

January 11, 2024
Via online submission

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

RE: Shareholder Proposal of American Conservative Values ETF at Wells Fargo & Company under Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

I am writing on behalf of the American Conservative Values ETF (“ACV” or the “Proponent”) to defend its shareholder proposal to Wells Fargo & Company (“Wells Fargo” or the “Company”). Ronald O. Mueller wrote to you on behalf of Wells Fargo on December 29th, 2023, to ask you to concur with Wells Fargo’s view that it can exclude ACV’s shareholder proposal from its 2024 Annual Meeting of Shareholders for failure to prove continuous ownership under Rule 14a-8(b) and (f). Wells Fargo has the burden of demonstrating it is entitled to exclude the Proposal. *See* Rule 14a-8(g). But it cannot bear this burden for two separate and independent reasons.

First, Wells Fargo’s no-action request fails for lack of notice. In its deficiency notice, Wells Fargo *approved* ACV’s proffered time frame to show ownership and erroneously took issue only with a failure to show continuous ownership. Since Wells Fargo has not properly notified ACV of the deficiency, it cannot argue for no-action relief on this issue under 14(f).

Second, Wells Fargo argues that ACV has failed to provide continuous proof of ownership of \$25,000 in voting securities for “one year” under 14(b)(i)(C). But it is undisputed that ACV supplied proof of continuous ownership of \$25,000 in Wells Fargo voting securities from November 14th, 2022 to November 13th, 2023, a 365-day period also known as a year. So ACV has satisfied the proof of ownership requirement. Wells Fargo contends that ACV must show proof of ownership for a year and a day, in plain contravention of the meaning of “one year.”

Discussion

A. Relevant background

On November 13th, 2023, ACV submitted a shareholder proposal at Wells Fargo focused on politicized de-banking. Wells Fargo’s No-Action Request (“NAR”), Ex. A. A letter with the shareholder proposal also stated that “A Proof of Ownership letter is

forthcoming and will be delivered once the company confirms receipt of this proposal and its submission date.” *Id.*

On November 28th, Wells Fargo sent ACV a notice of deficiency stating ACV lacked the proof of ownership letter and did not provide multiple times to meet with the company about the proposal, as required under Rule 14a-8(b)(iii). NAR Ex. B.

On December 4th, ACV provided a proof of ownership letter from its DTC participant, Citibank, and multiple dates of engagement availability. The letter from Citibank stated in relevant part:

We are writing to verify that American Conservative Values ETF (ACVF currently owns 8,127 shares of Wells Fargo (Cusip # 949746101) as of November 13, 2023. We confirm that American Conservative Values ETF has beneficial ownership from November 14, 2022 to November 13, 2023 of at least \$25,000 in market value of the voting securities of Wells Fargo, ticker WFC and that such beneficial ownership has continuously existed as of November 13, 2023 in accordance with rule 14a-8(a)(1) of the Securities Exchange Act.

NAR Ex. D.

On December 6th, Wells Fargo responded with a second notice of deficiency. NAR Ex. F. There, Wells Fargo told ACV the following: “The Citibank letter is insufficient because while it verifies ownership of 8,127 Company shares as of November 13, 2023, and beneficial ownership of at least \$25,000 in market value of Company shares from November 14, 2022 to November 13, 2023, the Citibank Letter does not verify continuous ownership of the Company shares for the one-year period preceding and including the Submission Date [November 13, 2023].” NAR Ex. F.

On December 7th, ACV submitted an updated letter from Citibank. That letter addressed Wells Fargo’s concern about continuous ownership by changing the language on continuous ownership from “beneficial ownership has continuously existed as of November 13, 2023” to “beneficial ownership has continuously existed for the above time frame,” November 14, 2022, to November 13, 2023. NAR Ex. H.

B. Legal standard

One of the procedural requirements to file a shareholder proposal is for the shareholder proponent to demonstrate proof that he or she has owned enough securities for long enough to satisfy Rule 14a-8. As relevant here, the shareholder “must have continuously held . . . [a]t least \$25,000 in market value of the company’s securities entitled to vote on the proposal for at least one year.” 17 C.F.R. § 240.14a-8(b)(1)(i)(C). SEC Staff Bulletins consistently interpret “one year” to mean “one year as of the time the shareholder submits the proposal.” SEC Staff Legal Bulletin 14 (July 13, 2001); SEC Staff Legal Bulletin 14F (Oct. 18, 2011) (“one year as of the date

the shareholder submits the proposal”); SEC Staff Legal Bulletin 14G (Oct. 16, 2012) (“one year as of the date the shareholder submits the proposal”).

The one-year period ends at and must include the submission date itself; that is, it must cover “the entire one-year period preceding and including the date the proposal is submitted.” SEC Staff Legal Bulletin 14F. The Staff also consistently rejects “an overly technical reading of proof of ownership letters.” SEC Staff Legal Bulletin 14K (Oct. 16, 2019); SEC Staff Legal Bulletin 14L (Nov. 3, 2021).

If the company wants to exclude a proposal for failing to show proof of ownership, it must “notify [the proponent] in writing of any procedural or eligibility deficiencies” and may only exclude the proposal on this ground if the shareholder has “failed to adequately correct it” within 14 days. Rule 14a-8(f)(1). This requires the company to do more than cite the relevant subsection. It must “provide adequate detail about what the Proponent was required to do to comply with Rule 14a-8.” *Southwestern Energy Company* (Mar. 15, 2022) (deficiency notice did not identify specific problems with proponent’s statement of engagement availability).

C. Wells Fargo did not notify American Conservative Values of a deficiency in the one-year time frame and actually approved of it.

The Staff does not need to decide the adequacy of the one-year ownership because Wells Fargo has waived the ability to raise this in a no-action request. As explained above, Wells Fargo must “provide adequate detail about what the Proponent was required to do to comply with Rule 14a-8.” But there was no such detail. In fact, Wells Fargo actually approved of the Proponent’s date range.

The only specific deficiency the second notice identified was that it did not verify continuous ownership: “The Citibank letter is insufficient because while it verifies ownership of 8,127 Company shares as of November 13, 2023, and beneficial ownership of at least \$25,000 in market value of Company shares from November 14, 2022 to November 13, 2023, the Citibank Letter does not verify continuous ownership of the Company shares for the one-year period preceding and including the Submission Date [November 13, 2023].” Fairly read, Wells Fargo is approving of the November 14, 2022, to November 13, 2023, time frame because it uses both that time frame and the \$25,000 threshold as examples of what the proof of ownership letter got right.

This makes sense, because the initial proof of ownership letter contained a separate statement stating that “beneficial ownership has continuously existed as of November 13, 2023.” NAR Ex. D. And Staff Legal Bulletin 14F, which Wells Fargo cited and attached to its second deficiency notice, notes that “fail[ing] to confirm continuous ownership of the securities” is a common error when submitting proof of ownership.

It is disingenuous for Wells Fargo to now say that it put ACV on notice about the date span, particularly November 13, 2022. Indeed, the second notice did not identify any alleged deficiencies other than the continuous nature of the ownership. Nor did it specify how—in Wells Fargo’s view—ACV could correct this. The rest of the letter is just boilerplate language about how to prepare a written statement from Citibank or provide an alternative proof of ownership and advising ACV to respond to the company within the 14-day requirement of 14(f).

Wells Fargo approved ACV’s time frame for proof of ownership and failed to notify it of any alleged problem, so it cannot bring a no-action request on this ground alone.

D. American Conservative Values has satisfied the one-year ownership requirement.

Wells Fargo is also wrong about the meaning of “one year.” Its argument boils down to there being 366 days in a year (or 367 in a leap year). Rule 14a-8(b)(i)(C) requires proof of ownership for a year, not a year and a day.

At times, the Staff has emphasized that this one-year period spans “the entire one-year period preceding and including the date the proposal is submitted.” SLB 14F. The Staff has done this to avoid two common errors: putting the end date *before* the submission date, thus “leaving a gap between the date of the verification and the date the proposal is submitted,” and putting the end date “*after* the date the proposal was submitted but cover[ing] a period of only one year, thus failing to verify . . . the required full one-year period preceding the date of the proposal’s submission.” *Id.* Every one of Wells Fargo’s no-action cites deals with these two cases.

But this case deals with neither because ACV ended the one-year span on the Submission Date, November 13, 2023, and went back to November 14, 2022, to cover a full year. All the days preceding and including the Submission date are 365 calendar days, on a non-leap year. This is one year.

Wells Fargo tries to strain the interpretation of SLB 14F by saying that “the entire one-year period preceding and including the date the proposal is submitted” is actually a one-year period *plus* the date the proposal is submitted. But the plain language of the Bulletin is that this one-year period *includes* the submission date. The Staff was clarifying that the submission date ends the span for the “one-year period” of Rule 14a-8(b), not rewriting “one-year period” to mean “one-year-and-a-day period.” The Staff even stated in a subsequent bulletin that the relevant time is “at least one year as of the date the shareholder submits the proposal.” SLB 14G.

Conclusion

For the above reasons, I respectfully request the Staff reject the Company's request for relief from the Proposal. A copy of this correspondence has been timely provided to the Company. If we can provide additional materials to address any queries the Commission may have with respect to this letter, please do not hesitate to contact me.

Sincerely,



Michael Ross

Cc: Ronald O. Mueller