



DIVISION OF  
CORPORATION FINANCE

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

March 2, 2023

Lori Zyskowski  
Gibson, Dunn & Crutcher LLP

Re: Wells Fargo & Company (the "Company")  
Incoming letter dated December 22, 2022

Dear Lori Zyskowski:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the National Legal and Policy Center for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the Company provide a report, published on the Company's website and updated semi-annually, that specifies the Company's policy in responding to requests to close, or in issuing warnings of imminent closure about, customer accounts by any agency or entity operating under the authority of the executive branch of the United States Government.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal relates to, and does not transcend, ordinary business matters.

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2022-2023-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Paul Chesser  
National Legal and Policy Center

December 22, 2022

**VIA E-MAIL**

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

Re: *Wells Fargo & Company*  
*Shareholder Proposal of the National Legal and Policy Center*  
*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 2023 Annual Meeting of Shareholders (collectively, the “2023 Proxy Materials”) a shareholder proposal (the “Proposal”) received from the National Legal and Policy Center (the “Proponent”).

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

- filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 2023 Proxy Materials with the Commission; and
- concurrently sent a copy of this correspondence to the Proponent.

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

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## THE PROPOSAL

The Proposal states:

### RESOLVED:

The shareholders request that Wells Fargo & Company (“Company”) provide a report, published on the company’s website and updated semi-annually – omitting proprietary and private customer information and at reasonable cost – that specifies the Company’s policy in responding to requests to close, or in issuing warnings of imminent closure about, customer accounts by any agency or entity operating under the authority of the executive branch of the United States Government.

This report shall also include an itemized listing of such requests, including the name and title of the government official making the request; the nature and scope of the request; the date of the request; the outcome of the request; and a reason or rationale for the Company’s response, or lack thereof.

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

## BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2023 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal relates to the Company’s ordinary business operations and seeks to micro-manage the Company.

## ANALYSIS

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

#### *A. Background.*

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 [of] 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”).

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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 was that “[c]ertain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.” Examples of the tasks cited by the Commission include “management of the workforce, such as the hiring, promotion, and termination of employees, *decisions on production quality and quantity*, and the retention of suppliers” (emphasis added). 1998 Release. 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)).

In the instant case, the Proposal relates to the Company’s products and services it offers to customers (customer accounts), procedures and policies related to such products and services, as well as procedures concerning the handling of the Company’s customer accounts and customer relations. The Proposal also seeks to micro-manage the Company by seeking to dictate what the Company discloses about the policies it applies to customer accounts, particularly in response to government requests. As such, similar to the well-established precedent described in greater detail below and consistent with the Commission and Staff guidance cited above, the Proposal involves matters related to the Company’s ordinary business and may be excluded under Rule 14a-8(i)(7).

We note that, although the Staff recently issued guidance specifically relating to its approach to evaluating certain aspects of the ordinary business exclusion, such guidance does not impact the arguments made herein. *See* Staff Legal Bulletin No. 14L (Nov. 3, 2021) (“SLB 14L”). Although SLB 14L, among other things, reverses prior Staff guidance regarding the company-specific approach to evaluating the significance of a policy issue that is the subject of a shareholder proposal for purposes of the ordinary business exclusion, this no-action request does not rely on a company-specific approach to evaluating significance and relies on precedent preceding, or not involving, the reversed prior Staff guidance. Therefore, SLB 14L is not applicable to this Proposal.

*B. The Proposal May Be Excluded Because Its Subject Matter Relates To The Products And Services That The Company Offers, Including How The Company Handles Its Customer Accounts And Its Customer Relations.*

The Proposal seeks to require that the Company disclose “[its] policy in responding to requests to close, or in issuing warnings of imminent closure about, customer accounts by

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any agency or entity operating under the authority of the executive branch of the United States Government. . . . includ[ing] an itemized listing of such requests.” The Proposal asserts this information is necessary for shareholders “to know whether the Company is . . . engaged in unconstitutional law enforcement activities and censorship” and “failing to disclose” related risks. The Company’s decisions about the policies and procedures for the products and services that it offers and how it handles its customer accounts and customer relations implicate routine management decisions encompassing legal, regulatory, operational, and financial considerations, among others. For example, as a global financial institution organized under the laws of the United States, the Company is subject to significant federal, state, and local laws and regulations, which, among other things, include requirements relating to appropriate procedures for opening, reviewing, and closing customer accounts. In addition, laws and regulations require that the Company report unusual or suspicious activity to agencies or government entities as part of its obligations to monitor for particular criminal activity, such as money laundering. As a result, the Company has developed a set of policies and procedures encompassing customers’ use of its products and services and the communication mechanisms in place to assist customers when necessary, including procedures, consistent with applicable federal, state, and local regulatory requirements, relating to potential reasons for unilaterally closing certain customer accounts. The Proposal impermissibly seeks to override the Company’s ordinary business decisions in this respect.

The Staff has consistently determined that proposals relating to the products and services that a company offers to its customers as well as associated policies and procedures can be excluded pursuant to Rule 14a-8(i)(7) as relating to the company’s ordinary business operations. For example, the Staff recently concurred with the exclusion under Rule 14a-8(i)(7) of two proposals requesting that the boards of financial services companies complete a report evaluating each company’s overdraft policies and practices and the impacts those have on customers. In each case, the proposal raised concerns that overdraft fees allegedly impacted certain customers more than others and that the provision of such services exposed the companies to increased litigation and reputational risks. The Staff nonetheless concurred with exclusion under Rule 14a-8(i)(7) as the proposals related to “ordinary business operations,” and specifically, “the products and services offered for sale” by those companies. *See Bank of America Corp. (Worcester County Food Bank and Plymouth Congregational Church of Seattle)* (avail. Feb. 21, 2019); *JPMorgan Chase & Co.* (avail. Feb. 21, 2019). *See also FMC Corp.* (avail. Feb. 25, 2011, *recon. denied* Mar. 16, 2011) (concurring with the exclusion of a proposal recommending that the company establish a “product stewardship program” for certain of its pesticides, noting that the proposal related to “products offered for sale by the company”); *JPMorgan Chase & Co.* (avail. Mar. 16, 2010) (concurring with the exclusion of a proposal regarding the company’s decision to issue refund anticipation loans to customers, noting that “proposals concerning the sale of

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particular services are generally excludable under Rule 14a-8(i)(7)"); *Bank of America Corp.* (avail. Jan. 6, 2010) (concurring with the exclusion of a proposal requiring the company to stop accepting matricula consular cards as a form of identification, which effectively sought "to limit the banking services the [company could] provide to individuals the [p]roponent believe[d] [we]re illegal immigrants," because the proposal sought to control the company's "customer relations or the sale of particular services"); *General Electric Co. (Balch)* (avail. Jan. 28, 1997) (concurring with the exclusion of a proposal recommending that the company adopt a policy of recalling and refunding defective products, noting that the proposal related to the company's "recall and refund procedures"); *Banc One Corp.* (avail. Feb. 25, 1993) (concurring with the exclusion of a proposal requesting that the corporation publish "a report reviewing the [c]ompany's lending practices" as they pertained to specifically identified groups of people, noting that the proposal involved "a description of special technical assistance and advertising programs[,] lending strategies and data collection procedures").

The Staff has also consistently concurred with the exclusion of proposals relating to how a company handles its customer accounts and any associated procedures. For instance, in *Comcast Corp. (Leonard J. Grossman)* (avail. Apr. 13, 2022), the proposal requested that the company follow certain procedures and provide certain information "in advance of any termination, suspension or cancellation of any service to the customer named on the account" where the proponent raised concerns about the company's decision to suspend the proponent's service and the procedures the company followed in doing so. The Staff concurred with the proposal's exclusion under Rule 14a-8(i)(7). Similarly, in *PayPal Holdings, Inc. (James A. Heagy)* (avail. Apr. 2, 2021), the proposal requested that the company ensure "that [the company's] users do not have accounts frozen or the use of [company] services terminated without giving specific, good and substantial reasons to the user for so doing." The company argued that the proposal "attempt[ed] to dictate the [c]ompany's management of its customer accounts, including the design and administration of [c]ompany policies and procedures" and related to communications with customers and the company's processes related to customer accounts, which are both fundamental to day-to-day operations and matters of ordinary business operations. The Staff concurred with the proposal's exclusion under Rule 14a-8(i)(7). In *Wells Fargo & Co.* (avail. Jan. 17, 2017), the proposal likewise requested that the company's CEO "assume for the company, the responsibility in cost and time to correctly cash checks and assure its brokerage customers that it will obtain their permission before placing securities into their accounts, unless [the company] has received previous customer authority." The Staff concurred with the exclusion under Rule 14a-8(i)(7), noting that "the proposal relates to procedures for handling customer accounts." This was also the Staff's conclusion in *Zions Bancorporation* (avail. Feb. 11, 2008, *recon. denied* Feb. 29, 2008), where the proposal requested that the company implement a mandatory adjudication process prior to the termination of certain customer accounts. The Staff concurred that the proposal related to "ordinary business operations (i.e.,

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procedures for handling customers' accounts)." *See also TD Ameritrade Holding Corp.* (avail. Nov. 20, 2017) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company's shareholders have the right to be clients of the company because it related to the company's ordinary business operations (i.e. "policies and procedures for opening and maintaining customer accounts"))).

Importantly, the Staff has also consistently concurred with the exclusion of proposals relating to customer relations, even where the proposal has implicated policies and procedures related to government inquiries. For instance, in *AT&T Inc.* (avail. Jan. 30, 2017) ("*AT&T 2017*"), the proposal requested that the board "review and publicly report . . . on the consistency between AT&T's policies on privacy and civil rights and the [c]ompany's actions with respect to U.S. law enforcement investigations." The supporting statements, like those in the Proposal, raised concerns regarding "how cooperation between U.S. law enforcement entities and telecommunications companies affects Americans' privacy and civil rights" and cited a company program that reportedly provided law enforcement access to certain data. The Staff nonetheless concurred with the proposal's exclusion under Rule 14a-8(i)(7), noting it "relate[d] to procedures for protecting customer information." Similarly, in *AT&T Inc.* (avail. Feb. 5, 2016) ("*AT&T 2016*"), the Staff concurred with the exclusion of a proposal requesting that the company "issue a report . . . clarifying the [c]ompany's policies regarding providing information to law enforcement and intelligence agencies, domestically and internationally, above and beyond what is legally required . . . , whether and how the policies have changed since 2013, and assessing risks to the [c]ompany's finances and operations arising from current and past policies and practices" as it also related to "procedures for protecting customer information and [did] not focus on a significant policy issue." *See also AT&T Inc.* (Feb. 7, 2008) ("*AT&T 2008*," and together with *AT&T 2017* and *AT&T 2016*, the "*AT&T Precedent*") (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company's board of directors prepare a report discussing, from technical, legal, and ethical standpoints, the policy issues that pertain to disclosing customer records and the content of customer communications to governmental agencies without a warrant, as well as the effect of such disclosures on privacy rights of customers because it related to the ordinary business matter of procedures for protecting customer information); *Verizon Communications Inc.* (Feb. 22, 2007) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company prepare a report describing "the overarching technological, legal and ethical policy issues surrounding the disclosure of customer records and communications content" to government and non-government agencies because the proposal related to the company's "ordinary business operations (i.e., procedures for protecting customer information)," even where the proposal also emphasized the importance of these issues in terms of customers' freedom of expression).

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Here, like the policies, practices, and procedures at issue in the *AT&T Precedent*, *PayPal*, *Comcast Corp.*, and the other precedent cited above, the Proposal relates to the Company's day-to-day administration of customer accounts and thus involves the Company's policies and procedures relating to the products and services the Company offers to its customers and the Company's procedures for handling customer accounts and customer relations. In particular, the Proposal asks that the Company provide a semi-annual report disclosing "the Company's policy in responding to requests to close, or in issuing warnings of imminent closure about, customer accounts" including the "reason or rationale for the Company's response." Decisions regarding the policies around services and products the Company offers and on what terms, as well as any associated policies and procedures related to handling customer accounts and customer relations, including decisions regarding when to close customer accounts, are a fundamental responsibility of management, requiring consideration of a number of factors. Such considerations involve complex evaluations about which shareholders are not in a position to make an informed judgment. Balancing such considerations is a complex matter and is "so fundamental to management's ability to run a company on a day-to-day basis that [it] could not, as a practical matter, be subject to direct shareholder oversight." 1998 Release. Specifically, customer accounts maintained by the Company, a global financial institution, are subject to closure for many reasons as required by law or Company policy, including for violation of applicable terms and conditions, activity that is inconsistent with law or regulation or outside of its risk appetite or because it has ceased to offer certain product lines or services. As such, consistent with Staff precedent, the Proposal, by attempting to dictate the disclosure of the Company's policies surrounding the offering of its products and services and the management of the Company's customer accounts and customer relations, addresses issues that are ordinary business matters for the Company. As such, the Proposal is properly excludable under Rule 14a-8(i)(7).

*C. The Proposal Does Not Focus On Any Significant Policy Issue That Transcends The Company's Ordinary Business Operations.*

The well-established precedent set forth above demonstrates that the Proposal squarely addresses ordinary business matters and, therefore, is excludable under Rule 14a-8(i)(7). The 1998 Release distinguishes proposals pertaining to ordinary business matters from those involving "significant social policy issues." *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)). While "proposals . . . focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable," the Staff has indicated that proposals relating to both ordinary business matters and significant social policy issues may be excludable in their entirety in reliance on Rule 14a-8(i)(7) if they do not "transcend the day-to-day business matters" discussed in the proposals. 1998 Release. In this regard, when assessing proposals under Rule 14a-8(i)(7), the Staff considers "both the proposal and the supporting statement as a whole." Staff Legal

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Bulletin No. 14C, part D.2 (June 28, 2005). Moreover, as Staff precedent has established, merely referencing topics in passing that might raise significant policy issues, but which do not define the scope of actions addressed in a proposal and which have only tangential implications for the issues that constitute the central focus of a proposal, does not transform an otherwise ordinary business proposal into one that transcends ordinary business.

In SLB 14L, the Staff stated that it “will realign its approach for determining whether a proposal relates to ‘ordinary business’ with the standard the Commission initially articulated in [the 1976 Release], which provided an exception for certain proposals that raise significant social policy issues, and which the Commission subsequently reaffirmed in the 1998 Release.” As such, the Staff stated that it will focus on the issue that is the subject of the shareholder proposal and determine whether it has “a broad societal impact, such that [it] transcend[s] the ordinary business of the company,” and noted that proposals “previously viewed as excludable because they did not appear to raise a policy issue of significance for the company may no longer be viewed as excludable under Rule 14a-8(i)(7).”

Here, the Proposal does not transcend the Company’s ordinary business operations. Rather, as discussed above, the Proposal’s principal focus is on the policies and procedures relating to the Company’s offerings of products and services as well as management of its customer accounts and associated customer relations. Furthermore, while the Proposal mentions concerns about actions taken by the U.S. Department of Justice that allegedly constituted a “discriminatory campaign” or “unconstitutional law enforcement activities and censorship,” the central focus of the Proposal is on the Company’s policies and rationale for deciding if and when to close certain customer accounts and how to handle customer communications and relations in connection with doing so. Thus, the Proposal does not implicate any significant policy issue. *See, e.g., PayPal Holdings, Inc. (James A. Heagy)* (avail. Apr. 2, 2021) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company ensure “that [the company’s] users do not have accounts frozen or the use of [company] services terminated without giving specific, good and substantial reasons to the user for so doing” when the supporting statement briefly alleged that the company’s fraud modeling system was “unethical and un-American” because it “put[] people out of business to save the company money by not using proper human oversight”); *JPMorgan Chase & Co.* (avail. Feb. 21, 2019) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company’s board complete a report evaluating each company’s overdraft policies and practices and the impacts those have on customers where the proponent argued that “[o]verdraft fees have been a matter of widespread public attention and discussion”); *FMC Corp.* (avail. Feb. 25, 2011, *recon. denied* Mar. 16, 2011) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal recommending that the company establish a “product stewardship program” for certain of its pesticides, noting that the proposal “does not focus on a significant social policy issue” despite the proponent’s

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assertion that the proposal related to “wildlife poisonings, possible extinction and human equality principles”); *JPMorgan Chase & Co.* (avail. Mar. 16, 2010) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal regarding the company’s decision to issue refund anticipation loans to customers despite the proposal’s characterization of refund anticipation loans as predatory and allegations that these loans “do not constitute responsible lending” and have been “subject to successful lawsuits for false and deceptive lending practices”).

In this regard, the Proposal is distinguishable from the Staff’s decision in *Alphabet Inc. (Mari Fennel-Bell et al.)* (avail. Apr. 12, 2022) and other precedent related to ethical business practices that the Staff viewed as transcending ordinary business matters. In *Alphabet Inc. (Mari-Fennel Bell et al.)*, the proposal requested that the board “commission a report assessing the siting of Google Cloud Data Centers in countries of significant human rights concern, and the [c]ompany’s strategies for mitigating the related impacts.” The supporting statement outlined particular human rights risks based on the company’s planned sites in countries recognized by the U.S. Government as engaging in significant human rights violations, including the imprisonment or interrogation of political opponents and critics, prosecuted online activity, and violated privacy rights of dissidents. The company argued the proposal focused on the ordinary business matter of the location of its business operations and sought to micromanage related decision-making; however, the Staff disagreed and did not concur with its exclusion under Rule 14a-8(i)(7) or other grounds because “[i]n [its] view, the [p]roposal transcends ordinary business matters and does not seek to micromanage the [c]ompany.” See also *Alphabet Inc. (Edward Feigen et al.)* (avail. Apr. 12, 2022) (not concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting the board issue a report reassessing the company’s policies on support for military and militarized policing agency activities and their impacts because it “transcend[ed] ordinary business matters” and did not micromanage the company); *The Walt Disney Co. (National Legal and Policy Center)* (avail. Jan. 19, 2022) (not concurring with the exclusion under Rule 14a-8(i)(7) of a requested report on the process of due diligence undertaken in evaluating the human rights impacts of its business and associations with foreign entities). The Proposal, by contrast, does not raise human rights concerns or other significant policy matters and makes only passing references to alleged activities by the U.S. government. Instead, the Proposal generally focuses on the Company’s policy regarding the closure of customer accounts and related communications. In this regard, the Proposal is more comparable to the Staff’s decision in *AT&T 2016*. As discussed above, the Staff there concurred that a proposal focused on its customer account policies—specifically, “a report . . . clarifying the [c]ompany’s policies regarding providing information to law enforcement and intelligence agencies, domestically and internationally, above and beyond what is legally required . . . , whether and how the policies have changed since 2013, and assessing risks to the [c]ompany’s finances and operations arising from current and past policies and practices”

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“[did] not focus on a significant policy issue” and was excludable under Rule 14a-8(i)(7) because it related to “procedures for protecting customer information.”

Accordingly, because the text of the Proposal makes clear that it is primarily focused on the Company’s ordinary business operations (specifically, the services and products offered by the Company and its procedures and policies around such services and products, customer accounts, and customer relations), the Proposal does not transcend the Company’s ordinary business operations and does not focus on any significant policy issue. As such, similar to the proposals in the precedent discussed above, the Proposal may be excluded under Rule 14a-8(i)(7).

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

As explained above, the Commission stated in the 1998 Release that one of the considerations underlying the ordinary business exclusion is “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.” 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 time-frames or methods for implementing complex policies.” In addition, SLB 14L clarified that in considering arguments for exclusion based on micro-management, the Staff “will focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management.” Furthermore, the Staff noted that the ordinary business exclusion “is designed to preserve management’s discretion on ordinary business matters but not prevent shareholders from providing high-level direction on large strategic corporate matters.” SLB 14L.

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The Proposal requests that the Company provide a report on the Company’s “policy in responding to requests to close” customer accounts. This report is to be updated twice a year and “shall also include an itemized listing of such requests” with the following details:

- the name and title of the government official making the request;
- the nature and scope of the request;
- the date of the request;
- the outcome of the request; and
- a reason or rationale for the Company’s response, or lack thereof.

Because the Proposal seeks disclosure of intricate details regarding the Company’s policies and procedures relating to customer accounts, and on a specific cadence, the Proposal seeks to micro-manage the Company. As a result, the Proposal may be excluded under Rule 14a-8(i)(7).

In this regard, the Proposal is similar to the one submitted in *Deere & Co.* (avail. Jan. 3, 2022), where the proposal requested that the company’s board publish “the written and oral content of any employee-training materials offered to any subset of the company’s employees” so that “shareholders can appropriate[ly] gauge executives’ responses to and management of [reputational and legal risks and financial harm]” to the company associated with employment discrimination. The company argued that the proposal “intend[ed] for shareholders to step into the shoes of management and oversee the ‘reputational, legal and financial’ risks to the [c]ompany” and thus did not “afford[] management sufficient flexibility or discretion to address and implement its policy regarding the complex matter of diversity, equality, and inclusion.” The Staff concurred with exclusion under Rule 14a-8(i)(7), noting that the proposal “micromanages the [c]ompany by probing too deeply into matters of a complex nature by seeking disclosure of intricate details regarding the [c]ompany’s employment and training practices.” See *Verizon Communications Inc. (National Center for Public Policy Research)* (avail. Mar. 17, 2022) (same); and *American Express Co.* (avail. Mar. 11, 2022) (same). See also *The Coca-Cola Co.* (avail. Feb. 16, 2022) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting the company submit any proposed political statement to the next shareholder meeting for approval prior to issuing the subject statement publicly because it “micromanages the [c]ompany”); *Amazon.com, Inc.* (avail. Jan. 18, 2018, *recon. denied* Apr. 5, 2018) (concurring with the exclusion under Rule 14a-8(i)(7) where the proposal instructed the company to list WaterSense showerheads before the listing of other showerheads and to provide a short description of the meaning of WaterSense showerheads, noting that the proposal sought “to micromanage the [c]ompany 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”); *Marriott International, Inc.* (avail. Mar. 17, 2010, *recon. denied* Apr.

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19, 2010) (concurring with the exclusion of a proposal requiring the installation of low-flow showerheads at certain of the company's hotels because "although the proposal raise[d] concerns with global warming, the proposal . . . [sought] to micromanage the company to such a degree that exclusion of the proposal . . . [was] appropriate"); *SeaWorld Entertainment, Inc.* (avail. Mar. 30, 2017, *recon. denied* Apr. 17, 2017) (concurring with the exclusion under Rule 14a-8(i)(7) 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").

As in *Deere & Co.* and the other precedent cited above, the Proposal involves "intricate detail" and seeks "to impose specific methods for implementing complex policies." SLB 14L (citing 1998 Release). The Proposal seeks disclosure of the "Company's policy in responding to requests to close" customer accounts and "an itemized listing of such requests" with several required details, including the "reason or rationale for the Company's response, or lack thereof." If the Company were to publish twice a year the report and itemized list requested by the Proposal, this could require the Company to review any inquiry "by any agency or entity operating under the authority of the executive branch of the United States Government," which could implicate any or all of the Company's millions of customer accounts, then necessitate analysis, diligence, and the preparation of extensive disclosures with each of the details required by the Proposal. The Proposal concludes that shareholders should be able to determine whether the Company's actions are "opening the Company to liability claims by victims" and "whether the Company is failing to disclose these potential liabilities as material risks in its public filings." Similar to the proposal in *Deere & Co.*, the Proposal "intends for shareholders to step into the shoes of management" and oversee potential liabilities and material "risks" to the Company. However, the shareholder proposal process is not intended to provide an avenue for shareholders to impose detailed requirements of this sort. As discussed above, decisions about the choice of policies and procedures related to the products and services a company offers and how to communicate these policies and procedures to its customers are multifaceted and require management to evaluate complex issues. The Company has gone to great lengths to develop customer policies and communications, and, as discussed above, the implementation of those policies and procedures, including handling of customer accounts and customer relations, are fundamental to the management of the Company's day-to-day operations. By mandating how the Company should communicate specific policies and procedures, the Proposal impermissibly seeks to replace management's informed and reasoned judgments with respect to how its customer policies and procedures are communicated. The Proposal thus micro-manages the Company's fundamental day-to-day decisions and policies and procedures with respect to its products and services, customer accounts and customer relations. As a result, the Proposal may be excluded under Rule 14a-8(i)(7).

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## CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2023 Proxy Materials.

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

Sincerely,



Lori Zyskowski

Enclosures

cc: Mara Garcia Kaplan, Senior Vice President, Senior Company Counsel Corporate  
Governance & Securities  
Paul Chesser, National Legal and Policy Center

**EXHIBIT A**

## Report on Government Requests for Account Closings

### RESOLVED:

The shareholders request that Wells Fargo & Company (“Company”) provide a report, published on the company’s website and updated semi-annually – omitting proprietary and private customer information and at reasonable cost – that specifies the Company’s policy in responding to requests to close, or in issuing warnings of imminent closure about, customer accounts by any agency or entity operating under the authority of the executive branch of the United States Government.

This report shall also include an itemized listing of such requests, including the name and title of the government official making the request; the nature and scope of the request; the date of the request; the outcome of the request; and a reason or rationale for the Company’s response, or lack thereof.

### SUPPORTING STATEMENT:

In 2013, the U.S. Department of Justice initiated “Operation Choke Point,” to investigate financial institutions that provided services to payment processors for allegedly “high risk,” – but legal – businesses, such as firearms retailers and precious metals dealers. The stated purpose of the initiative was to ferret out pervasive “fraud.”

This discriminatory campaign against legally functioning businesses drove many owners to financial ruin and forced many to close.<sup>1</sup> Wells Fargo cooperated<sup>2</sup> with the government in the unconstitutional program.<sup>3</sup> After multiple lawsuits, the FDIC reached settlements<sup>4</sup> with several of its former targets, and the Justice Department announced<sup>5</sup> in July 2017 that it would end Operation Choke Point.

In 2021, however, the current presidential administration considered reinstating the program.<sup>6</sup> Later that year two outspoken political activists saw their Wells Fargo bank accounts closed without advanced notice.

Shareholders need to know whether the Company is cooperating with government officials engaged in unconstitutional law enforcement activities and censorship, opening the Company to

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<sup>1</sup> Ybarra, Maggie. “Operation Choke Point victims, small business owners, decry government overreach,” *The Washington Times*, March 24, 2015. See <https://bit.ly/3VC8Yoj>.

<sup>2</sup> “Wells Fargo Denies Hogue Knives Banking Services Over Weapons Concern,” *Knife News*, August 1, 2016. See <https://bit.ly/3CEW8Nh>.

<sup>3</sup> Halbrook, Stephen P. “Some of the world’s most powerful banks push policies circumventing Constitution and federal laws,” *Tribune Content Agency*, Sept. 17, 2018. See <https://bit.ly/3rZ5BKu>.

<sup>4</sup> “Federal Deposit Insurance Corporation Agrees to Settlement in Operation Choke Point Lawsuit,” *PR Newswire*, May 22, 2019. See <https://prn.to/3zanhqD>.

<sup>5</sup> Guida, Victoria. “Justice Department to end Obama-era ‘Operation Choke Point’,” *Politico*, 8/17/2017. See <https://politi.co/2DPsyUR>.

<sup>6</sup> Zimmerman, Dan. “Biden Administration Takes First Step to Reinstating Operation Choke Point,” *The Truth About Guns*, January 29, 2021. See <https://bit.ly/3TacioK>.

liability claims by victims.<sup>7</sup> Shareholders also need to know whether the Company is failing to disclose these potential liabilities as material risks in its public filings. There is currently no single source providing shareholders the information sought by this resolution.

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<sup>7</sup> Santiago, Dennis. "Wells Fargo Risks Reputation Over Private "Chokepoint" Policy Against Gun Industry," RedState.com, July 29, 2020. See <https://bit.ly/3yPnOxP>.



## NATIONAL LEGAL AND POLICY CENTER

January 11, 2023

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

Re: *Wells Fargo & Company*  
*Shareholder Proposal of the National Legal and Policy Center*

VIA EMAIL: [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)

Ladies and Gentlemen:

This letter is in response to the letter dated December 22, 2022 from Lori Zyskowski of Gibson Dunn, counsel for Wells Fargo & Company (“Wells Fargo” or “Company”), requesting permission from the Staff of the Division of Corporation Finance (“Staff”) to exclude our shareholder proposal from Wells Fargo’s 2023 proxy materials (“Proxy”).

The Company’s request provides insufficient rationale for exclusion and should be denied.

Despite the Company’s 13 pages of legal arguments, our comparatively brief response will show that its excuse to exclude our proposal from the Proxy – that “it involves matters related to the Company’s ordinary business operations” – is illegitimate, because the Proposal seeks to address a societal issue that *transcends* ordinary business matters.

The 500-word limit for shareholder proposals constrained our ability to present a fuller case for the necessity of the transparency report we request, so we will attempt to do so here. But first we will address the nature of the sought-after report itself.

*Transparency is sought regularly via the shareholder proposal process and thus is permitted in proxy materials.*

We seek an itemization of the requests to close accounts that Wells Fargo has received from entities under the Executive Branch of the United States Government, and an explanation of the Company’s policies in response to such requests. Such a report would be no different from the types of reports that seek transparency about other

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Company operations, that in the past have been permitted on proxy materials under SEC precedent.

Two long-standing, consistently-presented types of shareholder proposals come to mind: disclosures of charitable contributions, and disclosures of lobbying expenditures. As examples, these two issues go to the heart of a company's approach to what causes it supports, and what government policies it seeks to influence. At the same time, both types of engagement – with nonprofits to consider potential charitable support, and a company's government affairs department for lobbying activities – occur on a “day-to-day” basis. They are as core to a company's affairs and operations as anything else it does, yet shareholder proposals seeking transparency about both types of activities have been accepted on proxy materials for many years.

Thus the Company's contention that our proposal seeks exceptional transparency, that interferes with ordinary business operations and seeks to micro-manage the company, is baseless.

***Transparency about the Company's cooperation with abusive government agencies is a critical societal issue that transcends ordinary business operations.***

As our proposal's supporting statement briefly contextualizes, Wells Fargo and other major financial institutions cooperated with the Department of Justice's “Operation Choke Point” initiative, to close the accounts of legally operating businesses that were politically disfavored by the executive administration at the time. Owners of such businesses were victims of “de-banking” and lost their businesses at the hands of the Company – including Allison Deguisne, who testified before a House Financial Services investigative subcommittee hearing in March 2015. The *Washington Times* reported at the time:<sup>1</sup>

*Business owners, who say they are victims of government overreach, have dark tales about how they were forced to eat through their savings to salvage their companies or, in worst-case scenarios, sell their shops.*

*Rep. Sean P. Duffy, Wisconsin Republican and chairman of the Financial Services subcommittee on oversight and investigations, convened the meeting of victims to demonstrate the personal effects of what he calls “the greatest government overreach that no one is talking about” and to question the FDIC chairman about*

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<sup>1</sup> Ybarra, Maggie. “Operation Choke Point victims, small business owners, decry government overreach,” *The Washington Times*, March 24, 2015. See <https://www.washingtontimes.com/news/2015/mar/24/operation-choke-point-victim-small-business-owners/>.

*the program...*

*FDIC Chairman Martin Gruenberg said during the Tuesday hearing on Choke Point that some banks appear to have misinterpreted regulatory guidance. That misinterpretation led them to bar entire categories of businesses from using bank services.*

Al LePage lost his payday lending business also because of Wells Fargo's actions on behalf of an abusive government, according to an April 2014 *Washington Post* report:<sup>2</sup>

*Al LePage has been issuing payday loans out of a suburban Minneapolis storefront for most of the past decade. But on Valentine's Day, a Wells Fargo banker called and gave him 30 days to cease and desist — or risk losing his bank account.*

*"The only explanation I got was since they're not doing payroll advances anymore, they didn't want to have customers providing similar loans," said LePage, owner of Al's Check Cashing. "But I run a legal business..."*

*Doing business with companies that inflict such harm could damage a bank's reputation and leave it vulnerable to litigation, regulators have said. But LePage...said not every short-term lender takes advantage of people...*

*"We've never had a complaint filed against us, because we treat our customers fairly," he said. "Shutting down our payday line just means a lot of people will either have no access to money they need or they'll go online, which isn't any better."*

*After he got the call from Wells Fargo, LePage said he complained to the state attorney general and the Commerce Department, as well as the bank's chief regulator. Wells Fargo declined to comment on LePage's case. But spokesman Jim Seitz said bank officials "recognize the need for an extra level of review and monitoring to ensure these customers do business in a responsible way." In the end, LePage said he gave up and shut his payday business down.*

Two years later, Nevada-based Hogue Inc., a knife manufacturer, said the Company rejected their business – citing "weapons" concerns – only after first trying to

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<sup>2</sup> Douglas, Danielle A. "Banks to payday lenders: Quit the business or we'll close your account," *The Washington Post*, April 11, 2014. See [https://www.washingtonpost.com/business/economy/banks-to-payday-lenders-quit-the-business-or-well-close-your-account/2014/04/11/afd34976-c0c6-11e3-bccc-b71ee10e9bc3\\_story.html](https://www.washingtonpost.com/business/economy/banks-to-payday-lenders-quit-the-business-or-well-close-your-account/2014/04/11/afd34976-c0c6-11e3-bccc-b71ee10e9bc3_story.html).

solicit the business as a customer.<sup>3</sup>

On May 22, 2019, two major payday lending companies announced that they “reached a settlement with the Federal Deposit Insurance Corporation (FDIC) regarding Operation Choke Point, the FDIC program that pressured banks to cut ties with certain categories of lawful businesses...”<sup>4</sup> “We uncovered how some FDIC leaders and officials executed a campaign motivated by personal scorn for our industry, contempt for our millions of customers, and blatant disregard for due process,” said Jessica Rustin, chief legal officer for Advance America. “This settlement will help to prevent this disenfranchisement from happening again – to our business or any other legal, regulated business.”

The companies’ strong legal defense by their lawyers against government abuses, unfortunately, was not matched by the massive-but-feeble legal team employed by Wells Fargo, which chose to genuflect to overreaching regulators rather than examine the law and protect its current and potential customers.

Sadly, the weakness of the Company’s attorneys, and its mysterious, apparently discriminatory de-banking practices, continue to the present. Conservative campaign strategist and columnist Pete D’Abrosca wrote in June 2021 that Wells Fargo closed his account without explanation.<sup>5</sup> Around the same time, former Republican Senate nominee from Delaware, Lauren Witzke, was also de-banked without warning or explanation by the Company.<sup>6</sup>

“When I called Wells Fargo told me that it was a ‘business decision’ and that they have the right to close my account at any time,” Witzke said. “Had I not been surrounded by friends in Florida, I would be completely stranded.”

Other companies – unlike Wells Fargo and much of the “Big Bank” industry – at times have found the resolve to resist unlawful or unethical requests made by government

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<sup>3</sup> “Wells Fargo Denies Hogue Knives Banking Services Over Weapons Concern,” Knife News, August 1, 2016. See <https://knifenews.com/wells-fargo-denies-hogue-knives-banking-services-over-weapons-concern/>.

<sup>4</sup> “Federal Deposit Insurance Corporation Agrees to Settlement in Operation Choke Point Lawsuit,” PR Newswire, May 22, 2019. See <https://www.prnewswire.com/news-releases/federal-deposit-insurance-corporation-agrees-to-settlement-in-operation-choke-point-lawsuit-300855421.html>.

<sup>5</sup> D’Abrosca, Pete. “Banned from the Bank,” American Greatness, June 17, 2021. See <https://amgreatness.com/2021/06/17/banned-from-the-bank/>.

<sup>6</sup> Bokhari, Allum. “Financial Blacklisting: Wells Fargo Shuts Down GOP Senate Candidate Lauren Witzke’s Bank Account,” Breitbart, June 16, 2021. See <https://www.breitbart.com/tech/2021/06/16/financial-blacklisting-wells-fargo-shuts-down-gop-senate-candidate-lauren-witzkes-bank-account/>.

agencies and *protected* their customers – sometimes in the face of strong criticism. In the last several years, for example, Apple has rejected pleas from law enforcement to provide access to shooting suspects’ encrypted iPhones.<sup>7</sup>

And genealogy companies such as Ancestry.com and 23andMe say they adhere to their privacy promises to customers, and rarely comply with requests for DNA samples from law enforcement. 23andMe “closely scrutinizes all law enforcement and regulatory requests,” only complying with ones the company “determine[s] are legally valid and legally require our response after exhausting other options,” the company said in 2021, according to Fox Business.<sup>8</sup>

Government and elected officials have been proven to be more-than-willing in recent years to pressure private corporations to censor or “de-fund” their political adversaries.<sup>9</sup> Nowhere has this been exposed as more evident than with the release by new CEO Elon Musk of “The Twitter Files” over the past month, via several reputable independent journalists.<sup>10</sup> And in another de-banking example, Democrat members of both the U.S. House and Senate pressed JPMorgan Chase and Wells Fargo to cut ties with an association of Republican state financial officers.<sup>11</sup>

Besides the de-banking issue, Wells Fargo also has not distinguished itself well in recent years with regard to other ethical breaches. There was the widely reported fake accounts scandal of the mid-2010s, and just last month the Consumer Financial Protection Bureau fined the Company a record \$3.7 billion for “widespread mismanagement” that affected more than 16 million accounts, which included repeatedly misapplying loan payments, wrongfully foreclosing on homes, illegally repossessing

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<sup>7</sup> Collier, Kevin & Farivar, Cyrus. “The FBI cracked another iPhone — but it's still not happy with Apple,” NBCNews.com, May 18, 2020. See <https://www.nbcnews.com/tech/security/fbi-cracked-another-iphone-it-s-still-not-happy-apple-n1209506>.

<sup>8</sup> Murphy, Aislinn. “Idaho murder suspect nabbed by genetic genealogy; some sites work with law enforcement,” FoxBusiness.com, Jan. 5, 2023. See <https://www.foxbusiness.com/lifestyle/idaho-murder-suspect-nabbed-genetic-genealogy-sites-work-law-enforcement>.

<sup>9</sup> Smith, Lee. “How the FBI Hacked Twitter,” Tablet magazine, Jan. 5, 2023. See <https://www.tabletmag.com/sections/news/articles/how-the-fbi-hacked-twitter-lee-smith>.

<sup>10</sup> Malik, Kenan. “The Twitter Files should disturb liberal critics of Elon Musk – and here’s why,” The Guardian, Jan. 1, 2023. See <https://www.theguardian.com/commentisfree/2023/jan/01/the-twitter-files-should-disturb-liberal-critics-of-elon-musk-and-heres-why>.

<sup>11</sup> Hallez, Emile. “Democrats urge JP Morgan, Wells Fargo to cease funding of anti-ESG group,” InvestmentNews.com, Oct. 24, 2022. See <https://www.investmentnews.com/democrats-urge-jp-morgan-wells-fargo-to-cease-funding-of-anti-esg-group-228225>.

vehicles, incorrectly assessing fees and interest and charging surprise overdraft fees.<sup>12</sup>

Wells Fargo has also been credibly accused of having twice the number of problems of its peer banks with scams and fraud in the Zelle payment transfer system.<sup>13</sup> Also, a fifteen-state coalition of state financial officers have warned banking industry officials, including the Company's, against boycotts of fossil fuel companies – with the State of West Virginia explicitly denying Wells Fargo access to state contracts over the issue.<sup>14</sup> And after CEO Charlie Scharf wrote an embarrassing memo two years ago bemoaning a “a very limited pool of black talent to recruit from,” he instituted interview quotas for the company in an attempt to atone for his “unconscious bias” – but then the Company was caught last year setting up fake job interviews to fulfill corporate diversity demands.<sup>15</sup>

With a history like this, it's not surprising that Wells Fargo scored second-to-last among the largest national retail banks in the view of customers, in the J.D. Power 2022 U.S. National Banking Satisfaction Study.<sup>16</sup>

### *Conclusion*

The de-banking issue is not a concern that is limited to Wells Fargo.<sup>17</sup> Its peers among the “Big Banks” have also been accused of similar practices, without explanation to their customer-victims.<sup>18</sup>

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<sup>12</sup> Egan, Matt. “Wells Fargo ordered to pay \$3.7 billion for ‘illegal activity’ including unjust foreclosures and vehicle repossessions,” CNN.com, Dec. 20, 2022. See <https://www.cnn.com/2022/12/20/investing/wells-fargo-cfpb-foreclosure-fine/index.html>.

<sup>13</sup> Saulsbery, Gabrielle. “Warren roasts Wells Fargo’s ‘severely bad performance’ on Zelle fraud,” BankingDive.com, Oct. 14, 2022. See <https://www.bankingdive.com/news/warren-wells-fargo-zelle-fraud-scharf-severely-bad/634159/>.

<sup>14</sup> Wolman, Jordan. “Wall Street firms face W.Va. boycott over alleged fossil fuel bias,” Politico, June 14, 2022. See <https://www.politico.com/news/2022/06/14/banks-letter-west-virginia-boycott-fossil-fuels-00039246>.

<sup>15</sup> Flitter, Emily. “At Wells Fargo, a Quest to Increase Diversity Leads to Fake Job Interviews,” *New York Times*, May 19, 2022. See <https://www.nytimes.com/2022/05/19/business/wells-fargo-fake-interviews.html>.

<sup>16</sup> Tascarella, Patty. “PNC slips in latest J.D. Power study on banks and customer satisfaction,” *Pittsburgh Business Times*, Dec. 16, 2022. See <https://www.bizjournals.com/pittsburgh/news/2022/12/16/pnc-customer-satisfaction-drops-jd-power.html>.

<sup>17</sup> Byrne, John Aidan. “JPMorgan Chase accused of purging accounts of conservative activists,” *New York Post*, May 25, 2019. See <https://nypost.com/2019/05/25/jpmorgan-chase-accused-of-purging-accounts-of-conservative-activists/>.

<sup>18</sup> Brown, Jon. “Chase Bank allegedly shuts bank account of religious freedom nonprofit, demands donor list,” *FoxBusiness.com*, Oct. 13, 2022. See <https://www.foxbusiness.com/politics/chase-bank-allegedly-shutters-bank-account-religious-freedom-nonprofit-demands-donor-list>.

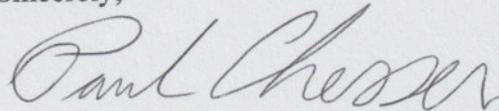
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It is a trend that we do not believe will be viewed as acceptable among the shareholder community. Greater transparency is badly needed, and shareholders should have an opportunity to vote on it with our proposal, which addresses a significant social policy issue that transcends day-to-day business.

For this reason, and because of Wells Fargo's track record of scandal and untrustworthiness, NLPC asks the Staff to recommend enforcement action should the Company omit the proposal.

If you have any questions or need more information, please feel free to contact me via email or at 662-374-0175.

Sincerely,

A handwritten signature in cursive script that reads "Paul Chesser".

Paul Chesser  
Director  
Corporate Integrity Project

Cc: Mara Garcia Kaplan, Wells Fargo & Company  
Lori Zyskowski, Gibson Dunn