposal on September 24, 2014); *Mondelēz International, Inc.* (avail. Feb. 11, 2014) (concurring with the exclusion of a proposal where the proponent's proof established continuous ownership of company securities for one year as of November 27, 2013, but the proponent submitted the proposal on November 29, 2013); *PepsiCo, Inc. (Albert)* (avail. Jan. 10, 2013) (concurring with the exclusion under Rule 14a-8(b) and Rule 14a-8(f) of a proposal where the proponent's purported proof of ownership covered the one-

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year period up to and including November 19, 2012, which was one day less than the required one-year period where the proposal was submitted on November 20, 2012).

Here, and consistent with the foregoing precedent, the Broker Letters are clearly deficient because they leave a gap regarding the Proponent's ownership on November 13, 2022 by addressing ownership of Company shares dating back only to November 14, 2022, when the Proposal was submitted on November 13, 2023 (and thus pursuant to Rule 14a-8(b)(i)(C) needed to cover a period of no less than one year prior to and including November 13, 2023)—a gap in ownership similar to the gaps in *Walgreens Boots Alliance*, *Exxon Mobil* and *PepsiCo*. The Proponent therefore failed to provide any documentary evidence satisfying any of the Ownership Requirements, either with the Proposal or in response to the Company's timely Deficiency Notices, and has therefore not demonstrated eligibility under Rule 14a-8 to submit the Proposal. The Staff has consistently concurred with the exclusion of shareholder proposals based on a proponent's failure to provide satisfactory evidence of eligibility under Rule 14a-8(b) and Rule 14a-8(f)(1). See *Exxon Mobil Corp.* (avail. Feb. 13, 2017) (concurring with the exclusion of a shareholder proposal under Rule 14a-8(b) and Rule 14a-8(f) and noting that "the proponent appears to have failed to supply, within 14 days of receipt of ExxonMobil's request, documentary support sufficiently evidencing that she satisfied the minimum ownership requirement for the one-year period required by rule 14a-8(b)"); *Cisco Systems, Inc.* (avail. Jul. 11, 2011) (same); *I.D. Systems, Inc.* (avail. Mar. 30, 2011) (same); *Amazon.com, Inc.* (avail. Mar. 29, 2011) (same); *Yahoo! Inc.* (avail. Mar. 24, 2011) (same); *Alcoa Inc.* (avail. Feb. 18, 2009) (same); *Qwest Communications International, Inc.* (avail. Feb. 28, 2008) (same); *Occidental Petroleum Corp.* (avail. Nov. 21, 2007) (same); *General Motors Corp.* (avail. Apr. 5, 2007) (same); *Yahoo! Inc.* (avail. Mar. 29, 2007) (same); *CSK Auto Corp.* (avail. Jan. 29, 2007) (same); *Motorola, Inc.* (avail. Jan. 10, 2005) (same); *Johnson & Johnson* (avail. Jan. 3, 2005) (same); *Agilent Technologies* (avail. Nov. 19, 2004) (same); *Intel Corp.* (avail. Jan. 29, 2004) (same); *Moody's Corp.* (avail. Mar. 7, 2002) (same).

As in the precedent cited above, the Proponent failed to provide adequate documentary evidence of ownership of Company shares. Therefore, the Proponent has not demonstrated eligibility under Rule 14a-8 to submit the Proposal. Accordingly, we ask that the Staff concur that the Company may exclude the Proposal under Rule 14a-8(b) and Rule 14a-8(f)(1).

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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 2024 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 (212) 351-2309, or Mara Garcia Kaplan, Senior Vice President, Senior Company Counsel, Corporate Governance & Securities, at (651) 263-3117.

Sincerely,



Lori Zyskowski

Enclosures

cc: Mara Garcia Kaplan, Senior Vice President, Senior Company Counsel, Corporate Governance & Securities
William E. Flaig Jr., Ridgeline Research LLC

Exhibit A



RIDGELINERESEARCH

Investments. Ideals. Innovation. Integrity.

Via Fed Ex

November 13th, 2023

Attn: Charles W. Scharf, CEO
420 Montgomery Street
San Francisco, CA 94104

and

Tangela Richter
Corporate Secretary
MAC# J0193-610
30 Hudson Yards
New York, New York 10001

To Whom It May Concern,

I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in the Wells Fargo & Company (the "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 United States Securities and Exchange Commission's proxy regulations.

I submit the Proposal as the investment adviser to the American Conservative Values ETF, which has continuously owned Company stock with a value exceeding \$25,000 for at least 1 year prior to and including the date of this Proposal and which intends to hold these shares through the date of the Company's 2024 annual meeting of shareholders. A Proof of Ownership letter is forthcoming and will be delivered once the company confirms receipt of this proposal and its submission date.

Pursuant to interpretations of Rule 14(a)-8 by the Securities & Exchange Commission staff, I initially propose as a time for a telephone conference to discuss this proposal December 7th, 2023 at 11:00 EST. If that proves inconvenient, I hope you will suggest some other times to speak. Please feel free to contact me at [REDACTED] so that we can determine the mode and method of that discussion.

Copies of correspondence or a request for a "no-action" letter should be sent to me at [REDACTED] and emailed to [REDACTED]

Sincerely,

William E. Flaig Jr.

Enclosure: Shareholder Proposal

William E. Flaig, Jr.
Founder & CEO

[REDACTED]

Report on Risks of Politicized De-banking

Supporting Statement:

Financial institutions are essential pillars of the marketplace. On account of their unique and pivotal role in America's economy, many federal and state laws already prohibit them from discriminating against customers. And the UN Declaration of Human Rights recognizes that "everyone has the right to freedom of thought, conscience, and religion."¹ These are an important part of protecting every American's right to free speech and free exercise of religion.

As shareholders of Wells Fargo, we believe it is essential for the company to provide financial services on an equal basis without regard to factors such as race, color, religion, sex, national origin, or social, political, or religious views.

We are concerned with recent evidence of religious and political discrimination against customers by companies in the financial services industry, as seen in recent examples² and the 2022 Statement on Debanking and Free Speech.³

The 2023 edition of the Viewpoint Diversity Business Index⁴ shows that many of the largest financial institutions include vague and subjective grounds to deny service like "reputational risk," "social risk," "misinformation," "hate speech" or "intolerance." These kinds of terms allow financial institutions to deny or restrict service for arbitrary or discriminatory reasons. They also give fringe activists and governments a foothold to demand that private financial institutions deny service under the sweeping, unfettered discretion that such policies provide.

When companies engage in this kind of discrimination, they hinder the ability of Americans to access the marketplace and instead become *de facto* regulators and censors. This undermines the fundamental freedoms of our country and is an affront to the public trust. Politicized debanking can also damage the company's reputation and ability to operate in favorable regulatory environments.

In early 2023, shareholders called for Chase, Mastercard, PayPal, Capital One, and Charles Schwab to assess whether they have adequate safeguards to prevent

¹ <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

² <https://adflegal.org/press-release/bank-america-boots-charity-serving-impovertished-ugandans-under-vague-risk-tolerance>; <https://www.newsweek.com/stop-troubling-trend-politically-motivated-debanking-opinion-1787639>; <https://www.dailymail.co.uk/news/article-12314423/The-Coutts-Farage-dossier-bank-admitted-ex-Ukip-leader-DID-meet-commercial-criteria-used-tweet-Ricky-Gervais-trans-joke-Novak-Djokovic-ties-decide-odds-position-inclusive-organisation.html>; <https://familycouncil.org/?p=25159>

³ https://storage.googleapis.com/vds_storage/document/Statement%20on%20Debanking%20and%20Free%20Speech.pdf.

⁴ <https://viewpointdiversityscore.org/business-index>

politicized de-banking.⁵ Nineteen state attorneys general and fourteen state financial officers specifically called out Chase for their de-banking of a non-profit committed to advancing religious freedom and demanded action from the company to show good faith in addressing these widespread concerns.⁶

Resolved: Shareholders request the Board of Directors of Wells Fargo conduct an evaluation and issue a report within the next year, at reasonable cost and excluding proprietary information and disclosure of anything that would constitute an admission of pending litigation, evaluating how it oversees risks related to discrimination against individuals based on their race, color, religion (including religious views), sex, national origin, or political views, and whether such discrimination may impact individuals' exercise of their constitutionally protected civil rights.

⁵ <https://www.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/investor-relations/documents/proxy-statement2023.pdf> pg. 100-101; https://s201.q4cdn.com/231198771/files/doc_financials/2023/ar/PayPal-Holdings-Inc-Combined-2023-Proxy-Statement-and-2022-Annual-Report.pdf pg. 105-106; <https://ir-capitalone.gcs-web.com/static-files/8de8dcce-b518-491d-bd78-b01a8a66028c> page 149 – 153; https://content.schwab.com/web/retail/public/about-schwab/Charles_Schwab_2023_Proxy.pdf pg. 83-85.

⁶<https://www.wsj.com/articles/jpmorgan-targeted-by-republican-states-over-accusations-of-religious-bias-903c8b26>



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Wednesday

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Signed for by: R.SAMPAGA

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How was your delivery?



DELIVERY STATUS

Delivered

TRACKING ID

786304546850 [✎](#) [☆](#)

FROM
GAITHERSBURG, MD US

Label Created
11/13/23 11:24 AM

WE HAVE YOUR PACKAGE
ROCKVILLE, MD
11/13/23 5:20 PM

ON THE WAY
SAN FRANCISCO, CA
11/15/23 7:10 AM

OUT FOR DELIVERY
SAN FRANCISCO, CA
11/15/23 8:11 AM

DELIVERED
SAN FRANCISCO, CA US
Delivered
11/15/23 at 8:36 AM

[↓ View travel history](#)

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Manage Delivery





 Shipment overview

TRACKING NUMBER 786304546850

DELIVERED TO Shipping/Receiving

SHIP DATE  11/13/23

STANDARD TRANSIT  11/16/23 before 5:00 PM

ACTUAL DELIVERY 11/15/23 at 8:36 AM

 Services

SERVICE FedEx Express Saver

TERMS Shipper

SPECIAL HANDLING SECTION Deliver Weekday

 Package details

WEIGHT 0.5 lbs / 0.23 kgs

TOTAL PIECES 1

TOTAL SHIPMENT WEIGHT 0.5 lbs / 0.23 kgs

PACKAGING FedEx Envelope

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Travel history 

Ascending 

Local Scan Time 



- 11:24 AM
Shipment information sent to FedEx
- 5:20 PM
Picked up
ROCKVILLE, MD
- 5:24 PM
Shipment arriving early
ROCKVILLE, MD
- 9:40 PM
Left FedEx origin facility
ROCKVILLE, MD

Tuesday, 11/14/23

- 8:38 AM
Arrived at FedEx hub
MEMPHIS, TN
- 2:55 PM
Departed FedEx hub
MEMPHIS, TN
- 5:11 PM
At destination sort facility
SAN FRANCISCO, CA

Wednesday, 11/15/23

- 7:10 AM
At local FedEx facility
SAN FRANCISCO, CA
- 8:11 AM
On FedEx vehicle for delivery
SAN FRANCISCO, CA
- ☑ 8:36 AM
Delivered
SAN FRANCISCO, CA

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Exhibit B

November 28, 2023

VIA OVERNIGHT MAIL AND EMAIL

William E. Flaig, Jr.

Dear Mr. Flaig:

I am writing on behalf of Wells Fargo & Company (the “**Company**”), which received on November 15, 2023, the shareholder proposal entitled “Report on Risks of Politicized De-Banking” that you submitted via mail on November 13, 2023 (the “**Submission Date**”) on behalf of American Conservative Values ETF (the “**Proponent**”) pursuant to Securities and Exchange Commission (“**SEC**”) Rule 14a-8 for inclusion in the proxy statement for the Company’s 2024 Annual Meeting of Shareholders (the “**Proposal**”).

The Proposal contains certain procedural deficiencies, which SEC regulations require us to bring to your attention and which you and the Proponent should correct as described below if the Company is to consider the Proponent to have properly submitted the Proposal.

1. Proof of Continuous Ownership

Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), provides that a shareholder proponent must submit sufficient proof of its continuous ownership of company shares preceding and including the submission date. 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; or

- (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 (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, while the submission letter states that proof of ownership will be provided, to date the Company has not received proof that the Proponent has satisfied any of the Ownership Requirements.

To remedy this defect, the Proponent must submit sufficient proof that it 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 <https://www.dtcc.com/-/media/Files/Downloads/client-center/DTC/DTC-Participant-in-Alphabetical-Listing-1.pdf>. If a shareholder's shares are held through DTC, the shareholder needs to obtain and submit to the Company 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 obtain and 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 obtain and 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.

2. Engagement Availability

Rule 14a-8(b)(1)(iii) of the Exchange Act requires a shareholder to provide the company with a written statement that it is 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 shareholder proposal, including the shareholder's contact information and the business days and specific times during the company's regular business hours that such shareholder is available to discuss the proposal with the company. We believe the statement you provided that you "initially propose as a time for a telephone conference to discuss this proposal December 7th, 2023 at 11:00 EST" is not adequate because the statement only provides one business day rather than multiple business days and specific times during the Company's regular business hours. Accordingly, to remedy this defect, the Proponent must provide a statement to the Company that includes the business days and specific times between 10 and 30 days after the Submission Date that the Proponent is available to discuss the Proposal with the Company.

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 420 Montgomery Street, San Francisco, CA 94104, or by email at [REDACTED]. Please note that the SEC's staff has stated that a proponent is responsible for confirming our receipt of any correspondence transmitted in response to this letter.

If you have any questions with respect to the foregoing, please contact me at [REDACTED]. For your reference, I enclose a copy of Rule 14a-8, Staff Legal Bulletin No. 14F and Staff Legal Bulletin No. 14L.

Sincerely,

Mara G. Kaplan

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

cc: Tangela Richter, Wells Fargo & Company, Executive Vice President,
Deputy General Counsel & Corporate Secretary (via email)
Janet McGinness, Wells Fargo & Company, Counsel Executive (via email)
Sam Rosenbaum, Wells Fargo & Company, Vice President, Assistant Corporate Secretary
(via email)

Enclosures

Exhibit C

From: Kaplan, Mara G. (Legal)

Sent: Tuesday, November 28, 2023 4:58 PM

To: [REDACTED] <[REDACTED]>

Cc: [REDACTED] Richter, Tangela (Legal) [REDACTED]

Rosenbaum, Sam (Legal) [REDACTED]

Subject: WFC Shareholder Proposal / American Conservative Values EFT

William,

Please find attached a notice in connection with the shareholder proposal submitted on behalf of American Conservative Values ETF for inclusion in the 2024 Wells Fargo Proxy Statement.

Please confirm receipt of this e-mail and the attachment. Thank you.

Warm regards,
-Mara

Mara Garcia Kaplan

Senior Vice President | Senior Lead Counsel
Corporate Governance & Securities
Wells Fargo & Company

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TRACKING ID

787112645135 [✎](#) [☆](#)

FROM

MINNEAPOLIS, MN US

Label Created

11/28/23 1:51 PM

WE HAVE YOUR PACKAGE

ROSEVILLE, MN

11/29/23 5:47 PM

ON THE WAY

ROCKVILLE, MD

11/30/23 7:45 AM

OUT FOR DELIVERY

ROCKVILLE, MD

11/30/23 9:16 AM

DELIVERED

GAITHERSBURG, MD US

Delivered

11/30/23 at 10:07 AM

[↓ View travel history](#)

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Exhibit D

From: William Flaig [REDACTED]
Sent: Monday, December 4, 2023 1:44 PM
To: Kaplan, Mara G. (Legal) [REDACTED]
Cc: [REDACTED] Richter, Tangela (Legal) [REDACTED];
Rosenbaum, Sam (Legal) <[REDACTED]>
Subject: Re: WFC Shareholder Proposal / American Conservative Values EFT

Mara, this email should satisfy the deficiencies you identified in our proposal submission.

- Proof of Continuous Ownership

Letter provided by my custodian Citbank - Attached

- Engagement Availability

In addition to the date and time (12/7/23 @11est) , I proposed in my original submission. I am also available the following dates and times.

12/5/23 11EST

12/5/23 2EST

12/7/23 11EST

12/7/23 2EST

12/8/23 11EST

12/8/23 2EST

12/12/23 11EST

12/12/23 2EST

Thanks and Regards, Bill

On Tue, Nov 28, 2023 at 5:58 PM <[REDACTED]> wrote:

William,

Please find attached a notice in connection with the shareholder proposal submitted on behalf of American Conservative Values ETF for inclusion in the 2024 Wells Fargo Proxy Statement.

Please confirm receipt of this e-mail and the attachment. Thank you.

Warm regards,

-Mara

Mara Garcia Kaplan



December 4, 2023

Wells Fargo
Office of the Corporate Secretary
Attn: Tangela Richter
30 Hudson Yards
New York, NY 10001

To whom it may concern:

Citibank N.A. ("Citibank") acts as custodian for American Conservative Values ETF with Ridgeline Research LLC (Ridgeline) as the investment manager for this fund since the fund's inception. We are providing this verification to you at Ridgeline's request.

We are writing to verify that American Conservative Values ETF (ACVF) currently owns 8,127 shares of Wells Fargo (Cusip # 949746101) as of November 13, 2023. We confirm that American Conservative Values ETF has beneficial ownership from November 14, 2022 to November 13, 2023 of at least \$25,000 in market value of the voting securities of Wells Fargo, ticker WFC and that such beneficial ownership has continuously existed as of November 13, 2023 in accordance with rule 14a-8(a)(1) of the Securities Exchange Act of 1934.

In addition, we confirm that we are a DTC participant.

Should you require further information, please contact me at [REDACTED] directly.

Sincerely,

Shaye Lipskind
Shaye Lipskind
Account Manager

Citi | Securities Services | Email: [REDACTED]

Exhibit E

From: [REDACTED]
Sent: Monday, December 4, 2023 3:11 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: WFC Shareholder Proposal / American Conservative Values EFT

Bill,
Thank you for your email. We have received your email and the attachment, which we'll review.

Best,
-Mara

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

From: William Flaig <[REDACTED]>
Sent: Monday, December 4, 2023 1:44 PM
To: Kaplan, Mara G. (Legal) [REDACTED]
Cc: [REDACTED]; Richter, Tangela (Legal) <[REDACTED]>
Rosenbaum, Sam (Legal) [REDACTED]
Subject: Re: WFC Shareholder Proposal / American Conservative Values EFT

Mara, this email should satisfy the deficiencies you identified in our proposal submission.

- Proof of Continuous Ownership
Letter provided by my custodian Citbank - Attached

- Engagement Availability

In addition to the date and time (12/7/23 @11est) , I proposed in my original submission. I am also available the following dates and times.

12/5/23 11EST
12/5/23 2EST
12/7/23 11EST
12/7/23 2EST

12/8/23 11EST
12/8/23 2EST
12/12/23 11EST
12/12/23 2EST

Thanks and Regards, Bill

On Tue, Nov 28, 2023 at 5:58 PM [REDACTED] wrote:

William,

Please find attached a notice in connection with the shareholder proposal submitted on behalf of American Conservative Values ETF for inclusion in the 2024 Wells Fargo Proxy Statement.

Please confirm receipt of this e-mail and the attachment. Thank you.

Warm regards,
-Mara

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

CONFIDENTIALITY NOTE: The contents of this message may be attorney-client privileged, protected by the work product doctrine, or contain confidential proprietary information.

If you are not the intended recipient, you must not use, copy, disclose, or take any action based on this message or any information herein. If you have received this message in error, please advise the sender immediately by reply e-mail and delete this message. Thank you for your cooperation.

Carefully consider the Fund's investment objectives, risk factors, charges and expenses before investing. This and additional information can be found in the Fund's prospectus and Summary Prospectus, which may be obtained by visiting ACVETFS.com. Read the prospectus and Summary Prospectus carefully before investing.

An investment in the Fund is subject to risks, including the possible loss of the principal amount invested. Overall, stock market risks may affect the value of individual securities in which the Fund invests. The Fund is actively managed, the Adviser's investment decisions impact the Fund's performance. The Fund and Adviser are new, the ETF has only recently commenced operations. This Fund may not be suitable for all investors.

The ACVF Fund is distributed by Foreside Fund Services, LLC.

The Fund is structured as an ETF and as a result, is subject to special risks. Shares are bought and sold at market price (closing price) not net asset value (NAV) and are not individually redeemed from the Fund. Market price returns are based on the midpoint of the bid/ask spread at 4:00pm Eastern Time (when NAV is normally determined) and do not represent the return you would receive if you traded at other times.

Exhibit F

From: [REDACTED] <[REDACTED]>
Sent: Wednesday, December 6, 2023 5:10 PM
To: [REDACTED]
Cc: [REDACTED]
[REDACTED]
Subject: RE: WFC Shareholder Proposal / American Conservative Values EFT

Bill,

In response to your message below, the information you provided on December 4 does not cure the procedural deficiencies related to the proposal you submitted on behalf of American Conservative Values ETF, as noted in my letter dated November 28, 2023. Please refer to the information in my letter and the attachments that accompanied the letter, as these materials explain what you must do to remedy the defects.

Warm regards,
-Mara

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

From: William Flaig <[REDACTED]>
Sent: Monday, December 4, 2023 1:44 PM
To: Kaplan, Mara G. (Legal) [REDACTED]
Cc: [REDACTED] Richter, Tangela (Legal) <[REDACTED]>
Rosenbaum, Sam (Legal) [REDACTED]
Subject: Re: WFC Shareholder Proposal / American Conservative Values EFT

Mara, this email should satisfy the deficiencies you identified in our proposal submission.

- Proof of Continuous Ownership
Letter provided by my custodian Citbank - Attached

- Engagement Availability

In addition to the date and time (12/7/23 @11est) , I proposed in my original submission. I am also available the following dates and times.

12/5/23 11EST
12/5/23 2EST
12/7/23 11EST
12/7/23 2EST
12/8/23 11EST
12/8/23 2EST
12/12/23 11EST
12/12/23 2EST

Thanks and Regards, Bill

On Tue, Nov 28, 2023 at 5:58 PM <[REDACTED]> wrote:

William,

Please find attached a notice in connection with the shareholder proposal submitted on behalf of American Conservative Values ETF for inclusion in the 2024 Wells Fargo Proxy Statement.

Please confirm receipt of this e-mail and the attachment. Thank you.

Warm regards,
-Mara

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

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If you are not the intended recipient, you must not use, copy, disclose, or take any action based on this message or any information herein. If you have received this message in error, please advise the sender immediately by reply e-mail and delete this message.
Thank you for your cooperation.

Carefully consider the Fund's investment objectives, risk factors, charges and expenses before investing. This and additional information can be found in the Fund's prospectus and Summary Prospectus, which may be obtained by visiting ACVETFS.com. Read the prospectus and Summary Prospectus carefully before investing.

An investment in the Fund is subject to risks, including the possible loss of the principal amount invested. Overall, stock market risks may affect the value of individual securities in which the Fund invests. The Fund is actively managed, the Adviser's investment decisions impact the Fund's performance. The Fund and Adviser are new, the ETF has only recently commenced operations. This Fund may not be suitable for all investors.


The ACVF Fund is distributed by Foreside Fund Services, LLC.

The Fund is structured as an ETF and as a result, is subject to special risks. Shares are bought and sold at market price (closing price) not net asset value (NAV) and are not individually redeemed from the Fund. Market price returns are based on the midpoint of the bid/ask spread at 4:00pm Eastern Time (when NAV is normally determined) and do not represent the return you would receive if you traded at other times.

December 6, 2023

VIA OVERNIGHT MAIL AND EMAIL

William E. Flaig, Jr.



Dear Mr. Flaig:

I am writing on behalf of Wells Fargo & Company (the “**Company**”), which received on November 15, 2023, the shareholder proposal entitled “Report on Risks of Politicized De-Banking” that you submitted via mail on November 13, 2023 (the “**Submission Date**”) on behalf of American Conservative Values ETF (the “**Proponent**”) pursuant to Securities and Exchange Commission (“**SEC**”) Rule 14a-8 for inclusion in the proxy statement for the Company’s 2024 Annual Meeting of Shareholders (the “**Proposal**”). In our letter to you dated November 28, 2023 (the “**Prior Deficiency Notice**”), we informed you of certain deficiencies regarding your submission and provided information on how to remedy the deficiencies. This letter supplements the Prior Deficiency Notice in light of your subsequent correspondence.

We are in receipt of the December 4, 2023 letter from Citibank N.A. (the “**Citibank Letter**”) addressing your ownership of the Company’s shares. The Citibank Letter does not satisfy the ownership requirements of Rule 14a-8. As we explained in the Prior Deficiency Notice, 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 preceding and including the submission date. 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; or
- (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 (each an “**Ownership Requirement**,” and collectively, the “**Ownership Requirements**”).

The Citibank Letter is insufficient because while it verifies ownership of 8,127 Company shares as of November 13, 2023, and beneficial ownership of at least \$25,000 in market value of Company shares from November 14, 2022 to November 13, 2023, the Citibank Letter does not verify continuous ownership of the Company shares for the one-year period preceding and including the Submission Date.

To remedy this defect, and as described in the Prior Deficiency Notice, the Proponent must submit sufficient proof that it 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 <https://www.dtcc.com/-/media/Files/Downloads/client-center/DTC/DTC-Participant-in-Alphabetical-Listing-1.pdf>. If a shareholder’s shares are held through DTC, the shareholder needs to obtain and submit to the Company 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 obtain and 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 obtain and 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 420 Montgomery Street, San Francisco, CA 94104, or by email at [REDACTED]. Please note that the SEC's staff has stated that a proponent is responsible for confirming our receipt of any correspondence transmitted in response to this letter.

If you have any questions with respect to the foregoing, please contact me at [REDACTED]. For your reference, I enclose another copy of Rule 14a-8, Staff Legal Bulletin No. 14F and Staff Legal Bulletin No. 14L.

Sincerely,

Mara G. Kaplan

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

cc: Tangela Richter, Wells Fargo & Company, Executive Vice President,
Deputy General Counsel & Corporate Secretary (via email)
Janet McGinness, Wells Fargo & Company, Counsel Executive (via email)
Sam Rosenbaum, Wells Fargo & Company, Vice President, Assistant Corporate Secretary
(via email)

Enclosures



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12/7/23 at 9:39 AM

Signed for by: A.AXELLE

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12/6/23 2:38 PM

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ROSEVILLE, MN

12/6/23 5:47 PM

ON THE WAY

ROCKVILLE, MD

12/7/23 8:00 AM

OUT FOR DELIVERY

ROCKVILLE, MD

12/7/23 9:12 AM

DELIVERED

GAITHERSBURG, MD US

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12/7/23 at 9:39 AM

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 Shipment overview

TRACKING NUMBER 787580456061

DELIVERED TO Receptionist/Front Desk

SHIP DATE  12/6/23

STANDARD TRANSIT  12/7/23 before 12:00 PM

ACTUAL DELIVERY 12/7/23 at 9:39 AM

 Services

SERVICE FedEx Priority Overnight

TERMS Shipper

SPECIAL HANDLING SECTION Deliver Weekday

 Package details

WEIGHT 0.5 lbs / 0.23 kgs

TOTAL PIECES 1

TOTAL SHIPMENT WEIGHT 0.5 lbs / 0.23 kgs

PACKAGING FedEx Envelope

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Ascending



Local Scan Time





● 2:58 PM
Shipment information sent to FedEx

● 4:57 PM
Picked up
Tendered at FedEx Office
MINNEAPOLIS, MN

● 4:58 PM
Shipment arriving On-Time
MINNEAPOLIS, MN

● 5:47 PM
Picked up
ROSEVILLE, MN

● 7:50 PM
Left FedEx origin facility
ROSEVILLE, MN

● 11:20 PM
Arrived at FedEx hub
MEMPHIS, TN

Thursday, 12/7/23

● 2:51 AM
Departed FedEx hub
MEMPHIS, TN

● 5:28 AM
At destination sort facility
DULLES, VA

● 8:00 AM
At local FedEx facility
ROCKVILLE, MD

● 9:12 AM
On FedEx vehicle for delivery
ROCKVILLE, MD

☑ 9:39 AM
Delivered
GAITHERSBURG, MD

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Exhibit G

From: William Flaig [REDACTED]
Sent: Wednesday, December 6, 2023 5:02 PM
To: Kaplan, Mara G. (Legal) <[REDACTED]>
Cc: Rosenbaum, Sam (Legal) <[REDACTED]> Richter, Tangela (Legal)
[REDACTED]
Subject: Re: WFC Shareholder Proposal / American Conservative Values EFT

Mara, Thank you, I will look at this more closely in the morning, I'm not a lawyer, just an investor. I understand that it's in the company's interest to nit pick and get proposals disqualified. Not providing an adequate number of meeting times is new. Citibanck has provided me with the same letter template, which I have used without issue for four successful proxy submissions last year.
Regards, Bill

On Wed, Dec 6, 2023 at 5:10 PM <[REDACTED]> wrote:

Bill,

In response to your message below, the information you provided on December 4 does not cure the procedural deficiencies related to the proposal you submitted on behalf of American Conservative Values ETF, as noted in my letter dated November 28, 2023. Please refer to the information in my letter and the attachments that accompanied the letter, as these materials explain what you must do to remedy the defects.

Warm regards,

-Mara

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

Exhibit H

From: William Flaig [REDACTED]
Sent: Thursday, December 7, 2023 12:14 PM
To: Kaplan, Mara G. (Legal) <[REDACTED]>
Cc: Rosenbaum, Sam (Legal) <[REDACTED]>; Richter, Tangelia (Legal)
[REDACTED]
Subject: Re: WFC Shareholder Proposal / American Conservative Values EFT

Mara, I've attached a revised ownership letter from my custodian which I believe addresses your deficiency.

Please let me know if you have any questions or concerns.

Regards, Bill

On Wed, Dec 6, 2023 at 5:10 PM [REDACTED] > wrote:

Bill,

In response to your message below, the information you provided on December 4 does not cure the procedural deficiencies related to the proposal you submitted on behalf of American Conservative Values ETF, as noted in my letter dated November 28, 2023. Please refer to the information in my letter and the attachments that accompanied the letter, as these materials explain what you must do to remedy the defects.

Warm regards,

-Mara

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



December 7, 2023

Wells Fargo
Office of the Corporate Secretary
Attn: Tangela Richter
30 Hudson Yards
New York, NY 10001

To whom it may concern:

Citibank N.A. ("Citibank") acts as custodian for American Conservative Values ETF with Ridgeline Research LLC (Ridgeline) as the investment manager for this fund since the fund's inception. We are providing this verification to you at Ridgeline's request.

We are writing to verify that American Conservative Values ETF (ACVF) currently owns 8,127 shares of Wells Fargo (Cusip # 949746101) as of November 13, 2023. We confirm that American Conservative Values ETF has beneficial ownership from November 14, 2022 to November 13, 2023 of at least \$25,000 in market value of the voting securities of Wells Fargo, ticker WFC and that such beneficial ownership has continuously existed for the above time frame in accordance with rule 14a-8(a)(1) of the Securities Exchange Act of 1934.

In addition, we confirm that we are a DTC participant.

Should you require further information, please contact me at [REDACTED] directly.

Sincerely,

Shaye Lipskind
Shaye Lipskind
Account Manager

Citi | Securities Services | Email: [REDACTED]



January 11, 2024
Via online submission

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

RE: Shareholder Proposal of American Conservative Values ETF at Wells Fargo & Company under Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

I am writing on behalf of the American Conservative Values ETF (“ACV” or the “Proponent”) to defend its shareholder proposal to Wells Fargo & Company (“Wells Fargo” or the “Company”). Lori Zyskowski wrote to you on behalf of Wells Fargo on December 29th, 2023, to ask you to concur with Wells Fargo’s view that it can exclude ACV’s shareholder proposal from its 2024 Annual Meeting of Shareholders for failure to prove continuous ownership under Rule 14a-8(b) and (f). Wells Fargo has the burden of demonstrating it is entitled to exclude the Proposal. *See* Rule 14a-8(g). But it cannot bear this burden for two separate and independent reasons.

First, Wells Fargo’s no-action request fails for lack of notice. In its deficiency notice, Wells Fargo *approved* ACV’s proffered time frame to show ownership and erroneously took issue only with a failure to show continuous ownership. Since Wells Fargo has not properly notified ACV of the deficiency, it cannot argue for no-action relief on this issue under 14(f).

Second, Wells Fargo argues that ACV has failed to provide continuous proof of ownership of \$25,000 in voting securities for “one year” under 14(b)(i)(C). But it is undisputed that ACV supplied proof of continuous ownership of \$25,000 in Wells Fargo voting securities from November 14th, 2022 to November 13th, 2023, a 365-day period also known as a year. So ACV has satisfied the proof of ownership requirement. Wells Fargo contends that ACV must show proof of ownership for a year and a day, in plain contravention of the meaning of “one year.”

Discussion

A. Relevant background

On November 13th, 2023, ACV submitted a shareholder proposal at Wells Fargo focused on politicized de-banking. Wells Fargo's No-Action Request ("NAR"), Ex. A. A letter with the shareholder proposal also stated that "A Proof of Ownership letter is forthcoming and will be delivered once the company confirms receipt of this proposal and its submission date." *Id.*

On November 28th, Wells Fargo sent ACV a notice of deficiency stating ACV lacked the proof of ownership letter and did not provide multiple times to meet with the company about the proposal, as required under Rule 14a-8(b)(iii). NAR Ex. B.

On December 4th, ACV provided a proof of ownership letter from its DTC participant, Citibank, and multiple dates of engagement availability. The letter from Citibank stated in relevant part:

We are writing to verify that American Conservative Values ETF (ACVF currently owns 8,127 shares of Wells Fargo (Cusip # 949746101) as of November 13, 2023. We confirm that American Conservative Values ETF has beneficial ownership from November 14, 2022 to November 13, 2023 of at least \$25,000 in market value of the voting securities of Wells Fargo, ticker WFC and that such beneficial ownership has continuously existed as of November 13, 2023 in accordance with rule 14a-8(a)(1) of the Securities Exchange Act.

NAR Ex. D.

On December 6th, Wells Fargo responded with a second notice of deficiency. NAR Ex. F. There, Wells Fargo told ACV the following: "The Citibank letter is insufficient because while it verifies ownership of 8,127 Company shares as of November 13, 2023, and beneficial ownership of at least \$25,000 in market value of Company shares from November 14, 2022 to November 13, 2023, the Citibank Letter does not verify continuous ownership of the Company shares for the one-year period preceding and including the Submission Date [November 13, 2023]." NAR Ex. F.

On December 7th, ACV submitted an updated letter from Citibank. That letter addressed Wells Fargo's concern about continuous ownership by changing the language on continuous ownership from "beneficial ownership has continuously existed as of November 13, 2023" to "beneficial ownership has continuously existed for the above time frame," November 14, 2022, to November 13, 2023. NAR Ex. H.

B. Legal standard

One of the procedural requirements to file a shareholder proposal is for the shareholder proponent to demonstrate proof that he or she has owned enough securities for long enough to satisfy Rule 14a-8. As relevant here, the shareholder “must have continuously held . . . [a]t least \$25,000 in market value of the company’s securities entitled to vote on the proposal for at least one year.” 17 C.F.R. § 240.14a-8(b)(1)(i)(C). SEC Staff Bulletins consistently interpret “one year” to mean “one year as of the time the shareholder submits the proposal.” SEC Staff Legal Bulletin 14 (July 13, 2001); SEC Staff Legal Bulletin 14F (Oct. 18, 2011) (“one year as of the date the shareholder submits the proposal”); SEC Staff Legal Bulletin 14G (Oct. 16, 2012) (“one year as of the date the shareholder submits the proposal”).

The one-year period ends at and must include the submission date itself; that is, it must cover “the entire one-year period preceding and including the date the proposal is submitted.” SEC Staff Legal Bulletin 14F. The Staff also consistently rejects “an overly technical reading of proof of ownership letters.” SEC Staff Legal Bulletin 14K (Oct. 16, 2019); SEC Staff Legal Bulletin 14L (Nov. 3, 2021).

If the company wants to exclude a proposal for failing to show proof of ownership, it must “notify [the proponent] in writing of any procedural or eligibility deficiencies” and may only exclude the proposal on this ground if the shareholder has “failed to adequately correct it” within 14 days. Rule 14a-8(f)(1). This requires the company to do more than cite the relevant subsection. It must “provide adequate detail about what the Proponent was required to do to comply with Rule 14a-8.” *Southwestern Energy Company* (Mar. 15, 2022) (deficiency notice did not identify specific problems with proponent’s statement of engagement availability).

C. Wells Fargo did not notify American Conservative Values of a deficiency in the one-year time frame and actually approved of it.

The Staff does not need to decide the adequacy of the one-year ownership because Wells Fargo has waived the ability to raise this in a no-action request. As explained above, Wells Fargo must “provide adequate detail about what the Proponent was required to do to comply with Rule 14a-8.” But there was no such detail. In fact, Wells Fargo actually approved of the Proponent’s date range.

The only specific deficiency the second notice identified was that it did not verify continuous ownership: “The Citibank letter is insufficient because while it verifies ownership of 8,127 Company shares as of November 13, 2023, and beneficial ownership of at least \$25,000 in market value of Company shares from November 14, 2022 to November 13, 2023, the Citibank Letter does not verify continuous ownership of the Company shares for the one-year period preceding and including the Submission Date [November 13, 2023].” Fairly read, Wells Fargo is approving of the

November 14, 2022, to November 13, 2023, time frame because it uses both that time frame and the \$25,000 threshold as examples of what the proof of ownership letter got right.

This makes sense, because the initial proof of ownership letter contained a separate statement stating that “beneficial ownership has continuously existed as of November 13, 2023.” NAR Ex. D. And Staff Legal Bulletin 14F, which Wells Fargo cited and attached to its second deficiency notice, notes that “fail[ing] to confirm continuous ownership of the securities” is a common error when submitting proof of ownership.

It is disingenuous for Wells Fargo to now say that it put ACV on notice about the date span, particularly November 13, 2022. Indeed, the second notice did not identify any alleged deficiencies other than the continuous nature of the ownership. Nor did it specify how—in Wells Fargo’s view—ACV could correct this. The rest of the letter is just boilerplate language about how to prepare a written statement from Citibank or provide an alternative proof of ownership and advising ACV to respond to the company within the 14-day requirement of 14(f).

Wells Fargo approved ACV’s time frame for proof of ownership and failed to notify it of any alleged problem, so it cannot bring a no-action request on this ground alone.

D. American Conservative Values has satisfied the one-year ownership requirement.

Wells Fargo is also wrong about the meaning of “one year.” Its argument boils down to there being 366 days in a year (or 367 in a leap year). Rule 14a-8(b)(i)(C) requires proof of ownership for a year, not a year and a day.

At times, the Staff has emphasized that this one-year period spans “the entire one-year period preceding and including the date the proposal is submitted.” SLB 14F. The Staff has done this to avoid two common errors: putting the end date *before* the submission date, thus “leaving a gap between the date of the verification and the date the proposal is submitted,” and putting the end date “*after* the date the proposal was submitted but cover[ing] a period of only one year, thus failing to verify . . . the required full one-year period preceding the date of the proposal’s submission.” *Id.* Every one of Wells Fargo’s no-action cites deals with these two cases.

But this case deals with neither because ACV ended the one-year span on the Submission Date, November 13, 2023, and went back to November 14, 2022, to cover a full year. All the days preceding and including the Submission date are 365 calendar days, on a non-leap year. This is one year.

Wells Fargo tries to strain the interpretation of SLB 14F by saying that “the entire one-year period preceding and including the date the proposal is submitted” is

actually a one-year period *plus* the date the proposal is submitted. But the plain language of the Bulletin is that this one-year period *includes* the submission date. The Staff was clarifying that the submission date ends the span for the “one-year period” of Rule 14a-8(b), not rewriting “one-year period” to mean “one-year-and-a-day period.” The Staff even stated in a subsequent bulletin that the relevant time is “at least one year as of the date the shareholder submits the proposal.” SLB 14G.

Conclusion

For the above reasons, I respectfully request the Staff reject the Company’s request for relief from the Proposal. A copy of this correspondence has been timely provided to the Company. If we can provide additional materials to address any queries the Commission may have with respect to this letter, please do not hesitate to contact me.

Sincerely,



Michael Ross
Alliance Defending Freedom
44180 Riverside Parkway
Lansdowne, VA 20176
(571) 707-4655
mross@adflegal.org

Cc: Lori Zyskowski

January 31, 2024

VIA ELECTRONIC SUBMISSION

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 the Shareholder Proposal of
American Conservative Values ETF
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

On December 29, 2023, Wells Fargo & Company (the “Company”) submitted a letter (the “No-Action Request”) notifying the staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “SEC”) that the Company intends to omit from its proxy statement and form of proxy for its 2024 Annual Meeting of Shareholders (collectively, the “2024 Proxy Materials”) a shareholder proposal (the “Proposal”) received from American Conservative Values ETF (the “Proponent”). The No-Action Request indicated our belief that the Proposal, including its supporting statements, could be excluded from the 2024 Proxy Materials pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1) of the Securities Exchange Act of 1934, as amended.

Subsequently, Michael Ross of the Alliance Defending Freedom submitted a letter, dated January 11, 2024, on behalf of the Proponent responding to the No-Action Request (the “Response Letter”). The Response Letter argues that: (1) the Second Deficiency Notice (as defined in the No-Action Request) did not explicitly state that shares had to be held from November 13, 2022 to November 13, 2023, but instead, stated that “[t]he Citibank letter is insufficient because while it verifies ownership of 8,127 Company shares as of November 13, 2023, and beneficial ownership of at least \$25,000 in market value of Company shares from November 14, 2022 to November 13, 2023, *the Citibank Letter does not verify continuous ownership of the Company shares for the one-year period preceding and including the Submission Date*” (emphasis added); and (2) according to the Alliance Defending Freedom’s calculation, the period from November 14, 2022 to November 13, 2023 is precisely 365 days. However, for the reasons stated in the No-Action Request and further articulated below, we continue to believe that the Proposal, including its supporting statements, is excludable under Rule 14a-8(b) and Rule 14a-8(f)(1), and we wish to respond to the Response Letter.

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I. The Company Faithfully Followed Staff Guidance with Respect to the Deficiency Notice.

As described in the No-Action Request, the Proposal was submitted to the Company by William E. Flaig Jr. on behalf of the Proponent on November 13, 2023 (the “Submission Date”) via FedEx. The Proponent’s submission failed to provide any documentary evidence of the Proponent’s ownership of Company shares. In addition, the Company reviewed its stock records, which did not indicate that the Proponent was the record owner of any shares of Company securities. While the Proponent’s cover letter indicated that “[a] Proof of Ownership letter is forthcoming and will be delivered once the company confirms receipt of this proposal and its submission date,” the Company had no way of knowing when the proof of ownership would be delivered or if it would be delivered at all. Therefore, to preserve its rights under the applicable SEC guidance that permits companies to seek exclusion of a proposal on procedural grounds only if a proper and timely deficiency notice is delivered to the proponent, the Deficiency Notice was sent to the Proponent and its representative. On December 4, 2023, Mr. Flaig replied to the Deficiency Notice and provided the Citibank Letter (as defined in the No-Action Request) verifying ownership of 8,127 Company shares as of the Submission Date and “beneficial ownership from November 14, 2022 to November 13, 2023 of at least \$25,000 in market value of” Company shares. Because the Citibank Letter did not confirm the Proponent’s ownership of Company shares for the full one-year period preceding and including the Submission Date, the Company sent the Proponent and its representative the Second Deficiency Notice (as defined in the No-Action Request), in accordance with Staff Legal Bulletin No. 14L (Nov. 3, 2021) (“SLB 14L”). In response, Mr. Flaig provided, on behalf of the Proponent, the Second Citibank Letter (as defined in the No-Action Request), which verified ownership of “8,127 shares of [the Company] as of November 13, 2023,” and “from November 14, 2022 to November 13, 2023 of at least \$25,000 in market value of the voting securities of [the Company] . . . and that such beneficial ownership has continuously existed as of November 13, 2023.”

Both the Deficiency Notice and the Second Deficiency Notice (together, the “Deficiency Notices”) specifically instructed the Proponent that it “must submit sufficient proof that it has satisfied at least one of the [o]wnership [r]equirements,” each of which was described therein. As Alliance Defending Freedom admits in the Response Letter and as we summarized in the No-Action Request, the Second Deficiency Notice further explained that “[t]he Citibank Letter is insufficient because while it verifies ownership of 8,127 Company shares as of November 13, 2023, and beneficial ownership of at least \$25,000 in market value of Company shares from November 14, 2022 to November 13, 2023, the Citibank Letter does not verify continuous ownership of the Company shares *for the one-year period preceding and including the Submission Date*” (emphasis added). The Company carefully followed the SEC Staff’s guidance in drafting the Second Deficiency Notice. Specifically, Rule 14a-8(b) provides that the Proponent can “submit to the company a written statement

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from the ‘record’ holder of [its] securities (usually a broker or bank) verifying that, at the time [the Proponent] submitted [its] proposal, [the Proponent] continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the company’s securities entitled to vote on the proposal for at least three years, two years, or one year, respectively.” In SLB 14L, the SEC Staff provided sample language for proponents in this regard, and while this format is not required, it notably states: “*As of [date the proposal is submitted], [name of shareholder] held, and has held continuously for at least [one year] . . . , [number of securities] shares of [company name] [class of securities]*” (emphasis added). In addition, Staff Legal Bulletin No. 14G (Oct. 16, 2012) provides specific guidance on the manner in which companies should notify proponents of a failure to provide proof of ownership for the one-year period required under Rule 14a-8(b)(1), noting that companies should identify “the specific date on which the proposal was submitted and explains that the proponent must obtain a new proof of ownership letter verifying continuous ownership of the requisite amount of securities *for the one-year period preceding and including such date to cure the defect*” (emphasis added). The Company complied with these requirements and included the requisite language in the Deficiency Notices. There is no requirement to identify the specific range of dates that must be covered by the proof of ownership because there is no requirement that the proof of ownership provide a specific date range. In fact, if the Proponent and its representative carefully followed the Company’s instructions and used the language included in the Deficiency Notices (i.e., stating in either of the Citigroup Letters (as defined in the No-Action Request) that the Proponent “has continuously owned at least . . . \$25,000 in market value of the Company’s shares entitled to vote on the Proposal for at least one year preceding and including” November 13, 2023, instead of “from November 14, 2022 to November 13, 2023”), the Citibank Letters would have been sufficient for purposes of demonstrating the Proponent’s eligibility to submit the Proposal.

However, the Proponent chose to present a proof of ownership that used a specific date range. The Company did everything it was required to do under the SEC guidance in the Second Deficiency Notice: (i) it notified the Proponent and its representative of what the submission date was (i.e., November 13, 2023) and (ii) it told the Proponent and its representative that the proof had to show the Proponent’s continuous ownership of “at least . . . \$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.” Thus, we continue to believe that the Proposal, including its supporting statements, remains excludable from the 2024 Proxy Materials.

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II. Using the Counting Method the SEC Staff Utilizes for Other Purposes, the Citigroup Letters Fail to Cover the Full One-Year Period Preceding and Including the Proposal's Submission Date.

While Rule 14a-8 does not define “one year,” the term is commonly understood to mean a period of 365 days (or 366 days, in the case of a leap year). In this case, using the counting methodology the SEC Staff applies in other cases,¹ 365 calendar days (or 366, in the case of a leap year) must be complete before a proponent can be said to have held securities “for at least one year.” In other words, a proponent would have held the securities for one year at 12:01 a.m. on day 366 (or day 367 in the case of a leap year). In a nearly identical situation, the Staff concurred with the exclusion of a proposal in *Mondelēz International, Inc.* (avail. Jan. 5, 2017). There, the proposal was submitted on November 23, 2016, unaccompanied by any documentary evidence of ownership. Accordingly, the company sent a proper and timely deficiency notice instructing the proponent on how to cure the deficiency, including that the proponent must verify that the proponent “continuously held the required number or amount of [c]ompany shares for the one-year period preceding and including November 23, 2016, the date the proposal was submitted.” In response, the proponent sent a letter from Comerica Bank that provided verification of ownership of the requisite shares as of November 23, 2016, and verifying that the proponent “has held in excess of \$2,000 worth of shares in [the company] continuously since November 24, 2015.” The company argued that the letter from Comerica Bank was deficient because it did not address the continuous ownership of the proponent for the full one-year period preceding and including the submission date (i.e. from November 23, 2015 through and including November 23, 2016) – a gap of one day. Additionally, the company argued that there is no requirement to identify the specific range of dates that must be covered by the proof of ownership. The Staff concurred with the proposal's exclusion, noting that the proponent “appears to have failed to supply, within 14 days of receipt of [the company's] request, documentary support sufficiently evidencing that it satisfied the minimum ownership requirement for the one-year period as required by [R]ule 14a-8(b).” Similarly, in *Empire*

¹ For instance, in the SEC Staff's Compliance and Disclosure Interpretation addressing the 10-day preliminary proxy material filing requirement, the SEC determined the following:

“For purposes of calculating the ‘10 calendar day’ period in Rule 14a-6, the date of filing is day one pursuant to Rule 14a-6(k). For example, if the preliminary proxy statement is filed on Friday, October 20, 2023, then Sunday, October 29, 2023, would be day ten for purposes of Rule 14a-6. The registrant may send the definitive proxy statement to security holders starting at 12:01 a.m. on October 30, 2023. The foregoing assumes that the preliminary proxy statement is submitted on or before 5:30 p.m. Eastern Time on October 20, 2023.”

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Federal Bancorp, Inc. (avail. Feb. 25, 1999), the proponent submitted its proposal on November 17, 1998, but ultimately provided documentation confirming his ownership of company shares “beginning on November 18, 1997.” When the company sought exclusion of the proposal, arguing that the proponent provided proof of ownership for less than the one year prior to the proposal’s submission, the proponent argued that he had “continuously held the [c]ompany’s stock for exactly one year at the time he submitted the [p]roposal,” as he had held the shares “for 365 consecutive days (i.e. one year).” The company argued that, based on past SEC Staff guidance, “365 calendar days . . . must be *complete* before the proponent can be said to have held securities ‘for at least one year’” and that in this case, if the proponent “began to ‘hold’ shares of the [c]ompany’s common stock on November 18, 1997, he would not have continuously held such shares for one year until 12:01 a.m. on the 366th day thereafter, November 18, 1998, one day after the date on which he submitted the proposal, November 17, 1998.” The Staff concurred with the proposal’s exclusion, noting the “proponent appears to have failed to supply documentary support sufficiently evidencing that he satisfied the minimum ownership requirement for the one year period required by rule 14a-8(b).”

In this case, and consistent with the precedents above, 365 calendar days must be *complete* before the Proponent can be said to have held securities “for at least one year.” In other words, the Proponent would have held the securities for one year at 12:01 a.m. on day 366 in a regular year (or 367 in the case of a leap year). *See Mondelēz*. Here, the Proponent submitted the Proposal on November 13, 2023. Because 2023 was not a leap year, the Proponent had to verify its ownership of the requisite number or amount of Company shares for the 365 days preceding and including the November 13, 2023 submission date. In other words, the Proponent had to verify continuous ownership for the time period of November 13, 2022 through November 13, 2023. Therefore, the Proposal, including its supporting statements, remains excludable under Rule 14a-8(b) and Rule 14a-8(f)(1). Accordingly, based upon the foregoing information and precedent, and our arguments set forth in the No-Action Request, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal, including its supporting statements, from its 2024 Proxy Materials.

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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 2024 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 (212) 351-2309, or Mara Garcia Kaplan, Senior Vice President, Senior Company Counsel, Corporate Governance & Securities, at (651) 263-3117.

Sincerely,



Lori Zyskowski

Enclosures

cc: Mara Garcia Kaplan, Senior Vice President, Senior Company Counsel, Corporate
Governance & Securities
William E. Flaig Jr., Ridgeline Research LLC



February 29, 2024
Via online submission

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

RE: Shareholder Proposal of American Conservative Values ETF at Wells Fargo & Company under Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

I am writing on behalf the American Conservative Values ETF (“ACV” or the “Proponent”) to defend its shareholder proposal to Wells Fargo & Company (“the Company”). Lori Zyskowski wrote to you on behalf of the Company on December 29th, 2023 to ask you to concur with the Company’s view that it can exclude ACV’s shareholder proposal from its 2024 Annual Meeting of Shareholders for failure to prove continuous ownership under Rule 14a-8(b) and (f). I wrote a response to Ms. Zyskowski’s letter on January 11. Ms. Zyskowski replied to my response on January 31, 2024.

Ms. Zyskowski raised for the first time on reply two cases in which the Staff has opined that, in order for securities to have been held for “at least one year” they must have in fact been held for at least 366 days instead of 365 days. While we continue to dispute this interpretation of what constitutes “at least one year” for the reasons identified in my previous letter, I write to provide confirmation that the Proponent has in fact maintained possession of the requisite securities for “at least one year” no matter how that period is calculated (see Exhibit A). Since the Proponent in fact satisfies the requirements of Rule 14a-8, and any alleged procedural deficiency in his failure to establish this fact is the result of the inadequacy of the Company’s deficiency notice (which focused on the alleged lack of continuity of possession rather than the duration of possession), the alleged procedural deficiency should be resolved against the Company.

Sincerely,



Michael Ross
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Lansdowne, VA 20176
(571) 707-4635
mross@adflegal.org

Cc: Lori Zyskowski

Exhibit A



February 28, 2024

Wells Fargo
Office of the Corporate Secretary
Attn: Tangela Richter
30 Hudson Yards
New York, NY 10001

To whom it may concern:

Citibank N.A. ("Citibank") acts as custodian for American Conservative Values ETF with Ridgeline Research LLC (Ridgeline) as the investment manager for this fund since the fund's inception. We are providing this verification to you at Ridgeline's request.

We are writing to verify that American Conservative Values ETF (ACVF) currently owns 8,127 shares of Wells Fargo (Cusip # 949746101) as of November 15, 2023. We confirm that American Conservative Values ETF has beneficial ownership from November 13, 2022 to November 15, 2023 of at least \$25,000 in market value of the voting securities of Wells Fargo, ticker WFC and that such beneficial ownership has continuously existed for the above time period in accordance with rule 14a-8(a)(1) of the Securities Exchange Act of 1934.

In addition, we confirm that we are a DTC participant.

Should you require further information, please contact me at 212-723-5732 directly.

Sincerely,

Shaye Lipkind

Shaye Lipkind
Account Manager