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# Independent Study and Report and Wells Fargo & Company Response regarding Public Benefit Corporations

In 2019, Wells Fargo & Company (the “Company” or “Wells Fargo”) received a stockholder proposal (the “Proposal”) asking its Board of Directors (the “Board”) to commission an independent study, utilizing outside experts, with a report and recommendation to stockholders, to assess the feasibility of taking the necessary actions to become a Delaware public benefit corporation, or otherwise implementing similarly enforceable public purpose, accountability and reporting measures to the Company’s corporate governance documents to protect the interests of the Company’s critical stakeholders but without becoming a public benefit corporation.

The Board, acting through its Governance and Nominating Committee (the “GNC”) (to which the Board has delegated authority to oversee the Company’s corporate governance practices), engaged the law firm of Richards, Layton & Finger, PA to conduct the study and prepare the report requested in the Proposal.

The study regarding Delaware public benefit corporations and resulting report in response to the Proposal was delivered to the GNC and the Board and is included as the first part of this document beginning on the following page.

Wells Fargo’s response to the report is included as the second part of this document following the report.

**REPORT TO THE GOVERNANCE AND NOMINATING COMMITTEE OF THE  
BOARD OF DIRECTORS OF WELLS FARGO & COMPANY  
REGARDING PUBLIC BENEFIT CORPORATIONS**

In 2019, Wells Fargo & Company (the “Company” or “Wells Fargo”) received a stockholder proposal (the “Proposal”) asking its Board of Directors (the “Board”) to commission an independent study, utilizing outside experts, with a report and recommendation to stockholders, to assess the feasibility of (i) taking the necessary actions to become a Delaware public benefit corporation or (ii) otherwise implementing similarly enforceable public purpose, accountability and reporting measures to the Company’s corporate governance documents to protect the interests of the Company’s critical stakeholders but without becoming a public benefit corporation. The Board, acting through its Governance and Nominating Committee (the “GNC”) (to which the Board has delegated authority to oversee the Company’s corporate governance practices), engaged us to assist the GNC in conducting the study and preparing the report requested in the Proposal. Set forth below is our study regarding Delaware public benefit corporations and the resulting report in response to the Proposal.

**A. Feasibility of Becoming a Delaware Public Benefit Corporation**

The following section provides an overview of notable statutory requirements relating to the feasibility of Wells Fargo becoming a Delaware public benefit corporation as well as information regarding the management and governance of a public benefit corporation.

*Background on Delaware Public Benefit Corporations*

Wells Fargo is incorporated in the State of Delaware. Delaware law permits the organization of “public benefit corporations,” which are for-profit corporations organized under and subject to the General Corporation Law of the State of Delaware (the “DGCL”), that are “intended to produce a public benefit and to operate in a responsible and sustainable manner.”<sup>1</sup> 8 *Del. C.* § 362(a). The directors of public benefit corporations are required to manage the corporation in a manner that balances the stockholders’ pecuniary interests, the best interests of

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<sup>1</sup> The DGCL defines a “public benefit” as “a positive effect (or reduction of negative effects) on 1 or more categories of persons, entities, communities or interests (other than stockholders in their capacities as stockholders) including, but not limited to, effects of an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific or technological nature.” 8 *Del. C.* § 362(b).



those materially affected by the corporation's conduct, and the specific public benefit or benefits identified in the corporation's certificate of incorporation. *Id.*

### *Process of Becoming a Delaware Public Benefit Corporation*

An existing corporation that is not a public benefit corporation may become a public benefit corporation by either amending its certificate of incorporation or merging with or into another entity resulting in the shares of the existing corporation being converted into shares of a public benefit corporation. An amendment to the certificate of incorporation to become a public benefit corporation would require the approval of the board of directors and the requisite vote of the stockholders. 8 *Del. C.* § 242. The certificate of incorporation would need to be amended so that (i) the heading states that the corporation is a public benefit corporation, and (ii) the certificate of incorporation identifies one or more specific public benefits to be promoted by the corporation. A merger that results in the shares of the corporation being converted into shares of a public benefit corporation similarly would require the approval of the board of directors and the requisite vote of the stockholders.<sup>2</sup> Such an amendment to the certificate of incorporation or a merger would require the approval of the holders of two-thirds of the outstanding stock of the corporation entitled to vote thereon. 8 *Del. C.* § 363(a). Accordingly, to become a public benefit corporation, the Board would need to determine that becoming a public benefit corporation is advisable and in the best interests of Wells Fargo and its stockholders, and Wells Fargo would need to obtain the affirmative vote of the holders of two-thirds of its outstanding common stock. The solicitation of the stockholder vote would require the Company to file solicitation materials with the Securities and Exchange Commission (the "SEC") and, thereafter, submit the amendment to the certificate of incorporation or the merger to a vote of the stockholders at an annual or special meeting of the stockholders or seek such stockholder approval by written consent.

If Wells Fargo were to obtain the requisite stockholder vote in the case of an amendment to the Company's Restated Certificate of Incorporation, the officers of the Company would then be required to file with the Secretary of State of the State of Delaware (the "Secretary of State") a certificate of amendment to the Restated Certificate of Incorporation setting forth the amendment or an amended and restated certificate of incorporation incorporating the amendment. If Wells Fargo were to obtain the requisite stockholder vote in the case of a merger, the officers of the surviving public benefit corporation would then be required to file with the Secretary of State a certificate of merger. In either case, if the requisite stockholder vote were obtained via written consent in lieu of a meeting, the officers of the Company would be required to send a Section 228(e) notice to those stockholders that did not consent to the adoption of the amendment or the merger, as applicable.

### *Appraisal Rights in Connection with a Conversion to a Public Benefit Corporation*

Under certain circumstances, the conversion of an existing corporation to a public benefit corporation may entitle dissenting stockholders to exercise statutory appraisal rights (*i.e.*, the right

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<sup>2</sup> Note that if such a merger is structured so that Wells Fargo merges with and into a public benefit corporation, Wells Fargo's third-party contracts would need to be reviewed to determine how a merger through which Wells Fargo merges out of existence would affect its existing contracts.

to seek a judicial determination of the fair value of the dissenting stockholders' shares, payable in cash with interest at the statutory rate). 8 *Del. C.* § 363(b). Specifically, pursuant to the DGCL, a stockholder that has not voted in favor of (or consented in writing to) an amendment to the certificate of incorporation or a merger that would result in the corporation becoming a public benefit corporation is entitled to appraisal rights with respect to such stockholder's shares; provided, however, that such appraisal rights are not available for shares of any class or series that is listed on a national securities exchange or held of record by more than 2,000 holders, unless, in the case of a merger, the stockholders are required to accept anything for their shares other than publicly traded shares of stock, cash in lieu of fractional shares, or any combination thereof. 8 *Del. C.* § 363(b). Accordingly, in the case of an amendment to the Restated Certificate of Incorporation, appraisal rights would not be available to the holders of the outstanding shares of Wells Fargo common stock (because such shares are listed on a national securities exchange), but would be available to the holders of the outstanding shares of certain series of Wells Fargo preferred stock (because such shares are neither listed on a national securities exchange nor held of record by more than 2,000 holders).<sup>3</sup> Similarly, in the case of a merger, appraisal rights would be available to the holders of the outstanding shares of the same series of Wells Fargo preferred stock.<sup>4</sup>

### *Governance of a Public Benefit Corporation*

Delaware laws governing the internal affairs of a conventional stock corporation are largely applicable to a public benefit corporation, although there are certain significant differences including those relating to the fiduciary duties of the board of directors. Specifically, in a public benefit corporation, directors are required to manage the corporation in a manner that balances the pecuniary interests of the stockholders, the best interests of those materially affected by the corporation's conduct, and the specific public benefit or benefits identified in its certificate of incorporation. 8 *Del. C.* § 365(a). A director of a public benefit corporation does not, by virtue of the public benefit provisions, have any duty to any person on account of such person's interests in the public benefit(s) identified in the certificate of incorporation or on account of any interest materially affected by the corporation's conduct. 8 *Del. C.* § 365(b). For any decision requiring such balancing, each director is deemed to have satisfied his or her fiduciary duties to stockholders and the corporation if his or her decision is informed and disinterested and not such that no person of ordinary, sound judgment would approve. 8 *Del. C.* § 365(b). The certificate of incorporation of a public benefit corporation may include a provision that any disinterested failure to satisfy such duties shall not constitute an act or omission not in good faith or a breach of the duty of loyalty. 8 *Del. C.* § 365(c). Stockholders of public benefit corporations who own individually or collectively at least 2% of the corporation's outstanding shares or, in the case of a corporation with shares listed on a national securities exchange, the lesser of such percentage or shares of at least \$2 million in

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<sup>3</sup> Such series of preferred stock include Series I, Series K, Series S and Series U.

<sup>4</sup> In the case of a merger, the holders of Wells Fargo common stock would not have appraisal rights unless the Wells Fargo stockholders are required to accept anything for their shares other than publicly traded shares of stock, cash in lieu of fractional shares or any combination thereof. If any stockholders are entitled to appraisal rights in connection with the conversion to a public benefit corporation, the proxy materials soliciting the approval of the stockholders would also need to include a notice of appraisal rights in accordance with Delaware law.

market value, may bring derivative claims against the board of directors for failure to balance stockholder and public benefit interests properly. 8 *Del. C.* § 367.

### *Other Statutory Considerations and Requirements*

In addition, the following requirements currently apply to a Delaware public benefit corporation:

- If the name of the corporation does not include the words “public benefit corporation,” P.B.C. or PBC,<sup>5</sup> the corporation must, prior to issuing shares, provide notice to the persons being issued such shares that the corporation is a public benefit corporation. 8 *Del. C.* § 362(c).
- Any stock certificates shall note conspicuously that the corporation is a public benefit corporation, and any notice given to holders of uncertificated shares pursuant to Section 151(f) of the DGCL shall state conspicuously that the corporation is a public benefit corporation. 8 *Del. C.* § 364.
- Any notice of a meeting of stockholders must include a statement that it is a public benefit corporation. 8 *Del. C.* § 366(a).
- It must, no less than biennially, provide stockholders with a statement as to the corporation’s promotion of the public benefit identified in the certificate of incorporation and of the best interests of those materially affected by the corporation’s conduct. 8 *Del. C.* § 366(b).
- It may not amend its certificate of incorporation to delete or amend the public benefit provision or merge or consolidate with and into an entity that results in its shares being converted into shares of a corporation that is not a public benefit corporation without the approval of the holders of two-thirds of the outstanding shares of stock of the corporation entitled to vote thereon. 8 *Del. C.* § 363(c).

### **B. Feasibility of Implementing Enforceable Public Purpose, Accountability and Reporting Measures in Wells Fargo’s Governing Documents**

Rather than converting to a public benefit corporation, a corporation may amend the purpose clause of its certificate of incorporation to add a public benefit purpose that does not opt into public benefit corporation status,<sup>6</sup> or may alternatively amend its certificate of incorporation

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<sup>5</sup> If the corporation changes its name to indicate that it is a public benefit corporation, the corporation would need to make other necessary changes to reflect the name change, including, but not limited to, updating bank accounts, business cards, letterhead and registrations.

<sup>6</sup> For such a provision to be enforceable, it would need to be included in the certificate of incorporation and could not be accomplished through an amendment to the bylaws or an amendment to the corporate governance guidelines or another policy of the corporation. 8 *Del. C.*

or bylaws to add reporting or other accountability requirements such as those described in the Proposal.<sup>7</sup> Such amendments would not result in the corporation becoming a public benefit corporation and may not alter directors' fiduciary duties to stockholders and must otherwise be permitted under Delaware law.<sup>8</sup>

Such an amendment to the certificate of incorporation would require the approval of the board of directors and the subsequent approval of the holders of a majority of the outstanding stock entitled to vote thereon. 8 *Del. C.* § 242.<sup>9</sup> Notably, the voting standard to amend the purpose clause of the certificate of incorporation in this manner (the majority of the outstanding stock entitled to vote thereon) presents less of a hurdle than the standard required to convert to a public benefit corporation (two-thirds of the outstanding stock entitled to vote thereon). Such an amendment to the bylaws would require either the approval of the holders of a majority of the outstanding stock entitled to vote at the meeting of stockholders or the approval of the Board by a vote of a majority of the entire Board. In either case, because the corporation would not be a public benefit corporation, the directors would continue to have the standard fiduciary duties to the corporation and its stockholders. Any decision made by the Board with respect to the public benefit purpose would need to be made consistent with the best interests of Wells Fargo and its stockholders.

### **C. Other Relevant Factors, Considerations and Recommendations**

As described above, both converting to a public benefit corporation and implementing public purpose, accountability and reporting measures in the Company's governing documents are feasible as a technical matter under Delaware law. However, there are various additional relevant factors and issues relating to the practicality and appropriateness of taking these steps that we recommend be considered by the Board and stockholders in any consideration of this matter, including, but not limited to, those described below.

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§ 102(a)(3) ("The certificate of incorporation shall set forth ... [t]he nature of the business or purposes to be conducted or promoted.").

<sup>7</sup> An accountability or reporting measure also could be included in the corporate governance guidelines or another policy of the corporation; however, the enforceability of such a measure would depend on applicable law and other relevant factors.

<sup>8</sup> *See, e.g.*, Article Third of the Restated Certificate of Incorporation of The Goldman Sachs Group, Inc. ("Without limiting the generality of the foregoing, the Corporation shall have all of the powers conferred on corporations by the Delaware General Corporation Law and other law, including the power and authority to make an initial charitable contribution (as defined in Section 170(c) of the Internal Revenue Code of 1986, as currently in effect or as the same may hereafter be amended) of up to an aggregate of \$200,000,000 to one or more entities (the "Contribution"), and to make other charitable contributions from time to time thereafter, in such amounts, on such terms and conditions and for such purposes as may be lawful.").

<sup>9</sup> The process of the solicitation of the vote of the requisite stockholders would be the same as the process described in Section A above.

### *Ability to Obtain the Requisite Stockholder Vote in Connection with a Conversion to a Public Benefit Corporation or an Amendment to the Company's Certificate of Incorporation*

Amending the certificate of incorporation or merging to become a Delaware public benefit corporation is only feasible if Wells Fargo is able to obtain a vote of the holders of two-thirds of its outstanding common stock. Amending the Company's certificate of incorporation to add a public benefit purpose or to implement accountability and reporting measures such as those described in the Proposal but without becoming a public benefit corporation would require the vote of the holders of a majority of the Company's outstanding common stock. Under both of these voting standards, obtaining the required stockholder approval could be challenging, particularly given the lack of precedent for a publicly traded corporation to convert to a public benefit corporation or amend the purpose clause in its certificate of incorporation to implement enforceable public purpose or accountability and reporting measures such as those described in the Proposal.

### *Ability of Directors of Delaware Corporations to Consider the Interests of Stakeholders*

The directors of Delaware corporations that are not public benefit corporations or do not implement public purpose, accountability and reporting measures such as those described in the Proposal in their governing documents may (and often do) consider the interests of other stakeholders of the corporation so long as any decisions made with respect to such stakeholders are in the best interests of the corporation and its stockholders.<sup>10</sup>

### *Lack of Precedent for the Management of Public Benefit Corporations*

To our knowledge, no U.S. publicly traded corporation has converted to a public benefit corporation, and only one U.S. corporation has gone public as a public benefit corporation.<sup>11</sup> There are no major financial institutions that are public benefit corporations. Similarly, to our knowledge, there is minimal precedent regarding publicly traded corporations that have implemented public purpose or accountability and reporting measures such as those described in the Proposal in their certificate of incorporation or bylaws. As a result, there would likely be some uncertainty regarding decision-making in a public benefit corporation or a corporation that has implemented a public benefit purpose in its certificate of incorporation where the interests of stockholders and other stakeholders or the public benefit diverge. In addition, there is no case law in Delaware that provides guidance regarding the balancing obligation of directors of public benefit corporations.

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<sup>10</sup> See footnote 7 *supra*. See also *eBay Domestic Holdings, Inc. v. Newmark*, 16 A.3d 1, 33 (Del. Ch. 2010) (noting that, for corporations that are not public benefit corporations, “[p]romoting, protecting, or pursuing nonstockholder considerations must lead at some point to value for stockholders”); *Revlon Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173, 183 (Del. 1986) (noting that, with respect to corporations that are not public benefit corporations, “[a] board may have regard for various constituencies in discharging its responsibilities, provided there are rationally related benefits accruing to the stockholders.”).

<sup>11</sup> Laureate Education, Inc., a for-profit education company, completed its initial public offering in February 2017 and is listed on the Nasdaq Global Select Market.

## *Regulatory Uncertainty and Oversight by Financial Regulators*

As a large financial institution, Wells Fargo is subject to review and examination by a number of regulatory agencies, including, among others, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Consumer Financial Protection Bureau, the Securities and Exchange Commission and the Commodities Futures Trading Commission. Compliance with the rules and regulations of these authorities allows Wells Fargo to continue to do business as a financial institution. The views of such authorities, as well as Wells Fargo's ability to comply with the applicable rules and regulations of such authorities, could impact Wells Fargo's ability to convert to a public benefit corporation or include a public benefit purpose or reporting and accountability measures such as those described in the Proposal in its governing documents.

## *Market Uncertainty*

Due to the lack of precedent for a publicly traded company (let alone a major financial institution) to either convert to a public benefit corporation or implement public purpose, accountability and reporting measures such as those described in the Proposal in its certificate of incorporation or bylaws, it would be difficult to predict the impact such actions would have on a company's short and long-term stock price and market capitalization.

## *Costs of Implementation*

The costs of converting to a public benefit corporation could include, but are not limited to, (i) the fees and expenses of legal and other advisors in connection with the conversion and managing the corporation as a public benefit corporation following the conversion; (ii) the costs, fees and expenses incurred in connection with any appraisal proceedings that may be filed by certain holders of preferred stock; (iii) the fees and expenses incurred in connection with any stockholder derivative litigation relating to the conversion; (iv) the costs of soliciting stockholder approval of the conversion to a public benefit corporation; and (v) the costs of preparing the biennial statement to stockholders (as described above). Similarly, the costs of implementing public purpose, accountability and reporting measures such as those described in the Proposal could include, but are not limited to, (a) the fees and expenses of legal and other advisors in connection with the amendment of the governing documents and management of the corporation following the implementation, and (b) the costs of soliciting stockholder approval of any amendment to the certificate of incorporation.

## *Wells Fargo's Current Public Benefit Initiatives*

Wells Fargo is engaged in various public benefit activities and initiatives that it has undertaken under its existing corporate governance structure and periodically publishes public reports describing those activities and initiatives.

Dated: January 28, 2020

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## Response of Wells Fargo & Company

**January 30, 2020**

The Board, acting through its Governance and Nominating Committee (to which the Board has delegated authority to oversee the Company's corporate governance practices), reviewed the report prepared by Richards, Layton & Finger PA (the "Report"), which is included in the first part of this document. Taking into account the information in the Report and for the additional reasons discussed below, the Board determined that while aspects of the Proposal may be technically feasible, implementing the Proposal is neither appropriate nor necessary, and the Board does not recommend any further action regarding the Proposal.

Wells Fargo has long believed that focusing on the needs of all of its stakeholders, including customers, employees, regulators, suppliers, communities, and stockholders, drives long-term value creation. Wells Fargo understands that it has a fundamental commitment to all of its stakeholders, and one of the first actions of our new CEO, Charles W. Scharf, was to express his support for, and sign on to, the Business Roundtable's Statement on the Purpose of a Corporation (the "Business Roundtable Statement"). The Business Roundtable Statement sets forth a commitment by the companies signing the document in five areas that Wells Fargo believes are consistent with the Company's existing Vision, Values & Goals and Code of Ethics and Business Conduct (the "Code of Ethics"): (1) delivering value to our customers; (2) investing in our employees; (3) dealing fairly and ethically with our suppliers; (4) supporting our communities in which we work; and (5) generating long-term value for stockholders.

Under Wells Fargo's existing corporate governance structure, the Board's Corporate Responsibility Committee (the "CRC") oversees—and our management team directs—Wells Fargo's policies, programs, and strategies regarding corporate responsibility matters of significance to Wells Fargo and the public at large, including our community development and reinvestment activities and performance, fair and responsible lending, support of charitable organizations, and environmental issues. The CRC also monitors the Company's relationships and reputation with external stakeholders relating to significant corporate responsibility matters, including by taking into account feedback from the Company's external Stakeholder Advisory Council. Wells Fargo formed the Stakeholder Advisory Council in 2017 to provide insight and feedback to the Board and senior management from a stakeholder perspective, and it is composed of national thought leaders representing stakeholder groups important to the Company, including groups focused on human rights, consumer rights, fair lending, the environment, civil rights, and governance. In connection with its oversight activities, the CRC works closely with management's Public Affairs organization, which, among other things, includes our Corporate Philanthropy and Community Relations group that manages how we partner across Wells Fargo to make an impact on the communities we serve, and our Sustainability and Corporate Responsibility group that focuses on our awareness, management, performance, and disclosure relating to critical environmental, social, and governance issues. The CRC and our management team are focused on developing approaches to integrate public benefit strategies into our business in ways consistent with our Vision, Values & Goals, Code of Ethics, and the Business Roundtable Statement.

Wells Fargo has a deep commitment to our stakeholders as we continue to work to rebuild trust and transform our Company to better serve our customers and other stakeholders. We are committed to transparency through our public disclosures about our public benefit activities, including through our [Business Standards Report](#) issued in January 2019, our [2018 Corporate Responsibility Report](#) published in August 2019, and [Shaping our CSR Priorities](#) report issued in May 2018. In these and other disclosures, we identify various measurable outcomes, commitments, and goals of the Company, including regarding, among other topics, our contributions to non-profit organizations, our small-business and minority-borrower

lending activities, our investment in our employees, our engagement and diversity initiatives with suppliers, and our sustainability initiatives. Our [Shaping our CSR Priorities](#) report also details the formal process we go through on a routine basis to engage with our stakeholders to better understand the environmental, social, and governance issues of importance to our stakeholders, and our approach to integrating these findings into our corporate responsibility activities. By setting goals and providing [periodic updates](#) on our progress, we hold ourselves accountable to our many stakeholders, including stockholders, customers, employees, regulators, and the communities we serve, with respect to our public benefit activities.

Based on a review of the Report and Wells Fargo's public benefit activities, the Board concluded that Wells Fargo's existing corporate governance structure provides our management team and Board with appropriate flexibility to promote the interests of our various stakeholders and to manage important environmental, social, and governance matters without the significant uncertainties, costs, and distractions that the Proposal's implementation would require. Accordingly, the Board does not recommend any further action.