



DIVISION OF  
CORPORATION FINANCE

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

March 5, 2025

Lori Zyskowski  
Gibson, Dunn & Crutcher LLP

Re: Wells Fargo & Company (the "Company")  
Incoming letter dated December 26, 2024

Dear Lori Zyskowski:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the New York City Teachers' Retirement System and co-filers for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests the Company disclose annually its Energy Supply Ratio as defined in the Proposal.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, based on the information you have presented, the Company has not demonstrated that the Proposal relates to its ordinary business operations. In addition, in our view, the Proposal does not seek to micromanage the Company.

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/2024-2025-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Justina K. Rivera  
Office of the Comptroller of the  
City of New York

December 26, 2024

**VIA ONLINE 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 the New York City Teachers' Retirement System, the New York City Employees' Retirement System, and the New York City Police Pension Fund*  
*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 2025 Annual Meeting of Shareholders (collectively, the “2025 Proxy Materials”) a shareholder proposal (the “Proposal”) and statements in support thereof (the “Supporting Statement”) submitted by the Comptroller of the City of New York, Brad Lander, on behalf of the New York City Teachers’ Retirement System, the New York City Employees’ Retirement System, and the New York City Police Pension Fund (collectively, the “Proponents”).

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

- filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 2025 Proxy Materials with the Commission; and
- concurrently sent a copy of this correspondence to the Proponents.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”) provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the “Staff”). Accordingly, we are taking this opportunity to inform the Proponents that if the Proponents elect to submit additional correspondence to the Commission or the Staff with respect to this 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.

## THE PROPOSAL

The Proposal states:

**Resolved:** Shareholders request Wells Fargo & Company (“Company”) disclose annually its Energy Supply Ratio (“ESR”), defined as its total financing through equity and debt underwriting, and project finance, in low-carbon energy supply relative to that in fossil-fuel energy supply. The disclosure, prepared at reasonable expense and excluding confidential information, shall describe Company’s methodology, including what it classifies as “low carbon” or “fossil fuel.” Company should include lending in its ESR if methodologically sound.

A copy of the Proposal and the Supporting Statement is attached to this letter as Exhibit A.

## BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2025 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal relates to the Company’s ordinary business operations and seeks to micromanage the Company—specifically, the Proposal inappropriately seeks to limit management’s discretion by dictating a specific method for reporting on the Company’s activities related to its climate efforts.

## OVERVIEW

The Company shares the Proponents’ perspective on the importance of offering a range of products and services to its clients, including low-carbon financing products and services. The Company offers a suite of banking capabilities, including tailored solutions, to support relevant clients’ production, delivery and adoption of low-carbon solutions. This responsive approach aims to meet the evolving needs of clients and customers as they transition toward a sustainable and resilient low-carbon economy, and aligns with the Company’s own strategy, which is centered on supporting clients. As described in the Company’s Climate Report (the “Wells Fargo Climate Report”), the Company’s climate approach focuses on the Company’s efforts to support its clients by enhancing internal climate-related capabilities, supporting client climate-related activities and transitions, and collaborating with stakeholders to support climate progress.<sup>1</sup>

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<sup>1</sup> See Wells Fargo Climate Report (August 2024), available at <https://www08.wellsfargomedia.com/assets/pdf/about/corporate-responsibility/climate-disclosure.pdf>.

To keep stakeholders informed, the Company has devoted significant resources to developing public disclosures setting forth the Company's climate-related efforts. The Company's CO2eMission describes a multi-step methodology for measuring and disclosing certain financed emissions.<sup>2</sup> In July 2023, the Company published a supplement to its CO2eMission (the "July 2023 Supplement").<sup>3</sup> The Wells Fargo Climate Report also provides updates on the Company's activities with respect to operational and financed emissions and sustainable financing. The Company believes that the Wells Fargo Climate Report and the Company's other existing disclosures already track and assess its climate-related efforts, including with respect to operational and financed emissions and sustainable financing.

In addition to the Company's existing disclosures, the Company provides information to BloombergNEF, which uses this information and other data sources to calculate an estimated ESR for the Company that is based on BloombergNEF's own internally developed methodology. BloombergNEF calculates estimated ESRs for other global banks as well, to shed light on global energy supply financing activity across the industry. As alluded to in the Supporting Statement, there is currently no generally accepted framework or "industry-standard approach" for calculating and reporting an ESR. The Company's development and use of its own particular methodology to calculate and publish a Company-specific ESR, as the Proposal would require, would in fact result in less uniformity and lack of comparability across financial services companies.

The Proposal seeks this overly granular, Company-specific ratio, "to complement and supplement [the] Company's existing emissions-based climate financial disclosures." But under the dictates of the Proposal, the Company itself would be required to develop, collect and analyze the underlying data and then publish the Company-specific ratio. This work would be extensive and would explicitly require management to develop a new regime for collecting data, tracking and reporting on the Company's activity. As such, the Proposal inappropriately seeks to interfere with the Company's ordinary business operations and micromanages the Company by limiting management's discretion in reporting on climate-related efforts.

## ANALYSIS

### **The Proposal May Be Excluded Pursuant To Rule 14a-8(i)(7) Because It Involves Matters Related To The Company's Ordinary Business Operations.**

#### *A. Background On The Ordinary Business Standard.*

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder

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<sup>2</sup> See CO2eMission (May 2022), available at [https://sites.wf.com/co2emission/CO2eMission\\_Methodology.pdf](https://sites.wf.com/co2emission/CO2eMission_Methodology.pdf).

<sup>3</sup> See CO2eMission: July 2023 Supplement (July 2023), available at <https://sites.wf.com/co2emission/docs/CO2eMission-July-2023-Supplement.pdf>.

proposal that relates to the company's "ordinary business" operations. According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" "refers to matters that are not necessarily 'ordinary' in the common meaning of the word," but instead the term "is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release"). In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting," and identified two central considerations that underlie this policy. The first is that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." The second consideration is related to "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)).

The 1998 Release further states that "[t]his consideration may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific . . . methods for implementing complex policies." In Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L"), the Staff stated that in considering arguments for exclusion based on micro-management, the Staff "will focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management." In assessing whether a proposal probes matters "too complex" for shareholders, as a group, to make an informed judgment, the Staff "may consider the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic." The Staff stated that it would also consider "references to well-established national or international frameworks when assessing proposals related to disclosure" as examples of topics that shareholders are well-equipped to evaluate. Furthermore, the Staff noted that the ordinary business exclusion "is designed to preserve management's discretion on ordinary business matters but not prevent shareholders from providing high-level direction on large strategic corporate matters." SLB 14L.

When proposals request the adoption of specific approaches to address climate change matters, the extent to which a proposal permits the board or management to retain discretion is particularly relevant. In SLB 14L, the Staff indicated that when reviewing such proposals, it "would not concur in the exclusion of . . . proposals that *suggest* targets or timelines so long as the proposals *afford discretion to management as to how to achieve such goals*" (emphasis added). SLB 14L cites *ConocoPhillips Co.* (avail. Mar. 19, 2021) as an example of its application of the micromanagement standard, noting that the proposal at issue did not micromanage the company in the Staff's view because it requested that the

company address a particular issue but “did not *impose a specific method* for doing so” (emphasis added).

In assessing whether a proposal micromanages by seeking to impose specific methods for implementing complex policies, the Staff evaluates not just the wording of the proposal but also the action called for by the proposal and the manner in which the action called for under a proposal would affect a company’s activities and management discretion. See *The Coca-Cola Co.* (avail. Feb. 16, 2022) and *Deere & Co.* (avail. Jan. 3, 2022) (each of which involved a broadly phrased request but required detailed and intrusive actions to implement). Moreover, “granularity” is only one factor evaluated by the Staff. As stated in SLB 14L, the Staff focuses “on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management” (emphasis added).

As with the shareholder proposals in *Deere*, *Coca-Cola* and other precedents discussed below, the Proposal is excludable under Rule 14a-8(i)(7) because it seeks to micromanage the Company.

*B. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Seeks To Micromanage The Company.*

*1. The Proposal Does Not Follow Well-Established National Or International Frameworks.*

The Proposal requests that the Company “disclose annually its Energy Supply Ratio (‘ESR’), defined as its total financing through equity and debt underwriting, and project finance, in low-carbon energy supply relative to that in fossil-fuel energy supply,” which “should include lending . . . if methodologically sound.” Although the Supporting Statement sets forth the Proponent’s view that ESR has become a key climate disclosure metric, the Supporting Statement concedes that there is no generally accepted framework or “industry-standard approach” for calculating and reporting an ESR. In fact, the Supporting Statement indicates that among the drivers of the Proposal’s request is that the Company, in developing, calculating and disclosing its Company-specific metric, “work toward an industry-standard approach for calculating and reporting [ESR].” Because there is no established framework, the Supporting Statement suggests that when developing, calculating and reporting its Company-specific ESR, as required under the Proposal, the Company refer to two external sources, neither of which sets forth a unified and generally accepted approach to calculating ESR:

- BloombergNEF’s Energy Supply Banking Ratios: Implementation Guide (the “Implementation Guide”),<sup>4</sup> which includes three main methodological principles,

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<sup>4</sup> See Implementation Guide, available at <https://assets.bbhub.io/professional/sites/24/Energy-Supply-Banking-Ratios-Implementation-Guide.pdf>.

twelve steps and even more potential alternative steps and decision points for ESR development and calculation; and

- The Institute of International Finance’s White Paper on an Energy Supply Ratio (ESR) for Bank Disclosures (the “White Paper”),<sup>5</sup> a 26-page paper, which the Supporting Statement concedes provides only “a potential format for standardized disclosure.” In fact, the White Paper only summarizes additional methodological considerations, design decisions and disclosure approaches for ESR reporting, and notes that “the banking industry’s work on ESR development is still at a very early stage.” See White Paper at 6.

Both of these documents merely highlight numerous possible ESR design choices and underscore that in developing, calculating and disclosing an ESR report, the Company would be working outside of any established framework.

In fact, the variation in methodology is evident from the Proposal itself, which requests that the Company’s calculation of ESR “should include lending . . . if methodologically sound,” while noting that this inclusion differs from the BloombergNEF Report, which “excludes lending.” And while the Supporting Statement refers to commitments by a few financial institutions to “disclose an ESR” as evidence “that disclosure is feasible,” the Supporting Statement makes clear that each company is developing its own methodology for calculating and disclosing an ESR—further illustrating the lack of standardization and unsettled definition of ESR.

## *2. The Proposal Dictates Specific Methods For How The Company Reports On Its Climate-Related Efforts.*

The Proposal does not allow shareholders to provide “high-level direction on large strategic corporate matters” or to “suggest targets or timelines for implementing” such matters, but instead seeks to impose a particular method—the development of a methodology for calculating and disclosing a Company-specific ESR—for how the Company gathers data on and reports on its energy-related financing activities, which would inappropriately limit management’s discretion in addressing and implementing the complex issue of managing and reporting on its climate efforts.

The ratio dictated by the Proposal seeks to micromanage the Company’s actions and disclosures in a way that varies from the methodologies that the Company has already developed in connection with its climate efforts. The Wells Fargo Climate Report provides information on the Company’s activities with respect to operational and financed emissions and sustainable financing. The Company’s CO2eMission disclosed certain financed

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<sup>5</sup> See White Paper, available at [https://www.iif.com/portals/0/Files/content/Regulatory/32370132\\_iif\\_white\\_paper\\_energy\\_supply\\_ratio\\_september\\_2024\\_final.pdf](https://www.iif.com/portals/0/Files/content/Regulatory/32370132_iif_white_paper_energy_supply_ratio_september_2024_final.pdf).

emissions, with descriptions of the multi-step methodology underlying those disclosures and the rationale for its sector-specific approach. In July 2023, the Company published a Supplement to the CO2eMission. The Wells Fargo Climate Report, along with the CO2eMission and July 2023 Supplement and the Company's historical reports, together already provide transparency into these matters.

The Proposal would require the Company to set up new systems and processes to develop a calculation based on the Proposal's requirements, and thus would necessitate altering the way management assesses clients, transactions, deals, projects, products, services and asset classes. It would also require the Company to develop a model for tracking and reporting on a new climate-related metric that is significantly different than the approach the Company developed and implemented over the past several years. The process for developing a climate approach and related reporting is complex, requiring research and consideration of established and accepted guidelines and frameworks. Yet this type of dynamic and multifaceted process would not be reflected in the ESR prescribed in the Proposal. Instead, the Proposal would require the Company to adopt an entirely distinct climate-related reporting metric.

### *3. Staff Precedent Supports Exclusion Of The Proposal Under The Micromanagement Standard Of Rule 14a-8(i)(7).*

The Proposal eschews management's judgment on the appropriate approach to and manner for tracking and disclosing climate-related activities, and instead seeks to impose its own specific metric: ESR. The Proposal defines ESR as "[the Company's] total financing through equity and debt underwriting, and project finance, in low-carbon energy supply relative to that in fossil-fuel energy supply," which "should include lending . . . if methodologically sound." The Proposal not only requires a specific metric, but its prescriptive definition encompasses thousands of the Company's day-to-day activities, including thousands of potential clients, transactions, deals, projects, products, services and asset classes. In addition, the Supporting Statement points to the Implementation Guide and the White Paper as to how this ratio should be calculated, both of which describe numerous additional principles and factors to be considered in developing a methodology to calculate a ratio like the requested ESR. As the many decisions and design possibilities suggest, in determining what activities and categories to include in a company's ESR, there is a need to balance various trade-offs such as completeness and transparency with consistency and accuracy, and such determinations are inherently tied to a company's specific business objectives and strategies. This complex balancing involves nuanced considerations that are not appropriate for direct shareholder oversight. In seeking to prescribe in granular detail a specific metric the Company should publicly disclose, the Proposal attempts to override management's judgment on these matters and dictate a specific means for assessing and reporting on energy-related financing activities, thereby inappropriately limiting management's discretion.

In this regard, the Proposal does not provide the Company “high-level direction on large strategic corporate matters” and is not “suggest[ing] targets or timelines.” Instead, the Proposal is highly granular and seeks to eliminate management discretion by “impos[ing] a specific method” as to how the Company is to measure and report on its energy-related financing activities. Moreover, instead of operating within a well-established disclosure framework, which the Proposal acknowledges does not exist, the Proposal’s prescriptive approach for how the Company must report on certain energy-related financing activities would require the Company to set up new systems and processes and develop its own methodologies to calculate ESR based on the Proposal’s restrictive structure. As applied to the Company, the Proposal addresses a complex, multifaceted issue by imposing a prescriptive standard that differs from the approach the Company believes is best suited to reporting on its climate-related efforts. The Proposal thus falls clearly within the scope of the 1998 Release and SLB 14L by addressing intricate, granular details and prescribing a specific method for implementing complex policies.

In applying the micromanagement standard under Rule 14a-8(i)(7), the Staff consistently has concurred with the exclusion of shareholder proposals attempting to micromanage a company by delving too deeply into a company’s climate-related reports and disclosures. For example, in *Walmart Inc.* (avail. Apr. 18, 2024), the Staff concurred with the exclusion of a proposal, that, like the Proposal here, sought to dictate how the company reported on its climate-related efforts. In *Walmart*, the proposal requested that the company disclose a product category breakdown of the greenhouse gas (“GHG”) emissions from specific product lines. The company argued to the Staff that the request would replace management’s judgments by dictating the company’s approach to GHG emissions reporting “beyond the well-established international reporting framework in the GHG Protocol.” See also *Tractor Supply Co.* (avail. Mar. 18, 2024) (similar). In *Wells Fargo & Co. (Warren Wilson College)* (avail. Mar. 6, 2024, recon. denied Apr. 15, 2024), the Staff concurred that a proposal micromanaged the company when it requested that, for each of its sectors with a net zero-aligned target, the company disclose the proportion of emissions attributable to clients that were not aligned with a credible net zero pathway. The company argued that the proposal sought to impose a specific method for sector emissions reporting, which limited management’s discretion and was inconsistent with the company’s stated strategy. See also *JPMorgan Chase & Co. (Brian Patrick Kariger Revocable Trust)* (avail. Mar. 29, 2024); *Morgan Stanley* (avail. Mar. 29, 2024); *The Goldman Sachs Group, Inc.* (avail. Mar. 4, 2024, recon. denied Apr. 15, 2024); *Bank of America Corp. (Warren Wilson College)* (avail. Feb. 29, 2024, recon. denied Apr. 15, 2024) (similar). Similarly, the Staff concurred with the exclusion of an emissions reporting proposal in *Amazon.com*, where the proposal requested that the company measure and disclose Scope 3 GHG emissions from “its full value chain inclusive of its physical stores and e-commerce operations and all products that it sells directly and those sold by third party vendors.” The company explained that not only would the request replace management’s judgments by dictating the content of its Scope 3 emissions inventory outside the standards of the GHG Protocol, it would also have significant implications for numerous aspects of the Company’s climate change strategy. Furthermore, in *Chevron Corp.* (avail. Mar. 29, 2024), the proposal requested that the

company report on divestures of assets with a material climate impact, including whether each asset purchaser disclosed its GHG emissions or had other reduction targets. The company explained that the proposal thereby “[sought] to expand the scope of the [c]ompany’s GHG emissions reporting,” which “requires complex principles, tradeoffs, and business goal considerations.” The Staff concurred with the proposal’s exclusion, as it “micromanage[d] the [c]ompany.” See also *Exxon Mobil* (avail. Mar. 20, 2024) (similar).

Despite the Company’s existing disclosures on its climate efforts, the Proposal seeks to substitute management’s judgment about the appropriate way to address a complex, multifaceted issue by imposing a prescriptive standard that differs from the approach the Company settled on when establishing its related strategy and common practice in the industry consistent with established frameworks. Like the precedents discussed above, implementation of the Proposal would involve replacing management’s judgments on complex reporting principles connected to the Company’s climate approach, with a prescriptive disclosure regime that deprives management of discretion. The Proposal’s request to further add ESR as a metric, despite the Company’s existing disclosures on financed emissions, is comparable to the situation in *Walmart* and *Amazon*, where the proposal sought to dictate the operational boundaries of the company’s GHG reporting to include additional metrics that differed from the company’s GHG Protocol-aligned approach to reporting, and *Wells Fargo*, where the proposal requested a specific method by which to report on the Company’s sector emissions.

Although the Supporting Statement suggests that management has some discretion as to *how* it formulates and calculates ESR, the Proposal does not provide discretion as to whether to implement a de novo ESR reporting regime, which does not align with the Company’s existing reporting. Instead, it would require developing and disclosing a metric comparing the Company’s “total financing through equity and debt underwriting, and project finance, in low-carbon energy supply relative to that in fossil-fuel energy supply,” potentially including the Company’s lending activities, which would remove the Company’s discretion on how it reports on its energy-related financing activities, including in alignment with standardized reporting methodologies. The Supporting Statement’s references to the multiple potential design and decision possibilities outlined in the Implementation Guide and the White Paper do not preserve “high-level direction on large strategic corporate matters.” Instead, the Proposal is similar to the proposal at issue in *The Home Depot, Inc.* (*Jessica Wrobel*) (avail. Mar. 21, 2024), where the proposal requested that the company prepare a living wage report. As with the Supporting Statement, the proponent in *Home Depot* had cited a reference guide that demonstrated the lack of standardization and difficulty in performing living wage calculations. The company characterized the proposal as requiring an unusual and highly prescriptive format for which there was no well-established national or international framework, and that would require assembling granular detail to calculate the requested “living wage” amount and provide specific calculations and statistics based on comparisons of various amounts. The company explained that each element of that process required the collection of data that was not readily available and could be terribly complex. The Staff concurred that the proposal sought to micromanage the company and thereby

was excludable under Rule 14a-8(i)(7). *See also Amazon.com, Inc.* (avail. Apr. 1, 2024) (same). *See also Air Products and Chemicals, Inc.* (avail. Nov. 29, 2024), where the proposal requested disclosures that “[were] not required by the Commission and [did] not follow any established framework for reporting lobbying activities,” and the Staff recently concurred with exclusion due to micromanagement.

Here, the Proposal is also overly granular and requests specific disclosures beyond what the Company has determined to include in its reports and beyond what is required by any established framework for climate-related disclosures. Not only would the Proposal impermissibly limit management’s discretion in developing an approach to climate reporting, but also it would require the Company to undertake granular, detailed and intrusive actions in order to implement the Proposal’s request. Although the Proposal only requests the disclosure of one metric, ESR encompasses “total financing through equity and debt underwriting, and project finance” and potentially lending, in carbon energy and fuel supply, which encompasses thousands of clients, transactions, deals, projects, products, services and asset classes of the Company. Similar to *Home Depot* and *Air Products and Chemicals*, there is no limiting principle to this broad definition, which would span thousands of data points. Additionally, the Company would need to develop and implement new reporting systems for gathering, testing, and tracking those data points. The Proposal’s attempt to prescribe how the Company tracks and reports on energy-related financing activity, despite acknowledging that the Company already has “robust commitments to sustainable finance” and “existing emissions-based climate financial disclosures,” involve complex and nuanced issues that are not appropriate for direct shareholder oversight, and as such, the Proposal is exactly the type that the 1998 Release and SLB 14L recognized as appropriate for exclusion under Rule 14a-8(i)(7).

*C. Regardless Of Whether The Proposal Touches Upon A Significant Policy Issue, The Proposal Is Excludable Under Rule 14a-8(i)(7) Because It Seeks To Micromanage The Company.*

As discussed in the “Background” section above, a proposal may be excluded under Rule 14a-8(i)(7) if it seeks to micromanage a company by specifying in detail the manner in which the company should address a policy issue, regardless of whether the proposal touches upon a significant policy issue. Here, the focus of the Proposal is not on a broad policy issue relating to climate change or energy transition risks. Instead, the Proposal is an attempt to limit the Company’s discretion in how it addresses the complex and granular issue of establishing, assessing and reporting on specific aspects of the Company’s energy-related financing activities. In this respect, it is well established that a proposal that seeks to micromanage a company’s business operations is excludable under Rule 14a-8(i)(7) regardless of whether the proposal raises issues with a broad societal impact. *See Staff Legal Bulletin No. 14E* (Oct. 27, 2009), at note 8, citing the 1998 Release for the standard that “a proposal [that raises a significant policy issue] could be excluded under Rule 14a-8(i)(7), however, if it seeks to micro-manage the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a

# GIBSON DUNN

Office of Chief Counsel  
Division of Corporation Finance  
December 26, 2024  
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position to make an informed judgment.” For example, following the issuance of SLB 14L, the Staff has concurred with the exclusion of proposals addressing how companies interact with their shareholders on significant social policy issues because the proposals sought to micromanage how the companies addressed those policy issues. *See, e.g., Bank of America* (concurring that a proposal requesting the company issue an assessment of the proportion of certain sectors’ emissions that are attributable to clients not aligned with a credible 1.5°C pathway by 2030 was excludable for “seek[ing] to micromanage the [c]ompany”); *Amazon.com* (concurring that a proposal requesting the company report Scope 3 emissions from “its full value chain” was excludable for attempting to micro-manage the company). Thus, the fact that the Proposal addresses climate change and energy transition risks does not preclude its exclusion under Rule 14a-8(i)(7).

## 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 2025 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](mailto: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 Amanda Simmons, Senior Counsel, Wells Fargo Legal Department, at (212) 214-7701.

Sincerely,



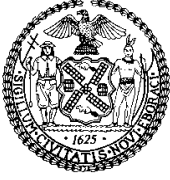
Lori Zyskowski

Enclosures

cc: Emma Bailey, Corporate Secretary, Wells Fargo Legal Department  
Janet McGinness, Associate General Counsel, Wells Fargo Legal Department  
Amanda Simmons, Senior Counsel, Wells Fargo Legal Department  
Jennifer Conovitz, Comptroller of the City of New York

GIBSON DUNN

**EXHIBIT A**



Jennifer Conovitz  
Special Counsel for Corporate  
Governance and Responsible  
Investment

CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
BRAD LANDER

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MUNICIPAL BUILDING  
ONE CENTRE STREET, 8<sup>TH</sup> FLOOR NORTH  
NEW YORK, N.Y. 10007-2341

November 14, 2024

Emma Bailey  
Deputy General Counsel and Corporate Secretary  
Wells Fargo & Company  
MAC# J0193-610, 30 Hudson Yards  
New York, NY 10001

Dear Ms. Bailey:

I write to you on behalf of the Comptroller of the City of New York, Brad Lander. The Comptroller is the custodian and a trustee of the New York City Teachers' Retirement System, the New York City Employees' Retirement System, and the New York City Police Pension Fund (individually a "System," collectively the "Systems"). The Systems' boards of trustees have authorized the Comptroller to submit and otherwise act on the Systems' behalf with respect to the enclosed shareholder proposal, and to inform you of the Systems' intention to present the shareholder proposal for the consideration and vote of shareholders at the Company's next annual meeting.

Therefore, we offer the enclosed proposal for the consideration and vote of shareholders at the Company's next annual meeting. It is submitted to you in full compliance with Rule 14a-8 of the Securities Exchange Act of 1934, and I ask that it be included in the Company's proxy statement.

Each System is the beneficial owner of at least \$25,000 in market value of the Company's securities entitled to vote on the shareholder proposal and have held such stock continuously for at least one year. Furthermore, each System intends to continue to hold at least \$25,000 worth of these securities through the date of the Company's next annual meeting. Proof of continuous ownership for the requisite time period will be sent by the Systems' custodian bank, State Street Bank and Trust Company, under separate cover.

We welcome the opportunity to discuss the shareholder proposal with you and are available to meet with the Company via teleconference at 11:00 am ET on either December 9, 2024, or December 10, 2024.

Please note that if the Company believes that the Systems or the enclosed shareholder proposal has failed to meet one or more of the eligibility or procedural requirements set forth in answers to Questions 1 through 4 of Rule 14a-8, the Company must notify us in writing of any alleged

deficiency within 14 calendar days of receiving the proposal and provide us with an opportunity to respond to any alleged deficiency within 14 days of receiving the Company's written notification.

I can be contacted at the phone number or email address set forth above to schedule a meeting with the Company or to address any questions the Company may have about the enclosed proposal.

Sincerely,

A handwritten signature in blue ink that reads "Jennifer Conovitz". The signature is written in a cursive style with a large, stylized initial "J".

Jennifer Conovitz

Enclosure

## Energy Supply Ratio

**Resolved:** Shareholders request Wells Fargo & Company (“Company”) disclose annually its Energy Supply Ratio (“ESR”), defined as its total financing through equity and debt underwriting, and project finance, in low-carbon energy supply relative to that in fossil-fuel energy supply. The disclosure, prepared at reasonable expense and excluding confidential information, shall describe Company's methodology, including what it classifies as “low carbon” or “fossil fuel.” Company should include lending in its ESR if methodologically sound.

### Supporting Statement:

As a major global bank, Company is broadly exposed to financial stability risks posed by climate change and has made certain climate-related commitments. Banks aligning their activities with their climate goals are better prepared to manage risk, including legal, reputational and financial risks associated with climate change and capitalize on opportunities associated with the global energy transition.

According to the International Energy Agency, reaching net zero greenhouse gas emissions by 2050 requires rapid transition away from fossil fuels and tripling in global annual clean energy investment by 2030.<sup>1</sup> The pace at which low-carbon energy supply is scaled up will dictate the rate at which fossil fuels are phased down.<sup>2</sup>

Company is reportedly among the largest global financiers of fossil fuels; however, it has committed to a goal of net zero by 2050, including financed emissions, and has a goal to deploy \$500 billion in sustainable finance by 2030.<sup>3</sup> Although Company has robust commitments to sustainable finance, investors need further disclosure to assess its clean energy financing activity and relative financing of fossil fuels.

The ESR, a dollar-based metric, will complement and supplement Company’s existing emissions-based climate financial disclosures, including any disclosures under European Union reporting requirements, and provide decision-useful disclosure on Company’s activities and progress toward its public commitments. In recent years, banks reportedly earned more in lending and underwriting fees from clean energy projects than from oil and gas, and coal companies.<sup>4</sup> Investors seek to assess whether Company is positioning itself as a leader in the energy transition.

The ESR has become a key climate disclosure metric. Bloomberg provides to its clients ESRs for global banks, including Company, using a standardized methodology with clear definitions for 'low carbon' and 'fossil fuel,' however, it excludes lending.<sup>5</sup> Three leading North American

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<sup>1</sup> <https://www.iea.org/reports/net-zero-roadmap-a-global-pathway-to-keep-the-15-0c-goal-in-reach>

<sup>2</sup> [Executive summary – Net Zero Roadmap: A Global Pathway to Keep the 1.5 °C Goal in Reach – Analysis - IEA](#)

<sup>3</sup> [Climate Report Published August, 2024](#)

<sup>4</sup> <https://www.bloomberg.com/news/articles/2023-10-18/green-fees-overtake-fossil-fuels-for-second-straight-year>

<sup>5</sup> <https://assets.bbhub.io/professional/sites/24/BNEF-Bank-Financing-Report-Summary-2023.pdf>; [https://assets.bbhub.io/professional/sites/24/Financing-the-Transition\\_Energy-Supply-Investment-and-Bank-Facilitated-Financing-Ratios.pdf](https://assets.bbhub.io/professional/sites/24/Financing-the-Transition_Energy-Supply-Investment-and-Bank-Facilitated-Financing-Ratios.pdf)

Banks, Citi, JPMorgan and Royal Bank of Canada committed to disclose an ESR, and their methodology, demonstrating that disclosure is feasible and leading market practice.

Investors believe Company should similarly disclose its annual ESR for which it is accountable, and work toward an industry-standard approach for calculating and reporting it. Bloomberg published an Implementation Guide<sup>6</sup> and the Institute of International Finance, a financial industry association with around 400 members globally, published a 2024 whitepaper that provides a potential format for standardized disclosure of methodological design choices.<sup>7</sup>

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<sup>6</sup> <https://assets.bbhub.io/professional/sites/24/Energy-Supply-Banking-Ratios-Implementation-Guide.pdf>

<sup>7</sup> [32370132 iif white paper energy supply ratio september 2024 final.pdf](#)



CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
BRAD LANDER

JUSTINA K. RIVERA  
GENERAL COUNSEL

OFFICE OF THE GENERAL COUNSEL

January 31, 2025

**VIA ONLINE SHAREHOLDER PROPOSAL FORM**

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

Re: Response to Wells Fargo & Company's No-Action Request

Dear Counsel:

I write on behalf of the New York City Employees' Retirement System, the New York City Teachers' Retirement System, and the New York City Police Pension Fund (collectively, the "Systems") in response to the no-action request from Wells Fargo & Company (the "Company"), dated December 26, 2024 (the "No-Action Request"). The No-Action Request seeks the concurrence of the Office of Chief Counsel of the Division of Corporate Finance of the Securities and Exchange Commission ("Staff") in the Company's contention that it may exclude the Systems' shareholder proposal ("Proposal") from its 2025 proxy materials.

At its core, the Proposal simply asks the Company to annually disclose to investors how its financing of fossil fuel energy supply compares to its financing of low-carbon energy supply. This information will better allow investors to evaluate the progress the Company is (or is not) making in financing the transition from fossil fuels to low-carbon energy – a transition necessitated by climate change. Because the Proposal is focused on addressing climate change, it transcends ordinary business. Furthermore, the Proposal leaves the Company with substantial discretion and flexibility for selecting a methodology and implementing the Proposal, allaying any micromanagement concerns. Nevertheless, the Company contends that the disclosure of this high-level, decision-useful metric somehow constitutes micromanagement under Rule 14a-8(i)(7). This is wrong as a matter of law and is further refuted by the fact that several of the Company's peers have committed to disclose their Energy Supply Ratio ("ESR") in response to shareholder engagement and evolving market practice, showing the metric to be both feasible and useful. In fact, one of those companies, JPMorgan, has already calculated and disclosed its ESR – and did so just months after reaching an agreement with the Systems in connection with a proposal filed with JPMorgan last year that is nearly identical to the Proposal at issue here. As part of its release, JPMorgan praised the ESR as "an insightful metric for our stakeholders that is also consistent with

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how we make financing decisions,” and further noted that its disclosure “is an excellent example of what ongoing engagements and pragmatic and reasonable requests can accomplish.”<sup>1</sup>

Based on the arguments set forth below, as well as the actions of the Company’s peers, the Staff should conclude that the Company has not established that the Proposal may be excluded under the micromanagement prong of Rule 14a-8(i)(7).

### **PROPOSAL AND SUPPORTING STATEMENT**

The Systems’ Proposal<sup>2</sup> states:

**RESOLVED:** Shareholders request Wells Fargo & Company (“Company”) disclose annually its Energy Supply Ratio (“ESR”), defined as its total financing through equity and debt underwriting, and project finance, in low-carbon energy supply relative to that in fossil-fuel energy supply. The disclosure, prepared at reasonable expense and excluding confidential information, shall describe Company’s methodology, including what it classifies as “low carbon” or “fossil fuel.” Company should include lending in its ESR if methodologically sound.

Although the Proposal’s Resolved Clause requests the annual disclosure of the Company’s ESR, the Supporting Statement makes clear that the Proposal is squarely focused on how shareholders can use this metric to better assess the Company’s response to the significant policy issue of addressing climate change, which the Staff has long recognized as an issue that transcends ordinary business. The Supporting Statement further explains that banks aligning their activities with their climate goals are better prepared to manage risk, including legal, reputational and financial risks associated with climate change and better aligned to capitalize on opportunities associated with the global energy transition.

The Supporting Statement also notes that reaching net zero greenhouse gas (“GHG”) emissions by 2050 requires a rapid transition from fossil fuels and a tripling in annual global clean energy investments by 2030. Financial institutions, such as the Company, play an outsized role in financing this transition. However, the Company remains one of the largest global financiers of fossil fuels. To its credit, the Company has committed to a goal of net zero by 2050, including financed emissions, and has a goal to deploy \$500 billion in sustainable finance by 2030. Despite these robust commitments to sustainable finance, investors need additional disclosure from the Company to assess how its low-carbon energy supply financing compares to its financing of fossil fuels, which will provide investors with high-level, decision-useful information on the Companies’ financing of the energy transition and progress towards achieving its climate-related commitments and goals. Additionally, as the Company itself noted in its 2024 Climate Report, “[w]e understand the role financial institutions can play to address climate change, and we see significant business

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<sup>1</sup> [www.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/investor-relations/documents/events/2024/energy-supply-financing-ratio-supplement/esfr-presentation.pdf](http://www.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/investor-relations/documents/events/2024/energy-supply-financing-ratio-supplement/esfr-presentation.pdf).

<sup>2</sup> A copy of the Proposal and supporting statement is attached as Exhibit A to the No-Action Request.

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opportunities in supporting our clients' climate transition efforts.”<sup>3</sup> For these reasons, ESR is a critical tool for investors.<sup>4</sup>

It is important to note that the Proposal does not require the Company to abandon, alter or supplant any current or contemplated disclosure or reporting as a result of an ESR disclosure. In fact, the Company's disclosure of its ESR will complement and supplement the Company's existing climate-related disclosures, which largely focus on “financed emissions.” Further, the Proposal imposes no specific methodology on the Company for formulating, calculating and disclosing its ESR. Although the Supporting Statement notes that ESRs are a key climate disclosure metric for assessing a company's progress in financing the energy transition, the Proposal accords the Company substantial methodological discretion in formulating, calculating and disclosing its annual ESR, asking only that the Company describe its chosen methodology as part of its disclosure, include lending in its ESR (if methodologically sound), and describe what it classifies as “low carbon” and “fossil fuel.” The Supporting Statement also recommends working towards an industry-standard approach, but this remains simply a recommendation and is not a requirement for implementing the Proposal. Likewise, the Supporting Statement suggests that the Company may wish to consult Bloomberg's Implementation Guide and a white paper from the Institute of International Finance in formulating its ESR methodology and a format for its ESR disclosure. But these, too, are simply recommendations for the Company's consideration and are not requirements of the Proposal.

Finally, the Supporting Statement notes that three of the leading North American banks – JPMorgan, Citigroup, Inc., and the Royal Bank of Canada – have already committed to disclosing their ESR and underlying methodology. This fact alone demonstrates that the disclosure is both feasible and a leading market practice.

### **THE PROPOSAL CANNOT BE EXCLUDED UNDER RULE 14a-8(i)(7)**

The Company argues the Proposal may be omitted under Rule 14a-8(i)(7) because it “relates to the Company's ordinary business operations and seeks to micromanage the Company – specifically, the Proposal inappropriately seeks to limit management's discretion by dictating a specific method for reporting on the Company's activities related to its climate efforts.” No-Action Request at 2. The Staff should reject this argument. The Proposal is focused on the significant policy issue of climate change, which transcends ordinary business concerns. Additionally, the Proposal does not seek to micromanage the Company or improperly limit management's discretion in developing, calculating or reporting on its progress toward achieving its financed emission goals or its other climate-related efforts. Further, the Proposal does not conflict with any of the Company's current reporting of financed emissions or other climate-related metrics. Accordingly, the Proposal cannot be excluded under Rule 14a-8(i)(7).

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<sup>3</sup> <https://www.wellsfargo.com/assets/pdf/about/corporate-responsibility/climate-disclosure.pdf>

<sup>4</sup> As the Supporting Statement notes, banks have recently earned more in lending and underwriting fees from clean energy projects than from oil and gas, and coal companies. Thus, the ESR can also provide insight into whether the Company is positioning itself as a leader in the financially lucrative energy transition.

### A. The Ordinary Business Standard of Rule 14a-8(i)(7)

The “ordinary business” exception permits a company to exclude a proposal that “deals with a matter relating to the company’s ordinary business operations.” Rule 14a-(8)(i)(7). In its most recent guidance, the Staff clarified that the policy underlying the ordinary business exception rests on two considerations: (1) the “proposal’s subject matter,” and (2) “the degree to which the proposal ‘micromanages’ the company ‘by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.’” Staff Legal Bulletin 14L, § B.3 (Nov. 21, 2021) (“SLB 14L”), quoting Release No. 34-40018 (May 21, 1998) (the “1998 Release”).

With respect to the subject matter of a proposal, SLB 14L re-affirmed the standards established in the 1998 Release, which explained that some “tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.” 1998 Release, § III. However, even if a proposal raises “ordinary business” issues, SLB 14L re-affirmed a longstanding exception, under which a company may not exclude a proposal that transcends a company’s ordinary business affairs where that proposal addresses “significant social policy issues.” SLB 14L, § B.2. Specifically, “the staff will consider whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company.” *Id.* The Staff has long recognized that climate change constitutes one such transcendent issue and that proposals focused on climate change are generally not subject to exclusion under Rule 14a-8(i)(7). *See, e.g., Portland Gen. Elec. Co.* (Feb. 19, 2016) (proposal requesting preparation of a climate change adaption report quantifying the financial and operational risk to the company associated with climate-change driven mega-droughts and describing how the company would avoid increased GHG emissions in mega-drought conditions not excludable under Rule 14a-8(i)(7) because the proposal focused on “the significant policy issue of climate change” and did not seek to micromanage the company to such a degree that warranted exclusion); *Devon Energy Corp.* (Mar. 19, 2014) (proposal requesting a report on the company’s goals and plans to address global concerns regarding the contribution of fossil fuel use to climate change, including analysis of long- and short-term financial and operational risks to the company, not excludable under Rule 14a-8(i)(7) because the proposal “focused on the significant policy issue of climate change” and did not seek to micromanage the company to such a degree that warranted exclusion). To determine whether a proposal focuses on a significant social policy issue, the Staff considers “both the proposal and the supporting statement as a whole.” Staff Legal Bulletin 14C, § D.2 (June 28, 2005).

With respect to the micromanagement prong – the sole focus of the Company’s No-Action Request – SLB 14L confirmed that the inclusion of “specific methods, timelines, or detail do not necessarily amount to micromanagement and are not dispositive of excludability.” SLB 14L, § B.3. The Staff “take[s] a measured approach to evaluating companies’ micromanagement arguments – recognizing that proposals seeking detail or seeking to promote ... methods do not per se constitute micromanagement.” *Id.* Instead, the Staff focuses “on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management.” *Id.* The Staff also noted that it “expect[s] the level of detail included in a shareholder proposal to be consistent with that needed to enable investors to assess an issuer’s impacts, progress towards goals, risks or other strategic matters appropriate for shareholder input.”

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*Id.* Finally, in assessing whether a proposal “probes matters ‘too complex’ for shareholders, as a group, to make an informed judgment,” the Staff “consider[s] the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic,” as well as “references to well-established national or international frameworks when assessing proposals related to disclosure, target setting, and timeframes as indicative of topics that shareholders are well-equipped to evaluate.” *Id.* Importantly though, the Staff has never stated that proposals requesting disclosures from a company must reference well-established national or international frameworks to survive a micromanagement challenge. In fact, just last year the Staff rejected a no-action request that argued that the lack of a consensus on a disclosure framework supported exclusion on micromanagement grounds under Rule 14a-8(i)(7). *See Chubb Ltd.* (Mar. 25, 2024) (proposal requesting report disclosing company’s GHG emissions from its underwriting, insuring, and investment activities not excludable on micromanagement grounds, even though company argued that there was “no industry-accepted or reasonably accurate methodology to measure GHG emissions of Chubb’s insurance clients”).

### **B. The Proposal Addresses the Significant Policy Issue of Climate Change and Therefore Transcends the Company’s Ordinary Business**

The Proposal is not excludable as “ordinary business” because it focuses on the significant policy issue of climate change, which transcends the Company’s ordinary business. The Proposal requests the disclosure of the Company’s ESR, a straightforward and clear financial metric that compares the Company’s total financing, expressed in dollars, in low-carbon energy supply to that in fossil-fuel energy supply. The Supporting Statement clarifies that the disclosure of the ESR provides investors with an additional tool to better assess the Company’s financing of the energy transition and progress towards achieving its own stated climate-related commitments and goals, as well as to better understand whether the Company is on pace to meet those commitments and goals. Simply put, the ESR will allow investors to see how (and the pace at which) the Company is (or is not) shifting its financing from fossil fuel energy supply – the burning of which is the primary driver of climate change – to a low-carbon energy supply. The Proposal is therefore directly focused on the issue of climate change and energy transition, especially with how the Company, through its financing decisions, is addressing those issues. The Staff has long considered proposals that focus on issues related to climate change, including proposals focused on the energy transition necessitated by climate change, to transcend ordinary business. *See, e.g., Portland Gen. Elec. Co.* (Feb. 19, 2016) (discussed above); *Devon Energy Corp.* (Mar. 19, 2014) (discussed above); *Dominion Resources* (February 27, 2014) (proposal requesting board report evaluating environmental and climate change impacts of the company using biomass as a key renewable energy and climate mitigation strategy, including an assessment of risks to the company’s finances and operations posed by emerging public policies on biomass energy and climate change, not excludable as ordinary business because proposal focused on the significant policy issue of climate change); *Goldman Sachs Group, Inc.* (February 7, 2011) (proposal requesting report disclosing the business risk related to developments in the political, legislative, regulatory, and scientific landscape regarding climate change not excludable as ordinary business because the proposal focused on the significant policy issue of climate change). *See also ConocoPhillips Co.* (Mar. 19, 2021) (proposal requesting that the company address the risks and opportunities presented by the global transition towards a lower emissions energy system by setting emission reduction targets covering GHG emissions of the company’s operations as well

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as their energy products (Scope 1, 2, and 3) not excludable as micromanagement where proponent argued that the Company's reporting failed to address the risks and opportunities of the energy transition).

Of relevance here is *Duke Energy Corp.* (Mar. 12, 2019), wherein the challenged proposal asked the company to annually disclose the costs the company actually incurred, as well as the associated actual/significant benefits accruing to shareholders, public health and the environment from the Company's environment-related activities that are voluntary and exceed federal/state regulatory requirements. Although the proposal expressly sought the disclosure of financial data, including the costs incurred by the company, the Staff determined that the proposal transcended ordinary business because of its environmental focus.<sup>5</sup> Likewise, in *PNC Financial Services Group, Inc.* (Feb. 13, 2013), the proposal requested a board report assessing GHG emissions resulting from its lending portfolio and its exposure to climate change risk in lending, investing, and financing activities. The Staff determined that the proposal was not excludable because it addressed the significant policy issue of climate change, even though the company argued that the proposal dealt with the Company's financing decisions.

We note that the Proposal does not require the Company to adopt any policies regarding its financing of fossil fuel projects, nor does it require the modification of any goals that the Company has already set for itself; however, even if it did, the Staff has concluded that such proposals can survive an ordinary business challenge where they transcend ordinary business. In *Chubb Ltd* (Mar. 26, 2022), the proposal requested that the board adopt and disclose new policies to help ensure that the Company's underwriting practices do not support new fossil fuel supplies, in alignment with the IEA's Net Zero Emissions by 2050 Scenario. The Staff concluded that the proposal transcended ordinary business matters and did not seek to micromanage the Company. It is hard to see how the Proposal – which simply requests the *disclosure* of high-level information regarding the Company's financing of fossil fuel and low-carbon energy supply – would be excludable as ordinary business, while a proposal requesting that a company expressly adopt policies to ensure that it does not support new fossil fuel supplies would not be excludable as ordinary business. In short, the Proposal falls squarely within a long line of prior determinations that have not been excluded on ordinary business grounds because the proposal focused on the significant policy issue of climate change.

We also note that the Staff has previously rejected no-action requests seeking to exclude proposals that asked companies to disclose a financial ratio where that ratio focused on a significant policy issue. In *Mastercard Inc.* (Apr. 24, 2019), the challenged proposal requested that the company disclose its global median gender pay gap, defined as the difference between male and female median earnings expressed as a percentage of male earnings. Although the Proposal here leaves it up to the Company to determine its own methodology for calculating and disclosing its ESR (including what it classifies as "low carbon" and "fossil fuel" and whether including lending in the calculation is methodologically sound), the *Mastercard* proposal was much more granular and methodologically prescriptive, requiring that the disclosure include the percentage global median pay gap between male and female employees across race and ethnicity, including

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<sup>5</sup> This determination also provides an example of a prior Staff determination that rejected a no-action challenge even where the requested disclosure did not reference any well-established national or international framework for the requested disclosure.

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base, bonus, and equity compensation. Because any percentage can be converted to a ratio, the proposal there, like the Proposal here, called for the disclosure of a high-level financial ratio comparing two things (there, male and female median pay globally across the company; here, fossil fuel and low-carbon energy supply financing). Mastercard, as the Company now does, sought no-action relief, arguing that the proposal micromanaged the company by seeking the disclosure of specific metrics. In response, the proponent argued that, despite requesting the disclosure of financial metrics, the proposal transcended ordinary business because it focused on a significant policy issue: gender pay discrimination. The Staff rightly rejected the company's micromanagement challenge, concluding that the proposal could not be excluded on micromanagement grounds. *See also Wells Fargo & Co.* (Feb. 21, 2019) (same) and *Bank of America Corp.* (Feb. 21, 2019) (same). Although the specific policy issues transcending ordinary business are different (gender pay discrimination versus climate change), the proposals at issue in these three determinations and the Proposal at issue here are otherwise analogous in their request: the disclosure of a financial metric that would allow investors to assess the company's progress on a significant policy issue. If anything, the Proposal is much less granular and methodologically prescriptive than the gender pay gap disclosure proposals. Accordingly, consistent with these determinations, the Staff should decline to concur with the Company's No-Action Request.

Despite this long line of precedent, the Company still argues that the Proposal can be excluded as ordinary business even if it "touches upon" a significant policy issue. No-Action Request at 10-11. The Company asserts the focus of the Proposal is "not on a broad policy issue relating to climate change or energy transition risks," but is rather "an attempt to limit the Company's discretion in how it addresses the complex and granular issue of establishing, assessing and reporting on specific aspects of the Company's energy-related financing activities" *Id.* at 10. This is simply false. The purpose of the Proposal is for the Company to provide an easily-understood metric – its ESR – that will allow investors to better assess the role the Company is playing in financing the energy transition necessitated by climate change, as well as the Company's progress in meeting its own stated climate commitments and goals.<sup>6</sup> Furthermore, nothing in the Proposal attempts to otherwise limit the Company's discretion in how it establishes, assesses, and reports on its energy-related financing activities," such as "financed emissions." For example, the Proposal does not require the Company to set any particular goal, make progress on that goal, change its financing activity, follow any specific methodology in reporting financed emissions or any other metric, or abandon or alter any of its other current or contemplated disclosures or goals.

To support its position, the Company relies on *Wells Fargo & Co. (Warren Wilson College)* (Mar. 6, 2024, recon. denied Apr. 15, 2024) and *Amazon.com, Inc.* (Apr. 7, 2023), both of which

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<sup>6</sup> The Institute of International Finance (IIF), a global financial industry association with around 400 members from over 60 countries, including commercial and investment banks, asset managers, insurance companies, ratings agencies, market infrastructure providers, and professional services firms, has made a similar argument in support of the ESR. In its "White Paper on an Energy Supply Ratio for Bank Disclosures," the IIF states: "In its simplest form, an ESR compares the amount of a bank's financing to low-carbon energy supply (e.g., renewables) relative to high-carbon energy supply (e.g., oil & gas). The concept has gained interest as a climate-related metric given the shift required in the global energy mix towards low-carbon energy sources in order to meet the goals of the Paris Agreement. Some banks are planning or considering disclosing an ESR as a complementary metric alongside the suite of other climate-related metrics already disclosed by many banks across the world." *See* [https://www.iif.com/portals/0/Files/content/Regulatory/32370132\\_iif\\_white\\_paper\\_energy\\_supply\\_ratio\\_september\\_2024\\_final.pdf](https://www.iif.com/portals/0/Files/content/Regulatory/32370132_iif_white_paper_energy_supply_ratio_september_2024_final.pdf).

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concerned prescriptive, complex, and multi-pronged proposals that have little in common with the Proposal at issue here. In *Wells Fargo & Co.*, the proposal requested that for each of its sectors with a Net Zero aligned 2030 target the company annually disclose: (1) the proportion of sector emissions attributable to clients not aligned with a credible Net Zero pathway; (2) whether this proportion of unaligned clients will prevent Wells Fargo from meeting its 2030 targets; and (3) actions it proposes to address any such emissions reduction shortfalls. In *Amazon.com, Inc.*, the proposal asked the company to undertake the Herculean task of measuring and disclosing Scope 3 GHG emissions *from its full value chain* inclusive of its physical stores and e-commerce operations and *all products that it sells* directly and those sold by third-party vendors on its marketplace. The Staff concluded that these proposals could be excluded because they sought to micromanage the companies, and further explained in *Amazon.com, Inc.* that the proposal did so by imposing a specific method for implementing a complex policy disclosure without affording discretion to management. In contrast, the Proposal here does not require calculating and reporting on anything as complex as various sectors' GHG emissions (or an entire value chain, including third-party vendors, as in *Amazon.com, Inc.*), assessing whether clients are or are not credibly aligned with any particular pathway, determining whether and how such unalignment affects the Company in the pursuit of its own emissions targets, or proposing actions to address any emissions reduction shortfalls. Instead, the Proposal presents a simple ask: the disclosure of the Company's ESR – a high-level comparison of the Company's total financing in low-carbon energy supply to its total financing of fossil fuel energy supply – with substantial methodological discretion left to the Company to determine what it classifies as “low carbon” and “fossil fuel.” There is simply no imposition of a specific methodology or other granular requirements that the Company must adhere to in disclosing its ESR and the Company is left with wide discretion to formulate its own methodology for calculating and making this requested disclosure. These two prior Staff determinations therefore provide no basis for excluding the Proposal.

### **C. The Proposal does not Micromanage the Company**

There is also no merit to the Company's argument that the Proposal seeks to micromanage the Company. Far from imposing a “specific method for implementing complex policies” or seeking “overly granular” detail (No-Action Request at 8, 10), the Proposal is a straightforward request, asking only that the Company disclose a key metric that has emerged as a vital tool for investors that want to evaluate a company's progress in financing the energy transition and achieving its own climate commitments and goals. The Proposal does not impose specific methods for implementing complex policies, and the Proposal's request for aggregated, high-level information is the very opposite of “overly granular detail.” Likewise, the Proposal does not inappropriately limit the discretion of the Company's board and management. Importantly, no constraints whatsoever are placed on the Company's financing activities, and in disclosing the requested ESR, the Company remains free to determine what financing it classifies as “low carbon” and what financing it classifies as “fossil fuel,” and whether it is methodologically sound to include lending in this ratio. While the Company argues about the purported complexity of disclosing its ESR, it is telling that the Company never once attempts to explain why it is hard to define and categorize energy supply financing as either “low carbon” or “fossil fuel,” especially in light of Bloomberg providing clear definitions and peer companies, such as JPMorgan, having no apparent difficulty doing so. Finally, disclosing the requested ratio does not limit the Company's ability to express any concerns or reservations it has about the usefulness of the ESR,

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nor does it limit the Company's ability to disclose alternative metrics that it feels are more appropriate for the Company and investors. Accordingly, the Proposal cannot be excluded on micromanagement grounds.

The Company first points out that the Proposal does not follow well-established national or international frameworks (No-Action Request at 5-6), as if this is a *sine qua non* for a shareholder proposal requesting a disclosure. However, the Company offers no argument for why an international framework is necessary when investors simply seek a high-level, easily-understood disclosure that compares the amount of financing the Company provides to low-carbon energy supply versus fossil fuel energy supply – categories that investors already have a clear understanding of. Moreover, the Staff's own reference in SLB 14L to "well-established national or international frameworks" makes clear that this is simply one factor that the Staff "*may also consider*" as "indicative of topics that shareholders are well-equipped to evaluate." SLB 14L, § B.3 (emphasis added). To say that Staff *may* consider the presence of one thing (reference to a well-established standard) as *indicative* of another thing (a topic shareholders are well-equipped to evaluate) in no way implies that the absence of the indicator means that shareholders are not well-equipped to evaluate the proposal. In fact, to think otherwise is to commit the fallacy of denying the antecedent – assuming that if the antecedent is not satisfied (the existence of a well-established standard) then the consequent (shareholders being well-equipped to evaluate the proposal) is also not satisfied.<sup>7</sup> Here, even without an established ESR reporting standard, investors can easily and readily understand what it means to finance fossil-fuel energy supply and low-carbon energy supply, as well as the resulting ratio. And any concern about the lack of an established standard for ESR disclosure is further ameliorated by the Proposal's request that the Company's ESR disclosure include a description of its methodology, thereby allowing investors to understand exactly how the Company categorized its energy supply financing and calculated its ESR.

The Company cites *Home Depot, Inc. (Jessica Wrobel)* (Mar. 21, 2024) and *Air Products and Chemicals, Inc.* (Nov. 29, 2024) as examples of where the Staff has concurred with the exclusion of proposals seeking disclosures that did not reference well-established standards. No-Action Request at 9-10. While it is true that the Staff granted no-action relief in those two determinations, there is no suggestion that the Staff's determination were based on the lack of a well-established disclosure standard. Accordingly, these determinations provide no support for the Company's micromanagement argument.

In *Home Depot, Inc.*, the proposal sought a highly-detailed and complex living wage report that had to include: (1) the number of Home Depot workers paid less than a living wage, broken down by full-time employees, part-time employees, and contingent workers; (2) how much aggregate compensation paid to workers in each category falls short of the aggregate amount that would be paid if they received a living wage; and (3) the living wage benchmark/methodology used for the disclosures. Far from arguing that the lack of an established reporting standard was indicative of micromanagement, the company noted that this afforded it "an element of discretion" – a factor generally seen as favoring a finding of no micromanagement – and instead argued that the proposal would "require the Company to calculate the compensation paid to workers that is included within the scope of a 'living wage' calculation ..., determine the level of compensation

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<sup>7</sup> See [https://en.wikipedia.org/wiki/Denying\\_the\\_antecedent](https://en.wikipedia.org/wiki/Denying_the_antecedent)

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that constitutes a ‘living wage’ for its employees, assemble the same type of information from the third parties who employ any ‘contingent workers,’ and provide specific calculations and statistics based on comparisons of those amounts. Each element of that process requires the collection of data that is not readily available and can be terribly complex.” Nothing comparable to this is found in the Proposal. Given that the company focused on the complexities of assembling, calculating and reporting the requested granular data – as opposed to the lack of an established reporting standard – the Staff’s determination was much more likely based on the prescriptiveness, complexity and granularity of the proposal, not on the absence of an established reporting standard.

In *Air Products and Chemicals, Inc.*, the proposal requested a lobbying report that would have required the company to disclose: (1) the company’s policy and procedures governing both direct and indirect lobbying, as well as grassroots lobbying communications; (2) all payments used for (a) direct and indirect lobbying, or (b) grassroots lobbying communications, in each case including the amount of the payment and the recipient; (3) the company’s membership in and payments to any tax-exempt organization that writes and endorses model legislation; and (4) a description of management’s decision-making process and the board’s oversight for making payments described in (2) and (3). Although the company mentioned that the proposal did not follow any established framework for reporting lobbying activities, the focus of its argument was instead on the “highly prescriptive nature of the Proposal,” and the burdensomeness of having to assemble and disclose the granular information requested in the proposal, noting that the “level of detail [requested] is misaligned with the level of detail that the Company provides with respect to *any* of its other business activities or categories of operating expenditures.” As in *Home Depot, Inc.*, it is much more likely that the Staff’s determination was based on the prescriptiveness, complexity and granularity required by the proposal – which are absent from the Proposal at issue here – not the absence of a requirement to report in accordance with an established reporting framework.

Furthermore, the Staff’s determination in *Chubb Ltd.* (Mar. 25, 2024) conclusively shows that the lack of established disclosure framework is not dispositive of micromanagement. There, the proposal asked the company to issue a report disclosing the company’s GHG emissions from its underwriting, insuring, and investment activities. The company sought no-action relief on micromanagement grounds, arguing extensively that climate change and emission disclosure frameworks were still emerging and in various stages of adoption and implementation and that there was no “industry-accepted or reasonably accurate methodology to measure GHG emissions of the company’s insurance clients.” Despite Chubb’s contention, the Staff determined, without qualification, that the proposal did not seek to micromanage the Company. Accordingly, there is no basis for the Company’s contention that exclusion is warranted because there is not a well-established national or international framework for ESR disclosure.

Although already stated above, it bears emphasizing again that the Proposal does not impose any particular methodology for calculating the ESR, much less require the implementation of a complex policy. This is apparent from the Resolved Clause, which asks that the Company’s disclosure of the requested ESR include a description of the “Company’s methodology, including what it classifies as ‘low carbon’ or ‘fossil fuel.’” If the Proposal sought to impose a pre-existing, third-party metric that already defined or classified low-carbon and fossil-fuel financing, it would make no sense to ask the Company to describe the “*Company’s* methodology” or explain “*what it*

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classifies as ‘low-carbon’ or ‘fossil-fuel’” As noted already, three leading North American banks (JPMorgan, Citigroup, Inc, and the Royal Bank of Canada) have committed to disclose their ESR and associated methodology (with JPMorgan already fulfilling its commitment), demonstrating the feasibility and usefulness of ESRs, and showing that ESRs have become a key metric for climate disclosure and a leading market practice. Additionally, the Supporting Statement simply *recommends* that the Company (1) consult Bloomberg’s Implementation Guide and the format for disclosure contained in the Institute of International Finance’s whitepaper, and (2) work to establish an industry-standard approach for calculating and reporting ESRs. The Supporting Statement’s recommendations merely serve as suggestions, not dictates, and refer to materials that the Company can employ in its own methodological discretion.

In light of the foregoing, the Company’s assertions that the ESR would remove the Company’s discretion on how it measures and reports its energy-related financing activities are simply not true and there is no basis for Company’s claim that the Proposal “seeks to eliminate management discretion by ‘impos[ing] a specific method’ and ‘granularity’ as to how to the Company is to measure and report on its energy-related financing activities.” No-Action Request at 8. Likewise, the Proposal does not seek overly granular detail. The requested ESR simply requires the Company to determine what financing it classifies as low-carbon energy supply financing and what financing it classifies as fossil-fuel energy supply financing, tally the dollar-value of two categories, and then annually disclose how they compare to each other. The information subject to disclosure is broad, high-level aggregated data that has become increasingly important for investors concerned with how (and the speed at which) financial institutions, such as the Company, are financing the energy transition. Accordingly, the Company’s conclusory claim that the Proposal seeks overly granular detail or information (No-Action Request at 10) has no basis.

The Proposal also does not inappropriately limit the discretion of the Company’s board or management. First and foremost, the Proposal focuses simply on the *disclosure* of data regarding the Company’s energy supply financing; it does not attempt to place any limits on the Company’s conduct of its financing activities. Second, even if shareholders approve the Proposal, the Company retains broad discretion regarding the requested disclosure. In particular, the Company is free to determine the methodology it adopts for calculating the ESR, including what it classifies as low-carbon energy supply financing and what is classifies as fossil-fuel energy supply financing, and whether it includes lending in that ratio. Further, the disclosure of the ESR does not, as the Company contends, “eliminate management discretion.” No-Action Request at 8. For example, the Company is free to explain why the metric is being disclosed (i.e., because shareholders asked for it, evolving market practices, consistency with peer institution disclosures, etc.) and express any concerns, reservations or caveats it has about the usefulness or relevance of the ratio for the Company and its investors. Likewise, the Proposal does not limit the Company’s discretion to disclose other metrics that it feels are more appropriate or useful for investors seeking to assess the impact of the Company’s activities on its energy financing transition, which is a stated goal of the Company. In short, any limitation the Proposal places on the Company’s discretion is *de minimis* and certainly not sufficient to warrant a finding of micromanagement.

As the Staff made clear in SLB 14L, the micromanagement exemption should not be read to mean that “any limit on company or board discretion constitutes micromanagement,” and

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investors remain free to advance proposals that “provid[e] high-level direction on large strategic corporate matters,” including those that seek information that allows them “to assess an issuer’s impacts, progress towards goals, risks or other strategic matters appropriate for shareholder input.” SLB 14L, § B.3. This guidance is particularly relevant here. As noted in the Supporting Statement, the Company has committed to a goal of net zero by 2050, including financed emissions, and has a goal to deploy \$500 billion in sustainable finance by 2030. The Proposal makes clear that the purpose of the requested disclosure is to make it easier for investors to assess the Company’s progress on financing the energy transition and the Company’s progress towards achieving its own climate-related commitments and goals. Accordingly, this is exactly the type of proposal that should survive a micromanagement challenge.

Although the Company cites several prior Staff determinations in support of its micromanagement arguments, those determinations are easily distinguished and of no relevance here. In *Walmart Inc.* (Apr. 18, 2024), the proposal requested a product category breakdown of GHG emissions from purchased goods and services and use of sold products, all of which are considered Scope 3 GHG emissions, which are notoriously hard to gather and calculate because they occur outside of a company’s direct operational control. In arguing that the proposal micromanaged the company, Walmart explained that it sold “hundreds of thousands of different products in dozens of product categories” and that the proposal “would require the Company to provide granular disclosure regarding each of these categories (1) without regard for their significance to the Company’s overall operations and emissions profile; (2) at a level of detail that is misaligned with the level of detail at which the Company reports its net sales and trends to the investment community; and (3) in a manner inconsistent with the established framework of the GHG Protocol, which the Company utilizes in its emissions reporting decisions.” Simply put, Walmart’s undertaking would have been daunting, especially because of the number of products it sold (hundreds of thousands across dozens of product categories) and the type of data (Scope 3 GHG emissions data) that would need to be collected and reported.

The Proposal at issue here is nothing like the proposal in *Walmart*. First, the reporting sought by the two proposals differs in *kind*. The proposal in *Walmart* requested disclosure of Scope 3 GHG *emissions data*. In contrast, the Proposal requests the disclosure of a *financial ratio* – the Company’s ESR – which is an easily-understood, high-level comparison of the amount of *financing* that the Company provides to low-carbon energy supply vis-à-vis fossil fuel energy supply. Second, the general type of data that the Company needs to calculate its ESR – the amount of financing it has provided and the type of energy supply that has received that financing – is already readily available to the Company. The Company, after all, is the source of the financing and knows, through its extensive due diligence process, the types of entities and activities to which it is providing financing.<sup>8</sup> This is typically not true with Scope 3 GHG emissions data, because that data is generally not within a company’s direct operational control. Third, the granularity of the data needed to report an ESR is general, high-level data (i.e., the amount of financing for low-carbon energy supply and fossil fuel energy supply and how these two amounts compare), as opposed to the granular (and copious) Scope 3 GHG emission data that Walmart would have needed to assemble from third parties to provide the requested disclosure. For these reasons, *Walmart Inc.* is not relevant here.

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<sup>8</sup> See <https://www08.wellsfargomedia.com/assets/pdf/about/corporate-responsibility/environmental-social-impact-management.pdf>.

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As already discussed above, the proposal in *Wells Fargo & Co.* (Mar. 6, 2024, *recon. denied* Apr. 15, 2024) is even further afield and provides no support for the Company. *JPMorgan Chase & Co.* (Mar. 29, 2024), *Morgan Stanley* (Mar. 29, 2024), *Bank of America Corp. (Warren Wilson College)* (Feb. 29, 2024, *recon. denied* Apr. 15, 2024), and *The Goldman Sachs Group, Inc.* (March 4, 2024, *recon. denied* Apr. 15, 2024) all concerned proposals nearly identical to the proposal at issue in *Wells Fargo & Co.* and therefore require no additional discussion. Likewise, the Company reliance on *Amazon.com, Inc.* (Apr. 7, 2023, *recon. denied* Apr. 20, 2023) is misplaced for the reasons discussed above.

If the Staff seeks guidance from prior determinations, those concerning the gender pay gap, discussed above, are likely the most analogous. Additionally, *The Travelers Companies, Inc.* (Mar. 30, 2022) (proposal requesting the adoption and disclosure of new policies to help ensure that the company's underwriting practices do not support new fossil fuel supplies, in alignment with the International Energy Association's Net Zero Emissions by 2050 Scenario, did not micromanage the company); *Chubb Ltd.* (Mar. 26, 2022) (proposal requesting that the company issue a report addressing whether and how it intends to measure, disclose, and reduce GHG emissions associated with its underwriting, insuring, and investment activities in alignment with the Paris Agreement's temperature goal, requiring net zero emissions, did not micromanage the company); *JPMorgan Chase & Co.* (Mar. 25, 2022) (proposal requesting that the company adopt a policy in which the company takes available actions to help ensure its financing does not contribute to new fossil fuel supplies inconsistent with the International Energy Agency's Net Zero Emissions by 2050 scenario, did not micromanage the company); and *PNC Financial Services Group, Inc.* (Feb. 13, 2013) (proposal requesting disclosure of company's assessment of the greenhouse gas emissions resulting from its lending portfolio and its exposure to climate change risk in its lending, investing and financing activities not excludable under Rule 14a-8(i)(7)) are also relevant due to their high-level focus. In fact, the Proposal poses even less micromanagement concern than the proposals at issue in these determinations – most of which request the adoption and implementation of a specific policy related to climate change – because it simply requests the disclosure of a high-level financial metric that will better allow investors to assess the Company's progress towards meeting its own stated sustainable finance goals.

**D. The Actions of the Company's Peers with Respect to a Nearly Identical Proposal From the 2024 Proxy Season Demonstrate that the Proposal Should Be Put to a Shareholder Vote**

The Company's protestations that the Proposal can be excluded on micromanagement grounds ring hollow for several additional reasons. First, the Systems submitted a nearly identical proposal ("Prior Proposal") to several of the Company's peer institutions last year - Bank of America, Goldman Sachs, Inc., Citigroup, Inc., JPMorgan, and the Royal Bank of Canada.<sup>9</sup> The Prior Proposal was withdrawn at Citigroup, Inc. at the Royal Bank of Canada after they provided commitments to disclosure their ESR, while the Prior Proposal received 26% and 28.8% support

<sup>9</sup> See New York City Retirement Systems 2024 Shareholder Initiatives Postseason Report (Dec. 2024) at p. 21, available at <https://comptroller.nyc.gov/wp-content/uploads/documents/New-York-City-Retirement-Systems-2024-Shareholder-Initiatives-Postseason-Report-1.pdf>

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at Bank of America and Goldman Sachs, Inc., respectively.<sup>10</sup> This demonstrates that a substantial percentage of shareholders at those companies believe that an ESR disclosure presents decision-useful information for shareholders and potential investors. Only one of those companies – JPMorgan – sought No-Action relief last year. Ultimately, however, JPMorgan withdrew its no-action request and, through negotiations with the New York City Comptroller, agreed to formulate and disclose its ESR, which it termed its “Energy Supply Financing Ratio,” or ESFR.<sup>11</sup> Furthermore, JPMorgan has already disclosed its ESFR. Using its own methodology and definitions, JPMorgan calculated its ESFR as 1.29x, meaning that for every dollar JPMorgan supplied to support high-carbon energy supply it supplied 1.29 dollars to support low-carbon energy supply. The speed with which JPMorgan formulated, calculated, and disclosed its own ESFR (just months after it withdrew its no-action request) belies the Company’s conclusory claims that Herculean efforts would be needed to prepare an ESR disclosure. In fact, despite the initial no-action request against the Prior Proposal, JPMorgan has stated that its approach, negotiated with the New York City Comptroller’s Office, “aims to construct an insightful metric for our stakeholders that is also consistent with how we make financing decisions” and that the ESFR “is an excellent example of what ongoing engagements and pragmatic and reasonable requests can accomplish.”<sup>12</sup> The fact that one of the Company’s peers views the Prior Proposal as presenting an “insightful metric” that is both “pragmatic and reasonable” further undercuts the Company’s claim that the Proposal can be excluded on micromanagement grounds.

In sum, the actions of the Company’s peer institutions last proxy season demonstrate that the Proposal, far from micromanaging these financial institutions, presents a pragmatic and reasonable shareholder proposal that, if adopted, provides an “insightful metric” for shareholders and investors seeking to assess the progress financial institutions are making in financing the energy transition. Accordingly, the Staff should conclude that the Proposal does not micromanage the Company.

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<sup>10</sup> *Id.*

<sup>11</sup> See [www.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/investor-relations/documents/events/2024/energy-supply-financing-ratio-supplement/esfr-presentation.pdf](http://www.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/investor-relations/documents/events/2024/energy-supply-financing-ratio-supplement/esfr-presentation.pdf)

<sup>12</sup> *Id.*

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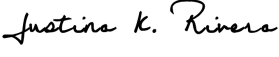
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**CONCLUSION**

For the reasons set forth above, we respectfully request that the Company's No-Action Request be denied.

If you have any questions or need additional information, please do not hesitate to contact me at the phone number or email address provided above.

Respectfully submitted,

DocuSigned by:  
  
4FA7FC017929408...  
Justina K. Rivera

CC (via email):

shareholderproposals@gibsondunn.com

February 21, 2025

**VIA ONLINE 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 Shareholder Proposal of the New York City*  
*Teachers' Retirement System, the New York City Employees' Retirement System,*  
*and the New York City Police Pension Fund*  
*Securities Exchange Act of 1934—Rule 14a-8*

Ladies and Gentlemen:

On December 26, 2024, we submitted a letter (the “No-Action Request”) on behalf of our client, Wells Fargo & Company (the “Company”), to inform 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 2025 Annual Meeting of Shareholders (collectively, the “2025 Proxy Materials”) a shareholder proposal (the “Proposal”) and statements in support thereof (the “Supporting Statement”) submitted by the Comptroller of the City of New York, Brad Lander, on behalf of the New York City Teachers’ Retirement System, the New York City Employees’ Retirement System, and the New York City Police Pension Fund (collectively, the “Proponents”). The No-Action Request sets forth the basis for our view that the Proposal properly may be excluded from the 2025 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal relates to the Company’s ordinary business operations and seeks to micromanage the Company.

This supplemental letter responds to a letter received from the Proponents in response to the No-Action Request dated January 31, 2025 (the “Response Letter”). The Response Letter demonstrates that the Proposal’s requested Energy Supply Ratio (“ESR”) does not implicate a significant social policy issue with respect to the Company and instead addresses the ordinary business issue of whether to provide supplement financial reporting of lending activity and seeks to impose specific methods for implementing and reporting on complex policy matters. Accordingly, the Proposal is excludable under Rule 14a-8(i)(7).

**I. The Response Letter Demonstrates That The Proposal Relates To Ordinary Business Matters And Does Not Implicate A Significant Social Policy Issue For The Company.**

In Staff Legal Bulletin No. 14M (Feb. 12, 2025) (“SLB 14M”), the Staff, citing prior statements by the Commission, confirmed that the determination as to whether a proposal deals with a matter relating to a company’s ordinary business operations for purposes of

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Rule 14a-8(i)(7) is “made on a case-by-case basis, taking into account factors such as the nature of the proposal and the circumstances of the company to which it is directed.”<sup>1</sup> Thus, the Response Letter’s references to disclosure practices of other financial institutions are of no relevance in assessing whether the Proposal may be excluded under Rule 14a-8(i)(7).

The Response Letter claims that the Proposal relates to the significant policy issue of addressing climate change by asserting, at page 1, that the financial metric “will better allow investors to evaluate the progress the Company is (or is not) making in financing the transition from fossil fuels to low-carbon energy.” But its discussion demonstrates otherwise, as the Proposal instead relates to the ordinary business matter of whether to present financial disclosures that are not required under applicable Commission and accounting rules. As the Response Letter states, on page 6, “the Proposal does not require the Company to adopt any policies regarding its financing of fossil fuel projects, nor does it require the modification of any goals that the Company has already set for itself.” Likewise, on page 7, the Response Letter states, “the Proposal does not require the Company to set any particular goal, make progress on that goal, change its financing activity, follow any specific methodology in reporting financed emissions of any other metric, or abandon or alter any of its other current or contemplated disclosures or goals.” Instead, as stated on page 5 of the Response Letter, “[t]he Proposal requests the disclosure of . . . a straightforward and clear financial metric that compares the Company’s total financing, expressed in dollars, in low-carbon energy supply to that in fossil-fuel energy supply.”

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company’s “ordinary business operations.” According to the 1998 Release, the term “ordinary business” “refers to matters that are not necessarily ‘ordinary’ in the common meaning of the word,” but instead the term “is rooted in the corporate law concept [of] providing management with flexibility in directing certain core matters involving the company’s business and operations.”<sup>2</sup> The Commission has stated, however, that proposals relating to such matters but focusing on a significant policy issue generally are not excludable under this consideration “because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.”<sup>3</sup> Most recently, in SLB 14M, the Staff confirmed that “whether the significant policy exception applies depends on the particular policy issue raised by the proposal and its significance in relation to the company.”<sup>4</sup>

Here, the Proposal does not raise a policy issue that is significant to the Company; it

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<sup>1</sup> SLB 14M at part A, citing Exchange Act Release No. 34-40018 (May 21, 1998) (the “1998 Release”).

<sup>2</sup> 1998 Release.

<sup>3</sup> *Id.*

<sup>4</sup> SLB 14M at part C.2, citing the 1998 Release, Staff Legal Bulletin No. 14H (Oct. 22, 2015) and Staff Legal Bulletin No. 14E (Oct. 27, 2009).

does not request that the Company study, analyze, or change its policies and practices with respect to climate change or its financing practices. Instead, the Proposal requests that the Company report a financial ratio that is not required to be reported under applicable Commission or accounting rules.

The Staff has historically found that proposals seeking additional, detailed financial disclosure, the subject matter of which involves ordinary business operations, may be excluded under Rule 14a-8(i)(7). *See, e.g., Citigroup Inc. (Missionary Oblates of Mary Immaculate et al.)* (avail. Feb. 20, 2008) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting disclosure of certain prescribed financial information on a website on a quarterly basis); *AmerInst Insurance Group, Ltd. (Kimball, Paris and Gugliotti, PC)* (avail. Apr. 14, 2005) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board provide each quarter a full, complete and adequate disclosure of the accounting of the line items and amounts of the operating and management expenses of the company); *Johnson Controls, Inc.* (avail. Oct. 26, 1999) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting disclosure of additional information in financial statements in reports to shareholders); *LTV Corp.* (avail. Nov. 25, 1998) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requiring a new disclosure in a note to the financial statements as “directed at matters relating to the conduct of the [c]ompany’s ordinary business operations”); *Potomac Electric Power Co.* (avail. Mar. 1, 1991) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting disclosure of a “contingent liability account,” noting that the proposal relates to ordinary business matters “(i.e., the accounting policies and practices of the [c]ompany”); and *Santa Fe Southern Pacific Corp.* (avail. Jan. 30, 1986) (concurring with the exclusion under the predecessor to Rule 14a-8(i)(7) of a proposal requesting disclosure of cost basis financial statements to all shareholders, noting that the proposal related to the conduct of ordinary business operations, including “the determination to make financial disclosure not required by law”). Contrary to the claim in the Response Letter, *MasterCard Inc.* (avail. Apr. 24, 2019), and precedents relating to a similar proposal, did not involve reporting of a financial metric such as the balance sheet-related detail requested in the Proposal, but instead related to reporting on employee wage data. Here, the subject matter of the requested financial metric relates to the Company’s lending business, and the Response Letter confirms that the Proposal is not intended to require any change to those policies or the Company’s role in financing the energy transition. As such, in the context of the Company’s existing policies and disclosures, the Proposal relates to the Company’s ordinary business of reporting on its financial activities and does not raise a significant policy issue, and accordingly is excludable under Rule 14a-8(i)(7).

## **II. The Response Letter Misinterprets Rule 14a-8(i)(7) And Mischaracterizes The Degree To Which The Proposal Micromanages The Company.**

As explained in the No-Action Request, the Proposal micromanages the Company by seeking to impose a specific method for how the Company implements and reports on its energy transition financing activities, which would inappropriately limit management’s

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discretion in addressing and implementing the complex issue of managing and reporting on the Company's climate-change related activities. The Response Letter asserts that the Proposal does not micromanage the Company because it presents a "straightforward request" for a "high-level comparison of the Company's total financing in low-carbon energy supply to its total financing of fossil fuel energy supply." The Response Letter also notes that "substantial methodological discretion" is "left to the Company," including "to determine what it classifies as 'low carbon' and 'fossil fuel,'" and thus it contends, at page 10, that the Proposal "does not impose any particular methodology for calculating the ESR, much less require the implementation of a complex policy." These claims misstate how the Proposal would fundamentally reorient the Company's approach to managing and reporting on the Company's climate-related lending activities and misinterpret the micromanagement standard under Rule 14a-8(i)(7).

As explained in the No-Action Request, the Company has devoted significant resources to developing public disclosures setting forth the Company's climate-related efforts, including with respect to operational and financed emissions and sustainable financing. As part of the Company's approach, the Company works with its clients to help them meet their evolving needs as they transition toward a sustainable and resilient low-carbon economy. Managing and reporting on these activities requires management to evaluate and balance the Company's business and sustainability goals, legal compliance programs, stakeholder perspectives, market best practices, accepted reporting standards and frameworks and available data, among other considerations. Balancing these complex ordinary business priorities is exactly the type of challenge that the 1998 Release sought to confine to the discretion of management.

The Proposal's request for the Company to disclose an ESR is itself an attempt to impose a specific methodology for implementing complex policies to manage the Company's approach to financing, including with respect to financed emissions, and related reporting. While acknowledging that the Company has provided reporting on its financed emissions that follows well-accepted industry practices, the Proposal requests that the Company also measure, calculate and report on a different standard using a "financial metric that compares the Company's total financing, expressed in dollars, in low-carbon energy supply to that in fossil-fuel energy supply." Response Letter at 5. While the Response Letter claims, at page 8, that this metric will assist investors "to evaluate a company's progress in financing the energy transition and achieving its own climate commitments and goals," it fails to explain how the ESR achieves this purported purpose. In fact, the Response Letter acknowledges that the ESR is likely to be of limited use in, or even at odds with, understanding the Company's climate-related efforts, stating, at page 11, "the Company is free to . . . express any concerns, reservations or caveats it has about the usefulness or relevance of the ratio for the Company and its investors. Likewise, the Proposal does not limit the Company's discretion to disclose other metrics that it feels are more appropriate or useful for investors seeking to assess the impact of the Company's activities on its energy financing transition, which is a stated goal of the Company." The Proposal thus inappropriately limits management's discretion by seeking to override its

judgement on how best to measure and report on the Company's climate-related financing activities and mandating the calculation and disclosure of a specific financial metric.

Furthermore, notwithstanding the Response Letter's characterization of the ESR as a "simple" or "straightforward" request for "high-level" information, calculating an ESR would require the Company to undertake a detailed analysis and characterization of its lending activities that does not align with how the Company currently measures and reports on its climate-related financing activities. As discussed in part B.1. of the No-Action Request, the two external reference sources cited in the Supporting Statement for guidance on how to develop and report an ESR do not set forth a unified and generally accepted approach, underscoring the complexity and significant resources that would be required to implement the Proposal. The Proposal would require the Company to disclose the "Company's methodology, including what it classifies as 'low carbon' or 'fossil fuel.'" The Response Letter's assertion at page 12 that this extensive information "is already readily available to the Company . . . through its extensive due diligence process" and would be simple to report is similar to the claims made by the proponents in *Wells Fargo & Co. (Warren Wilson College)* (avail. Mar. 6, 2024, *recon. denied* Apr. 15, 2024) where the Staff ultimately concurred in exclusion of the proposal.

Likewise, requesting that the Company review, develop standards for categorizing, aggregate, and report on a specific financial metric is very different from the other precedents cited on page 13 of the Response Letter, which request adoption of a policy, an assessment, or a report on "whether and how" a company intends to undertake, measure and report on certain activities.<sup>5</sup> Instead, the Proposal is comparable to the one considered in *Delta Air Lines, Inc.* (avail. Apr. 24, 2024), where the Staff concurred that a proposal asking the company to report on "expenditures that are intended or could be viewed as intended to dissuade employees from joining or supporting unions" could be excluded because it sought to micromanage the company where the company pointed out that the proposal would have required it to identify, characterize and report on activities carried out as part of its workforce management, thereby "inappropriately limit[ing] the discretion of management to communicate with and make decisions related to the Company's workforce." Likewise, in *Paramount Global (National Center for Public Policy Research)* (avail. Apr. 19, 2024), the proposal requested disclosure of the recipients of corporate charitable contributions of \$5,000 or more "along with the amount contributed and any material limitations or monitoring of the contributions." The company argued that the proposal would inappropriately limit the company's discretion in choosing the form and substance of its charitable giving disclosure when the company already provided public disclosures related to its charitable giving but not in the level of detail requested by the proposal. The Staff concurred that the proposal could be excluded because it sought to micromanage the company. *See also, Phillips 66* (avail. Mar. 20, 2023) and *Valero Energy Corp.* (avail. Mar. 20, 2023) (concurring in each case with the exclusion of a proposal

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<sup>5</sup> See Staff Legal Bulletin No. 14K (Oct. 16, 2019), at Section B.4., reinstated by SLB 14M (distinguishing a "whether and how" proposal as not micromanaging a company).

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requesting that the company disclose specific and detailed information related to the undiscounted expected value to settle obligations for asset retirement obligations with indeterminate settlement dates).

As with the foregoing precedents, the development, implementation, and reporting of the requested financial metric would explicitly require a regime for collecting data on, tracking and reporting the Company's energy transition financing activities that significantly differs from the regime the Company has already developed and is currently utilizing for disclosure purposes. As such, the Proposal inappropriately seeks to replace management's judgment on how the Company should measure and report on its business activities in connection with its climate change strategy and to impose a specific method for implementing a complex policy.

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With respect to the ordinary business argument set forth in part I of this letter, we request that the Staff waive the 80-day filing requirement set forth in Rule 14a-8(j). Rule 14a-8(j)(1) states that a company that “intends to exclude a proposal from its proxy materials . . . must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission.” However, Rule 14a-8(j)(1) allows the Staff, in its discretion, to permit a company to make its submission within 80 days of filing its definitive proxy materials if the company demonstrates “good cause” for missing the deadline. In SLB 14M, the Staff stated that it “consider[s] the publication of [SLB 14M] to be ‘good cause’ if it relates to legal arguments made by” a new no-action request. The legal arguments set forth in part I of this letter relate to the Staff’s guidance in SLB 14M. Accordingly, we believe that the Company has “good cause” for its inability to meet the 80-day requirement with respect to such argument, and we respectfully request that the Staff waive the 80-day requirement with respect to this letter. Please note that the Company plans to begin printing its 2025 Proxy Materials on March 5, 2025, which is in advance of the date that it plans to file its proxy materials with the Commission due to the size of the Company’s shareholder base impacting printing logistics.

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 2025 Proxy Materials. Correspondence regarding this letter should be sent to [shareholderproposals@gibsondunn.com](mailto:shareholderproposals@gibsondunn.com). If we can be of any further assistance in this matter, please do not hesitate to call me at (212) 351-2309 or Amanda Simmons, Senior Counsel, Wells Fargo Legal Department, at (212) 214-7701.

Sincerely,



Lori Zyskowski

cc: Emma Bailey, Corporate Secretary, Wells Fargo Legal Department  
Janet McGinness, Associate General Counsel, Wells Fargo Legal Department  
Amanda Simmons, Senior Counsel, Wells Fargo Legal Department  
Jennifer Conovitz, Comptroller of the City of New York