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VIA FEDERAL EXPRESS

Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

File No. S7-19-03

Dear Mr. Katz:

I am writing on behalf of Wells Fargo & Company to comment on the recent proposals in SEC Release 34-48626 to require companies to include in their proxy statements under certain circumstances security holder nominees for election as director. Two copies of this letter are enclosed.

Improper Subject for Federal Rule-Making. There has always been a line between the SEC's traditional role to assure that investors are informed, namely by mandating disclosure and regulating the activities of securities markets, and the role of state law in setting the rules of internal corporate governance. We think these rule proposals cross that line by creating substantive internal governance rules that would supplant the rules provided by state law to strike the balance between the rights of stockholders and the responsibilities of directors. We think this would result in a serious flaw by allowing crucial action affecting the corporation to be taken by individual stockholders acting in their own interest, supplanting directors acting under fiduciary obligations to stockholders as a whole. The likely result, we fear, is board membership for those representing narrow interests and disruption of board processes at the expense of the stockholder body as a whole.

We believe that this conceptual flaw is serious enough to cause the proposal to be withdrawn or seriously reworked. If, nevertheless, the proposal does go forward in its present form, we have the following additional comments on its details.

"Withhold" Vote on Director as Triggering Event. Section (a)(2) of proposed Rule 14a-11 requires one of two possible triggering events to have occurred before a company would be required to accept a security holder's nomination of a director. One of those triggering events is the receipt by a director nominee during either of the two calendar years preceding the

election of "withhold" votes from more than 35 percent of the votes cast at a meeting of security holders held after January 1, 2004. We believe this threshold ought to be 50 percent. Our concern, once again, is founded on the fact that individual stockholders (unless they are majority stockholders) are acknowledged not to have a fiduciary duty towards other stockholders and are legally permitted to vote in their own interest. In fact, with the substantial role played by institutional investors, many of these stockholders do not even express their own interests but, in effect, allow their votes to further the private agendas and causes of outside advisory services such as Institutional Shareholder Services ("ISS") by seeking and following their guidance at annual meetings. As the clients of these services grow, the effects of their advice are amplified and the voting in response to their recommendations can be quite significant.

Our own experience illustrates this phenomenon. Using their own definition of "independence," ISS recommended votes against two director nominees with relatives employed by Wells Fargo in a non-executive capacity and another nominee who was an employee prior to 1993. Even though all three qualified as "independent" under then current (as well as the new) guidelines of the New York Stock Exchange, the votes withheld ranged from 22.8 percent to 23.4 percent of the votes cast. For comparison's sake, the number of "withhold" votes received by the nominee receiving the next highest amount represented 5.3 percent of the votes cast. Advisory services have too much unregulated influence to allow the trigger in the proposed rule to be set at any level below 50 percent.

Failure to Implement Security Holder Proposals as Triggering Event. You have asked for comment on whether proposed Rule 14a-11 should include a third triggering event based on the board's failure to implement a stockholder proposal. The proposing release supposes that the approval of a stockholder proposal followed by the failure of the board to implement it is an "indication of ineffectiveness in, or dissatisfaction with, the proxy process." We think it is merely an example of a disagreement between the board and stockholders regarding what is best for the corporation. Moreover, stockholders may have been greatly influenced by ISS's recommendation rather than their own analysis.

Again, we would offer our own experience to show that a board of directors that declines to implement one stockholder proposal is not unresponsive to stockholders and will not necessarily decline to implement all stockholder proposals. At the Wells Fargo & Company annual meeting in April 2002, the stockholders (with a recommendation in favor by ISS) approved by a vote of 56 percent of the shares that were voted on the proposal (i.e. after excluding broker non-votes) a stockholder proposal requesting that the board of directors eliminate the stockholder rights plan. In response to this stockholder vote, at its meeting in July 2002, the Wells Fargo board determined that the plan no longer served the best interests of the company and took action to terminate the plan effective August 12, 2002.

The next year at the annual meeting, the same stockholder presented another proposal requesting that the Board cease using stock options unless the options are expensed. The stockholders (with a recommendation in favor by ISS) also approved this stockholder proposal by a vote of 56 percent of the shares that were voted on the proposal. Again, in response to this stockholder vote, at its meeting in July 2003, the board considered the matter but concluded that in light of the unsettled accounting and valuation issues surrounding the expensing of stock options and the fact that the accounting used by Wells Fargo was in full compliance with generally accepted accounting principles, it would be premature to take action and the board declined to implement the proposal.

This is one example, and there must be many others, of the good-faith exercise by a board of directors of its fiduciary obligations in the interest of the company as a whole. Making the most recent rejection of a stockholder proposal a trigger for opening up director nominations to stockholders rests on the erroneous assumption that all stockholder proposals which are approved are good for the corporation, an assumption which deprives the corporation of the benefit of the board's judgment and disenfranchises the board from the role mandated for it by state law. We believe that the legal responsibility of the board is to exercise its judgment in the best interest of the corporation rather than to rubber-stamp every proposal approved by stockholders. Moreover, a board may be performing this function admirably even though it rejects all stockholder proposals presented to it.

Our own experience leads us to believe there is no necessary connection between the performance of a board's responsibilities, the implementation of stockholder proposals and the functioning of the proxy process. We are strongly opposed in principle to any dilution of the board's discretion and responsibility in this area. Further, opening the proxy statement to nominations by stockholders based on the board's response to stockholder proposals would inappropriately require the board to balance the disruptive effect that special-interest directors would have on the corporation in considering the merits of stockholder proposals.

We would comment in passing that the unsuitability of using the failure to implement a stockholder proposal as a trigger is demonstrated by the discussion in the proposing release. The SEC's own request for comment on how to determine whether in fact a stockholder proposal had been implemented, how the timing of that implementation would mesh with the publication of the proxy statement and whether stockholders should have a private right of action if they do not agree that a proposal had in fact been implemented demonstrates that these are matters too complex for rule-making. In fact, whether, when and how to implement stockholder proposals should be left to the judgment of those close to the situation and under a fiduciary obligation to carry out the best interests of the company, namely the board of directors. Their deliberations should not be layered over with the extraneous consideration of whether failure to implement the proposal or implementing it in a way that takes more time will subject the company's proxy statement to direct access by stockholders.

Qualifications of Nominating Stockholders and Nominees. The proposing release solicits comment on how long and how much stock should be required to be held by stockholders who wish to nominate a director. In general, we think such a stockholder should hold as much stock for as long as practicable and should undertake to hold the stock indefinitely into the future, or at least so long as their director-nominee is included in the company's proxy statement. More fundamentally, though, the existence of these concerns illustrates the fundamental flaw in the proposal. It would replace a fiduciary -- the board of directors -- with a group of stockholders acting in their own interest. By attempting to require a stockholder to hold a certain amount of stock for a specified length of time, the proposed rule is trying to create a synthetic kind of fiduciary. In fact, regardless of what a stockholder may represent as to his or her intentions, he or she remains free to sell all of his or her stock at any time. Since no amount of stock and no holding period can create a fiduciary obligation, we find ourselves opposed to this proposal in principle.

If this proposal nevertheless goes forward in its present form, we believe that any stockholder that is qualified to make a nomination under the proposed rule should be obliged to satisfy any standards a company may have adopted for its board of directors and represent that its nominee meets those standards in addition to the "independence" representations already required by the proposed rule. The failure to meet any applicable director qualification standards adopted by the company should be grounds for excluding the nominee under paragraph (a)(3) of proposed Rule 14a-11. There should also be grounds for excluding the nominee under that paragraph if the nomination is not submitted within the time required by paragraph (c) of the proposed rule, and the stockholder should be required to provide some sort of objective proof of ownership in addition to his or her representation.

You also asked for comments on whether a repeat nomination could be excluded and whether a company should be permitted to negotiate with stockholders proposing a board nominee. We believe that a stockholder group with a board nominee is just like a stockholder with a proposal; both are trying to promote their own interests by influencing the behavior of the company in some way. Accordingly, a director nomination by a stockholder should be treated like any other stockholder proposal. Namely, if the same nominee is presented in successive years, he or she should be subject to exclusion under the same conditions that any other unsuccessful stockholder proposal would be under Rule 14a-8. Similarly, a company should be able to discuss the nomination of a director candidate with a stockholder proponent in the same way it can discuss and reach agreements regarding any other stockholder proposal.

Supporting Statement Regarding Director Nominee. Under the proposal, if a company has received the name of a nominee that it cannot exclude, it then must decide whether to put a statement opposing the nomination in its proxy materials. If the company decides to do this, it must notify the nominating stockholders, who then have the right to submit within 10 business days a statement of up to 500 words in support of the nominee. We think this process could be streamlined and made more constructive if the nominating stockholders submitted their supporting statement at the same time the name of the nominee is submitted to the company. We think that such a statement might assist the company in deciding whether to approve or oppose the nominee and would require very little additional effort by the stockholders.

Procedure for Excluding Nominees. The proposal would require a determination by the board of directors to enable the company to exclude a nominee on one of the grounds stated in the proposal. The schedule for this process of cross-notification between the company and stockholder proponents and the deadlines involved may not coincide with a company's schedule for board meetings. In addition, some of the grounds for exclusion provided in the proposal would require only a ministerial decision. Accordingly, we would suggest that the proposed rule permit a decision to exclude a nominee to be made by a committee of the board.

Thank you for your attention to these comments.

Very truly yours,

WELLS FARGO & COMPANY

By ______________________
Laurel A. Holschuh
Senior Vice President, Assistant General Counsel and Secretary

cc: Robert S. Singley, Esq., Wells Fargo & Company
James M. Strother, Esq., Wells Fargo & Company