Law Department
N9305-173
90 S. Seventh Street
Minneapolis, MN 55479

Laurel A. Holschuh
Senior Vice President, Assistant
General Counsel and Secretary
(612) 667-8655
(612) 667-6082 (fax)

August 17, 2009

Via e-mail: rule-comments@sec.gov

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: File Number S7-10-09
Release Numbers 33-9046; 34-60089; IC-28765
Facilitating Shareholder Director Nominations

Dear Ms. Murphy:

Wells Fargo & Company ("Wells Fargo") appreciates the opportunity to comment on Release Nos. 33-9046, 34-60089, and IC-28765 (collectively, the "Release") relating to facilitating shareholder director nominations, which was issued by the Securities and Exchange Commission (the "Commission"). Wells Fargo is a diversified financial services company with $1.3 trillion in assets, providing banking, insurance, investments, mortgage banking, investment banking, retail banking, brokerage and consumer finance through banking stores, the internet and other distribution channels to individuals, businesses and institutions in all 50 states, the District of Columbia and in other countries.

The Release proposes amendments to the proxy rules that would require, under certain circumstances, that a company include in its proxy materials (i) shareholder nominees for election as director (the "Proxy Access Proposal"), and (ii) shareholder proposals under Rule 14a-8 regarding director nomination procedures (the "Rule 14a-8 Proposal" and, together with the Proxy Access Proposal, the "Proposals"). Wells Fargo emphatically recognizes the importance of the rights of shareholders in the director election process and ensuring the accountability of directors to shareholders. Each of Wells Fargo's directors is elected annually and, in uncontested director elections, under a majority vote standard. Wells Fargo also appreciates the Commission's past efforts to strengthen the role of nominating committees and to enhance disclosure regarding nominating committee procedures and shareholder nominations, as well as the Commission's thoughtful consideration in the Release of potential changes to the federal proxy rules relating to the election of directors.

Wells Fargo, however, has serious concerns regarding the Proxy Access Proposal, and for the reasons set forth below, which include some of the same reasons previously noted by Wells

Fargo and many others during past considerations of mandated federal proxy access rules, Wells Fargo believes that the Proxy Access Proposal should not be adopted by the Commission. Although Wells Fargo believes that the Rule 14a-8 Proposal may not be necessary at this time, Wells Fargo supports the general principles outlined in the Rule 14a-8 Proposal, which would allow shareholders and boards to determine whether proxy access, or some other alternative, is in the best interests of a company and its shareholders and, if so, in what manner it should apply.

Executive Summary

The Commission makes clear in the Release that the impetus for the Proposals is the economic crisis, which the Commission believes has led to concerns about the accountability of boards of directors to shareholder interests and has resulted in a loss of investor confidence. According to the Release, the Proposals are intended to address these issues by removing certain impediments so that shareholders may more effectively exercise their rights under state law to nominate and elect directors. [1] While examining the possible causes of the economic crisis is a worthwhile endeavor, Wells Fargo believes that, unfortunately, the Proposals are not the answer to the problems outlined by the Commission. In fact, Wells Fargo believes that the Proxy Access Proposal, in particular, would be harmful to companies and their shareholders. The provisions set forth in the proposed Rule 14a-11 and its related proposed rules under the Proxy Access Proposal may encourage groups of shareholders, who individually may own small amounts of stock and collectively share narrowly focused special interests that often take priority over the long-term financial success of the company, to nominate candidates for election as director for inclusion in company proxy materials as easily as submitting shareholder proposals under Rule 14a-8. This would likely result in an increase in disruptive and costly election contests, less independent and qualified director candidates, fragmented and less effective boards and board committees, and the proliferation of special interest directors. In sum, at precisely the time when boards of directors and management should be focused entirely on meeting the current economic challenges, the Proxy Access Proposal, if adopted, would create complete uncertainty in the director election process and the effectiveness of boards, potentially resulting in a further loss of investor confidence.

The above harmful effects are particularly troubling because the Proposals are unnecessary since state law already provides shareholders with the proper framework and rights for the nomination and election of directors, and recent and continued corporate governance advancements, such as majority voting and the elimination of broker discretionary voting in director elections, are further enhancing the shareholders' role in director elections. Moreover, the Proxy Access Proposal would effectively prohibit companies and their shareholders from developing their own solutions, if any, under state law regarding proxy access and from tailoring a proxy access process to the particular circumstances of a company and its shareholders. If the Commission believes that federal changes in the director election process are warranted at this

[1] Facilitating Shareholder Director Nominations, Exchange Act Release No. 34-60089, 74 Fed. Reg. 29,024 (June 18, 2009), at 29,025-29,027.

time, then Wells Fargo believes that the Commission should focus its efforts only on the Rule 14a-8 Proposal, which would allow the proxy access debate to be conducted through a private ordering process involving boards and shareholders in a way that would reduce the negative effects that could result from the Proxy Access Proposal. In any event, Wells Fargo does not believe that either or both of the Proposals, if adopted, should be effective until after the 2010 proxy season because of the complexity of implementing the Proposals. Wells Fargo also provides in this letter a number of specific comments and suggestions regarding the Proposals, which Wells Fargo believes are necessary to address some of the serious concerns that it has with the Proposals.

Proxy Access Proposal Would be Harmful to Shareholders

Disruptive and Costly Election Contests

The possibility that every annual meeting would involve an election contest, or the threat of an election contest, would be extremely disruptive to boards, companies, and their shareholders. Election contests require substantial attention and resources of a company, including its board, senior management, in-house legal and investor relations staff, proxy solicitors, outside securities and state law counsel, and ultimately divert the time and attention of a company's board and management away from running the business for the long-term benefit of all shareholders. As some commentators have noted, the very threat of an election contest may lead to a focus on short-term strategies at the expense of potentially more beneficial long-term strategies.[2] Indeed, many recent legislative developments resulting from the economic crisis are based on the premise that excessive risk taking to produce short-term profits may have played a significant role in the economic crisis.[3] The Proxy Access Proposal, if adopted, would present a constant threat of an election contest and may result in the continuation of the very activities and harmful effects that the Proxy Access Proposal and other recently adopted and proposed regulations are intended to prevent. In addition, any increase in the frequency of election contests also would likely deter highly qualified individuals from serving on a board.

Boards may Become Fragmented and Less Effective

The Proxy Access Proposal may be harmful to shareholders because it may result in less independent and qualified directors and ultimately fragmented and less effective boards and board committees. Under the Proxy Access Proposal, shareholder director nominees would have to satisfy only the objective standards of independence under stock exchange rules applicable to a company. These nominees would not have to satisfy any of the stock exchange's subjective independence standards or additional categorical independence standards that many companies,

---

[2] See Wachtell, Lipton, Rosen & Katz, SEC Releases Proposed Rules "Facilitating Shareholder Director Nominations" (June 11, 2009) (noting Proxy Access Proposal, if adopted, would likely exacerbate rather than mitigate the emphasis on short-term results).

[3] For example, see Proxy Disclosure and Solicitation Enhancements, Exchange Act Release No. 34-60280, 74 Fed. Reg. 35,076 (July 17, 2009).

including Wells Fargo, have adopted. For example, Wells Fargo's board of directors (the "Board") has adopted additional independence standards that apply to customer relationships with Wells Fargo's banking subsidiaries, charitable relationships, family relationships, and business relationships relating to the provision of legal services. Under the Proxy Access Proposal, shareholder director nominees would not have to satisfy these standards and, therefore, depending on the circumstances may not be classified as independent directors. Moreover, these directors also would not have to satisfy the Commission's additional independence rules applicable to audit committee members or existing and proposed rules relating to compensation committee members. In addition to lessening overall board independence, shareholder nominated directors who do not satisfy all of a company's independence standards or the Commission's additional independence rules would not be eligible to serve on the audit, nominating, or compensation committees of a company's board of directors. In Wells Fargo's case, it would be extremely disruptive to the Board's operations if up to 25% of the Board's newly elected members were not eligible to serve on these important committees.

Wells Fargo's Board also has approved minimum qualifications for first-time nominees for director, including having a demonstrated breadth and depth of management and/or leadership experience, preferably in a senior leadership role, such as a chief executive officer, in a large or recognized organization, and financial literacy or other professional or business experience relevant to an understanding of Wells Fargo and its business. Under the Proxy Access Proposal, it appears that shareholder director nominees would not have to meet these minimum qualifications. In addition, the Board's Governance and Nominating Committee would not be permitted under the Proxy Access Proposal to have any role in examining the qualifications of the shareholder director nominees and determining whether they would be a proper fit for the Board. As a result, Wells Fargo believes that the quality of the Board may be seriously jeopardized and the application of the proposed rule may lead to two (or more) hierarchies of directors, consisting of those directors who satisfy the independence and minimum qualification standards of the Board and those nominated by shareholders who do not meet such standards. This would likely result in a fragmented and less effective Board. It also may result in more director turnover and further deter qualified individuals from serving on the Board. A dysfunctional board is not in shareholders' interests and unquestionably undercuts the Commission's rationale for the Proposals of leading U.S. companies through the economic crisis.

Board independence and effectiveness may further be negatively affected under the Proxy Access Proposal because, unlike the proxy access rules proposed in 2003, there would not be any limitations on relationships between a nominating shareholder or group and the director nominee. The shareholder director nominee would be permitted to have personal or business relationships with the nominating shareholder or group that could influence the nominee's service on the board. Wells Fargo recognizes that a nominee with such relationships, if elected, would be subject to state law fiduciary duties, but, nevertheless, such a nominee may still be inclined to advance the interests of the nominating shareholder or group in a way that could be disruptive to the board's operations or to the interests of other shareholders. The addition of shareholder director nominees with an "agenda" or "special interests" could negatively affect

board harmony, cohesiveness, and effectiveness, especially if these directors are not otherwise independent or do not satisfy the minimum qualifications for directors outlined by a board's nominating committee.

Proposals Are Not Necessary

State Law, and Other Governance Advancements, Already Provide Shareholders with the Proper Framework and Rights for Director Nominations and Elections

Wells Fargo believes that it is not necessary to adopt the Proposals, particularly the Proxy Access Proposal, because shareholders already have the right and ability under state law to nominate and elect directors effectively. In the Release, the Commission indicated that the chief complaint from shareholders regarding their ability to exercise their right to nominate and elect directors is the high costs involved in mounting a proxy contest. [4] However, similar to what is proposed in the Proxy Access Proposal, shareholders can already join together and share the costs of preparing and mailing a proxy statement. The sharing of these costs does not seem like such a burden since even under the Proxy Access Proposal, a shareholder or group of shareholders owning, for example, 1% of a large accelerated filer's shares, which would be worth at least several million dollars, would appear to have significant resources to finance their own proxy campaigns. It is difficult to understand why shareholders with such resources would require the adoption of these highly complex mandatory proxy access rules, which may have significant harmful effects on companies and their shareholders, in order to exercise their existing rights to nominate directors at the expense of all of the company's shareholders. Recent rule changes, such as e-proxy, which permits the Internet-based distribution of proxy materials, and Commission rules facilitating the use of electronic shareholder forums, also make it easier and less expensive for shareholders to conduct proxy contests.

Recent corporate governance developments, such as majority voting, also have provided shareholders with effective ways of expressing their approval or disapproval of director nominees proposed by a company. Many companies, including Wells Fargo, do not have a staggered board and have adopted a majority vote standard, and shareholders at these companies clearly have a greater voice in the director election process and the composition of the board. [5] In fact, recently shareholders at certain large financial institutions completed, or threatened to commence, "no vote" campaigns that successfully resulted in changes to board and/or committee membership.[6] The recent adoption of rules eliminating broker discretionary voting in the

---

[4] Facilitating Shareholder Director Nominations, 74 Fed. Reg. at 29,028.

[5] Approximately 66% of companies in the S&P 500 do not have a staggered board. See Sorkin, Ross, "A Few Things to Think About," *New York Times*, May 28, 2008 (citing FactSet SharkRepellent). The Release cites sources indicating that approximately 68% of companies in the S&P 500 have some form of majority voting. Facilitating Shareholder Director Nominations, 74 Fed. Reg. at 29,029, n.69.

[6] In discussing some of the primary reasons for the Proposals, the Commission noted the difficulty of withhold vote and vote no campaigns because of plurality voting. *Id.* at 29,028. However, as noted above, well over a majority of large companies do not have a staggered board and have adopted some form of majority voting.

election of directors may further expand the power of shareholders in director elections. Accordingly, Wells Fargo believes that it may be appropriate to delay making any changes at this time to the director election process, including not adopting the Rule 14a-8 Proposal, and to continue to assess and monitor developments in this area[7] or, alternatively, to carve out an exception from the Proposals for companies that elect directors under a majority vote standard.

If, however, changes in the director election process are warranted, then Wells Fargo believes that amendments to state corporation law represent the best way for implementing the necessary corporate law changes. State law, rather than a federal corporate law, provides the traditional and proper framework for governing the nomination and election of directors, which is fundamental to corporate governance. As Commissioner Casey stated in her speech at the Commission's meeting regarding the Release, "[t]he states are best suited to understand and respond to the needs of companies organized under their laws and shareholders of those companies."[8] In this regard, Wells Fargo, as a Delaware corporation, notes the recent amendments to the Delaware General Corporation Law, which explicitly permit, but do not require, the adoption of bylaws that would require a company to include shareholder nominees in its proxy materials and/or reimburse shareholders for expenses in proxy solicitations for the election of directors.[9] The new Delaware law provisions recognize that proxy access is a complex concept that is not suited for a "one-size-fits-all" approach and it provides for a non-exclusive list of provisions that could be included in bylaws to provide parameters for shareholders' proxy access rights, including those relating to minimum ownership and duration of ownership requirements, the number of directors eligible to be nominated, information regarding the nominating shareholder and the nominee, and the indemnification of the company for false or misleading statements by the nominating shareholder. These provisions would allow a company and its shareholders to establish, through customary board and/or shareholder action, alternative means of proxy access or expense reimbursement procedures that would ensure only qualified director candidates are elected and reduce the risk of disruptions in board and committee collegiality, cohesiveness and effectiveness that could result from the approach that would be mandated by the Proxy Access Proposal.

Delaware law acknowledges, and Wells Fargo agrees, that rather than mandate a federal proxy access right, it is better for companies and their boards to determine, with the proper input from shareholders, whether proxy access is in the best interests of a company and its shareholders and, if so, in what form it should apply. Given the potential detrimental effects to companies and their shareholders resulting from proxy access, it is highly possible that a

---

[7] The Commission, for example, has indicated that it intends to consider issues relating to the use of proxy advisory services, and Wells Fargo believes it would be useful to assess the results of that review, as well as the impact of the elimination of broker discretionary voting in director elections, before making additional significant changes to the director election process. See Exchange Act Release No. 34-60215 (July 1, 2009).

[8] Speech by SEC Commissioner Kathleen L. Casey: Statement at Open Meeting to Propose Amendments Regarding Facilitating Shareholder Director Nominations (May 20, 2009).

[9] See Delaware General Corporation Law Sections 112 and 113. Similar amendments to the Model Business Corporation Act have been proposed.

majority of shareholders would not desire to subject their company to the Proxy Access Proposal. However, under the Proxy Access Proposal companies would not be permitted to opt out of proxy access or, to the extent more restrictive than the Proxy Access Proposal, to develop their own approach to shareholder director nominations, even if desired through the vote of a majority of its shareholders.[10] Wells Fargo believes that the Commission's approach is contrary to traditional principles of state corporate law and is not in the best interests of companies and their shareholders. Rather, Wells Fargo believes that allowing a private ordering process, which has been successful in corporate governance advancements relating to, among other matters, the elimination of staggered boards and the adoption of majority voting, would be the right approach.

For all of the reasons set forth above, Wells Fargo believes that the Proxy Access Proposal should not be adopted, and any efforts to enact changes to the director election process at this time should be focused only on the Rule 14a-8 Proposal, taking into consideration our comments and suggestions regarding the Rule 14a-8 Proposal set forth below.

Specific Additional Comments and Suggestions Regarding the Proposals

If the Proposals are adopted, Wells Fargo has several additional specific comments and suggestions on various aspects of the Proposals that it believes are necessary to address some of its concerns regarding the Proposals, particularly the Proxy Access Proposal.

Eligibility to Use Proxy Access

In the Release, the Commission indicated that it attempted to balance shareholders' ability to participate more fully in the nomination and election process against the potential costs and disruption to companies, by providing that only holders of a significant, long-term interest in the company would be eligible to rely on the proxy access rule.[11] Given the likely substantial costs and disruption to companies if the Proxy Access Proposal is adopted, Wells Fargo does not believe the proposed rule accomplishes that objective.

Under the Proxy Access Proposal, an unlimited number of shareholders collectively owning as little as 1% of a large accelerated filer's outstanding shares for only one year would be able to rely on the proposed rule, and these shareholders would not be required to hold their shares beyond the date of the shareholders' meeting to elect directors. Although 1% of outstanding shares may represent a large investment for an individual shareholder, it is not a significant investment for a large group of shareholders, each of whom may own only small

[10] Delaware law, as well as the laws of other states, permits reasonable restrictions regarding the manner in which shareholders may nominate directors, including advance notice provisions, disclosure requirements, and minimum director qualifications. However, none of these types of restrictions, to the extent more restrictive than provisions in the Proxy Access Proposal, would be permitted under the Proxy Access Proposal, rendering many long-standing state law provisions, as well as provisions in the corporate governance guidelines of many boards, meaningless.

[11] Facilitating Shareholder Director Nominations, 74 Fed. Reg. at 29,035.

amounts of stock and have little at stake in the long-term financial success of the company. In addition, proposed Rule 14a-11 does not take into account, or require any disclosure about, the possible hedging of a nominating shareholder's economic interest in the shares, which may further frustrate the Commission's goal of ensuring that nominating shareholders have a significant financial interest in the company. Accordingly, Wells Fargo believes that the ownership threshold should be higher than 1% of outstanding shares for large accelerated filers such as Wells Fargo (e.g., at least 5% of outstanding shares for an individual shareholder and 10% for a group) and/or shareholders should not be allowed to aggregate their holdings in order to meet the ownership eligibility requirement or such number of aggregating shareholders should be limited. Wells Fargo also believes that the holders should be required to evidence a continuing economic interest in their shares and to disclose whether they have engaged in any hedging or other transactions that may affect economic or voting rights. In addition, Wells Fargo believes that the holding period for a nominating shareholder or group prior to submitting a nomination should be at least two years and that nominating shareholders should be required to hold their shares for a period of time after the meeting to elect directors if their nominee is elected, perhaps even as long as the term of the elected director. Wells Fargo believes that these changes are necessary to ensure that a nominating shareholder or group has a significant long-term financial interest in the company that justifies their commitment to their director nominee. Furthermore, Wells Fargo believes that, because of the likely substantial costs and disruption to companies, any federally mandated proxy access rule must do more to ensure that a shareholder or group of shareholders using the rule to nominate a director candidate is acting in alignment with the interests of shareholders generally and not just to advance its own narrowly focused special interests or agenda.

Finally, similar to provisions in Rule 14a-8, if a shareholder director nominee fails to receive a certain percentage of the vote (e.g., 25%), then the nominating shareholder or group should be prohibited from nominating a director candidate at future meetings for a certain period of time, such as three years, and the nominee should not be eligible for re-nomination for a similar period of time. Wells Fargo believes this would be an appropriate check on a nominating shareholder or group to ensure that company resources were not being wasted on a nomination by a shareholder or group that has not received prior significant shareholder support for their nomination.

Shareholder Nominee Requirements

As described above, Wells Fargo believes that the failure of a shareholder director nominee to satisfy all of a company's independence standards and minimum director qualification requirements would significantly negatively affect the board's operations and effectiveness. Thus, Wells Fargo believes that shareholder nominees should be required to satisfy all of a company's independence standards and director qualification requirements, provided those qualification requirements are reasonably designed to result in more qualified directors and are objectively applied (the proposed rules also should make clear that stock ownership requirements, retirement policies, and other requirements applicable to all elected

directors also would be applicable to shareholder nominated directors). The Commission indicated in the Release that satisfying director qualifications criteria should not be necessary because the shareholder director nominee is the nominating shareholder's nominee and not the company's nominee.[12] Nevertheless, Wells Fargo believes to allow otherwise would lead to two (or more) hierarchies of directors and a fragmented and dysfunctional board. In addition, to avoid the possibility of "special interest" directors, Wells Fargo believes that shareholder director nominees should not have any significant personal or business relationships with the nominating shareholder or group. Wells Fargo also believes that the board's nominating committee should have a significant role in ensuring that the independence, director qualification and any other legal requirements relating to board membership, including compliance with director interlock requirements, are properly addressed and satisfactorily resolved.

Maximum Number of Shareholder Nominees to be Included in Company Proxy Materials

In the Release, the Commission acknowledges that extensive changes in board membership or even the possibility of such changes as a result of including shareholder nominees in the company's proxy statement have the potential to be disruptive to the board and confusing to shareholders.[13] Wells Fargo strongly agrees with that assessment and believes that the number of shareholder director nominees that should be permitted to be nominated and serve on a board at any one time should be limited and that there should be certain additional changes in proposed Rule 14a-11 to limit abrupt, disruptive board turnover. Wells Fargo currently has 18 directors and under the Proxy Access Proposal there would be the possibility of four additional shareholder director nominations in one year. The possibility of such sudden and unexpected turnover would be extremely disruptive to the Board, its committees, and Wells Fargo's management. Accordingly, Wells Fargo believes that the number of shareholder director nominees that should be permitted to be nominated at any one time should be limited to one director for each annual meeting, up to an aggregate percentage cap, which Wells Fargo believes should be no greater than 15% rather than the proposed 25% cap. For these purposes, any individual nominated for director by shareholders should count, at least for a certain period of time, towards the limit or cap, including nominees originally nominated by shareholders, but subsequently nominated by the company's nominating committee at the initial or a future meeting, and shareholder director nominees nominated outside of proposed Rule 14a-11. In particular, if shareholder director nominees that are later nominated by a company's nominating committee did not count towards the cap, then nominating committees would have no incentive to nominate or re-nominate shareholder nominated directors that they believe may in fact be in the best interests of the company and its shareholders in order to avoid the possible disruption from additional shareholder director nominees.

In keeping with the Commission's desire to limit applicability of the rule to those shareholders who have a significant financial interest in the company and to limit disruption to

---

[12] *Id.* at 29,041.
[13] *Id.* at 29,043.

the board, Wells Fargo believes that the largest shareholder or group should be selected to have its nominee included in the company's proxy materials in those circumstances where more than one eligible shareholder or group submits its nominee under the rule. Wells Fargo does not believe that a first-in standard is appropriate because, among other things, it may lead to hasty nominations by a shareholder or group racing to be the first one to the company's door. If the rule permits more than one shareholder director nominee at an annual meeting, then Wells Fargo also believes that only one nominating shareholder or group should be permitted to have their nominee or nominees included in the company's proxy materials, regardless of whether they nominate the maximum number allowed under the rule.

Notice and Disclosure Requirements and Inclusion of a Shareholder Director Nominee

Under the Proxy Access Proposal, the deadline for a shareholder or group submitting the required notice to nominate a director would be the date set by a company's advance notice provision or, in the absence of such a provision, 120 days before the anniversary of the date that the company mailed the prior year's proxy materials. Many companies, including Wells Fargo, have advance notice provisions that generally require advance notice of shareholder director nominations no earlier than 120 days and not later than 90 days before the first anniversary of the preceding year's annual meeting. The process outlined in the Proxy Access Proposal to determine whether a nominating shareholder or group and the nominee would be eligible under the proposed rule may take as long as 120 to 150 days. Accordingly, the timing under these advance notice provisions will not work under the proposed rules and the advance notice provisions will need to be amended, subject to any state law restrictions regarding the reasonableness of the advance notice period. Wells Fargo believes that it is appropriate to have one deadline for submitting notices under the rules applicable to all companies and that the deadline should be in the form of an appropriate range, similar to the typical advance notice provisions described above, so that companies would have a set period of time during the year to manage this process. The ultimate deadline would, however, have to provide enough time to permit companies to complete the complex and time consuming process of verifying the eligibility of a nominating shareholder and their nominee. In this regard, Wells Fargo notes that the 14 days provided in the Proxy Access Proposal to respond to a nominating shareholder's notice and determine compliance with eligibility requirements is too short and should be extended to no less than 30 days. In Wells Fargo's case, internal legal counsel, management, and the Board's Governance and Nominating Committee devote a substantial amount of time and resources to collect, review and assess information regarding the personal and business relationships between Wells Fargo, the director, the director's immediate family members and his or her related interests in order to assess independence (including the objective independence standards), as well as information relating to compliance with other legal requirements for board membership, including Section 8 of the Clayton Act and the Depository Institution Management Interlocks Act applicable to financial institutions, such as Wells Fargo. Wells Fargo does not believe that completing this process for one or more shareholder director nominees could be accomplished in 14 days.

In addition, because of the significant amount of time and resources that would be required to determine the eligibility of a shareholder director nominee, Wells Fargo believes that once a nominating shareholder or group provides the proper notice to submit the requisite number of nominees, then no other shareholder or group should be permitted to submit a nominee, even if the first shareholder or group, or their nominee, is determined to be ineligible or later becomes ineligible. To allow otherwise may put the company in the position of having to needlessly verify several nominating shareholder submissions at the same time and/or determine eligibility in an unreasonably short period of time, which would be extremely burdensome and a substantial waste of company and shareholder resources. Similarly, if, as Wells Fargo recommends, the largest shareholder or group would be eligible to submit a nominee in those cases where more than one notice is submitted, Wells Fargo believes that the applicable period to verify eligibility described above should not begin to run until after the expiration of the deadline for submitting notices.

Rule 14a-8 Proposal

As noted above, Wells Fargo supports the general principles outlined in the Rule 14a-8 Proposal, which would appropriately allow shareholders and boards to determine the desirability of proxy access and, if desirable, the manner in which it would apply. Wells Fargo does, however, have some concerns that at this time it may be premature to permit shareholders with a short-term minimal financial interest in the company to submit shareholder proposals regarding proxy access under the current eligibility rules of Rule 14a-8, especially before boards and shareholders have had time to analyze fully recent corporate developments regarding the director election process and how the proxy access process or other alternatives would impact the company and its shareholders. Accordingly, Wells Fargo believes it would be appropriate to increase the minimum ownership threshold and holding period requirements under Rule 14a-8 to submit a proxy access proposal to at least 1% of outstanding shares and two years, respectively.

Timing of Effectiveness of the Proposals

If either or both of the Proposals are adopted, Wells Fargo does not believe that they should be effective until after the 2010 proxy season. As the Commission noted in the Release, "[a]mending our rules to provide for the inclusion of shareholder nominees for directors in a company's proxy materials is a significant change."[14] Companies will need time to prepare for this significant change, including assessing and implementing any necessary changes to governing documents, such as bylaws, corporate governance guidelines, and corporate governance and nominating committee charters, and educating and preparing their boards, management, and shareholders regarding the new rules. Specifically, as described above, many advance notice provisions will not work under the Proxy Access Proposal and will need to be amended, and any amendment would be required to take into account various notice periods and deadlines, which would likely be affected by the timing of the adoption of the Proposals. In sum,

---

[14] *Id.*

to require companies to implement the Proposals during the 2010 proxy season, especially during a time when many other complex rules and regulations relating to proxy disclosure and executive compensation matters may be required to be implemented for the first time by companies, would be extremely burdensome to companies and may be harmful to companies and their shareholders.

* * *

Wells Fargo appreciates the opportunity to provide its comments regarding the Proposals. If you have any questions relating to the issues raised in this letter, please do not hesitate to contact the undersigned (at 612-667-8655) or Anthony R. Augliera (at 704-383-4901).

Very truly yours,

Laurel A. Holschuh

cc: Richard M. Kovacevich, Chairman of the Board
John G. Stumpf, President and Chief Executive Officer
Philip J. Quigley, Lead Director and Chair, Governance and Nominating Committee
James M. Strother, General Counsel
Anthony R. Augliera, Deputy General Counsel