Richard D. Levy
Executive Vice President & Controller

MAC A0163-039
343 Sansome Street, 3rd Floor
San Francisco, CA 94104
415 222-3119
415 975-6871 Fax
richard.d.levy@wellsfargo.com

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Via email

Russell G. Golden, Chairman
Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, Connecticut 06856-5116

Re: File Reference No. 2015-270: Proposed Accounting Standards Update, *Compensation-Stock Compensation (Topic 718)*

Dear Mr. Golden:

Wells Fargo & Company (Wells Fargo) is a diversified financial services company with over $1.7 trillion in assets providing banking, insurance, investments, mortgage, and commercial and consumer finance services. We appreciate the opportunity to comment on the FASB's Proposed Statement of Financial Accounting Concepts: *Compensation-Stock Compensation (Topic 718), Improvements to Employee Share-Based Payment Accounting* ("The Proposal").

We support the proposed changes for accounting for forfeitures, standardization of the minimum tax withholding threshold to qualify for equity classification and the treatment of stock compensation items in the statement of cash flows. These changes will reduce complexity for financial statement preparers without adversely affecting the utility of the financial statements. However, we do not believe that the proposed change to record both excess tax benefits and excess tax deficiencies directly in earnings (the "APIC change") has conceptual merit nor results in an improvement. Eliminating the need to track the historical excess tax benefit pools in additional paid-in capital (the "APIC pools") will result in significant incremental costs for all companies, not just banks. Currently, the excess tax benefit calculation is determined at a pool level and is fully supported by existing accounting systems. However, the APIC change will require the determination of the excess tax benefits on an employee-by-employee/grant-by-grant basis. Accordingly, this proposal will not represent a simplification and instead will create an enormous amount of cost to re-work underlying systems and workflow.

Most importantly, we do not agree with the conceptual merit of the APIC change. The difference between the compensation expense recognized for financial reporting purposes and the fair value of the stock award on the exercise date is appropriately never recognized in earnings by the reporting entity. Accordingly, the tax effect of that difference, i.e., the excess tax benefit or deficiency, should not be reflected in earnings. In addition, the exercise of a stock award results in the issuance of stock which is also appropriately recognized in equity rather than earnings. Conceptually, the granting of the award should result in compensation expense while exercise of the award should remain an equity transaction. As such, any subsequent differences in realized tax benefits, both excess tax benefits and tax deficiencies, should be recognized in additional paid-in capital. This approach best reflects the economics and nature of a stock award and is more understandable for financial statement users.

Moreover, we believe the current model whereby tax deficiencies are only recorded to additional paid-in capital to the extent there are sufficient prior excess tax benefits available to absorb the deficiencies is conceptually flawed and agree that the tracking of APIC pools is unnecessary and should be eliminated. For many companies, the current approach may be punitive when there are not sufficient APIC pools available. Recording all excess tax benefits and excess tax deficiencies to additional paid-in capital will eliminate the need to track APIC pools and accomplish the Board's simplification objective while producing consistent accounting across all entities.

Lastly, the APIC change will also complicate the income tax rate reconciliation disclosures. Recording excess tax benefits and deficiencies directly to the income tax provision will result in a new reconciling item between the statutory tax and effective income tax rates as there is no corresponding pretax expense item related to the additional tax recorded. The proposed change will distort the relationship between pretax income and expected income taxes, resulting in more complex tax disclosures. For these reasons, we recommend recording *all* excess tax benefits and excess tax deficiencies in APIC.

We also have the following comments on the proposed changes related to the standardization of the statutory minimum tax withholding threshold:

- As described in the basis of conclusions in BC16, we believe it was the Board's intent to determine the withholding tax rate at the jurisdiction level. However, the proposed guidance in ASC 718-10-18 seems to imply that the withholding tax rate should be determined at the individual employee level. To accomplish simplification, the rate should be determined at the jurisdiction level.

- The Proposal eliminates the guidance in ASC 718-10-25-19 which included a reference to payroll taxes as a type of tax on which the determination of minimum tax withholding could be based. However, the Board did not include a similar reference to payroll taxes in the revised guidance.

- To rectify these issues, we encourage the Board to make the following revisions to ASC 718-10-25-18 (strikethrough for proposed deletions, proposed inserts are underlined):

> **718-10-25-18** Similarly, a provision for either direct or indirect (through a net-settlement feature) repurchase of shares issued upon exercise of options (or the vesting of nonvested shares), with any payment due employees withheld to meet the employer's statutory withholding requirements resulting from the exercise, does not, by itself, result in liability classification of instruments that otherwise would be classified as equity. However, if the amount that is withheld, or may be withheld at the employee's discretion, is in excess of the ~~employee's~~ maximum ~~individual~~ statutory tax rate in the applicable jurisdiction, the entire award shall be classified and accounted for as a liability. That is, to qualify for equity classification the employer must have a statutory obligation to withhold taxes on the employee's behalf and the amount withheld cannot exceed the ~~amount determined on the basis of the employee's~~ maximum ~~individual~~ statutory tax rate in the applicable jurisdiction. The maximum ~~individual~~ statutory tax rates are based on the applicable rates required by the relevant tax authority (or authorities, for

> example, federal, state, and local), including the employee's share of payroll taxes that are applicable to such supplemental taxable income, as provided in tax law, regulations, or the authority's administrative practices.

The share-based compensation accounting model warrants simplification and we agree with the proposed changes in the areas of accounting for forfeitures, minimum tax withholding and cash flow statement treatment of stock compensation items. However, the APIC change lacks conceptual merit, will result in significant incremental costs to preparers and less meaningful financial statement disclosures. We recommend recognizing any subsequent differences in realized tax benefits, both excess tax benefits and tax deficiencies, in additional paid-in capital.

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We appreciate the opportunity to comment on the Proposal and are willing to work with the FASB as you proceed with further deliberations on the topic. If you have any questions, please contact me at 415-222-3119 or Mario Mastrantoni at 704-383-9678.

Sincerely,

/s/ Richard D. Levy

Richard D. Levy
Executive Vice President & Controller

CC: Rusty Thompson - Office of the Comptroller of the Currency
Robert Storch - Federal Deposit Insurance Corporation
Steven Merriett - Federal Reserve Board
Donna Fisher - American Bankers Association
David Wagner - The Clearing House Association