



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549-4561

March 4, 2010

Kathryn V. Purdom
Senior Counsel
Wells Fargo & Company
Law Department
MAC D1053-300
301 South College Street
Charlotte, NC 28288

Re: Wells Fargo & Company
Incoming letter dated December 28, 2009

Dear Ms. Purdom:

This is in response to your letter dated December 28, 2009 concerning the shareholder proposal submitted to Wells Fargo by the AFSCME Employees Pension Plan. We also have received a letter from the proponent dated January 25, 2010. Our response is attached to the enclosed photocopy of your correspondence. By doing this, we avoid having to recite or summarize the facts set forth in the correspondence. Copies of all of the correspondence also will be provided to the proponent.

In connection with this matter, your attention is directed to the enclosure, which sets forth a brief discussion of the Division's informal procedures regarding shareholder proposals.

Sincerely,

Heather L. Maples
Senior Special Counsel

Enclosures

cc: Charles Jurgonis
Plan Secretary
American Federation of State, County and Municipal Employees, AFL-CIO
1625 L Street, NW
Washington, DC 20036-5687

March 4, 2010

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: Wells Fargo & Company
Incoming letter dated December 28, 2009

The proposal urges the Human Resources Committee to make changes to the Performance Policy as applied to named executive officers and the 100 most highly-compensated employees.

There appears to be some basis for your view that Wells Fargo may exclude the proposal under rule 14a-8(i)(7). We note that the proposal relates to compensation that may be paid to employees generally and is not limited to compensation that may be paid to senior executive officers and directors. In addition, in our view, the proposal does not focus on the relationship between the company's compensation practices and excessive risk-taking. Proposals that concern general employee compensation matters are generally excludable under rule 14a-8(i)(7). Accordingly, we will not recommend enforcement action to the Commission if Wells Fargo omits the proposal from its proxy materials in reliance on rule 14a-8(i)(7). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which Wells Fargo relies.

Sincerely,

Charles Kwon
Special Counsel

**DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS**

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the Company in support of its intention to exclude the proposals from the Company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes administered by the Commission, including argument as to whether or not activities proposed to be taken would be violative of the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversary procedure.

It is important to note that the staff's and Commission's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly a discretionary determination not to recommend or take Commission enforcement action, does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the management omit the proposal from the company's proxy material.



Committee
Gerald W. McEntee
William Lucy
Edward J. Keller
Kathy J. Sackman
Marianne Steger

EMPLOYEES PENSION PLAN

January 25, 2010

VIA EMAIL

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

Re: Stockholder proposal of AFSCME Employees Pension Plan; request by Wells Fargo & Company for no-action determination

Dear Sir/Madam:

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, the American Federation of State, County and Municipal Employees, Employees Pension Plan (the "Plan") submitted to Wells Fargo & Company ("Wells Fargo" or the "Company") a stockholder proposal (the "Proposal") asking Wells Fargo to amend the Company's Performance Policy (the "Performance Policy") to provide for a delay in the payment of bonuses to the 100 most highly compensated employees for a period of three years, and for an adjustment of the amount of those bonuses based on the quality and sustainability over that three-year period of the performance metrics on which the bonuses were based.

In a letter dated December 28, 2009, Wells Fargo stated that it intends to omit the Proposal from its proxy materials being prepared for the 2010 annual meeting of stockholders. Wells Fargo argued that it is entitled to exclude the Proposal pursuant to (a) Rule 14a-8(i)(7), as relating to the Company's ordinary business operations, and (b) Rule 14a-8(i)(3), on the ground that the Proposal is materially false or misleading in violation of the Commission's Rule 14a-9. Because Wells Fargo has not met its burden of proving that it is entitled to rely on any of those three exclusions, the Plan respectfully urges that its request for relief should be denied.

The Proposal Deals with a Significant Social Policy Issue, Making Exclusion on Ordinary Business Grounds Inappropriate

Rule 14a-8(i)(7) and its predecessor Rule 14a-8(c)(7) allow a company to omit a proposal that "deals with a matter relating to the company's ordinary business

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operations.” The purpose of the exclusion is to prevent shareholders from interfering in tasks that are fundamental to the day-to-day management of the business and to avoid micro-management by shareholders. However, proposals dealing with mundane matters but focusing on “significant social policy issues” are not excludable. (Exchange Act Release No. 40,018 (May 21, 1998))

Until 1992, the Staff considered all compensation matters to be part of the day-to-day business of companies, and accordingly allowed proposals dealing even with top executive compensation to be excluded on this basis. In that year, the Staff reversed its position, stating that the “widespread public debate concerning executive and director compensation policies and practices, and the increasing recognition of these issues” placed senior executive compensation outside the ambit of ordinary business. (See *Eastman Kodak* (publicly available Feb. 13, 1992) and *International Business Machines Corp.* (publicly available Feb. 13, 1992))

The Plan concedes that the Proposal is not limited to senior executive compensation, as Wells Fargo asserts. As evidenced by the Proposal’s supporting statement, the Plan intends for the Proposal’s operation to extend beyond the handful of top executives because the Plan believes that the role of incentives for other highly-compensated employees of financial firms is no less important—in fact, in some cases, they may be more important—than the incentives given to senior executives. Given the key role employee incentives played in creating the financial crisis, proposals dealing with those incentives at financial firms involve a “significant social policy issue” and thus are not excludable on ordinary business grounds.

Incentives provided to financial firm employees, and not just top executives, have been the subject of an enormous amount of attention from legislators and regulators since the onset of the financial crisis. The Commission’s own recently-adopted amendments to the proxy disclosure rules recognize the importance of compensation policies below the top executive level. As SEC Chairman Mary Schapiro described these amendments earlier this month before the Financial Crisis Inquiry Commission, they “require companies to disclose their compensation policies and practices for all employees (not just executives) if these policies and practices create risks that are reasonably likely to have a material adverse effect on the company.”

She explained the context in which the Commission adopted these amendments: “Another lesson learned from the crisis is that there can be a direct relationship between compensation arrangements and corporate risk taking. Many major financial institutions created asymmetric compensation packages that paid employees enormous sums for short-term success, even if these same decisions result in significant long-term losses or failure for investors and taxpayers. (See Testimony of SEC Chairman Mary L. Schapiro Before the Financial Crisis Inquiry Commission, Jan. 14, 2010 (available at <http://www.fcic.gov/hearings/#jan13-1>))

A provision of the 2009 economic stimulus bill capped bonuses paid at bailed-out firms to one-third of total annual pay. According to an article in the Wall Street Journal, the provision applied not “just to top executives but . . . reach[ed] into the ranks of highly paid traders and department heads.” (Deborah Solomon & Mark Maremont, “Bankers Face Strict New Pay Cap,” Wall Street Journal, Feb. 14, 2009)

Congress required that a special master, Kenneth Feinberg, approve the actual compensation paid to the 25 most highly compensated employees of the “TARP Seven”—the seven companies receiving the largest amount of TARP funds—and the compensation policies applicable to the next 75 most highly compensated employees of those firms, until the firms repaid the government. The depth of Mr. Feinberg’s jurisdiction thus goes well beyond the senior executive ranks.

Comprehensive financial reform legislation recently passed by the House, the Wall Street Reform and Consumer Protection Act, contains provisions on compensation, including a shareholder advisory vote on executive compensation and a prohibition on compensation practices that promote excessive risk. House Financial Services Committee Chairman Barney Frank, announcing a hearing on the bill to be held on January 22, 2010, said that one of the topics he wanted to consider was broadening the shareholder advisory vote beyond top executive pay to address the “overall amount” of compensation at financial firms. (See Press Release dated Jan. 13, 2010, “Frank Announces Hearing on Compensation” (available at http://www.house.gov/apps/list/press/financialsvcs_dem/press_01132010.shtml))

Congress has held numerous hearings on the role of compensation and incentives in causing the financial crisis. Examples include:

- The House Committee on Financial Services

- ✓ “Compensation Structure and Systemic Risk,” June 11, 2009 (all testimony available at http://www.house.gov/apps/list/hearing/financialsvcs_dem/hrfc_061109.shtml)

- Federal Reserve General Counsel Scott Alvarez testified that “As the events of the past 18 months demonstrate, compensation practices throughout a firm can incent even non-executive employees, either individually or as a group, to undertake imprudent risks that can significantly and adversely affect the risk profile of the firm.” (Alvarez Testimony at 1)

- ✓ “Compensation in the Financial Industry,” January 22, 2010 (see above quote from Rep. Barney Frank regarding broadening shareholder supervision of compensation)(all testimony available at <http://www.house.gov/apps/>

list/hearing/financialsvcs_dem/fcher_01222010.shtml)

- The House Committee on Oversight and Government Reform, “Executive Compensation: How Much is Too Much?” October 28, 2009 (all testimony available at http://oversight.house.gov/index.php?option=com_content&task=view&id=4619&Itemid=2)

✓ Prof. William Black testified that the financial crisis resulted primarily from accounting control fraud facilitated, in part, by paying bonuses to lower-level employees such as loan officers. (Black Testimony at 9-10)

The Federal Reserve has issued a proposed Guidance on Sound Incentive Compensation Policies that would require banks under the Fed’s supervision to (a) use incentive compensation policies that do not encourage employees to take excessive risks, (b) ensure that their risk management programs effectively monitor risk created by incentive compensation schemes, and (c) make banks’ boards of directors responsible for putting in place appropriate compensation policies.

The Guidance would apply to three categories of employees, reaching much further down the organization than the senior executive level:

- Employees responsible for oversight of the organization’s firm-wide activities or material business lines;
- Employees whose activities may expose the organization to “material amounts of risk” (such as traders with large position limits); and
- Groups of employees who are subject to similar incentive compensation arrangements and who, in the aggregate, may expose the organization to material amounts of risk, even if no individual employee is likely to do so (such as loan officers).

(See Federal Reserve System, Proposed Guidance on Sound Incentive Compensation Policies (Oct. 22, 2009) (available at <http://edocket.access.gpo.gov/2009/pdf/E9-25766.pdf>))

The media scrutiny and public outrage over financial firm pay has similarly focused beyond only pay to the very top executives. The \$168 million in bonuses to employees of American International Group’s Financial Products Group were not limited to top executives—the amount paid included bonuses for 73 employees of the group who received payouts of \$1 million or more. Barney Frank, chairman of the House Financial Services Committee, said about that uproar: “I have never seen the public angrier about anything than when the stuff about the A.I.G. bonuses came out . . . I think the country snapped. . . . This was not like Vietnam or Iraq, where there was a split. Everyone was united on this.” (Steven Brill, “What’s a Bailed-Out

Banker Really Worth?" The New York Times, Jan. 3, 2010)

Former Federal Reserve Chairman Paul Volcker, who has been speaking a great deal about the financial crisis from his perch as an outside advisor to the Obama Administration, has complained about "enormous compensation for traders, speculators, and finance executives," not just senior executives. (See Paul Volcker's Remarks to the Class of 2009, Union College, June 14, 2009 (available at http://www.union.edu/N/DS/edition_display.php?e=1528&s=8486))

Other compensation-related subjects the Staff has determined to be significant social policy issues did not generate anything close to the level of interest and engagement among legislators, regulators, the media and the public at large, as the amount and structure of the incentives provided to Wall Street traders and others whose actions contributed to the financial crisis and whose jobs give them the power to expose their employers to large risks.

For example, in 2000 the Staff began declining to allow exclusion of proposals dealing with cash-balance pension plans, based on the widespread public debate generated by companies' conversions to these plans. (See Division of Corporation Finance's "Current Issues and Rulemaking Projects" dated July 25, 2000, section X.L.; International Business Machines Corporation (publicly available Feb. 16, 2000) (declining to allow exclusion of proposal asking companies to adopt a policy to provide all employees with the same retirement medical insurance pension choices and to require parity in benefits payable between a new cash-balance plan and the prior pension plan)) Similarly, in Staff Legal Bulletin 14A, the Staff announced that certain proposals dealing with shareholder approval of equity compensation plans would be considered to address significant social policy issues as a result of "widespread public debate." (Staff Legal Bulletin 14A, July 12, 2002) (available at <http://www.sec.gov/interps/legal/cfslb14a.htm>)

In sum, the amount of scrutiny, public debate, outrage and activity regarding financial firm compensation policies—and not just those applicable to the very top executives—leaves no doubt that they are a "significant social policy issue." Accordingly, Wells Fargo should not be permitted to omit the Proposal in reliance on the ordinary business exclusion.

The Proposal is not Materially False or Misleading

Wells Fargo contends that the Proposal is materially false or misleading because it implies that the 100 most highly-compensated employees are all covered by the Performance Policy. The Plan does not believe that this reading is supported by the Proposal's plain language, which speaks of amending the Performance Policy "as applied to" certain employees. A reasonable stockholder reading that language would likely conclude that the Plan did not intend for the requested changes to apply to employees covered by the Performance Policy who are below the top 100, not as an assertion that all 100 employees are eligible to participate in the Performance Policy.

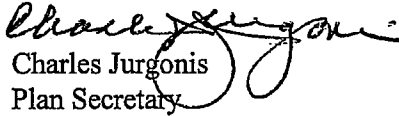
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January 25, 2010
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To the extent the Staff believes that clarification would be useful, however, the Plan does not object to adding the following language to the end of the first paragraph of the resolved clause (before the numbered items): "(to the extent such employees are eligible to participate in the Performance Policy)".

* * * *

If you have any questions or need additional information, please do not hesitate to call me at (202) 429-1007. The Plan appreciates the opportunity to be of assistance to the Staff in this matter.

Very truly yours,


Charles Jurgonis
Plan Secretary

cc: Kathryn V. Purdom
Senior Counsel
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December 28, 2009

Via E-Mail to shareholderproposals@sec.gov

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

Re: Wells Fargo & Company – Omission of Stockholder Proposal submitted by
American Federation of State, County and Municipal Employees (AFSCME)
Employees Pension Plan

Ladies and Gentlemen:

Wells Fargo & Company, a Delaware corporation (“Wells Fargo” or the “Company”) hereby notifies the Securities and Exchange Commission (the “Commission”) of its intent to omit a stockholder proposal from its proxy statement and form of proxy for Wells Fargo’s 2010 Annual Meeting of Stockholders (the “2010 Proxy Materials”), pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and, in connection therewith, respectfully requests the staff of the Division of Corporation Finance (the “Staff”) to indicate that it will not recommend any enforcement action to the Commission. Wells Fargo has filed this letter with the Commission no later than eighty calendar days before Wells Fargo intends to file its definitive 2010 Proxy Materials with the Commission.

The Proposal

On November 18, 2009, the Company received a stockholder proposal (the “Proposal”) from the AFSCME Employees Pension Plan (the “Proponent”) for inclusion in Wells Fargo’s 2010 Proxy Materials. In summary, the Proposal requests that the Human Resources Committee (the “HRC”) of Wells Fargo’s Board of Directors (the “Board”) implement certain changes to the Company’s “Performance Policy” “as applied to named executive officers and the 100 most highly compensated employees” of the Company.

The Proposal is attached as Exhibit A. For the reasons set forth below, Wells Fargo believes that it may properly omit the Proposal from its 2010 Proxy Materials.

Summary of Wells Fargo's Position

As set forth more fully below, Wells Fargo believes that it may properly omit the Proposal from its 2010 Proxy Materials. Wells Fargo believes that the Proposal may be omitted pursuant to (i) Rule 14a-8(i)(7) because it relates to Wells Fargo's ordinary business operations, namely general compensation matters, and (ii) Rule 14a-8(i)(3) because the Proposal is materially false and misleading under Rule 14a-9 under the Exchange Act.

Analysis

I. Rule 14a-8(i)(7) – Proposal Deals with Wells Fargo's Ordinary Business Operations.

Rule 14a-8(i)(7) permits the exclusion of a stockholder proposal if the proposal deals with the company's ordinary business operations. Wells Fargo believes that the Proposal is excludable under Rule 14a-8(i)(7) because it involves general compensation matters, which relate to Wells Fargo's ordinary business operations.

According to the Commission's Release accompanying the 1998 amendments to Rule 14a-8, 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 impractical for stockholders to decide how to solve such problems at an annual meeting." Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release"). In the 1998 Release, the Commission described the two "central considerations" for the ordinary business exclusion. The first was that certain tasks were "so fundamental to management's ability to run a company on a day-to-day basis" that they could not be subject to direct stockholder oversight. The second consideration "relates 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", which the Commission indicates "may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies."

Consistent with this administrative history, in Staff Legal Bulletin No. 14A (July 12, 2002) ("SLB 14A"), the Staff explained that since 1992 it has applied a bright-line analysis when considering the excludability under Rule 14a-8(i)(7) of stockholder proposals concerning equity or cash compensation matters. Under the Staff's analysis, proposals that relate to general employee compensation matters may be excluded under Rule 14a-8(i)(7), while those proposals that concern only senior executive officer and director compensation matters may not be excluded under Rule 14a-8(i)(7). The Staff's distinction between general compensation matters and senior executive officer and director compensation matters is based on its view that senior executive and director compensation matters involve "significant social policy issues" that transcend day-to-day business matters and are appropriate for a stockholder vote. See SLB 14A. Wells Fargo believes that it may properly exclude the Proposal under Rule 14a-8(i)(7) because the Proposal relates to general compensation matters for individuals far beyond only senior executive officers and directors.

The Proposal addresses the compensation of “the 100 most highly compensated employees,” which means it applies to certain employees based on their aggregate compensation rather than their executive management responsibilities. As discussed further below, the compensation arrangement addressed in the Proposal does not apply to “the 100 most-highly compensated employees” of the Company, on account of which we believe that the Proposal is false and misleading under Rule 14a-8(i)(3). However, by purporting to apply to employees who are not executive officers, the Proposal is not limited to the compensation of senior executive officers of the Company but instead concerns the compensation of numerous business line and staff employees. As set forth in Wells Fargo’s 2008 Annual Report on Form 10-K, Wells Fargo has 13 “executive officers,” as defined by Rule 3b-7 under the Exchange Act. These “executive officers” include, among others, Wells Fargo’s Chairman, Chief Executive Officer, Chief Financial Officer, Chief Credit and Risk Officer, General Counsel, the head of Human Resources, and the heads of its principal business units and are the group of “executive officers” who, depending upon their total compensation, may be considered “named executive officers” for purposes of determining Wells Fargo’s most highly compensated executive officers under the Commission’s proxy rules. In contrast, “the 100 most highly-compensated employees” covered by the Proposal include a much broader number of individuals who are not senior executive officers at Wells Fargo. In fact, the “100 most highly-compensated employees” extends well beyond the group of 78 individuals currently comprising the Company’s Management Committee, which is a committee of business line and corporate leaders who provide regular feedback and input on various issues affecting the Company. Most of the members of the Management Committee are not considered “executive officers” of Wells Fargo as discussed above. In addressing compensation for employees beyond the Company’s senior executive officers, the Proposal addresses general compensation matters that do not raise the significant social policy concerns outlined by the Staff in SLB 14A. Moreover, the Proposal’s focus on general compensation matters is inconsistent with the purposes of Rule 14a-8(i)(7), as discussed by the Commission in the 1998 Release. The Proposal’s proposed modifications to the Performance Policy, which the Proposal indicates would be applied to this larger group of business line and staff employees who are not senior executive officers of the Company, means the Proposal impermissibly seeks to “micro-manage” Wells Fargo’s day-to-day general compensation practices and programs. Therefore, the Proposal may be excluded under Rule 14a-8(i)(7) as relating to Wells Fargo’s ordinary business operations.

The Staff has permitted the exclusion under Rule 14a-8(i)(7) of compensation proposals that would apply to employees who are not “executive officers” of a company. For example, in Minnesota Mining and Manufacturing Company (publicly available March 4, 1999), the Staff concluded that a proposal that would limit the yearly percentage increase of the compensation of the “top 40 executives” and the CEO to amounts determined by certain formulas was excludable under Rule 14a-8(i)(7) as relating to general compensation matters and ordinary business operations. In that case, the company noted that the “top 40 executives” included employees who were not “executive officers” of the company. See also International Business Machines Corporation (publicly available January 22, 2009) (proposal limiting salary increases for employees of “level equivalent to a 3rd Line Manager or above” properly excludable under Rule 14a-8(i)(7) because it related to general compensation matters); 3M Company (publicly available March 6, 2008) (proposal relating to the compensation of high-level 3M employees, including

line employees and staff employees, excludable under Rule 14a-8(i)(7) because it related to general compensation matters); Xcel Energy, Inc. (publicly available February 6, 2004) (proposal determining the compensation of the president, all levels of vice president, the CEO, CFO and all levels of top management based on a specified formula excludable under Rule 14a-8(i)(7)); Ascential Software Corporation (publicly available April 4, 2003) (proposal addressing compensation policies and practices that extended beyond senior executive compensation, excludable under Rule 14a-8(i)(7) because it related to general compensation matters); and Reliant Energy Inc. (publicly available March 18, 2004) (proposal calling for the adoption of an “executive compensation policy” without defining “executive”, excludable under Rule 14a-8(i)(7) because it related to general compensation matters).

Similar to the above cases, the Proposal would address compensation matters with respect to employees of Wells Fargo who are not senior executive officers of Wells Fargo and would infringe upon the day-to-day decision making related to complex matters such as determining the amount, type and form of payment of compensation to these employees. Accordingly, Wells Fargo believes that the Proposal may be excluded from its 2010 Proxy Materials pursuant to Rule 14a-8(i)(7) because it relates to general compensation matters and, thus, the Company’s ordinary course business operations.

II. Rule 14a-8(i)(3) – The Proposal is Materially False and Misleading in Violation of Rule 14a-9.

Rule 14a-8(i)(3) provides that a company may exclude from its proxy materials a stockholder proposal if the proposal or supporting statement is “contrary to any of the Commission’s proxy rules, including [Rule] 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials.” Specifically, Rule 14a-9 provides that no solicitation shall be made by means of any proxy statement containing “any statement, which, at the time and in light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading.” In Staff Legal Bulletin No. 14B (September 15, 2004) (“SLB 14B”), the Staff asserted that exclusion under Rule 14a-8(i)(3) may be appropriate where “the company demonstrates objectively that a factual statement is materially false or misleading.” The Staff consistently has allowed the exclusion under Rule 14a-8(i)(3) of stockholder proposals that contain statements that are false or misleading. See, e.g., Wal-Mart Stores, Inc. (publicly available April 2, 2001) (concurring in the exclusion of a proposal to remove “all genetically engineered crops, organisms or products” because the text of the proposal misleadingly implied that it related only to the sale of food products); McDonald’s Corp. (publicly available March 13, 2001) (granting no-action relief because the proposal to adopt “SA 8000 Social Accountability Standards” did not accurately describe the standards).

The Proposal is materially false and misleading because it requests amendments to the Company’s “Performance Policy” “as applied to named executive officers and the 100 most highly-compensation employees”, but such “Performance Policy” is not applicable currently to either group. First, the Company’s “Performance Policy” does not currently apply to the Company’s “named executive officers.” The Proposal appears to request amendments to the

Company's Performance-Based Compensation Policy (which is referred to as the "Performance Policy" in the proxy statement for Wells Fargo's 2009 Annual Meeting of Stockholders and in this letter). By way of background, the Board did adopt and the Company's shareholders did approve, in 1994 and again in 1998, 2003 and 2008, a Performance-Based Compensation Policy, which is an Internal Revenue Code (the "Code") Section 162(m) plan, applicable to the Company's "named executive officers" as determined under the Commission's proxy rules. However, in February 2009 as previously disclosed by the Company in its Current Report on Form 8-K filed with the Commission on February 27, 2009 and discussed in its proxy statement for Wells Fargo's 2009 Annual Meeting of Stockholders, the HRC determined that the Performance Policy was not needed while the limits on tax deductibility of senior executive compensation in excess of \$500,000 imposed by the Emergency Economic Stabilization Act of 2008, as amended, were in effect with respect to the Company. Therefore, the HRC suspended the Performance-Based Compensation Policy, as permitted by its terms, effective January 1, 2009. The HRC has not taken any action as of the date of this letter to reinstate the Performance Policy. Furthermore, in November 2009 and as previously disclosed by the Company in its Current Report on Form 8-K filed with the Commission on November 23, 2009, the Company's Board of Directors adopted an Executive Officer Performance Plan effective beginning for the 2009 performance period. The Executive Officer Performance Plan applies to individuals who are the Company's "officers" as determined by the Company's Board of Directors for purposes of Section 16 of the Exchange Act ("Section 16 officers"), and such other management or key employees of the Company whom the HRC determines are eligible to participate in the Executive Officer Performance Plan for the applicable performance period, which group of officers would include the Company's "named executive officers" as determined under the Commission's proxy rules. Therefore, the Proposal's statements that the requested amendments to the Performance Policy would be "applied to named executive officers" are materially false and misleading in violation of Rule 14a-9.

Moreover, the Company's "Performance Policy" does not apply to the Company's "100 most highly-compensation employees," as suggested by the Proposal. The Proposal states that the "following changes" should be made to the Performance Policy "as applied to named executive officers and the 100 most highly-compensation employees." However, Section 2 of the suspended Performance Policy indicates that it is restricted to certain executive officers of Wells Fargo, as follows:

This Policy applies to any individual (a "Covered Executive Officer") who on the last day of the taxable year is (a) the principal executive officer of the Company or is acting in such capacity, (b) an executive officer and whose name and total compensation for the taxable year is required to be disclosed in the Company's proxy statement delivered to stockholders pursuant to Section 14(a) of the Securities Exchange Act of 1934 (the "Exchange Act") by reason of the individual being among the Company's three highest compensated executive officers for the taxable year (other than by reason of being the principal executive officer or principal financial officer), or (c) an executive officer and whose name and total compensation for the taxable year is included in the Summary Compensation Table for the taxable year included in the Company's proxy

statement delivered to stockholders pursuant to Section 14(a) of the Exchange Act. Whether an individual is the principal executive officer or among the three highest compensated executive officers other than the principal executive officer or principal financial officer shall be determined pursuant to the executive compensation disclosure rules under the Exchange Act. To the extent “covered employee” under Section 162(m) of the Code (including, without limitation, by subsequent interpretation or amendment) includes additional individuals with respect to the Company, such additional individuals shall also be Covered Executive Officers for purposes of this Policy.

Thus, the Proposal’s reference to the Performance Policy being “applied to the 100 most highly-compensation employees” is materially false and misleading because the Performance Policy does not apply to that larger group of employees.

The Proposal is comparable to other proposals the Staff has concurred are excludable under Rule 14a-8(i)(3). For example, in Johnson & Johnson (publicly available January 31, 2007), the Staff considered a stockholder proposal asking the company’s board to adopt a policy that stockholders be given the opportunity to vote on an advisory management resolution to approve the compensation committee report in the proxy statement. The proposal at issue implied that stockholders would be voting on the company’s executive compensation policies; however, under amended Commission rules the compensation committee report no longer contained that information. Accordingly, the Staff concurred that the proposal was materially false or misleading and concurred in the exclusion of the proposal under Rule 14a-8(i)(3). See also Ryland Group, Inc. (publicly available February 7, 2008); (same); WellPoint Inc. (publicly available February 12, 2007) (same); Sara Lee Corp. (publicly available September 11, 2006) (same). The Staff also has concurred with the exclusion of stockholder proposals related to other matters where the proposals were materially false and misleading. See General Electric Co. (publicly available January 6, 2009) (permitting exclusion under Rule 14a-8(i)(3) of a proposal requesting that the board adopt a policy to ensure that a director who receives greater than 25% withheld votes will not serve on key board committees for two years after the annual meeting where the company had adopted majority voting); Duke Energy Corp. (publicly available February 8, 2002) (permitting exclusion under Rule 14a-8(i)(3) of a proposal that urged the company’s board to “adopt a policy to transition to a nominating committee composed entirely of independent directors as openings occur” because the company had no nominating committee); General Magic, Inc. (publicly available May 1, 2000) (permitting exclusion under Rule 14a-8(i)(3) as false and misleading of a proposal that requested the company “make no more false statements” to its stockholders because the proposal created the false impression that the company tolerated dishonest behavior by its employees when in fact, the company had corporate policies to the contrary).

As discussed above, the Proposal indicates that the Performance Policy, which the Proposal seeks to amend, would apply to Well Fargo’s “named executive officers and the 100 most highly-compensation employees.” However, as previously disclosed by the Company and discussed in the proxy statement for Wells Fargo’s 2009 Annual Meeting of Stockholders, the HRC suspended the Performance Policy effective January 1, 2009, so it does not apply to Wells

Fargo's named executive officers. Moreover, the Performance Policy by its terms does not apply to "the 100 most highly-compensation employees." Therefore, consistent with the precedent cited above, Wells Fargo believes that it may omit the Proposal under Rule 14a-8(i)(3) because the Proposal is materially false and misleading in violation of Rule 14a-9.

Conclusion

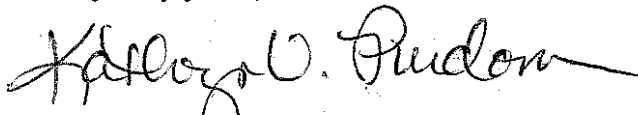
For the reasons set forth above, Wells Fargo respectfully submits that it may properly omit the Proposal from its 2010 Proxy Materials and requests that the Staff indicate that it will not recommend enforcement action to the Commission if Wells Fargo omits such Proposal.

In accordance with Staff Legal Bulletin No.14D (November 7, 2008) ("SLB 14D"), this letter, including Exhibit A, is being submitted by e-mail to shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), a copy of this letter is being sent concurrently to the Proponent.

Rule 14a-8(k) and SLB 14D provide that stockholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the Staff. Accordingly, I am taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff regarding the Proposal, a copy of that correspondence should concurrently be furnished to the undersigned pursuant to Rule 14a-8(k) and SLB 14D.

If you have any questions regarding this request, please call the undersigned at (704) 383-9631.

Very truly yours,



Kathryn V. Rurdom
Senior Counsel

Enclosure

cc: Charles Jurgonis, AFSCME Employees Pension Plan



Committee
 Gerald W. McEmpe
 William Lucy
 Edward J. Keller
 Kathy J. Sackman
 Marianna Steger

EMPLOYEES PENSION PLAN

November 18, 2009

VIA OVERNIGHT MAIL and FAX (651) 450-1033

John G. Stumpf, President and CEO
 Wells Fargo & Company
 420 Montgomery Street
 San Francisco, California 94104

VIA MAIL, EMAIL and FAX (612) 667-6082

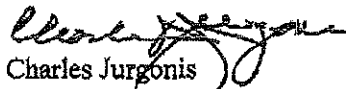
Laurel A. Holschuh, Senior Vice President and Corporate Secretary
 Wells Fargo & Company
 MAC #N9305-173, Sixth and Marquette
 Minneapolis, Minnesota 55479

Dear Mr. Stumpf and Ms. Holschuh:

On behalf of the AFSCME Employees Pension Plan (the "Plan"), I write to give notice that pursuant to the 2009 proxy statement of Wells Fargo & Company (the "Company") and Rule 14a-8 under the Securities Exchange Act of 1934, the Plan intends to present the attached proposal (the "Proposal") at the 2010 annual meeting of shareholders (the "Annual Meeting"). The Plan is the beneficial owner of 45,573 shares of voting common stock (the "Shares") of the Company, and has held the Shares for over one year. In addition, the Plan intends to hold the Shares through the date on which the Annual Meeting is held.

The Proposal is attached. I represent that the Plan or its agent intends to appear in person or by proxy at the Annual Meeting to present the Proposal. I declare that the Plan has no "material interest" other than that believed to be shared by stockholders of the Company generally. Please direct all questions or correspondence regarding the Proposal to me at (202) 429-1007.

Sincerely,


 Charles Jurgonis
 Plan Secretary

Enclosure

American Federation of State, County and Municipal Employees, AFL-CIO

TEL (202) 775-8142 FAX (202) 785-4606 1625 L Street, NW, Washington, DC 20036-5687

RESOLVED that stockholders of Wells Fargo & Company ("Wells Fargo") urge the Human Resources Committee (the "Committee") to make the following changes to the Performance Policy ("PP") as applied to named executive officers and the 100 most highly-compensated employees:

1. An award under the PP (a "Bonus") that is based on financial measurements (a "Financial Metric") whose performance measurement period ("PMP") is one year or shorter shall not be paid in full for a period of three years ("Deferral Period") following the end of the PMP;
2. The Committee shall develop a methodology for (a) determining what proportion of a Bonus should be paid immediately, (b) adjusting the remainder of the Bonus over the Deferral Period to reflect performance on the Financial Metric(s) during the Deferral Period and (c) paying out the remainder of the Bonus during and at the end of the Deferral Period; and
3. The adjustment(s) described above should not require achievement of new performance goals but should focus on the quality and sustainability of the performance on the Financial Metric(s) during the Deferral Period.

The changes should not violate any existing contractual obligation of Wells Fargo or the terms of any compensation or benefit plan currently in effect and should not have the effect of reducing amounts already awarded or earned.

SUPPORTING STATEMENT

As long-term stockholders, we are concerned that short-term incentive plans can encourage employees to manage for the short term and take on excessive risk. The PP is based upon return on equity for the fiscal year. The current financial crisis illustrates what can happen when key employees are rewarded without any effort to ensure that short-term performance is sustainable.

We think incentives matter not only for senior executives, but also for other highly-compensated employees, such as traders, whose decisions can have a large impact on the company. Our focus on the 100 most highly-compensated employees is based on the Treasury Department's requirement that companies receiving "exceptional financial assistance" seek approval for the compensation structures of executive officers and the 100 most highly-compensated employees.

This proposal urges that the PP be changed to encourage a longer-term orientation. The proposal asks that the Committee develop a system for holding back some portion of each bonus based on short-term financial metrics for three years and adjusting the unpaid portion to account for performance during that period. The Committee would have discretion to set the terms and mechanics of this process.

A bonus deferral system is gaining significant support internationally. In September 2009, the G-20 endorsed the Principles for Sound Compensation Practices, which recommend that a substantial portion of variable compensation be deferred over a period of at least three years.

France already requires that at least 50% of bankers' bonuses be deferred for three years. The U.K.'s Financial Services Authority has adopted a remuneration code mandates that two-thirds of senior employees' bonuses be deferred over three years.

We urge support FOR this proposal.