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

DIVISION OF
CORPORATION FINANCE

March 6, 2024

Lori Zyskowski
Gibson, Dunn & Crutcher LLP

Re: Wells Fargo & Company (the "Company")
Incoming letter dated December 29, 2023

Dear Lori Zyskowski:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the AFL-CIO Equity Index Funds and co-filers for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the board of directors commission and oversee an independent, third-party assessment of the Company's respect for the internationally recognized human rights of freedom of association and collective bargaining, and that the assessment should evaluate management interference when employees seek to form or join trade unions as well as recommend steps to remedy any practices that are inconsistent with the Company's international human rights obligations.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(3). We do not believe that the Proposal, taken as a whole, is so vague or indefinite that it is rendered materially misleading.

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/2023-2024-shareholder-proposals-no-action.

Sincerely,

Rule 14a-8 Review Team

cc: Maureen O'Brien
Segal Marco Advisors

GIBSON DUNN

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December 29, 2023

VIA ELECTRONIC SUBMISSION

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

Re: *Wells Fargo & Company*
Shareholder Proposal of the AFL-CIO Equity Index Funds et al.
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, Wells Fargo & Company (the "Company"), intends to omit from its proxy statement and form of proxy for its 2024 Annual Meeting of Shareholders (collectively, the "2024 Proxy Materials") a shareholder proposal (the "Proposal") and statements in support thereof (the "Supporting Statement") received from the Segal Marco Advisors on behalf of AFL-CIO Equity Index Funds; SEIU Mastertrust; and United Church Funds (the "Proponents").

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

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the Company intends to file its definitive 2024 Proxy Materials with the Commission; and

- concurrently sent a copy of this correspondence to the Proponents.

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

THE PROPOSAL

The Proposal states:

> RESOLVED: Shareholders urge the Board of Directors of Wells Fargo & Company ("Wells Fargo") to commission and oversee an independent, third-party assessment of Wells Fargo's respect for the internationally recognized human rights of freedom of association and collective bargaining. The assessment should evaluate management interference when employees seek to form or join trade unions as well as recommend steps to remedy any practices that are inconsistent with Wells Fargo's international human rights obligations. The assessment, prepared at reasonable cost and omitting legally privileged, confidential, or proprietary information, should be publicly disclosed on Wells Fargo's website.

A copy of the Proposal and the Supporting Statement, as well as correspondence with the Proponents relevant to this no-action request, 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 2024 Proxy Materials pursuant to Rule 14a-8(i)(3) because it is impermissibly vague and indefinite so as to be inherently misleading.

ANALYSIS

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

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

company argued that its shareholders "would not know with any certainty what they are voting either for or against").

A. The Proposal Is Excludable Under Rule 14a-8(i)(3) Because It Fails To Provide Sufficient Clarity Or Guidance Such That Shareholders And The Company Would Reach Different Conclusions Regarding Its Implementation.

The Proposal requests that the Company's board of directors (the "Board") "commission and oversee an independent, third-party assessment of [the Company's] respect for the internationally recognized human rights of freedom of association and collective bargaining," including to "evaluate management interference when employees seek to form or join trade unions" and "recommend steps to remedy any practices that are inconsistent with [the Company's] international human rights obligations." However, the scope and nature of the requested assessment is unclear. Shareholders reading the words of the Proposal, such as "respect for," "management interference," "internationally recognized human rights", and "international human rights obligations," would not be able to identify the scope or nature of the assessment on which they are voting. Similarly, if shareholders were to vote in favor of the Proposal, the Company would be unable to ascertain the scope of the assessment that shareholders requested as the Proposal is materially vague and indefinite.

The Proposal is similar to the shareholder proposal in *Fuqua Industries, Inc.* (avail. Mar. 12, 1991), where the Staff permitted exclusion of a proposal under Rule 14a-8(i)(3) that sought to prohibit "any major shareholder . . . which currently owns 25% of the Company and has three board seats from compromising the ownership of the other stockholders," where the meaning and application of such terms as "any major shareholder," "assets/interest" and "obtaining control" would be subject to differing interpretations. In *Fuqua*, the company argued that the ambiguities in the proposal would render the proposal materially misleading since "any action ultimately taken by the [c]ompany upon implementation [of the proposal] could be significantly different from the actions envisioned by the shareholders voting on the proposal." *See also Apple Inc.* (avail. Dec. 22, 2021) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal as vague and indefinite when it requested that the company take steps necessary to become a "public benefit corporation" where the Staff noted that "the proposal creates uncertainty regarding the statutory form the Company must take to implement the proposal"); *Microsoft Corp.* (avail. Oct. 7, 2016) (concurring with the exclusion of a proposal where "neither shareholders nor the company would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires"). Here, like in *Fuqua*, the ambiguous scope and nature of the requested assessment could lead to materially different, reasonable interpretations. In this regard, the Proposal is unclear as to what would be evaluated as part of an assessment of the Company's "*respect for* the internationally recognized human rights of freedom of association and collective bargaining" (emphasis added). An assessment of "respect for"

human rights could be interpreted to encompass a number of different, widely varied scopes of review: a determination as to whether the Company has publicly or internally acknowledged such rights (e.g., verbally, in written statements); whether the Company has or should adopt a policy related to such rights (e.g., agreeing to abide by certain standards); confirmation that the Company has a record of actions adhering to certain standards in its own operations; whether the Company encourages or discourages the exercise of such rights; whether the Company has taken action in its community or elsewhere to support or foster such rights; a confirmation the Company has not violated such rights or has processes in place to prevent violations; and many other variations. The Supporting Statement only broadens the range of actions that fall within the scope of the requested assessment. The Supporting Statement asserts that the Company's policies are "silent" on obligations to respect human rights, which could imply that the Proposal is now seeking some sort of action from the Company, but there is no indication of what this action is. Further, the Supporting Statement's criticism that the Company's Chief Executive Officer would "not commit to remain neutral" implies that it could be *inaction* that the Proposal seeks. In this regard, neither the Proposal, nor the Supporting Statement, clarify the nature or scope of the requested third-party assessment of the Company's "respect for" certain rights. As such, shareholders would not be able to determine the scope of the assessment, and could not be expected to make an informed decision on the merits of the Proposal. Moreover, the Company would be unable to effectively respond to shareholder support of the Proposal because shareholders would read and interpret the Proposal differently.

B. The Proposal Is Excludable Under Rule 14a-8(i)(3) Because It Fails To Define Other Key Terms.

The Staff has routinely concurred with the exclusion of proposals that fail to define key terms or otherwise fail to provide sufficient clarity or guidance to enable either shareholders or the company to understand how the proposal would be implemented. For example, in *Apple Inc. (Zhao)* (avail. Dec. 6, 2019), the Staff recently concurred that a company could exclude, as vague and indefinite, a proposal that recommended that the company "improve guiding principles of executive compensation," but failed to define or explain what improvements the proponent sought to the "guiding principles." The Staff noted that the proposal "lack[ed] sufficient description about the changes, actions or ideas for the [c]ompany and its shareholders to consider that would potentially improve the guiding principles" and concurred with exclusion of the proposal as "vague and indefinite." *See also The Walt Disney Co. (Grau)* (avail. Jan. 19, 2022) (concurring with the exclusion under Rule 14a-8(i)(3) as vague and indefinite a proposal that requested a prohibition on communications by or to cast members, contractors, management or other supervisory groups within the Company of "politically charged biases regardless of content or purpose," where the Staff stated that "in applying this proposal to the Company, neither shareholders nor the Company would be able to determine with reasonable certainty exactly what actions

or measures the Proposal requests"); *The Boeing Co.* (avail. Feb. 23, 2021) (concurring with the exclusion of a proposal requiring that 60% of the company's directors "must have an aerospace/aviation/engineering executive background" where such phrase was undefined); *AT&T Inc.* (avail. Feb. 21, 2014) (concurring with the exclusion of a proposal requesting a review of policies and procedures related to the "directors' moral, ethical and legal fiduciary duties and opportunities," where such phrase was undefined); *The Boeing Co. (Recon.)* (avail. Mar. 2, 2011) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal because it failed to "sufficiently explain the meaning of 'executive pay rights'"); *International Paper Co.* (avail. Feb. 3, 2011) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal that requested the adoption of a particular executive stock ownership policy because it did not sufficiently define "executive pay rights"); *Verizon Communications Inc.* (avail. Feb. 21, 2008) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal because it failed to define certain critical terms, such as "Industry Peer Group" and "relevant time period").

Here, the Proposal requests an assessment of the Company's "respect for the internationally recognized human rights of freedom of association and collective bargaining." The Proposal fails to define the nature and scope of those rights, which are a central facet of the Proposal and inherently broad, vague, and indefinite as their interpretation varies widely based on the specific context in which they are used. The Supporting Statement refers to "the International Labour Organization's Declaration on Fundamental Principles and Rights at Work" (the "ILO Declaration") and "the United Nations' Universal Declaration of Human Rights" (the "UN Declaration"), but only as sources that *recognize* the rights to collective bargaining and freedom of association, not as sources that define them (or as standards against which the Company could be assessed). The Proposal's request that the assessment include "steps to remedy any practices that are inconsistent with [the Company's] *international human rights obligations*" further adds to the uncertain scope of the Proposal and the rights to be assessed because it appears to shift the assessment to a much broader set of rights. This is mirrored by the Supporting Statement's summary of the Company's "Priority Recommendations of the Wells Fargo Human Rights Impact Assessment and Actions in Response" (the "HRIA"), which included a recommendation that the Company "consider prioritizing the issuance of *a comprehensive human rights policy* and providing training to the bank's leadership and senior management regarding the [United Nations Guiding Principles on Business and Human Rights]" (the "UNGPs") (emphasis added). These sources similarly expand the potential scope of the review because the HRIA and the UNGPs discuss an extensive range of different types of human rights and related obligations beyond freedom of association and collective bargaining alone. For example, the HRIA[1] discusses recommendations related to customer

[1] *Available at* https://www08.wellsfargomedia.com/assets/pdf/about/corporate-responsibility/human-rights-impact-assessment.pdf.

remediation, fair compensation, safe workplaces free from retaliation and discrimination, unethical behavior, diversity, equity, and inclusion, racial equity, low-wage and vulnerable workers, modern slavery prevention, environmental stewardship, community investment, fair lending, and civil rights. The UNGPs similarly refer to internationally recognized human rights as, at a minimum, *all* of those included in the International Bill of Human Rights[2] and the ILO Declaration,[3] which together address more than 40 different types of human rights (of which freedom of association and collective bargaining are only two). Other human rights encompassed by these standards include issues such as gender equality, fair trials, privacy, forced labor, exploitation of children, health and safety, education, public affairs, peaceful assembly, expression, and discrimination. As a result, the conclusion as to what human rights would be subject to the Proposal's assessment and recommendations, if adopted, could reasonably vary as between the Company and shareholders.

The Supporting Statement also alleges that the Company's current statements and policies are "silent on [the Company's] obligations to respect these internationally recognized human rights." However, the Company's Human Rights Statement[4] sets forth that the Company's efforts with regard to human rights "are guided by" the UN Declaration and the UNGPs. In the Company's most recent proxy statement filing,[5] it has further described that "[its] policies are designed to comply with applicable local laws related to freedom of association and collective bargaining, including laws with respect to non-interference." By ignoring these disclosures, it is therefore unclear what definition of the Company's "international human rights obligations"—the standard by which the Company is to be assessed—is applicable for the requested assessment. Both the Company and shareholders would therefore struggle to understand how the requested assessment could evaluate whether Company practices are inconsistent with human rights obligations if the Proposal's intended meaning of the term "international human rights obligations" cannot be reasonably established.

Even if the Company attempts to narrow the scope of the Proposal to human rights associated with only the freedom of association and collective bargaining, the Proposal remains too vague and indefinite a request. As addressed in section A above, it is unclear what would be evaluated as part of an assessment of the Company's "respect for" such rights. The Proposal's term "management interference" is also vague and indefinite. The Proposal does not define what may constitute "management interference" with employees

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[2] *Available at* https://www.ohchr.org/en/what-are-human-rights/international-bill-human-rights.
[3] *Available at* https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/normativeinstrument/wcms_716594.pdf.
[4] *Available at* https://www.wellsfargo.com/assets/pdf/about/corporate-responsibility/human-rights-statement.pdf.
[5] *Available at* https://www.sec.gov/ix?doc=/Archives/edgar/data/72971/000119312523071373/d399928ddef14a.htm.

seeking to form or join trade unions. Shareholders voting on the Proposal may interpret "management interference" to mean conducting unfair labor practices in violation of applicable law; however, since the Supporting Statement notes that "Wells Fargo would not commit to *remain neutral* if Wells Fargo's employees seek to unionize" (emphasis added), the Proposal could also be interpreted to suggest that "management interference" is anything short of a commitment by the Company to remain neutral if Wells Fargo's employees seek to unionize. In this regard, the proposal is similar to the proposal in *NYNEX Corp.* (avail. Jan. 12, 1990). In *NYNEX Corp.*, the proposal requested that the company not interfere in government policies of foreign nations. In concurring with the exclusion of the proposal as vague and indefinite, the Staff specifically noted that the company would be required to make a highly subjective determination concerning what constitutes "interference" without guidance from the proposal. *See also Bank of America Corp.* (avail. Feb. 25, 2008) (concurring with the exclusion of a proposal requesting a moratorium on activities that "support" MTR coal as vague and indefinite).

The failure to resolve these ambiguities in the Proposal render it so vague as to be materially misleading since "any action ultimately taken by the [c]ompany upon implementation [of the proposal] could be significantly different from the actions envisioned by the shareholders voting on the proposal." *Fuqua Industries, Inc.* In this respect, the Proposal's request could reasonably be interpreted to comprise many types of actions and obligations, from an assessment of the Company's compliance with its own internal policies on a narrow category of human rights to compliance with applicable labor laws to an assessment analyzing a range of actions (or indications of inaction) the Company has taken (or not taken) to support, uphold, or interfere with a wide range of various types of human rights as defined by multiple international standards.

As the Proposal does not provide any explanation or context for the meaning of these critical terms, which are necessary to understand the nature and scope of the requested assessment, shareholders would have no ability to make a reasonable assessment of the Proposal, and the inherent ambiguity as to what exactly would and would not constitute "management interference" would make it impossible for the Company to reasonably determine how to implement the assessment. And without any specificity as to what the Proposal is asking shareholders to vote on, shareholders would have difficulty determining whether to vote "for" or "against" the Proposal, and neither the shareholders nor the Company would be able to determine with reasonable certainty what further actions or measures should be taken with regard to this Proposal. If shareholders were to approve the Proposal pursuant to their individual interpretations, the Company would have no consistent direction or guidelines with respect to how the Proposal should be implemented. The Board would then have to choose among multiple reasonable interpretations for implementing the Proposal, any one of which could be very different from what the shareholders approving the

Proposal envisioned. Accordingly, the Proposal is inherently vague and indefinite and is excludable under Rule 14-8(i)(3).

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2024 Proxy Materials pursuant to Rule 14a-8(i)(3).

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

Sincerely,

Lori Zyskowski

Enclosures

cc: Mara Garcia Kaplan, Senior Vice President, Senior Company Counsel Corporate Governance & Securities
Maureen O'Brien, Segal Marco Advisors
Sarah Reed, AFL-CIO Equity Index Funds c/o The Bank of New York Mellon
Megan Sweeney, SEIU MasterTrust
Matthew Illian, United Church Funds

Exhibit A

Segal Marco Advisors

Maureen O'Brien
Senior Vice President, Corporate Governance,
Engagement and Proxy Voting
[redacted]

[redacted]

November 14, 2023

Via UPS Air and E-Mail to T[redacted]

Tangela Richter
Corporate Secretary
Wells Fargo & Company
MAC# J0193-610
30 Hudson Yards
New York, NY 10001

Re: Shareholder proposal for 2024 Annual Shareholder Meeting

Dear Ms. Richter:

Segal Marco Advisors is filing a shareholder proposal on behalf of the AFL-CIO Equity Index Funds (the "Proponent"), a shareholder of Wells Fargo & Company (the "Company"), for action at the next annual meeting of the Company. The Proponent submits the enclosed shareholder proposal for inclusion in the Company's 2024 proxy statement, for consideration by shareholders, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.

The Proponent has continuously beneficially owned, for at least one year as of the date hereof, at least $25,000 worth of the Company's common stock. The Proponent intends to continue to hold the requisite amount of securities through the date of the 2024 shareholders' meeting. A letter from the Proponent's trustee and custodian bank verifying the Proponent's share ownership is enclosed. A representative of the Proponent will attend the stockholders' meeting to move the resolution as required.

Segal Marco Advisors and the Proponent is available to meet with the Company via teleconference on November 30 and December 1 between 11am and 1pm PST. We are also available to discuss this issue at a mutually agreeable day and time. We appreciate the opportunity to engage and seek to resolve the Proponent's concerns. I can be contacted [redacted] to schedule a meeting and to address any questions. Please address any future correspondence regarding the proposal to me at this address.

Sincerely,

Maureen O'Brien
Senior Vice President, Corporate Governance,
Engagement and Proxy Voting

RESOLVED: Shareholders urge the Board of Directors of Wells Fargo & Company ("Wells Fargo") to commission and oversee an independent, third-party assessment of Wells Fargo's respect for the internationally recognized human rights of freedom of association and collective bargaining. The assessment should evaluate management interference when employees seek to form or join trade unions as well as recommend steps to remedy any practices that are inconsistent with Wells Fargo's international human rights obligations. The assessment, prepared at reasonable cost and omitting legally privileged, confidential, or proprietary information, should be publicly disclosed on Wells Fargo's website.

SUPPORTING STATEMENT

Freedom of association and collective bargaining are internationally recognized human rights according to the International Labour Organization's Declaration on Fundamental Principles and Rights at Work and the United Nations' Universal Declaration of Human Rights. However, Wells Fargo's Human Rights Statement, Code of Ethics and Business Conduct, and Supplier Code of Conduct are silent on Wells Fargo's obligations to respect these internationally recognized human rights.

In February 2022, Wells Fargo published "Priority Recommendations of the Wells Fargo Human Rights Impact Assessment and Actions in Response" that summarized a human rights impact assessment performed by a third party law firm. The recommendations stated "Wells Fargo should consider prioritizing the issuance of a comprehensive human rights policy and providing training to the bank's leadership and senior management regarding the [United Nations Guiding Principles on Business and Human Rights]."

In 2022, Wells Fargo CEO Charles Scharf told Congress that Wells Fargo would not commit to remain neutral if Wells Fargo's employees seek to unionize.[1] In 2023, various unfair labor practice charges were pending before the National Labor Relations Board alleging that Wells Fargo had violated its employees' rights.[2] Wells Fargo has agreed to settle one of these unfair labor practice charges.[3] Meanwhile, a Wells Fargo internal presentation revealed that management has been tracking employees' union organizing efforts.[4]

This resolution may help address human rights risks at Wells Fargo's operations in other countries. Wells Fargo's largest international operations are in India and the Philippines. The 2023 ITUC Global Rights Index rated India and the Philippines as countries with no guarantee of rights, explaining that such countries are "the worst countries in the world to work in. While the legislation may spell out certain rights, workers have effectively no access to these rights and are therefore exposed to autocratic regimes and unfair labour practices."[5]

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[1] "Wells Fargo to Beef Up Labor Relations Staff Amid Union Campaign," Bloomberg Law, June 26, 2023, https://news.bloomberglaw.com/banking-law/wells-fargo-to-beef-up-labor-relations-staff-amid-union-campaign.

[2] "Wells Fargo Illegally Restricted Union Activism, US Labor Board Officials Allege," Bloomberg, August 10, 2023, https://www.bloomberg.com/news/articles/2023-08-10/wells-fargo-bank-illegally-restricted-union-activism-nlrb-officials-allege.

[3] "Wells Fargo Reaches Settlement in Union Retaliation Case," Bloomberg Law, May 3, 2023, https://news.bloomberglaw.com/banking-law/wells-fargo-reaches-settlement-in-union-retaliation-case.

[4] "Wells Fargo Privately Worries Union "Resurgence" Could Reach Its Workers Next," Bloomberg, April 17, 2023, https://www.bloomberg.com/news/articles/2023-04-17/wells-fargo-privately-worries-union-resurgence-could-reach-its-workers-next.

[5] 2023 ITUC Global Rights Index, International Trade Union Confederation, 2023, https://www.ituc-csi.org/ituc-global-rights-index-2023.

January 29, 2024

VIA ONLINE SUBMISSION

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

Email: shareholderproposals@sec.gov

Re: Shareholder Proposal to Wells Fargo & Company Regarding Climate Transition Planning on Behalf of Warren Wilson College

Ladies and Gentlemen:

Warren Wilson College (the "Proponent"), the beneficial owner of common stock of Wells Fargo & Company (the "Company" or "Wells Fargo"), has submitted a shareholder proposal (the "Proposal") seeking information from the Company on its ability to meet its 2030 greenhouse gas reduction targets. The Proponent has designated *As You Sow* to act as its representative with respect to the Proposal, including responding to the Company's No Action letter dated December 29, 2023 (the "Company Letter").

The Company Letter contends that the Proposal may be excluded from the Company's 2024 proxy statement on the basis of micromanagement and vagueness. Proponent's response demonstrates that the Company has no basis under Rule 14a-8 for exclusion of the Proposal. As such, the Proponent respectfully requests that the Staff inform the Company that it cannot concur with the Company's request.

A copy of this letter is being emailed concurrently to the Company and its counsel.

SUMMARY

In response to growing climate risk, Wells Fargo has set a goal to reach net-zero greenhouse gas (GHG) emissions by 2050, inclusive of emissions associated with its financing activities. To align its financing activities with its goal, the Company has set interim 2030 sectoral targets for the high-carbon oil & gas, power, automotive, steel, and aviation sectors. The actions necessary to meet these 2030 targets will be affected in significant part by the credible climate transition plans of its clients in these sectors — or the lack of such plans.

The Company's public climate reporting demonstrates that it is assessing client transition progress. Such progress is a means to evaluate progress toward its own net zero-by-2030 transition goals. The Proposal therefore requests that Wells Fargo report to its investors on: the outcome of this assessment, *i.e.*, are clients aligning with a credible 1.5^{o}C net zero pathway; whether the proportion of unaligned clients will prevent the Company from meeting its own emissions 2030 targets; and, if so, what actions Wells Fargo proposes to take to address any

associated emissions reduction shortfalls. This information is necessary to inform investors about the credibility of the Company's climate targets, its ability to meet its commitments, and the associated climate risk in its portfolio.

Wells Fargo argues that the Proposal may be excluded under Rule 14a-8(i)(7) because the Proposal seeks to micromanage the Company by dictating specific methods for meeting its emissions reduction goals. To the contrary, the Proposal requests the disclosure of basic information based on data the Company is already collecting – client transition progress. The Proposal does not dictate how the Company should meet its reduction goals. Rather, it asks *whether* it is likely to do so and, if not, what responsive measures it will take.

The Company also argues that the Proposal may be excluded under Rule 14a-8(i)(3) because it is impermissibly vague insofar as it does not define what constitutes a "credible" net zero pathway. However, despite the Company's objections, the term has self-evident meaning while allowing for the Company to define the term's contours at its discretion.

Disclosure of the information requested in the Proposal is important to investors. The requested information bears directly on the Company's likelihood of meeting its interim and long-term emissions reduction goals. It also provides valuable information to investors on the Company's climate risk. As climate transition risk becomes an increasingly salient issue, the Company's success in helping its clients decarbonize will bear directly on its own financial performance. It is therefore an appropriate subject of investor consideration.

THE PROPOSAL

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

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

[1] https://www.asyousow.org/press-releases/2023/4/27/wells-fargo-disclose-climate-transition-plan
[2] https://www.transitionpathwayinitiative.org/sectors/oil-gas
[3] https://www.transitionpathwayinitiative.org/sectors/autos
[4] https://www.iea.org/energy-system/industry/steel

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

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

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

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

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

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[5] https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/banks-face-mounting-risk-of-fines-regulatory-probes-over-sustainability-claims-74385257

[6] https://139838633.fs1.hubspotusercontent-eu1.net/hubfs/139838633/Past%20resource%20uploads/IIGCC-Net-Zero-Standard-for-Banks-June-2023.pdf, p.7,9

BACKGROUND

Well Fargo states: "Climate change is one of the most urgent environmental and social issues of our time, and financial institutions like Wells Fargo can play a critical role in helping address it by supporting our clients during the transition to a low-carbon future."[1] According to the Company, "financing is . . . a critical component to how the world will address climate change"[2] because "[f]inancial institutions like Wells Fargo can . . . help finance the transformation and transition of carbon-intensive assets, infrastructure, and business models."[3]

Recognizing the importance of the financial sector in addressing climate change, and the reality of climate-related risk to the financial sector, Wells Fargo has established a "core climate-related goal[]" of "achiev[ing] net-zero GHG emissions by 2050, including . . . emissions attributable to our financing."[4] To meet its net-zero financing commitment, the Company is "focusing on . . . [s]upporting clients' transition to a low-carbon economy."[5] This entails "working with clients to reduce their own emissions in line with a low-carbon future."[6]

The Company's approach to its net-zero financed emissions goal, named "CO2eMission," "combines target setting . . . with intentional client engagement" in order to "align[the Company's] financial portfolios to the 1.5° Celsius goal of the Paris Agreement."[7] The central component of CO2eMission is the "setting [of] interim, emissions-based targets to guide that alignment."[8]

In 2022, Wells Fargo set "interim 2030 targets for the Oil & Gas and Power sectors."[9] In July 2023, the Company supplemented those targets with additional 2030 targets for the Automotive, Steel, and Aviation sectors.[10] These targets are intended to "help [the Company] address climate change through portfolio alignment and to inform [its] approach to engagement."[11] The Company's targets include "both the financing [it] provide[s] clients through lending activities and the financing [it] facilitate[s] through debt and equity capital markets activities."[12]

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[1] *CO2eMission*, Wells Fargo (2023), https://sites.wf.com/co2emission/.
[2] *Task Force on Climate Related Financial Disclosures Report* ("2023 TCFD Report") at 25, Wells Fargo (July 2023), https://www08.wellsfargomedia.com/assets/pdf/about/corporate-responsibility/climate-disclosure.pdf.
[3] *CO2eMission Executive Summary* at 2, Wells Fargo (May 2022), https://sites.wf.com/co2emission/CO2eMission_Executive_Summary.pdf.
[4] 2023 TCFD Report at 20.
[5] *Id.* at 3.
[6] *Id.* at 23.
[7] *Id.* at 28.
[8] *Id.* at 28.
[9] *CO2eMission Executive Summary*, *supra* note 3, at 2.
[10] *CO2eMission July 2023 Supplement*, Wells Fargo (July 2023), https://sites.wf.com/co2emission/docs/CO2eMission-July-2023-Supplement.pdf.
[11] *Id.* at 5.
[12] *Id.* at 4.

In short, Wells Fargo recognizes climate transition as a business priority; identifies reducing its clients' emissions as the key way in which it can support the global climate transition and its own climate transition goals; and has implemented 2030 sectoral targets for high-carbon sectors to measure and assess its progress toward its goals.

ANALYSIS

Wells Fargo has pledged to reach net zero by 2050 for its financed emissions. Such emissions constitute the vast majority of the Company's total climate impact.[13] Wells has also set interim 2030 targets to ensure progress in aligning with its net zero goal. As the Company acknowledges, this will require reducing its financed emissions in high-carbon sectors.

Wells' success in meeting its net zero goals will depend in large part on its success in moving clients to decarbonize. The Proposal thereofore seeks a straightforward disclosure: the Company's assessment of what proportion of its financed emissions are attributable to clients not aligned with a credible net zero pathway; whether this will prevent Wells Fargo from meeting its 2030 net zero targets; and actions the Company proposes to take to address any such emissions reduction shortfalls.

Notably, the Company Letter makes no argument that the latter two aspects of the Proposal constitute micromanagement. Rather, its argument is that the Proposal micromanages simply by requesting that Wells Fargo disclose an overall assessment of its clients' transition progress. Consistent with the Company Letter, this response will therefore focus on the first element of the Proposal – the request that Wells disclose the proportion of clients in sectors with a 2030 target that are not aligned with a 1.5ºC net zero goal.

In arguing that the first part of the Proposal *alone* constitutes micromanagement, the Company Letter hyperbolically claims that the Proposal "seeks to alter virtually every aspect of" the Company's 2030 goals and "dictat[es] specific methods for how the Company assesses and reports on its progress" in meeting its goals. Company Letter at 2, 5.

A plain reading of the Proposal, however, demonstrates that this portrayal is inaccurate. The Proposal requests disclosure relating to actions the Company is already taking — an assessment of client emissions in the oil & gas, power, automotive, and steel sectors.[14] In short: what proportion of the Company's total financed emissions in these sectors are associated with clients not aligned with the Company's own goals? This information is critical to understanding whether the Company can rely on client emission reductions to meet its goals, or whether it must plan additional actions to meet its net zero goals. This disclosure does not eliminate management discretion in what goals it sets, what calculations or methodologies it uses to measure and assess client progress, what determination it makes about clients' alignment, or what responsive actions it plans.

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[13] In its 2019 baseline year, the Company disclosed about 92,000 metric tons of CO2e in GHG emissions stemming from its operations (Scopes 1 and 2 combined), and 97,700,000 metric tons of financed emissions in the Oil & Gas sector *alone*. 2023 TCFD Report at 43, 47.

[14] As discussed in greater depth below, the Company asserts that its 2030 aviation sector targets are not net zero-aligned. By the plain terms of the Proposal, then, that sector is outside of the scope of the Proposal.

In limiting the scope of the request to those sectors in which Wells Fargo has announced net zero-aligned targets, and requesting that the Company assess its clients' alignment with net-zero aligned pathways, the Proposal boils down to a disclosure of whether the Company is likely to meet its own 2030 goals.

The argument that such a basic disclosure request constitutes micromanagement amounts to a request that the Staff adopt a new standard wholly at odds with Rule 14a-8 and Staff precedent. The Company's proposed rule would require that shareholders be satisfied with whatever disclosure a company elects to make, no matter if those disclosures fail to provide consistent, comparable, and decision-useful information to shareholders. Such a position is at odds with the SEC's long-standing position that investors should be provided with reliable information to make informed investment decisions about material risk, consistent with the SEC's core mandate to protect investors.

The Company Letter additionally argues that the Proposal is inherently vague and misleading because it does not define what constitutes a "credible" transition pathway. This argument, too, is unpersuasive. The term "credible" is both commonly used with regard to net zero aligned pathways and self-explanatory, with its exact details intentionally left to management discretion. Wells Fargo has set 2030 and 2050 net zero goals and is monitoring client transition progress. If the Company is incapable of determining whether its clients' transition plans are credibly aligned with net zero goals, because it does not know the meaning of the term "credible," investors have cause to be alarmed.

I. The Proposal Does Not Micromanage the Company

A. Micromanagement Standard

Rule 14a-8(i)(7) permits the exclusion of proposals that "deal[] with a matter relating to the company's ordinary business operations." As the Commission has recognized, however, proposals focused on a *significant social policy issue* generally are not excludable even if they relate to the company's day-to-day business. *See* SEC, Exchange Act Release No. 34-40018 (May 21, 1998) ("1998 Release"). This is true even when the proposal "relates to the 'nitty-gritty of [a company's] core business." Staff Legal Bulletin No. 14H (Oct. 22, 2015).

At the same time, the Commission has also recognized the exclusion under Rule 14a-8(i)(7) of proposals seeking to "micromanage" companies 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." 1998 Release. The Staff provided additional guidance about the scope of micromanagement exclusion in Staff Legal Bulletin No. 14L (Nov. 3, 2021). There, the Staff noted that "proposals *seeking detail* or *seeking to promote* timeframes or *methods* do not per se constitute micromanagement." (emphasis added). Rather, the Staff looks at:

> [T]he level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management. We would expect the level of detail included in a shareholder proposal to be consistent with that needed to enable investors to assess an issuer's impacts, progress towards goals, risks or other strategic matters appropriate for shareholder input.

Staff Legal Bulletin No. 14L.

Finally, the Staff has also provided guidance on the standards it uses to judge the appropriate level of granularity in a proposal, noting that the Staff "may consider the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic" as well as "references to well-established national or international frameworks when assessing proposals related to disclosure . . . as indicative of topics that shareholders are well-equipped to evaluate." *Id.*

B. The Proposal Does Not Inappropriately Interfere with Management Discretion

As described above, the Company and Proponent agree that: (1) the Company has committed to reduce its financed and facilitated emissions to net zero by 2050; (2) the progress of its clients' transitions will impact its ability to meet that goal; and (3) the Company can and must measure such progress.

The Proposal requests that the Company disclose its assessment of its clients' — and therefore its own — interim progress. This request falls well within the established boundaries of permissible proposals. As the Staff has explained, proponents may seek "the level of detail . . . consistent with that needed . . . to assess an issuer's impacts, progress towards goals, risks or other strategic matters appropriate for shareholder input." Staff Legal Bulletin No. 14L.

These standards are well aligned with the Proposal, which seeks the disclosure of information necessary to assess the Company's progress towards its own goals and the climate risk presented to investors' portfolios associated with not meeting its climate targets. The Company itself describes at length exactly why its investors are right to be concerned about whether its clients have credible transition plans, acknowledging that it may experience a "[d]ecline in market share or profit from failure to diversity into climate-related opportunities or to *identify clients failing to transition.*"[15] It also acknowledges the possibility of "[n]egative market and/or stakeholder sentiment from failure to achieve climate commitments."[16] The Proposal therefore squarely confronts a matter speaking directly to shareholders' legitimate interest in judging risk in their portfolios. *See* Staff Legal Bulletin No. 14L.

The Company Letter's arguments that the Proposal falls outside of these bounds are unpersuasive.

The Company's first argument is that the Proposal would "require the Company to alter the way it works with its clients by replacing its strategy of supporting its clients in their own goals with the need to assess their 'credibility' as well as altering the way it gathers data for purposes of evaluating the Company's pathway to net zero and reporting on its progress." Company Letter at 11. This is a wholly inaccurate description of the Proposal, which does not replace Wells' strategy with its own. It in fact asks Wells to state what actions *it* will take *if* its clients' transition plans are not aligned with net zero. Nor does the Proposal ask for an assessment of its clients' credibility, only an assessment of whether their transition plans are credibly aligned with net

[15] 2023 TCFD Report at 38 (emphasis added).
[16] *Id.*

zero, a critical assessment for the Company if it intends to meet its own goals. Further, the Proposal does not dictate how the Company "gathers data," or works with its clients to assist them in aligning with net zero goals. What the Proposal asks for is an assessment of whether the clients' plans are credibly aligned with net zero and, if not, what additional actions Wells will take to address any potential emission reduction shortfalls.

The Company's attempt to justify how the Proposal micromanages it strains credulity. For example, Company Letter claims that the Proposal would interfere with its "strategy of supporting its clients" by "replacing" that strategy with a requirement that the Company assess the credibility of its clients' transition plans. Company Letter at 11. Facially, there is no conflict whatsoever between supporting clients' transition and assessing the consistency of its clients' transition plans with the Company's 2030 goals. The Company does not explain how any such conflict actually exists. The Proposal does not request that the Company stop everything else it is doing and *only* make the requested disclosure. Moreover, the Company's TCFD explicitly acknowledges that the Company is concerned about risk created by clients "***failing to transition***."[17]

The Company's attempt to transform the Proposal's requested disclosure into an entirely new climate transition regime entails some significant stretching. For example, the Company announces that it begins its transition progress assessment by "calculating [its] clients' emissions metrics." Company Letter at 11. This allows the Company "to account for [its] clients' progress and calibrate and guide our actions to support them." Then, Wells Fargo says, it "aggregates these attributed emissions for all clients in a given portfolio." Company Letter at 12. In other words: The Company is: (1) measuring its clients' emissions; (2) making a determination about each client's "progress"; and (3) aggregating each clients' emissions into a sectoral assessment. It nonetheless asserts that these steps are somehow *inconsistent* with a Proposal that asks, in relevant part, to: (1) measure its clients' emissions; (2) make a determination about the clients' progress in aligning with net zero; and (3) aggregate that determination into a sectoral assessment.

The Company Letter next complains that, under the Proposal, Wells Fargo "would then have to calculate and report on a ratio and how that ratio reflects on the Company's progress to meeting its 2030 Financed Emission Goals." Company Letter at 11. We note that the company substitutes the word "ratio" for the actual term "proportion," a word that is much less specific and asks for a relationship or a part considered in relation to the whole. Thus, the Proposal asks that Wells Fargo describe the proportion of clients in each sector that align with net zero, which is its own goal. The Company could provide a specific number or could more broadly state "the majority" of clients align or the "minority of clients align" or one third align. No specific ratio is required. The goal of investors is to understand that Wells understands how clients are aligning and thus, whether it needs to take additional action to meet its 2030 goals.

The Company Letter further asserts, once more without explanation, that providing the requested information would somehow be "[i]n contrast" to the Company's "assessment framework" that recognizes "the uniqueness of each sector or industry" and "set[s] targets informed by the trends

[17] *Id.*

and challenges each industry is facing." Company Letter at 11-12. The Proposal, however, asks the company to respond with a sector-based analysis, thus aligning directly with the Company's existing 2030 goals and the Company's assessment of the uniqueness of "each sector or industry." The Proposal does not request that the Company alter its "targets informed by the trends and challenges each industry is facing." Nor does the Proposal interfere with "the Company's judgment regarding how to accurately measure progress in the face of difficulties collecting quality and timely data," given both its acknowledgment in the Supporting Statement that emissions "can be measured using estimates or other appropriate method," and its designation to management of discretion in how to define progress.

Even if the Proposal did, however, request that the Company "alter the way it works with its clients," as the Company claims, Company Letter at 11, this would not automatically constitute micromanagement. Every shareholder proposal, in some way, requests that a company change some aspect of how it does business or gathers and reports data. The question under Rule 14a-8(i)(7) is whether that request is appropriately made by shareholders based on the request's level of granularity and the discretion it leaves to the company's management. *See* Staff Legal Bulletin No. 14L. Here, the Proposal's reporting request does not seek overly granular data, does not mandate a collection methodology, and the Company is free to decide how to measure the percentage of its clients' unaligned emissions.

Proposals that seek even more significant "alter[ations in] the way [a company] works with its clients" routinely survive micromanagement challenges. In *Morgan Stanley* (Mar. 25, 2022), for instance, the proposal requested that the bank "adopt a policy . . . committing to proactive measures to ensure that the Company's lending and underwriting do not contribute to new fossil fuel development." Implementation of that proposal would alter the bank's relationship with its clients, and the company argued as much. Nonetheless, the Staff correctly concluded that the proposal "d[id] not seek to micromanage the Company."[18] This is because the proposal's request that the company adopt a policy was not: (a) too granular for investors to consider, or (b) too restrictive of management's discretion to implement the request. So too here.

The Company's second argument is closely related. The Company Letter next claims that the Proposal micromanages the Company because it "would require a different model for reporting goals and progress toward those goals than the approach the Company has adopted." Company Letter at 12. This argument, like the last, relies on an increasingly common but baseless legal argument in which companies seeking to exclude shareholder proposals argue that, because management has decided to do X, it is micromanagement for shareholders to suggest Y. This argument is especially problematic. If "seeking a change from the status quo" is a legitimate

[18] The *Morgan Stanley* decision is consistent with numerous other Staff precedents before and since, all of which involve much more significant shareholder oversight of company-client relationships than this Proposal and many of which involve banks' or insurance companies' fossil fuel financing, investment, or underwriting. *See, e.g.*, *Chubb Ltd.* (Mar. 27, 2023) (no exclusion where proposal requested company disclose medium- and long-term Scope 3 emissions reduction targets); *J.P. Morgan Chase & Co.* (Mar. 25, 2022) and *Citigroup Inc.* (Mar. 7, 2022) (same proposal as *Morgan Stanley*); *J.P. Morgan & Chase Co.* (Feb. 28, 2020) (proposal requested company issue report describing how it intended to reduce Scope 3 emissions).

basis for exclusion, no proposals would be left standing. There is, however, no basis in the Rule or in Staff precedent to apply the micromanagement rule so broadly.

That being said, the Company Letter fails to make out a case that the Proposal is in conflict with the Company's actions. For example, the Company takes issue with the Proposal's citation to an authoritative source that suggests that a "realistic transition plan" requires "assess[ing] its clients' likelihood of meeting 1.5°C-aligned 2030 goals." *See* Company Letter at 12. The Company asserts, "there are many ways to have a realistic transition plan." Company Letter at 12. Proponent agrees. However, the Company's transition plan involves setting Net Zero-aligned 2030 goals for its high-carbon sectors. It is thus incorrect to suggest that the Proposal does not represent "the path that the Company has (or, indeed, most companies have) chosen." Company Letter at 12. Measuring its clients' emissions in those high emissions sectors, and making assessments about client progress vis-à-vis the Company's goals is necessary. This does not dictate what type of transition plan either Wells or its clients must adopt. *See supra*.

Wells Fargo twists itself into an array of uncomfortable arguments in an attempt to conjure conflicts — at one point arguing that the Proposal's suggestion that companies should "independently establish and disclose . . . strategies specific to each business activity" is somehow "[i]n contrast" to the Company's independently established and adopted CO2eMission strategy, which, as described *one paragraph earlier*, "is meant to recognize the uniqueness of each sector or industry and to set targets informed by the trends and challenges each industry is facing." *See* Company Letter at 12-13.

In any event, as described above, a proposal need not simply parrot back what the Company is already doing. As the Staff has said, the micromanagement standards look to: (1) the level of granularity of a proposal, and (2) management and board discretion in implementing a proposal's request. *See* Staff Legal Bulletin No. 14L. Shareholders are allowed to propose actions that differ from those the Company has taken in the past — indeed, that is the point of a shareholder proposal, *see* Rule 14a-8(i)(10) (permitting exclusion of proposals that already have been substantially implemented by the company) — so long as they leave sufficient discretion for management in *implementation*. As described above, the Proposal satisfies this standard. "We disagree with this approach" is an argument the Company can make to shareholders, but it is not a basis for a micromanagement exclusion.

The Company's third argument is that the Proposal "would require the Company to alter its strategy for the 2030 Financed Emissions Goals and prioritize target achievement." Company Letter at 13. The Proposal does not do so. The Company itself set 2030 net-zero aligned targets; the Proposal requests that the Company report on its clients' alignment with net-zero targets. Proponent is assuming that the Company is prioritizing target achievement, as it did set 2030 and 2050 targets, but the Proposal requests no substantive change to Company targets or strategy, and certainly does not, as the Company argues, "shift [the Company's] strategic priority to one of divestment." Company Letter at 13. The third portion of the Proposal does ask the Company to describe additional actions it plans to take if it appears unlikely to meet its targets. Such actions are, however, left wholly to the company's discretion.

The Company's fourth argument is that the Proposal "would require other changes to how the Company approaches the 2030 Financed Emissions Goals." Company Letter at 13. The

Company's entire argument on this point is that its aviation sector target is not net-zero aligned. *See* Company Letter at 13-14. The Proposal's disclosure request applies to "each of [the Company's] sectors with a Net Zero aligned 2030 target." If the Company's aviation sectoral target is not net zero aligned, it is not within the scope of the Proposal.

The Company's fifth argument is that the Proposal would "require the Company to address additional Company activities that are currently outside the scope of the 2030 Financed Emission Goals." Company Letter at 10. The same two flaws present themselves here: The Proposal is consistent with the Company's actions, and even if it weren't, this would not constitute micromanagement.

The Company also fails to demonstrate that the Proposal differs in scope from its 2030 goals. As the Company notes, the Proposal's Supporting Statement requests, *at management discretion*, that the Company include in its assessment "all material financing mechanisms and asset classes" that contribute to its Scope 3 financed and facilitated emissions. The Company argues that its methodology includes "lending activities, sector-specific financing solutions, and capital markets activities it helps to facilitate" Company Letter at 10. It explains at length why it includes capital market activities without explaining why the inclusion of any activity conflicts with the Proposal's request that it include all material sources of emissions.

The Company further argues that the Supporting Statement's inclusion of investments "is inappropriate in light of the many regulations that govern the liquidity requirements for global financial institutions like the Company." Company Letter at 11. In light of these obligations, the Company states, "[r]equiring the Company to include investments in [its] 2030 Financed Emissions Goals . . . requires attention to regulatory and other legal obligations" outside the expertise of shareholders. Company Letter at 11. But, once more: the Proposal does not request that the Company alter its 2030 Financed Emissions Goals in any way. If the Company's 2030 net zero goals do not include investments, as noted in the Proposal, it is within the Company's discretion to exclude them.

While the Proposal specifically provides discretion to the Company on the scope of the types of emissions addressed, investors are routinely permitted to request the disclosure of additional information beyond that provided by the Company. This was exactly the case in *Eli Lilly & Co.* (Mar. 10, 2023). There, the proponent requested that the company disclose additional quantitative information about "hiring, retention, and promotion of employees, including data by gender, race, and ethnicity." Echoing the Company's arguments here, Eli Lilly argued that the proposal intruded into a "broader workforce management strategy" that "include[d] multi-faceted processes guided by numerous factors," and that the proposal "limit[ed] the Company's discretion in preparing the requested report by dictating the metrics and data the report must contain." Nonetheless, the Staff concluded that the proposal "does not micromanage the company." The Company, by contrast, cites two completely inapposite precedents in *Deere & Co.* (Jan. 3, 2022) and *The Coca-Cola Co.* (Feb. 16, 2022). *Deere* involved a proposal demanding that shareholders be permitted to review every single piece of employee training material the company offered any employee, and *Coca-Cola*'s proposal demanded that shareholders literally micromanage the company by being given the authority to approve or disapprove any political statement the company wanted to make. Neither bears any resemblance to the Proposal here, and the contrast with *Eli Lilly* is instructive regarding application of the

micromanagement exclusion. Once more: if a company could exclude a disclosure proposal by arguing it is micromanagement to request the disclosure of any information beyond that which the company has already disclosed, *there could be no disclosure proposals*. That is not and cannot be the rule.

Sixth, the Company Letter begins with an extended preamble about the Greenhouse Gas Protocol. *See* Company Letter at 7-10. The Company argues that its climate reporting "conforms to existing and established frameworks" like the GHG Protocol, which, "in contrast to the prescriptive dictates outlined in the Proposal, . . . firmly recognizes the complexities faced by a company" in reporting Scope 3 emissions. Company Letter at 9.

This argument, a by-now-familiar attempt to extend last season's Staff decision in *Amazon.com, Inc.* (Apr. 7, 2023), amounts to a declaration that because the GHG Protocol says Scope 3 reporting is complex, any Scope 3 proposal must by definition: (a) micromanage the company and (b) conflict with the GHG Protocol.

On its face, this argument is totally irrelevant. The GHG Protocol is a standard for how to measure GHG emissions. The Proposal does not ask the Company to alter its Scope 3 inventory or measure it differently, it asks only for reporting on the Company's conclusions regarding client progress, and thus its own progress, in meeting its established Scope 3 targets.[19] The Supporting Statement's request, at management discretion, that the Company measure all relevant and material financed emissions reflects a basic tenet of the GHG Protocol, which is based in whole on the core principles of "relevance, accuracy, completeness, consistency, and transparency." GHG Scope 3 Standard at 119.

Further, the assumption behind this argument — that shareholders cannot propose any action that might be in addition to or differ in any way from the terms of an established framework — has no basis in Rule 14a-8. Staff Legal Bulletin No. 14L is clear that the Staff may "consider references to well-established national or international frameworks . . . *as indicative of topics that shareholders are well-equipped to evaluate.*" Staff Legal Bulletin No. 14L (emphasis added). In other words, established frameworks are just *evidence* that a certain *topic* is within the appropriate level of granularity or complexity for a shareholder proposal. They do not create new substantive exclusions for proposals that depart from their guidance.

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[19] Succinctly, the Company's version of the GHG Protocol bears little resemblance to the intent of the framework and conflicts with every single Staff precedent permitting Scope 3 proposals — which is to say, too many precedents to list. The Staff should not permit issuers to patch together out-of-context language from the GHG Protocol to create a blanket ban on an important category of proposals. While the GHG Protocol framework recognizes the complexity of Scope 3 reporting, it also repeatedly emphasizes the importance of complete and accurate Scope 3 reporting. Its basic objective is "[t]o help companies prepare a *true and fair* scope 3 GHG inventory" thereby creating "*consistent* and transparent public reporting" of emissions. This is why the Scope 3 Standard is very clear that "Companies *shall* account for *all* scope 3 emissions and disclose and justify any exclusions." GHG Protocol, *Corporate Value Chain (Scope 3) Accounting and Reporting Standard* ("GHG Scope 3 Standard") at 4, 21 (Sept. 2011), https://ghgprotocol.org/sites/default/files/standards/Corporate-Value-Chain-Accounting-Reporing-Standard_041613_2.pdf (emphasis added).

Lastly, other precedents relied upon by the Company Letter are no longer good law. *Apple Inc.* (Dec. 5, 2016) requested that the Company "generate a feasible plan . . . to reach a net-zero GHG emissions status by the year 2030." The Staff concluded that the Proposal "prob[ed] too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." And *Apple Inc.* (Dec. 21, 2017) requested the company "prepare a report that evaluates the potential for the Company to achieve, by a fixed date, 'net-zero' emissions of greenhouse gases." Staff Legal Bulletin No. 14L explicitly disavowed decisions like these, noting that "[g]oing forward we would not concur in the exclusion of similar proposals that suggest targets or timelines so long as the proposals afford discretion to management as to how to achieve such goals." Among the decisions explicitly called out as no longer representing the Staff's approach to micromanagement was *Paypal Holdings, Inc.* (Mar. 6, 2018), which was identical to the latter *Apple* proposal in "asking the company to prepare a report on the feasibility of achieving net-zero emissions by 2030."

Accordingly, the Proposal does not inappropriately interfere with management discretion. Rather, it is a modest disclosure request based on the Company's own goals and actions, consistent with the level of granularity appropriate for shareholder consideration and replete with concessions to management discretion in implementation. The Company's arguments otherwise would expand the micromanagement exception into a black hole that would swallow *any* disclosure proposal.

II. The Proposal Is Not Impermissibly Vague or Indefinite So As To Be Misleading

The Company Letter also argues that the Proposal is excludable under Rule 14a-8(i)(3) because it is "impermissibly vague and indefinite so as to be inherently misleading." Company Letter at 18. The gravamen of this argument is that the Proposal does not define the term "credible Net Zero pathway," with particular emphasis on the word "credible." Company Letter at 19-21. This argument itself is not credible.

The Company correctly identifies the standard for Rule 14a-8(i)(3): a Proposal must be so vague that "neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." Staff Legal Bulletin No. 14B (Sept. 15, 2004). The Staff does not lightly assume the shareholders are incapable of grasping complex problems with which they are faced, however. Staff Legal Bulletin No. 14B itself is dedicated in large part to the "unintended and unwarranted extension of rule 14a-8(i)(3)" by companies. Thus, the emphasis must be on whether a proposal is "***so*** inherently vague or indefinite" that it cannot be determined with "***reasonable*** certainty" what it requires. The standard is not whether a lawyer could identify some tortured reading that renders the proposal minorly ambiguous.

Rule 14a-8(i)(3)'s anti-vagueness rule is also generally applied to proposals that require substantive action, not disclosure, and virtually all of the precedents cited by the Company fall into this category. *See, e.g., Apple Inc.* (Dec. 6, 2019) (proposal demanded company "improve" its executive compensation principles without defining what constituted improvement); *Walt Disney Co.* (Jan. 19, 2022) (proposal demanded prohibition on any communication with "politically charged biases" without defining what constituted a politically charged bias); *The Boeing Co.* (Feb. 23, 2021) (proposal demanded that 60% of company's directors have an

"aerospace/aviation/engineering executive background" without defining what would qualify); *AT&T Inc.* (Feb. 21, 2014) (proposal demanded review of "directors' moral, ethical and legal fiduciary duties and opportunities," without defining, for example, what a "moral opportunity" might be); *Berkshire Hathaway Inc.* (Jan. 31, 2012) (proposal demanded that company personnel "be required to sign-off be [sic] means of an electronic key, daily or weekly, that they have observed and approve or disapprove of figures and policies that show a high risk condition for the company, caused by those policies," without explaining what any of that meant).

The Company's objection to the term "credible Net Zero pathway" does not meet this high standard. First, despite the Company's objection otherwise, the term does have an ordinary, commonly understood meaning. One need look no further on that point than the Company itself. Its CDP Disclosures announce that it is collaborating with the World Resources Institute on "Scope 3 financed emissions methodologies that empower institutes ***to set credible,*** measurable, and meaningful ***science-based targets for emissions reduction***."[20] The Company apparently felt no need to clarify what it meant for an emissions reduction target to be credible. Likewise, its CO2eMission methodology declares that it chose its climate scenarios — the methodology *at the heart* of the Company's 2030 goals — from "credible" sources.[21] The term "credible" in respect to climate transition planning is also used in common parlance.[22]

More to the point, the Proposal intentionally allows the Company to determine whether a clients' transition plan is credible, based on management's discretion and evaluation of the many factors described in the Company Letter. Indeed, the Company Letter essentially acknowledges as much. As the Company notes, a credible net zero "pathway can vary based on the net zero timeline . . . or industry selected." Company Letter at 20. The Company Letter actually *emphasizes* that the Proposal uses the indefinite article "a" when it requests that the Company determine if its clients are aligned with "***a*** credible Net Zero aligned pathway." Company Letter at 20. Yet, the Company Letter complains, the Proposal does not "clarify what 'credible Net Zero pathway' the Company is expected to use." Company Letter at 20. As the Company's emphasis on the indefinite "a" would seem to clarify, the Proposal does not require that the Company choose a *single* "credible Net Zero pathway." Rather, the Proposal cedes to management expertise and discretion on that point. After all, the Company set "client emissions-related 2030 targets . . . us[ing] different scenarios to determine each sector's goal." Company Letter at 20. There is no reason to assume these pathways are not credible and the Proposal does not do so. The Company is left to decide what a credible net zero transition pathway is.

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[20] *2020 CDP Questionnaire* at 79, Wells Fargo (2020), *available at*: https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2021/handlerywellsfargo030921-14a8.pdf.
[21] *Co2eMission Net-zero alignment and target-setting methodology* at 11, Wells Fargo (May 2022), https://sites.wf.com/co2emission/CO2eMission_Methodology.pdf.
[22] *See, e.g.*, Alastair Marsh, *Vanguard Exit Has Lawyers Mapping Out Wall Street's Top ESG Risk*, Financial Advisor (Dec. 19, 2022), https://www.fa-mag.com/news/vanguard-exit-has-lawyers-mapping-out-wall-street-s-top-esg-risk-71183.html?print ("'For all the talk of antitrust risk,' the bigger concern 'flows from not acting in ESG friendly ways, not taking account of climate risk, not adequately preparing for the energy transition and ***not having a credible pathway to net zero***,' Tom Cummins, a partner at law firm Ashurst, said in an interview." (emphasis added)); *Credible Pathways to 1.5°C*, International Energy Agency (Apr. 2023), https://www.iea.org/reports/credible-pathways-to-150c.

We note the likelihood that, if the Proposal had attempted to define the term "credible Net Zero pathway" the Company would have objected on the basis of micromanagement. Instead, the Proponent chose to allow the Company to determine whether a client's transition plan was credibly aligned with Net Zero. As the Company Letter notes, that determination may vary by client and by sector; nothing in the Proposal requires otherwise.

The Staff routinely rejects attempts by issuers to manufacture ambiguity where none exists. For example, in *United Natural Foods, Inc.* (Oct. 2, 2014), the proposal requested that the company determine and report "the CEO-to-employee pay ratio." The company argued that the proposal "fail[ed] to define the key term, 'CEO to employee pay ratio,' and the Company and its stockholders will be unable to determine with any reasonable certainty exactly what actions or measures the Proposal requires." The Staff rejected this attempt to suggest that an extremely common and obvious term needed definition. Similarly, in *Abbott Laboratories* (Feb. 8, 2012), the company unsuccessfully attempted to argue that the term "lobbying" in a lobbying disclosure proposal was ambiguous. And in *Mattel, Inc.* (Mar. 10, 2009), the Staff rejected a company's attempt to claim that "safety and quality" of its toys and the "working conditions" of its employees were ambiguous terms.

Similarly, the Staff did not find that the well understood term "human rights" was impermissibly vague in *Chubb Limited* (Mar. 27, 2023). The proposal there requested that the company report on how "human rights risks and impacts are evaluated and incorporated in the underwriting process." In a direct mirror of the Company's argument here, Chubb argued that the proposal violated Rule 14a-8(i)(3) because it "fail[ed] to define what is meant by the key term 'human rights,' which is very broad and subject to multiple and at times conflicting interpretation." The Staff rejected this argument. It should do the same here.

CONCLUSION

The Proposal is a modest disclosure request. It is limited to sectors in which Wells Fargo has already announced "a Net Zero-aligned 2030 target." It does not require alteration of those targets. It instead requests general conclusions about the progress of its clients in those sectors and, therefore, progress toward its own transition goals. The Proposal does not dictate specific methods or calculations, does not dictate how the Company should meet its goals, or dictate how the Company should measure success. It does not request the use of new or different protocols for assessing or measuring client progress, nor does it mandate the Company take any specific responsive action to a lack of progress. In sum, it does not micromanage the Company and is consistent with the level of granularity expected of investors. Nor is the Proposal ambiguous; rather, it leaves the Company to define whether its clients' transition plans are credibly aligned with net zero, consistent with the Company's disclosed ability to do so.

Based on the foregoing, we believe that the Company has provided no basis for the conclusion that the Proposal is excludable from the 2023 proxy statement pursuant to Rule 14a-8. We urge the Staff to deny the no action request.

Sincerely,

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cc:
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