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December 29, 2023

VIA ELECTRONIC SUBMISSION

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

Re: *Wells Fargo & Company*
Shareholder Proposal of Warren Wilson College, et al.
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, Wells Fargo & Company (the "Company"), intends to omit from its proxy statement and form of proxy for its 2024 Annual Meeting of Shareholders (collectively, the "2024 Proxy Materials") a shareholder proposal (the "Proposal") and statement in support thereof (the "Supporting Statement") received from As You Sow on behalf of Warren Wilson College and the Minnesota Valley National Wildlife Refuge Trust; and Mercy Investment Services, Inc. on behalf of the Adrian Dominican Sisters and the Daughters of Charity (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 2024 Proxy Materials with the Commission; and

- concurrently sent copies of this correspondence to the Proponents.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D") provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the "Staff"). Accordingly, we are taking this opportunity to inform the Proponents that if the Proponents elect to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of such correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

THE PROPOSAL

The Proposal states:

> **RESOLVED:** Shareholders request that, for each of its sectors with a Net Zero aligned 2030 target, Wells Fargo annually disclose the proportion of sector emissions attributable to clients not aligned with a credible Net Zero pathway, whether this proportion of unaligned clients will prevent Wells Fargo from meeting its 2030 targets, and actions it proposes to address any such emissions reduction shortfalls.

The Supporting Statement states:

> **SUPPORTING STATEMENT:** Emissions attributable to unaligned clients can be measured using estimates or other appropriate method. At management discretion, the assessment should take into account all material financing mechanisms and asset classes contributing to Wells Fargo's emissions, including direct lending, underwriting, and investments.

Copies of the Proposal, the Supporting Statement, and correspondence with the Proponents directly relevant to this no-action request is attached to this letter in Exhibit A.

BASES FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2024 Proxy Materials pursuant to:

- Rule 14a-8(i)(7) because the Proposal seeks to micromanage the Company: specifically, the Proposal impermissibly seeks to eliminate management's discretion by dictating specific methods for how the Company assesses and reports on its progress and pathway to achieving certain 2030 sector Scope 3 greenhouse gas ("GHG") emissions goals; and

- Rule 14a-8(i)(3) because the Proposal is impermissibly vague and indefinite so as to be inherently misleading.

OVERVIEW

As noted in the Proposal, in March 2021 the Company announced a goal to achieve net-zero GHG emissions by 2050 that includes emissions from its own operations (Scope 1 and 2 GHG emissions), as well as emissions from clients attributable to the Company's

financing (Scope 3, category 15 emissions, or "financed emissions").[1] The Company relies on various established standards and frameworks for calculating its GHG emissions, setting emissions targets, and reporting its progress thereon. For example, the Company reports its financed emissions through the publication of reports aligned with the Task Force on Climate-related Financial Disclosures framework and is guided by the Greenhouse Gas Protocol.[2] The Company subsequently developed CO2eMission℠, a methodological framework that relies on "externally developed climate scenarios" to create sector-specific benchmarks for reaching net zero by 2050.[3] Target-setting for these emissions requires complex analysis and decision-making depending on the Company's short- and long-term strategic plans and priorities, client relationships, regulatory requirements, resources, and numerous other matters. For example, when determining the sectors to establish interim targets for, the Company "aim[s] to evaluate the components of its value chain to prioritize specific sections that have high emissions and where data exists and to understand drivers of broader emission patterns."[4] To determine the applicable climate scenario, the Company "evaluate[s] a variety of factors, including the level of detail included, the scenario provider's expertise, whether the scenario is premised on aligning to a 1.5°C temperature goal by 2050, and alignment of a scenario's assumptions with potential transition pathways of our clients."[5] Using these sector-specific benchmarks, the Company ultimately set interim 2030 reduction targets for key high-emission sectors, as follows (collectively, the "2030 Financed Emissions Goals"):

- the oil & gas and power sectors, relying on the Network for Greening the Financial System Orderly Net Zero 2050 climate scenario;
- the automotive and steel sectors, relying on the International Energy Agency Net-Zero Emissions by 2050 scenario; and
- the aviation sector, relying on improvements the Company believed to be achievable, rather than a climate scenario aligned to net zero by 2050, and

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1 *See* CO2eMission Methodology (May 2022), *available at* https://sites.wf.com/co2emission/CO2eMission_Methodology.pdf (the "Methodology") (noting that GHG "emissions are categorized into three groups or 'Scopes' by the most widely used international accounting tool, the Greenhouse Gas Protocol"); CO2eMission Executive Summary (May 2022), *available at* https://sites.wf.com/co2emission/CO2eMission_Executive_Summary.pdf (the "Executive Summary").

2 *See* Statement of Greenhouse Gas Emissions (July 2023), *available at* https://www08.wellsfargomedia.com/assets/pdf/about/corporate-responsibility/statement-greenhouse-gas-emissions.pdf (the "GHG Statement"); Task Force on Climate-Related Financial Disclosures (TCFD) Report (July 2023), *available at* https://www08.wellsfargomedia.com/assets/pdf/about/corporate-responsibility/climate-disclosure.pdf (the "TCFD Report") (describing "information pertaining to key value chain emissions aligned with the Greenhouse Gas Protocol scopes of emissions").

3 *See* Methodology at pp. 5-6.

4 *See id.* at pp. 8-9.

5 *See id.* at pp. 10-11.

informed by the International Civil Aviation Organization's goal of a minimum 2% fuel efficiency improvement annually.[6]

The Company has provided extensive detail on its goals and processes in a series of reports since 2021 and on a dedicated webpage,[7] which together:

- identify what Company financing activities are covered by each of the 2030 Financed Emissions Goals and explain why certain financing activities are not currently covered in each goal;
- describe the process and sources the Company uses in gathering data generally and for each sector, including difficulties and inconsistencies that can arise in attempting to collect or review such data and how those challenges are addressed;
- describe the formula the Company uses in reporting its financed emissions, including the use of external standards, internal assumptions, and management judgments;
- describe how the Company assesses progress toward its goals, including how it measures portfolio alignment; and
- explain the Company's focus on client engagement, rather than divestment, as the Company and its clients continue to progress toward net zero.

The Company believes that its methodology may change in time "as approaches to net zero mature, emissions data improves, and climate scenarios evolve," but it has nonetheless "performed [its] due diligence and developed a methodology that [it] believe[s] is sound using information and frameworks currently available."[8] The Company also acknowledges the limitations of its own efforts to achieve these targets, which "depend largely upon events beyond [its] control" and require collective action "by a wide range of stakeholders" to be more than just an aspiration.[9] In line with this view, the Company "intend[s] to support clients through the low-carbon transition and believe[s] that engagement rather than divestment is the fastest pathway to achieving economy-wide net zero ambitions."[10] To that end, the Company offers a range of financing tools to support

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[6] *See* CO2eMission Webpage (last visited Dec. 19, 2023), *available at* https://sites.wf.com/co2emission/ (the "Webpage"); CO2eMission Supplement (July 2023), available at https://sites.wf.com/co2emission/docs/CO2eMission-July-2023-Supplement.pdf (the "Supplement").

[7] *See* the Executive Summary, Supplement, Webpage, TCFD Report, and Methodology (together, the "CO2eMission Disclosures").

[8] *See* Methodology at p. 7.

[9] *See* Supplement at pp. 4-5.

[10] *See* Webpage.

customers' voluntary adoption of low-carbon solutions and has committed to deploy $500 billion in sustainable finance by 2030, among other initiatives.[11]

Notwithstanding the Company's existing and detailed disclosures, which reflect a complex, multi-year process tailored to its particular circumstances, clientele, and goals, in light of current frameworks, the Proposal seeks to alter virtually every aspect of the 2030 Financed Emissions Goals by requiring additional activities to be addressed that are currently outside the scope of the 2030 Financed Emissions Goals, rejecting the Company's chosen methodology in favor of new "independently establish[ed] . . . protocols and strategies," altering the way the Company works with its clients (including by substituting the Company's strategy of supporting clients in their own sustainability goals, which may vary across the Company's diverse client base, with the need to assess clients' "credibility," as well as in gathering data for purposes of evaluating the Company's pathway to net zero), and requiring a different model for reporting goals and progress toward those goals. 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 developing, calculating, reporting on, and achieving the 2030 Financed Emissions Goals.

ANALYSIS

I. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because The Proposal Relates 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 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

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[11] *See* Wells Fargo Sustainability & Governance Report at pp. 6, 27 (July 2023), *available at* https://www08.wellsfargomedia.com/assets/pdf/about/corporate-responsibility/sustainability-and-governance-report.pdf.

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 clarified that not all "proposals seeking detail or seeking to promote timeframes" constitute micromanagement, and that going forward 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." To that end, the Staff stated that this "approach is consistent with the Commission's views on the ordinary business exclusion, *which 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 (emphasis added).

In SLB 14L, the Staff also stated that in order to assess whether a proposal probes matters "too complex" for shareholders, as a group, to make an informed judgment, it 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. *Id.*

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, e.g.*,

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.

The Proposal requests that "for each of its sectors with a Net Zero aligned 2030 target," the Company "annually disclose the proportion of sector emissions attributable to clients not aligned with a credible Net Zero pathway." The Supporting Statement further provides that "[a]t management discretion," such assessment "should take into account all material financing mechanisms and asset classes contributing to [the Company's] emissions, including direct lending, underwriting, and investments" and that "[e]missions attributable to unaligned clients can be measured using estimates or other appropriate method." 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." *See* SLB 14L. Instead, while the Supporting Statement purports to permit management discretion in a limited manner, the Proposal and Supporting Statement together seek to eliminate it by "impos[ing] a specific method" and "granularity" for how the Company develops, measures, reports on, and achieves the 2030 Financed Emissions Goals, going so far as to alter what activities and asset classes are included within the Company's targets. Moreover, the Proposal's prescriptive approach for how the Company must assess aspects of its financed Scope 3 GHG emissions would require the Company to deviate from the established measurement and reporting frameworks on which it currently refers.

As discussed above, the Company utilizes existing frameworks in its calculation, determination, monitoring, and reporting of GHG emissions and the 2030 Financed Emissions Goals. For example, the Company is guided by the Greenhouse Gas Protocol in its reporting. The Greenhouse Gas Protocol Initiative is a multi-stakeholder partnership of businesses, non-governmental organizations, governments, and others, convened by the World Resources Institute and the World Business Council for Sustainable Development, whose mission is to "develop internationally accepted [GHG] accounting and reporting

standards for business and to promote their broad adoption."[12] In furtherance of this goal, the group published the GHG Protocol Corporate Accounting and Reporting Standard (as revised, the "Corporate Standard")[13] in order to, among other things, guide companies on preparing "a GHG inventory that represents a true and fair account of their emissions, through the use of standardized approaches and principles" and "provide business with information that can be used to build an effective strategy to manage and reduce GHG emissions."[14] For those companies that choose to report Scope 3 emissions, the Corporate Value Chain (Scope 3) Accounting and Reporting Standard[15] (the "Scope 3 Reporting Standard") and Technical Guidance for Calculating Scope 3 Emissions[16] (the "Technical Guidance," and together with the Corporate Standard and Scope 3 Reporting Standard, the "GHG Protocol") provide a standardized framework for assessing, categorizing, and measuring their value chain emissions.

The GHG Protocol's reporting framework has been widely adopted and endorsed. In its comment letter on the Commission's proposed climate reporting rules, the Proponents' representative, As You Sow, stated, "[w]e suggest that in order to assist in quickly ensuring standardized reporting, the SEC mandate that reporting be conducted in line with the GHG Protocol, at least initially…. Alternatively, we urge the agency to require that companies provide a rationale for how and why they depart from the GHG Protocol."[17] In its recent report, *Road to Zero Emissions; 100 Companies Ranked on Net Zero Emissions*, As You Sow acknowledges both the complexities of Scope 3 reporting under the GHG Protocol and that the GHG Protocol encourages companies to take a phased approach to reporting when necessary, stating:

> The GHG Protocol has already set the stage for how necessary Scope 3 emissions reporting is and, due to the complexity of Scope 3 reporting, even recommends companies approach disclosing Scope 3 in a "phased approach" and improve the quality of emissions data over time. With investors already identifying Scope 3 emissions as critical information to disclose for businesses across industries, companies have much to gain from leading the

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12 *See* https://ghgprotocol.org/sites/default/files/standards/ghg-protocol-revised.pdf at 2.
13 *See id.*
14 Corporate Standard at 3.
15 *Available at* https://ghgprotocol.org/sites/default/files/standards/Corporate-Value-Chain-Accounting-Reporing-Standard_041613_2.pdf.
16 *Available at* https://ghgprotocol.org/scope-3-calculation-guidance-2.
17 Comment letter submitted on June 21, 2022 by As You Sow, File Number S7-10-22, The Enhancement and Standardization of Climate-Related Disclosures for Investors, available at https://www.sec.gov/comments/s7-10-22/s71022-20132601-303123.pdf.

> development of these potential standards *that take time to accurately report on*.[18]

While the Proposal is vague and indefinite (as discussed further below), given the Company is already reporting in a manner that conforms to existing and established frameworks (including the Greenhouse Gas Protocol, which the Proponents' representative acknowledges is highly complex), the Proposal would thus necessitate that the Company depart from its practices and reporting frameworks to implement it in the manner that the Proposal dictates. For example, in contrast to the prescriptive dictates outlined in the Proposal, the GHG Protocol firmly recognizes the complexities faced by a company when determining which activities and categories of Scope 3 emissions to include within the company's Scope 3 inventory. It also affirms that such determinations should rest with a company's management, since inventories should be established taking into account company-specific circumstances. For example, the Scope 3 Reporting Standard recognizes that the process of determining which activities and categories of emissions are included within a company's Scope 3 inventory is inherently tied to the day-to-day management of a company and the company's business goals, stating, "[b]efore accounting for scope 3 emissions, companies should consider which business goal or goals they intend to achieve."[19] The process of developing a Scope 3 inventory is principles-based, with the Scope 3 Reporting Standard stating, "GHG accounting and reporting of a scope 3 inventory shall be based on the following principles: relevance, completeness, consistency, transparency, and accuracy." The Scope 3 Reporting Standard recognizes that "[i]n practice, companies may encounter tradeoffs between principles when completing a scope 3 inventory" and states, "[c]ompanies should balance tradeoffs between principles depending on their individual business goals."[20] Summarizing these considerations, the Corporate Standard states, "[c]ompanies may want to focus on accounting for and reporting those activities that are relevant to their business and goals, and for which they have reliable information."[21] In light of such guidance, and exercising the discretion granted to it, the Company most recently

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[18] As You Sow, *Road to Zero Emissions; 100 Companies Ranked on Net Zero Emissions* (Nov. 1, 2023), at page 20 (emphasis added), *available at* https://static1.squarespace.com/static/59a706d4f5e2319b70240ef9/t/6271848ea3b75a2e497cd717/1651606674044/AsYouSow2022_NetZero_rev8_FIN_20220428.pdf.

[19] Scope 3 Reporting Standard, Chap. 2, *Business Goals*, at 11.

[20] *Id.*, Chap. 4, *Accounting and Reporting Principles*, at 23-24.

[21] Corporate Standard, Chap. 4, *Setting Operational Boundaries; Scope 3: Other Indirect GHG Emissions*, at 29.

reported select Scope 3 emissions (categories 1-3 and 5-7)[22] and financed emissions (category 15).[23]

1. The Proposal Dictates Specific Methods For Implementing Sector Emissions Reporting That Limit Management's Discretion With Respect To The Company's Path To Implementing The 2030 Financed Emissions Goals.

The Proposal does not suggest targets or timelines for implementing GHG emission goals, but instead, through its request for specific disclosure, seeks to impose a specific method for implementing the Company's 2030 Financed Emissions Goals that would inappropriately limit management's discretion in addressing and implementing the complex issue of managing and reporting on Scope 3 emissions (generally and for financed emissions in particular). In numerous respects, the approach dictated by the Proposal's request limits the discretion granted to management under the methodologies that the Company has already adopted and disclosed, seeking to replace management's judgment on these complex matters:

- *The Proposal would require the Company to address additional Company activities that are currently outside the scope of the 2030 Financed Emissions Goals.* The Supporting Statement notes that the assessment of client alignment called for in the Proposal "should take into account all material financing mechanisms and asset classes that contribute to [the Company's] emissions, including direct lending, underwriting, and investments." In contrast, as discussed in the CO2eMission Disclosures, the Company's methodology includes lending activities, sector-specific financing solutions, and capital markets activities it helps to facilitate (i.e., origination activities, but not the following: advisory activities, commodities activity, or derivatives; assets held in the Company's investment portfolio, affiliated venture capital and private equity partnerships, or in connection with secondary trading and market-making activities). The Company has chosen to include funding arranged in the capital markets "to capture more fully [its] financing activities in each sector."[24] The recommendations of the Institute of International Finance support this tailored approach, noting that "[t]he specific set of financial services that are relevant for transition activities will vary by sector, in different parts of the value chain, and in

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22 *See* GHG Statement at p. 5 ("In addition to Scope 1 and Scope 2 emissions, Wells Fargo has elected to present six Scope 3 emissions categories. Scope 3 GHG emissions information has been calculated in accordance with the WRI/WBCSD GHG Protocol: Corporate Value Chain (Scope 3), Accounting and Reporting Standard (2011)").

23 *See* TCFD Report at pp. 46-51.

24 Methodology at p. 16.

different markets."[25] The Proposal's instruction that the Company further incorporate "investments" into these goals is also inappropriate in light of the many regulations that govern the liquidity requirements for global financial institutions like the Company. As described in its financial reports, the Company is subject to investment rules that have, for example, "established a quantitative minimum liquidity requirement consistent with the liquidity coverage ratio . . . established by the Basel Committee on Banking Supervision" and which "requires a covered banking organization to hold high-quality liquid assets" in a certain amount during a 30-day stress period.[26] Requiring the Company to include investments in the Company's 2030 Financed Emissions Goals and other climate initiatives requires attention to regulatory and other legal obligations on the bank that are far outside the expertise and judgment of the Company's shareholders to determine.

- *To prepare the requested disclosure, the Proposal would require the Company to alter the way it works with its clients by replacing its strategy of supporting its clients in their own goals with the need to assess their "credibility," as well as altering the ways it gathers data for purposes of evaluating the Company's pathway to net zero and reporting on its progress.* The Proposal would require the Company to develop a new "independently establish[ed]" methodology, outside of the recognized standards it currently utilizes, in which it first assesses whether each of its clients is or is not "aligned with a credible Net Zero pathway." The Company would then have to calculate and report on a ratio and how that ratio reflects on the Company's progress to meeting its 2030 Financed Emissions Goals. In contrast, the Company has already developed scenario benchmarks for each sector to set the 2030 Financed Emission Goals and to measure each financial portfolio's progress toward net zero. As explained in the Methodology:

> [W]e compare the pace at which a given financial portfolio is transitioning against the net-zero aligned benchmark (that is, we measure our portfolio's alignment to the benchmark). We make this comparison by calculating our clients' emissions metrics and attributing these metrics to

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25 The Role of The Financial Sector in the Net Zero Transition: Assessing Implications for Policy, Supervision and Market Frameworks, Institute of International Finance, at p. 15 (Oct. 10, 2023), *available at* https://www.iif.com/portals/0/Files/content/32370132_iif_transition_planning_report_2023_final_for_publication.pdf (the "IIF Recommendations").

26 *See* Wells Fargo & Company Annual Report for the fiscal year ended December 31, 2022, at p. 49, *available at* https://www.sec.gov/ix?doc=/Archives/edgar/data/72971/000007297123000071/wfc-20221231_d2.htm.

> Wells Fargo based on our financing activities. We then aggregate these attributed emissions for all clients in a given portfolio and compare this to the portfolio benchmark. Measuring portfolio alignment is an important step in our methodology as it provides a mechanism for us to account for our clients' progress and calibrate and guide our actions to support them.[27]

A full discussion of how the Company currently measures portfolio alignment to track progress is described in extensive detail in the Methodology.[28] The Company's assessment framework is meant to recognize the uniqueness of each sector or industry and to set targets informed by the trends and challenges each industry is facing.[29] In addition, the framework reflects the Company's judgment regarding how to accurately measure progress in the face of difficulties collecting quality and timely data, "a common challenge for financial institutions" in which certain data may take more than a year to receive (e.g., production and emissions data).[30]

- *The Proposal would require a different model for reporting goals and progress toward those goals than the approach the Company has adopted.* The Proposal's preamble asserts that, in order to have a "realistic transition plan in place to meet its goals," the Company must "assess[] its clients' likelihood of meeting 1.5C° aligned 2030 goals." However, there are many ways to have a realistic transition plan, and the specific method that would be imposed under the Proposal to address this complex issue is not a path that the Company has (or, indeed, most companies have) chosen. For example, in the financial context, the Institute of International Finance has recommended against a one-size-fits-all approach, such as the Proposal's, because "financial institutions have different business models and comparative advantages in supporting a net-zero economy, and given that transition planning is ultimately an idiosyncratic strategic exercise, transition planning approaches must be adaptable to the specific needs and priorities of individual firms."[31] The Proposal's preamble asserts that "banks should independently establish and disclose . . . . protocols and strategies specific to each

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[27] *See* Methodology at p. 6.
[28] *See id.* at pp. 14-19.
[29] *See id.* at p. 6.
[30] *See* TCFD Report at p. 50.
[31] IIF Recommendations at p. 1 (noting further that "[t]he strategic nature of transition planning, and relevance of transition plans to business strategy, is currently reflected in market-based frameworks, emerging jurisdictional frameworks (such as the one being developed by the UK Transition Plan Taskforce, TPT), and global standards for disclosure of climate-related risks and opportunities, including the ISSB's IFRS S2 standard").

business activity." In contrast, as described in the CO2eMission Disclosures, the Company's approach to this complex issue "reflects [its] best efforts, given what [it] know[s] now and the need to act" and its methodology is expected to evolve over time.[32]

- *The Proposal would require the Company to alter its strategy for the 2030 Financed Emissions Goals and prioritize target achievement.* The CO2eMission Disclosures make clear that the Company does not believe it can achieve its targets on its own: instead, its "ability to achieve [its] targets individually and a net-zero goal cumulatively depends largely upon events beyond [its] control, such as the development and commercialization of decarbonizing technologies, shifts in business models and practices, the implementation of supportive government policies, changes in societal and consumer behavior, and significant public investments globally. These dependencies represent critical decarbonization levers that need to be pulled at the same time, in the same direction, by a wide range of stakeholders, including our clients, governments, and consumers, among others. With such collective action, [it] believe[s] [its] targets are achievable; without such action, they may remain aspirational."[33] The interconnected nature and complexity of these dependencies has informed the Company's preference to help clients "achieve their goals to transition to a low-carbon future."[34] The Proposal seeks to shift this strategic priority to one of divestment, noting in the Supporting Statement that to meet their goals, "banks should . . . potentially 'phas[e] out financing of inconsistent activities which present particular risks.'" In this regard, the Proposal would require management to prioritize the achievement of its targets over client relationships, short- and long-term business strategy, and the many other day-to-day matters that management has reviewed and considered when establishing the 2030 Financed Emissions Goals, and about which shareholders as a group do not have the expertise to make an informed judgment.

- *The Proposal would require other changes to how the Company approaches the 2030 Financed Emissions Goals.* The CO2eMission Disclosures further detail how management has exercised its discretion, in light of the Company's particular circumstances and consistent with current frameworks, when establishing and monitoring the 2030 Financed Emissions Goals. For example, the United Nations Environment Programme Finance Initiative has published bank-specific

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32 Executive Summary at p. 3.
33 *See* Supplement at pp. 4-5.
34 *See* Methodology at p. 5.

guidelines for setting climate targets (the "Bank Target Setting Guidelines") that uses a comply-or-explain model: in other words, banks applying the guidelines are expected to comply or explain why they have not done so.[35] In relevant part, the Bank Target Setting Guidelines expect banks to set their targets to a net zero 2050 standard. When determining its 2030 target for the aviation sector, however, the Company assessed climate scenarios for the industry and found they "rely heavily upon widespread adoption of sustainable aviation fuels"—a practice the Company believed "is meaningfully behind the pace needed to align [its] Aviation portfolio with a net-zero emissions pathway."[36] Accordingly, the Company determined it was appropriate to depart from a climate scenario aligned to net zero by 2050 (used for the other sector targets and in line with the Bank Target Setting Guidelines) and set the aviation target based on something else. Instead, the target was "based on improvements [it] believe[d] [its] clients can achieve through operational and fuel efficiency improvements," with guidance from the International Civil Aviation Organization's goals.[37] In this regard, the Company departed—and explained its departure—from the Bank Target Setting Guidelines, consistent with the comply-or-explain standard. Yet this type of dynamic and multi-faceted process would not be reflected in the snapshot assessment and ratio reporting approach required by the Proposal, and in fact would require different processes and management approaches for working with the Company's clients.

The standards and frameworks used by the Company clearly illustrate the "complex nature" of determining what activities and categories are included in a company's Scope 3 GHG emissions inventory and goals, as well as the need to balance trade-offs such as completeness and transparency with consistency and accuracy, and that such determinations are inherently tied to a company's business goals. As such, whereas a proposal that suggests targets and timelines for Scope 3 emission goals might not rise to the level of implicating micromanagement, the Proposal—which seeks, through the requested disclosure, to prescribe what activities are included within the Company's 2030 Financed Emissions Goals, dictates a specific means for assessing progress towards those goals, and mandates a specific means for reporting on progress towards those goals—inappropriately limits management's discretion,

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[35] *See* Guidelines for Climate Target Setting for Banks, United Nations Environment Programme Finance Initiative at p. 3, *available at* https://www.unepfi.org/net-zero-banking/commitment ("Application: these Guidelines are to be applied on a *comply-or-explain* basis"). Signatories to the Net-Zero Banking Alliance, such as the Company, are expected to apply these guidelines, see id., and the CO2eMission Disclosures reflect the comply-or-explain methodology permitted.

[36] *See* Supplement at p. 21.

[37] *See id.* at p. 4.

and in fact wholly seeks to replace management's judgments as to how to support its clients and set, achieve, and report on its goals. Thus, the Proposal is the type of proposal "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."[38]

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

As applied to the Company, the Proposal addresses a complex, multifaceted issue by imposing a prescriptive standard that differs both from the approach the Company believes is best suited to the Company's financing activities when measuring GHG emissions and establishing and monitoring related goals (including with the established frameworks discussed above). 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 prong of 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 Scope 3 goal-setting and reporting processes. Most recently, in *Amazon.com, Inc.* (avail. Apr. 7, 2023, *recon. denied* Apr. 20, 2023) ("*Amazon*"), the Staff concurred with the exclusion of a proposal that, like the Proposal, sought to dictate how the company assessed, measured and reported on aspects of its Scope 3 GHG emissions. In *Amazon*, 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 argued that the request would replace management's judgments by dictating the content of its Scope 3 emissions inventory outside the standards of the GHG Protocol. Similarly, in *Apple Inc.* (*Christine Jantz*) (avail. Dec. 21, 2017), the Staff concurred that a proposal micromanaged the company when it requested an evaluation and report on the potential for the company to achieve, by a fixed date, net-zero GHG emissions across operations directly owned by the Company and its major suppliers. The company argued that the proposal "prob[ed] 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" since the requested evaluation would necessarily require the company to evaluate and prioritize particular courses of actions and changes to its operations and business, and then to replace its own judgments about the best course of action with a course of action directed solely at meeting the specific emissions level selected by the proponent by one of the arbitrary dates selected by the proponent. *See also Apple Inc.* (avail. Dec. 5, 2016)

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[38] 1998 Release, as reaffirmed in SLB 14L.

(concurring with the exclusion of a similar proposal that sought to define the scope of operations that would be included in a Scope 3 net-zero GHG emission plan).

Similarly, in *The Coca-Cola Co.* (avail. Feb. 16, 2022), the proposal requested that the company submit any proposed political statement to shareholders at the next shareholder meeting for approval prior to publicly issuing the subject statement. The company argued that the proposal thereby "dictates the content of and process by which the [c]ompany may make certain public statements by interfering with and impermissibly limiting the fundamental discretion of management to decide upon and exercise the corporate right to speech, and instead imposes a time-consuming and unnecessary process." The Staff concurred with the proposal's exclusion, as it "micromanages the [c]ompany." In *Texas Pacific Land Corp.* (*Recon.)* (avail. Oct. 5, 2021), the Staff concurred with the exclusion of a proposal that would have required that the company "establish a goal of achieving a 95% profit margin." Although the Staff did not issue an explanation, the company had argued that "the profit margin strategy of the [c]ompany" was a "matter fundamental to management's choices relevant to its revenues and expenditures in the context of the broader strategy of the [c]ompany," and that the proposal, by "mandating a very specific strategic goal," that was not informed by a "deep understanding of the [c]ompany's operations, growth opportunities and the industry as a whole" would "circumvent[] management's expertise and fiduciary duties," ultimately micromanaging the company. *See also SeaWorld Entertainment, Inc.* (avail. April 20, 2021) ("*SeaWorld 2021*") (concurring with the exclusion of a proposal seeking a report on specific changes to the company's business to address animal welfare concerns); *SeaWorld Entertainment, Inc.* (avail. Mar. 30, 2017, *recon. denied* Apr. 17, 2017) (concurring with the exclusion of a proposal requesting the replacement of live orca exhibits with virtual reality experiences as "seek[ing] to micromanage 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").

Like the precedents discussed above, implementation of the Proposal would involve replacing management's judgments on complex reporting principles and business decisions that are intimately tied to the Company's business goals and operations with a prescriptive approach that deprives management of any discretion. The provision that the Company's assessment "should take into account all material financing mechanisms and asset classes contributing to [its] emissions, including direct lending, underwriting, and investments" is directly comparable to the situation in *Amazon*, where the proposal likewise sought to dictate the operational boundaries of the company's Scope 3 assessment and reporting to include activities that differed from the company's GHG Protocol-aligned approach to Scope 3 reporting. Given the scope and nature of the Company's operations, changing its 2030 Financed Emissions Goals or other GHG emissions reporting to report the requested information (including to "take into account all material financing mechanisms and asset classes contributing to [its] emissions, including direct lending, underwriting, and

investments" and implementing the other methodology and reporting changes prescribed in the Proposal) would alter the carefully and holistically-developed strategies and alignment with business goals reflected in the 2030 Financed Emissions Goals. These changes would have significant implications for numerous aspects of the Company's climate change activities reflecting the many complex and detailed decisions and considerations related thereto, based on established disclosure protocols as described above. The prescriptive nature of the Proposal is not lessened by the discretion provided in the Supporting Statement, which notes that "[e]missions attributable to unaligned clients can be measured using estimates or other appropriate method." As such, the Proposal's attempt to prescribe what is and is not counted in the Company's 2030 Financed Emissions Goals or other GHG emissions reporting and how it assesses and reports its progress on those goals raises complex and nuanced issues that are not appropriate for direct shareholder oversight, and 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 "Overview" 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 an issue, regardless of whether the proposal touches upon a significant policy issue. Here, the Company does not dispute that the Proposal's reference to "systemic climate risk" touches upon a significant social policy matter. However, the focus of the Proposal is not on a broad policy issue relating to GHG emissions and climate change. Instead, the Proposal is an attempt to limit the Company's discretion in how it manages the complex and granular task of establishing, assessing, and reporting on certain aspects of the Company's Scope 3 emissions and how it works with its broad and diverse client base in doing so.

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 or not 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 position to make an informed judgment." For example, since the issuance of SLB 14L, the Staff 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 Amazon* (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); *Verizon Communications, Inc. (National Center for Public Policy Research)* (avail. March 17, 2022) (concurring that a proposal requesting the company publish annually the written and oral content of diversity, inclusion, equity, or related employee-training materials probed too deeply into matters of a complex nature); *The Coca-Cola Co.* (avail. Feb. 16, 2022) (concurring that a proposal addressing the company's political activities was excludable for attempting to micromanage the issue); and *SeaWorld 2021* (concurring that a proposal addressing animal rights was excludable for attempting to micromanage the issue). Thus, the fact that the Proposal references climate change and climate risk does not preclude its exclusion under Rule 14a-8(i)(7).

II. The Proposal May Be Excluded Under Rule 14a-8(i)(3) Because It Is Impermissibly Vague And Indefinite So As To Be Inherently Misleading.

Rule 14a-8(i)(3) permits the exclusion of a shareholder proposal if the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials. The Staff consistently has taken the position that vague and indefinite shareholder proposals are inherently misleading and therefore excludable under Rule 14a-8(i)(3) because "neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." Staff Legal Bulletin No. 14B (Sept. 15, 2004) ("SLB 14B"). *See also Dyer v. SEC*, 287 F.2d 773, 781 (8th Cir. 1961) ("[I]t appears to us that the proposal, as drafted and submitted to the company, is so vague and indefinite as to make it impossible for either the board of directors or the stockholders at large to comprehend precisely what the proposal would entail."); *Capital One Financial Corp.* (avail. Feb. 7, 2003) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal where the company argued that its shareholders "would not know with any certainty what they are voting either for or against"). As further described below, the Proposal is so vague and indefinite that neither the Company nor the Company's shareholders can comprehend with any level of certainty what the Proposal would entail and, therefore, is excludable under Rule 14a-8(i)(3).

The Staff has routinely concurred with the exclusion of proposals that fail to define key terms or otherwise fail to provide sufficient clarity or guidance to enable either shareholders or the company to understand how the proposal would be implemented. For example, in *Apple Inc. (Zhao)* (avail. Dec. 6, 2019), the Staff concurred that a company could exclude, as vague and indefinite, a proposal that recommended that the company "improve guiding principles of executive compensation," but failed to define or explain what improvements the proponent sought to the "guiding principles." The Staff noted that the proposal "lack[ed] sufficient description about the changes, actions or ideas for the

[c]ompany and its shareholders to consider that would potentially improve the guiding principles" and concurred with exclusion of the proposal as "vague and indefinite." *See also The Walt Disney Co. (Grau)* (avail. Jan. 19, 2022) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal that requests a prohibition on communications by or to cast members, contractors, management or other supervisory groups within the company of "politically charged biases regardless of content or purpose," where the Staff stated that "in applying this proposal to the [c]ompany, neither shareholders nor the [c]ompany would be able to determine with reasonable certainty exactly what actions or measures the [p]roposal requests"); *The Boeing Co.* (avail. Feb. 23, 2021) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal requiring that 60% of the company's directors "must have an aerospace/aviation/engineering executive background" where such phrase was undefined); *The Home Depot, Inc.* (avail. Mar. 12, 2014, *recon. denied* Mar. 27, 2014) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal requesting a sustainability report where the company argued that the meaning of "benchmark objective footprint information" was unclear); *AT&T Inc.* (avail. Feb. 21, 2014) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal requesting a review of policies and procedures related to the "directors' moral, ethical and legal fiduciary duties and opportunities," where such phrase was undefined); *Berkshire Hathaway Inc.* (avail. Jan. 31, 2012) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal that specified company personnel "sign off [by] means of an electronic key . . . that they . . . approve or disapprove of [certain] figures and policies" because it did not "sufficiently explain the meaning of 'electronic key' or 'figures and policies'"); *International Paper Co.* (avail. Feb. 3, 2011) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal that requested the adoption of a particular executive stock ownership policy because it did not sufficiently define "executive pay rights"); *Puget Energy, Inc.* (avail. Mar. 7, 2002) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal requesting that the company's board of directors implement "a policy of improved corporate governance" where it also included a broad array of unrelated topics that could be covered by such a policy).

The Proposal requests "that, for each of its sectors with a Net Zero aligned 2030 target, [the Company] annually disclose the proportion of sector emissions attributable to clients not aligned with a credible Net Zero pathway." Understanding the meaning of the term "a credible Net Zero pathway" is essential to the Company's efforts to implement the Proposal if adopted, and essential to shareholders' understanding of the Proposal as they consider how to vote on the Proposal. First, the term "a credible Net Zero pathway" is a key term because it defines the standard against which the Company would be required to assess its broad and diverse set of clients before it could identify and calculate the impacts of the requested emissions. Second, the scope of the term "a credible Net Zero pathway" is critical because the Proposal further asks for reporting on "whether this proportion of unaligned clients will prevent [the Company] from meeting its 2030 targets." However, similar to the proposals in the precedents cited above, this key term does not have an ordinary, common

understood meaning, and the Proposal does not define the term or explain its meaning. There is significant debate regarding what constitutes a "credible" pathway to net zero,[39] and such pathway can vary based on the net zero timeline (e.g., by 2030, 2040, or 2050) or industry selected. This varied approach is reflected in the Company's own reporting, which as described above, details how, for its client emissions-related 2030 targets, the Company used different scenarios to determine each sector's goal.[40] Further, a credible Net Zero pathway likely depends on parallel and immediate action from a variety of other actors, including policymakers, as anticipated in the Company's own targets. Given that the Company has employed varied standards in its target-setting, and the Proposal fails to specify any definition for a "credible Net Zero pathway," the Proposal is like the proposal in *Apple Inc. (Zhao)* as it "lacks sufficient description about the changes . . . for the [c]ompany and its shareholders to consider." Thus, the Proposal's vague and indefinite use of this key term makes it impossible for shareholders and the Company to know with any clarity the scope of the requested disclosure, including the potential gaps (if any) to be assessed.

Moreover, neither the preamble to the Proposal nor the Supporting Statement clarify what "credible Net Zero pathway" the Company is expected to use when assessing its clients for the requested disclosure. The preamble to the Proposal generally asserts that "[i]ndependent assessments show that most companies in [certain] sectors are failing to align with *a* 2030 Net Zero aligned pathway" (emphasis added). The subsequent sentences cite purported failures in different industries to "have 2030 targets aligned with a 1.5° C scenario," being "on a 2030 Net Zero pathway," and being "on track with the Net Zero Emissions by 2050 Scenario" (emphasis added). The preamble also asserts that for the Company to "have a fully informed, realistic transition plan," it must "assess[] its clients' likelihood of meeting 1.5°C aligned 2030 goals." Moreover, the preamble does not discuss the pathways that the Company has developed as part of its 2030 Financed Emissions Goals and thus provides no guidance on whether the Company's current pathways would be deemed "credible" by the Proponent. No clarification is provided in the Supporting Statement. Further ambiguity is caused in light of the fact that even clients who may not be deemed to align with a Net Zero pathway can contribute to the achievement of the overall portfolio goals by reducing their emissions. As a result, the language across the full body of the Proposal does nothing to allay the inherent ambiguity and creates confusion over the meaning of the term "credible Net Zero pathway," which could refer to, among other things:

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39 *See, e.g.*, For a Livable Climate: Net-Zero Commitments Must Be Backed by Credible Action, United Nations (last visited Dec. 18, 2023), *available at* https://www.un.org/en/climatechange/net-zero-coalition (noting that "[t]he growth in net-zero pledges has been accompanied by a proliferation of criteria with varying levels of robustness").

40 For example, the Company used the International Energy Agency Net-Zero Emissions by 2050 scenario to set its 2030 target for the steel industry, and used the Network for Greening the Financial System Orderly Net-Zero 2050 Scenario for determining its power and oil & gas targets. *See* Methodology at p. 11; TCFD Report at pp. 47, 51.

(i) the Company's particular target for each sector (which, as described, are not all aligned to a 1.5° C scenario), (ii) net zero pathways aligned to 2050, 2030, or any other year, (iii) the scenario for each sector to the extent cited by the Proponent, (iv) any net zero pathway deemed "credible," or (v) some other net-zero pathway.

As a result of the Proposal's lack of guidance or clarity in its use of the term "credible Net Zero pathway," shareholders would be unable to determine the scope and nature of the credibility assessment they are being asked to support and the type of new disclosures to be made, and the Company would be unable to determine how to implement the Proposal. In order to implement the Proposal, including to undertake an assessment of the credibility of the client alignment, the Company must have a clear understanding about which of the numerous potential standards each of its 2030 target sectors are to be assessed against, and yet the Proposal provides no guidance on that point.

Without knowing what standard constitutes "a credible Net Zero pathway," it is impossible for the Company or stockholders to determine the scope of the "proportion of unaligned client[]" emissions and the "emissions reduction shortfalls" it is supposed to address under the Proposal. *See Bank of America Corp.* (avail. Feb. 25, 2008) (concurring with the exclusion of a proposal requesting that the company's board of directors revise its policies on GHG emissions to cease operations including "further involvement in activities that support MTR coal mining," as such term invited too much speculation as to what actions the proposal would proscribe if implemented). Accordingly, the Proposal's failure to define the meaning of the term "a credible Net Zero pathway" causes the Proposal to be impermissibly vague and indefinite and renders it excludable under Rule 14a-8(i)(3).

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2024 Proxy Materials.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (212) 351-2309, or Mara Garcia Kaplan, Senior Vice President, Senior Company Counsel, Corporate Governance & Securities, at (651) 263-3117.

Sincerely,

Lori Zyskowski

Lori Zyskowski

Enclosures

cc: Mara Garcia Kaplan, Senior Vice President, Senior Company Counsel, Corporate Governance & Securities
Danielle Fugere, As You Sow
Elizabeth Levy, As You Sow
shareholderengagement@asyousow.org
Dr. Damián J. Fernández, Warren Wilson College
Anthony Rust, Warren Wilson College
Deborah Loon, Minnesota Valley National Wildlife Refuge Trust
Mary Minette, Mercy Investment Services, Inc.
Frances Nadolny, Adrian Dominican Sisters
Sister Teresa George, D.C., Daughters of Charity, Province of St. Louise

Exhibit A

VIA FEDEX & EMAIL

November 15, 2023

Tangela S. Richter
Executive Vice President, Deputy General Counsel
and Corporate Secretary
Wells Fargo & Company
MAC# J0193-610,
30 Hudson Yards,
New York, NY 10001

Dear Ms. Richter,

As You Sow® is filing a shareholder proposal on behalf of Warren Wilson College ("Proponent"), a shareholder of Wells Fargo & Company for inclusion in Wells Fargo's 2024 proxy statement and for consideration by shareholders in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.

A letter from the Proponent authorizing *As You Sow* to act on its behalf is enclosed. A representative of the Proponent will attend the stockholder meeting to move the resolution as required.

We are available to discuss this issue and are optimistic that such a discussion could result in resolution of the Proponent's concerns.

To schedule a dialogue, please contact myself, Danielle Fugere, at Please send all correspondence **with a copy to**

Sincerely,

Danielle Fugere
President & Chief Counsel

Enclosures

- Shareholder Proposal
- Shareholder Authorization

cc: John M. Campbell, Sr. Vice President, Investor Relations,

WHEREAS: Wells Fargo has established a Net Zero by 2050 goal and aligned 2030 emission reduction targets for financing activity in the auto, aviation, oil and gas, steel, and power sectors. Wells is also a Net Zero Banking Alliance member. Despite investor demand for clear disclosure of its transition plan,[1] shareholders lack sufficient information as to whether Wells is on track to meet its 2030 targets.

Critically, Wells' annual disclosures fail to disclose the impact high-emitting sectors will have on its ability to meet its 2030 targets. Independent assessments show that most companies in these sectors are failing to align with a 2030 Net Zero aligned pathway. The Transition Pathway Initiative finds no public companies in the oil and gas sector have 2030 targets aligned with a 1.5^{o} C scenario;[2] and no public auto manufacturers, besides dedicated electric vehicle manufacturers, are on a 2030 Net Zero pathway.[3] The International Energy Agency states the steel sector is not on track with the Net Zero Emissions by 2050 Scenario.[4]

This omission leaves investors unable to assess the potential for misalignment between Wells Fargo's 2030 targets and its clients' transition progress, and what actions, if any, Wells is proactively taking to address such misalignment.

The potential for misalignment carries significant risk. If Wells fails to meet its targets, it faces the possibility of reputational harm, litigation risk (including greenwashing), and financial costs.[5] Failure to meet targets also contributes to systemic climate risk that harms Wells' and investors' portfolios.

Wells must have a fully informed, realistic transition plan in place to meet its goals. This requires assessing its clients' likelihood of meeting 1.5°C aligned 2030 goals. As the Institutional Investors Group on Climate Change explains, "[t]o deliver on their targets and commitments, banks should independently establish and disclose . . . protocols and strategies specific to each business activity," and potentially "phasing out financing of inconsistent activities which present particular risks . . . while pivoting financing towards climate solutions." Other actions may include developing criteria related to financing of misaligned clients and setting firm-wide targets to increase the share of financing, facilitation, and revenue derived from 1.5°C-aligned companies and activities.[6]

RESOLVED: Shareholders request that, for each of its sectors with a Net Zero aligned 2030 target, Wells Fargo annually disclose the proportion of sector emissions attributable to clients not aligned with a credible Net Zero pathway, whether this proportion of unaligned clients will prevent Wells Fargo from meeting its 2030 targets, and actions it proposes to address any such emissions reduction shortfalls.

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[1] https://www.asyousow.org/press-releases/2023/4/27/wells-fargo-disclose-climate-transition-plan
[2] https://www.transitionpathwayinitiative.org/sectors/oil-gas
[3] https://www.transitionpathwayinitiative.org/sectors/autos
[4] https://www.iea.org/energy-system/industry/steel
[5] https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/banks-face-mounting-risk-of-fines-regulatory-probes-over-sustainability-claims-74385257
[6] https://139838633.fs1.hubspotusercontent-eu1.net/hubfs/139838633/Past%20resource%20uploads/IIGCC-Net-Zero-Standard-for-Banks-June-2023.pdf, p.7,9

SUPPORTING STATEMENT: Emissions attributable to unaligned clients can be measured using estimates or other appropriate method. At management discretion, the assessment should take into account all material financing mechanisms and asset classes contributing to Wells Fargo's emissions, including direct lending, underwriting, and investments.

DocuSign Envelope ID: 43EA61B9-9594-4118-9B35-2C112055C9C0

October 30, 2023

Andrew Behar
CEO

Re: <u>Authorization to File Shareholder Resolution</u>

Dear Mr. Behar,

In accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934, Warren Wilson College, ("Stockholder"), authorizes *As You Sow* to file or co-file a shareholder resolution with the named Company on our behalf for inclusion in the Company's 2024 proxy statement. The resolution at issue relates to the below described subject.

Stockholder: Warren Wilson College

Company: Wells Fargo & Co

Subject: Report on climate transition planning.

The Stockholder has continuously owned Company stock, with voting rights, for a duration of time that enables the Stockholder to file a shareholder resolution for inclusion in the Company's proxy statement. The Stockholder intends to hold the required amount of such stock through the date of the Company's annual meeting in 2024.

The Stockholder gives *As You Sow* authority to address, on the Stockholder's behalf, any and all aspects of the shareholder resolution, including drafting and editing the proposal, representing Stockholder in engagements with the Company, entering into any agreement with the Company, designating another entity as lead filer and representative of the shareholder, presenting the proposal at the Company's annual general meeting, and all other forms of representation necessary in moving the proposal. The Stockholder understands that the Stockholder's name may appear on the company's proxy statement as the filer of the aforementioned resolution, and that the media may mention the Stockholder's name in relation to the resolution. The Stockholder supports this proposal.

Anthony Rust is the Chair of the Investment Committee at Warren Wilson College.

He is available for a meeting with Wells Fargo & Co
regarding this shareholder proposal, at the following days/times: [Stockholder to provide 2 dates and 30-minute meeting options within the following time frame: 11/27/2023 - 12/11/2023
Monday - Friday and between the hours of 9:00am and 5:30pm Pacific Time]
DATE: 11-30-23 TIME: 2:00 p.m. DATE: 12-1-23 TIME: 2:00 p.m.

If the Company would like to meet at one of these dates and times, let the Stockholder and *As You Sow* at, [redacted] know within 2 days of the dates offered in this letter

If this Authorization is used for a Co-filing role instead of for a Proponent role, then the Stockholder agrees to designate the Proponent to engage on the Stockholder's behalf on the dates and times that the Proponent has provided.

Anthony Rust can be contacted at [redacted] to schedule a dialogue during one of the above dates. Any correspondence regarding meeting dates must **also be sent to my representative:**

Danielle Fugere, President & Chief Counsel at [redacted]
Elizabeth Levy, Climate Associate at [redacted]
and to [redacted]

Sincerely,

[redacted]

Dr. Damián J. Fernández
President