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

Ladies and Gentlemen:

On behalf of Morgan Stanley, a Delaware corporation (the "**Company**"), in accordance with Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), we are filing this letter with respect to the shareholder proposal (the "**Proposal**") submitted by As You Sow (on behalf of Michael Monteiro 2016 Rev Tr) (the "**Proponent**") for inclusion in the proxy materials the Company intends to distribute in connection with its 2024 Annual Meeting of Shareholders (the "**2024 Proxy Materials**"). The Proposal is attached hereto as Exhibit A.

We hereby request confirmation that the Staff of the Division of Corporation Finance (the "**Staff**") will not recommend any enforcement action if, in reliance on Rule 14a-8, the Company omits the Proposal from the 2024 Proxy Materials.

In accordance with relevant Staff guidance, we are submitting this letter and its attachments to the Staff through the Staff's online Shareholder Proposal Form. In accordance with Rule 14a-8(j), we are simultaneously sending a copy of this letter and its attachments to the Proponent as notice of the Company's intent to omit the Proposal from the 2024 Proxy Materials. This letter constitutes the Company's statement of the reasons it deems the omission of the Proposal to be proper. We have been advised by the Company as to the factual matters set forth herein.

THE PROPOSAL

The Proposal states:

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

BACKGROUND

The Company takes seriously its responsibility to help reduce greenhouse gas emissions and the Company is committed to considering climate change throughout its business, operational and risk management activities.

In 2020, the Company was the first major U.S. headquartered global financial services firm to commit to achieve net-zero[1] financed emissions[2] by 2050, which it continues to support and work towards. In 2021, the Company announced its 2030 interim financed emissions targets for the auto manufacturing, energy and power sectors within its corporate lending portfolio, which it identified as the most emissions-intensive sectors in such portfolio. The Company is a member of the Partnership for Carbon Accounting Financials ("**PCAF**") Board of Directors, and is a member of the Steering Committee of the Net-Zero Banking Alliance ("**NZBA**"). The Company considers the frameworks and methodologies of these two organizations to help inform its thinking regarding climate-related targets and measurement of progress. In 2021 and 2022 the Company published 2019 baseline greenhouse gas ("**GHG**") emissions data for these sectors and has continued to publish this data for subsequent years, also explaining changes from year to year. In addition, the Company has made a commitment to mobilize $750 billion to support low-carbon and green solutions by 2030.

The Company uses a "measure, manage and report" framework in its approach to net-zero and related interim targets. The Company uses PCAF's carbon accounting methodology to measure its financed emissions related to corporate lending (as discussed in more detail below), and considers suggested best practices from the NZBA in order to manage its climate target-setting. Further, the Company uses the industry-leading Task Force on Climate-Related Financial Disclosures ("**TCFD**") framework as guidance for making its climate-related financial disclosures, and includes a TCFD index in its 2022 ESG Report published in 2023 (the "**ESG Report**").[3] In addition, in November 2021 the Company published the methodology used for its 2030 interim financed emissions targets (the "**Methodology Report**").[4] The Company's interim financed emissions targets were informed by the International Energy Agency's ("**IEA**") Net-Zero Emissions by 2050 Scenario ("**NZE**"), which describes a possible pathway for the energy sector and related industries to achieve global net-zero emissions by 2050, in line with the Paris Agreement's goal to limit long-term temperature increase to 1.5ºC.[5]

The Company's climate strategy is driven by the overall goal of achieving net-zero financed emissions. The Company manages climate risk by integrating climate change considerations across risk management processes and governance structures. The Company has a commitment to transparency and to communicate progress through public disclosures and intends to increase focus on how portfolio lending decisions affect the progress toward its net-zero interim targets. The Company will continue to work with its clients on their transition strategies and consider their approaches to climate as it makes portfolio lending decisions to meet its 2030 interim net-zero targets.

At the same time, the Company recognizes the need to balance the urgency for action on climate with the realities of the current social, economic and geopolitical landscape. The Company manages its business for the long term while providing value for its clients and shareholders by incorporating climate considerations into its business activities. The ESG Report acknowledges that "clients are at different stages of setting their own targets, developing plans to diversify and, in some cases, transform[ing] their business models." The Company stresses that there can be "unintended consequences of withdrawing capital from

[1] Net zero is achieved when emissions in the atmosphere are balanced by removals over a specified period. *See* https://carbonaccountingfinancials.com/files/downloads/PCAF-Global-GHG-Standard.pdf at 31.

[2] Financed emissions means emissions, attributed to a financial institution's lending and investing activity, that banks and investors finance through their loans and investments. *See* https://carbonaccountingfinancials.com/files/downloads/PCAF-Global-GHG-Standard.pdf at 131 and 132.

[3] Page 104 of the ESG Report, available at https://www.morganstanley.com/content/dam/msdotcom/en/assets/pdfs/Morgan_Stanley_2022_ESG_Report.pdf.

[4] Available at https://www.morganstanley.com/content/dam/msdotcom/about-us/netzero/Morgan-Stanley-Net-Zero-Target-Methodology.pdf.

[5] Page 39 of the ESG Report.

transitioning sectors" and that "in some cases, lending to companies that are transitioning may result in our financed emissions increasing in the short term or over certain periods."[6]

Notwithstanding the detailed methodologies and disclosures that the Company has already published, as described further below, the Proposal seeks to significantly alter the Company's strategy for aligning its business and financing with the goal of limiting warming to 1.5ºC. The Proposal requests that the Company "annually disclose the proportion of sector emissions attributable to clients that are not aligned with a credible Net Zero pathway" and further expects that the Company should be "require[d to] asses[s] its clients' likelihood of meeting Net Zero-aligned 2030 goals and creat[e] clear plans to address likely misalignment." The Proposal seeks to replace the Company's emissions-focused targets and climate strategy for aligning its business with net zero with an approach focused on assessing client alignment with net zero, for which no standard methodologies exist.

The Proposal departs from established GHG accounting protocols by implicitly requiring the Company to assess the totality of clients' emissions, rather than the proportion of client emissions attributable to the Company's financing activities. Instead of operating within a "well-established national or international framework" as suggested by Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("**SLB 14L**") the Proposal's prescriptive approach is inconsistent with the frameworks established by the GHG Protocol[7] and PCAF.

The Proposal would require the Company to undertake additional activities that are outside the scope of its interim financed emissions targets, in effect rejecting both the Company's targets and standards and those of established industry reporting standards and dictating its own approach. The Company already works with clients to understand and assess their low-carbon transition plans, the resourcing of their plans and how these plans align with the Company's climate-related commitments. However, the Proposal would require the Company to alter the way the Company works with its clients by needing to gather significant amounts of new data and requiring it to make a value judgment as to whether its clients' emissions reduction pathways are "credible." However, unlike approaches to carbon accounting and reporting where there is clear, globally harmonized guidance (e.g., PCAF and TCFD), there is no standard or agreed upon way to assess whether client targets are "credible." In addition, the Proposal would require additional actions from the Company such as annually determining whether "unaligned clients will prevent Morgan Stanley from meeting its 2030 targets" and requiring the Company to annually disclose "actions it proposes to address any such emissions reduction shortfalls." As such, the Proposal interferes with the Company's ordinary business operations and micromanages the Company by limiting management's discretion in developing and managing its strategy to align its business with net zero by 2050.

REASON FOR EXCLUSION OF THE PROPOSAL

The Company believes that the Proposal may be properly omitted from the 2024 Proxy Materials pursuant to (i) Rule 14a-8(i)(7) because the Proposal deals with matters related to the Company's ordinary business operations by seeking to micromanage the Company and (ii) Rule 14a-8(i)(3) because the Proposal is impermissibly vague and indefinite so as to be inherently misleading.

The Proposal May Be Excluded under Rule 14a-8(i)(7) Because the Proposal Deals with Matters Related to the Company's Ordinary Business Operations.

Rule 14a-8(i)(7) allows a company to omit a shareholder proposal from its proxy materials if such proposal deals with a matter relating to the company's ordinary business operations. The policy underlying the ordinary business exception is based on two central considerations: (i) that "[c]ertain tasks are so

[6] *Id*.

[7] The GHG Protocol is a multi-stakeholder partnership of businesses, nongovernmental organizations, governments, and others convened by the World Resources Institute and the World Business Council for Sustainable Development.

fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight" and (ii) the "degree to which the proposal seeks to 'micromanage' the company 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." Exchange Act Release No. 34-40018 (May 21, 1998) (the "**1998 Release**"); see also SLB 14L.

The Proposal Seeks to Micromanage the Company by Imposing Specific Methods for Assessing Emissions.

Based on the second policy consideration underlying the ordinary business exclusion and reiterated by SLB 14L, the Company believes it may omit the Proposal pursuant to Rule 14a-8(i)(7) because it impermissibly seeks to micromanage the Company.

1. The Level of Granularity Sought in the Proposal Inappropriately Limits the Company's Discretion.

According to SLB 14L, the determination of whether a proposal impermissibly micromanages the Company "will focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management." The Staff further clarified that this approach is "consistent with the Commission's views on the ordinary business exclusion, which is designed to preserve management's discretion on ordinary business matters but not prevent shareholders from providing high-level direction on large strategic corporate matters." The Staff has consistently concurred with the exclusion of proposals that inappropriately limit management's discretion. *See, e.g. The Kroger Co.* (Apr. 25, 2023) (concurring with exclusion of a proposal requesting the company pilot participation in the Fair Food Program for tomato purchases in order to mitigate severe risks of forced labor and other human rights violations in the company's produce supply chain); *Amazon.com, Inc.* (Apr. 7, 2023) (concurring that a proposal requiring the company to measure and disclose scope 3 greenhouse gas emissions from its full value chain and all products that it sells directly and by third party vendors micromanaged the company); *Chubb Limited* (Mar. 27, 2023) (concurring with exclusion of a proposal that would require the board to adopt and disclose a policy for the timebound phase out of underwriting risks associated with new fossil fuel exploration and development projects); and *AT&T Inc.* (Mar. 15, 2023) (concurring with exclusion of a proposal requesting the board adopt a policy of obtaining shareholder approval for any future "golden coffin" arrangements).

a. The Proposal does not follow national or international frameworks.

The multi-stakeholder partnership that has authored the GHG Protocol has published the GHG Protocol Corporate Value Chain (Scope 3) Accounting and Reporting Standard (also referred to as the "**Scope 3 Standard**")[8] which supplements the GHG Protocol Corporate Accounting and Reporting Standard (the "**Corporate Standard**")[9]. Notably, the Scope 3 Standard provides the basis for categorizing certain types of investments as scope 3 emissions (i.e., all other indirect emissions that occur in a company's value chain)[10]. The GHG Protocol has been widely adopted and endorsed, and the Proponent itself has suggested that climate reporting be done in line with the GHG Protocol (e.g., in comments to the SEC's proposed climate change disclosure rule, where the Proponent suggested that "in order to assist in quickly ensuring standardized reporting, the SEC mandate that reporting be conducted in line with the GHG

[8] https://ghgprotocol.org/sites/default/files/standards/Corporate-Value-Chain-Accounting-Reporing-Standard_041613_2.pdf

[9] https://ghgprotocol.org/sites/default/files/standards/ghg-protocol-revised.pdf

[10] *See* https://ghgprotocol.org/sites/default/files/standards/Corporate-Value-Chain-Accounting-Reporing-Standard_041613_2.pdf at 7.

Protocol, at least initially… Alternatively, [they] urge the agency to require that companies provide a rationale for how and why they depart from the GHG Protocol.")[11]

PCAF is a global partnership of financial institutions that work together to develop and implement a harmonized accounting methodology to measure and disclose the greenhouse gas emissions associated with their loans and investments. Accordingly, they have published the Global GHG Accounting and Reporting Standard Part A: Financed Emissions (as revised, the "**Financing Standard**" and together with the Scope 3 Standard and Reporting Standard, the "**Standards**")[12] which was reviewed and approved by the GHG Protocol and is in conformance with the requirements for Scope 3 emissions as set forth by the GHG Protocol. In addition, the SEC's proposed climate change disclosure rule suggests that the Financing Standard is an appropriate methodology for reporting Scope 3 emissions.[13]

The Proposal fails to reference "well-established national or international frameworks" when it requests disclosure of "sector emissions attributable to clients that are not aligned with a credible Net Zero pathway." Notably, the Scope 3 Standard specifies that emissions from investments "should be allocated to the reporting company based on the reporting company's proportional share of investment in the investee."[14] The Financing Standard further elaborates that financed emissions should be "calculated by multiplying an attribution factor (specific to that asset class) by the emissions of the borrower or investee" where an attribution factor is defined as "the share of total annual GHG emissions of the borrower or investee that is allocated to the loan(s) or investment(s)."[15] The Proposal, in contrast, refers to "emissions attributable to clients that are not aligned with a credible Net Zero pathway," which may purport to be limited to emissions attributable to the Company, but in reality, would require the Company to determine the totality of its clients' emissions, regardless of whether such emissions come from the Company's financing activities with respect to that client.

In fact, the Financing Standard directly rejects this sort of attribution, noting that "[d]ouble counting, which occurs when GHG emissions are counted more than once in the financed emissions calculation of one or more institutions, should be minimized as much as possible."[16]

b. The Proposal limits management's discretion by requiring specific methods for implementing client emissions reporting that are inconsistent with how the Company manages its financed emissions targets.

The Proposal's request for specific disclosure seeks to prescribe a specific method for how the Company aligns its business with net zero, which is focused on financed emissions targets, which would impermissibly limit management's discretion in addressing the complex topic of managing and reporting on Scope 3 emissions. As discussed further below, the Proposal would, among other things, force the Company to shift from a sector-wide approach to one that focuses on individual clients as well as shift financing away from companies that are not aligned with net-zero targets, both of which significantly interfere with management's discretion. The Proposal's approach conflicts with the Company's existing methodologies and replaces management's judgment on complex matters. For example:

[11] Comment letter submitted on June 21, 2022 by As You Sow, File Number S7-10-22, The Enhancement and Standardization of Climate-Related Disclosures for Investors, available at https://www.sec.gov/comments/s7-10-22/s71022-20132601-303123.pdf.

[12] https://carbonaccountingfinancials.com/files/downloads/PCAF-Global-GHG-Standard.pdf

[13] Pages 196-197 of the proposed Enhancement and Standardization of Climate-Related Disclosures rule, available at https://www.sec.gov/files/rules/proposed/2022/33-11042.pdf.

[14] *See* https://ghgprotocol.org/sites/default/files/standards/Corporate-Value-Chain-Accounting-Reporing-Standard_041613_2.pdf at 53.

[15] *See* https://carbonaccountingfinancials.com/files/downloads/PCAF-Global-GHG-Standard.pdf at 40.

[16] *Id* at 40-41.

- The Proposal's supporting statement requests that the Company's "assessment should take into account all material financing mechanisms and asset classes that contribute to Morgan Stanley's emissions, including direct lending, underwriting and investments." In contrast, as discussed in the Methodology Report, the Company's initial financed emissions targets cover "the most emissions-intensive sectors in our corporate lending profile."[17] However, as noted in the ESG Report, with the finalization of PCAF's guidance and related methodology, the Company intends to "set new targets that increase the scope of financed emissions covered, including with respect to capital markets facilitation activities.[18] As such, by requesting the targets cover "direct lending, underwriting and investments," the Proposal seeks to bypass management's discretion by deciding that the Company should significantly expand the scope of its existing targets, despite the Company's view that it would be in its best interest to wait to undertake such expansions until PCAF has published relevant guidance and methodologies that it can continue to follow.

- The Proposal's request for additional disclosure will require the Company to alter the way it works with clients by requiring the Company to potentially take an adversarial, rather than collaborative, approach to engaging with clients. The Proposal would require the Company to assess the credibility of clients' net zero pathways, which will be highly burdensome on management in requiring it decide which clients "are not aligned with a *credible* Net Zero pathway" (emphasis added). The Proposal ignores that there is not a harmonized or widely recognized methodology for the kind of assessment sought in the Proposal, which would require basing the Company's strategy and business decision-making on a number of assumptions regarding client plans. This requires the Company to evaluate all the emissions of its clients and determine whether such client is in line with certain net zero goals, including taking complex and extensive steps to identify, assess, categorize, and estimate emissions of clients. Further, the Proposal would substitute the Company's sector-wide approach with one that shifts the focus instead to individual clients by requiring an assessment of each client's net zero pathway, impermissibly interfering with management's decision to support its clients' own goals and pathways.

- The Proposal suggests that the Company "increase the share of [its] financing, facilitation, and revenue derived from 1.5°C aligned companies," demanding that the Company decrease financing to companies that are not aligned with net zero targets. The Proponent's own statistics state, "no public companies in the oil and gas energy sector have 2030 targets aligned with a 1.5°C-scenario, and no public auto manufacturers, besides dedicated electric vehicle manufacturers, are on a 2030 Net Zero-aligned pathway." The Proposal would require the Company to disengage with financing specific industries or businesses operating in certain areas.

In contrast to the prescriptive approach that would be required by the Proposal, the Company recognizes that the path to achieving net-zero financed emissions from its lending activities, including its interim 2030 targets for the auto manufacturing, energy and power sectors, will not always be linear. The Company's clients are at different stages of setting their own targets, developing plans to diversify and, in some cases, transforming their business models. The Company supports an orderly transition and accepts that, in some cases, lending to companies that are transitioning may result in its financed emissions increasing in the short term or over certain periods. The Company needs to maintain discretion to avoid withdrawing financing from entire sectors if management believes that is the most productive pathway to a net-zero future.

The Company's position is consistent with the Transition Pathway Initiative report cited in the Proposal which indicates "[w]hile the long term trajectory for absolute emissions must be to net zero, investors

[17] Page 3 of the Methodology Report.

[18] Page 46 of the ESG Report.

acknowledge the need for transition linked activities in 'hard-to-abate' sectors, which can lead to short term increases in absolute financed / facilitated emissions but can be important in delivering real economy decarbonisation."[19] Rather than changing its lending practices towards new clients that are already aligned with a 1.5°C pathway as the Proposal suggests, the report cited in the Proposal concurs with the Company's decision that "the underlying expectation is that banks should support their clients to align their strategies with a 1.5°C pathway."[20]

The Proposal is further supplemented by a supporting statement which requires that the "assessment should take into account all material financing mechanisms and asset classes that contribute to [the Company's] emissions, including direct lending, underwriting, and investments." In this regard, the Proposal does not provide the Company "high-level direction on large strategic corporate matters." *See SLB 14L*. Instead, the Proposal eliminates the management-level discretion the Staff sought to preserve with the ordinary business exclusion by "impos[ing] a specific method" and "granularity" for defining the activities included in the Company's emissions reporting.

The Corporate Standard recognizes the complexity of scope 3 emissions reporting and provides management discretion in its reporting, stating that "Scope 3 is optional, but it provides an opportunity to be innovative in GHG management. Companies may want to focus on accounting for and reporting those activities that are relevant to their business and goals, and for which they have reliable information. Since companies have discretion over which categories they choose to report, scope 3 may not lend itself well to comparisons across companies."[21] As noted in the Scope 3 Standard, the Corporate Standard "gives companies flexibility in whether and how to account for scope 3 emissions."[22] The Proposal would remove such flexibility from management by prescribing how they should report emissions and also directly contradicts the Scope 3 Standard which recognizes that scope 3 emissions reporting is inherently tied to day-to-day management and "is intended to be tailored to business realities and to serve multiple business objectives."[23]

The Proposal addresses a nuanced issue and imposes a prescriptive standard that differs from both the approach that the Company believes is best suited to the nature of the Company's operations when measuring its financing emissions, as well as the various standards set forth in the Standards. The Proposal thus clearly falls within the scope of the 1998 Release and SLB 14L by addressing granular details and prescribing a specific method for implementing complex policies which inappropriately limits the discretion of management.

c. The Proposal is excludable under 14a-8(i)(7) regardless of whether it touches upon a significant policy issue.

A proposal may be excluded under Rule 14a-8(i)(7) if it seeks to micromanage a company by specifying in detail the manner in which the company should address an issue, regardless of whether the proposal touches upon a significant policy issue.

A proposal that seeks to micromanage a company's business operations is excludable under Rule 14a-8(i)(7) regardless of whether or not the proposal raises issues with a broad societal impact. See Staff Legal Bulletin No. 14E (Oct. 27, 2009), at note 8, citing the 1998 Release for the standard that "a proposal [that raises a significant policy issue] could be excluded under Rule 14a-8(i)(7), however, if it seeks to micro-

[19] *See* https://139838633.fs1.hubspotusercontent-eu1.net/hubfs/139838633/Past%20resource%20uploads/IIGCC-Net-Zero-Standard-for-Banks-June-2023.pdf at 7.

[20] *Id* at 9.

[21] *See* https://ghgprotocol.org/sites/default/files/standards/ghg-protocol-revised.pdf at 31.

[22] *Id* at 7.

[23] *See* https://ghgprotocol.org/sites/default/files/standards/Corporate-Value-Chain-Accounting-Reporing-Standard_041613_2.pdf at 6.

manage the company 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." Since the issuance of SLB 14L, the Staff concurred with the exclusion of proposals addressing how companies interact with their shareholders on significant social policy issues because the proposals sought to micromanage how the companies addressed those policy issues. See *Amazon.com, Inc.* (Apr. 7, 2023) (concurring that a proposal requesting the company report Scope 3 emissions from "its full value chain" was excludable for attempting to micro-manage the company). Thus, the fact that the Proposal references climate change and climate risk does not preclude its exclusion under Rule 14a-8(i)(7).

The Proposal Probes Matters "Too Complex" for Shareholders, as a Group, to Make an Informed Judgment.

The micromanagement element of the ordinary business exception under Rule 14a-8(i)(7) is also based on whether a proposal probes matters "too complex" for shareholders, as a group, to make an informed judgement. SLB 14L, citing the 1998 Release. According to SLB 14L, in making this determination as to whether a proposal probes matters "too complex" for shareholders, 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, target setting, and timeframes as indicative of topics that shareholders are well-equipped to evaluate." The Staff has consistently granted no-action relief for shareholder proposals that probe matters too complex for shareholders. *See, e.g. GameStop Corp.* (Apr. 24, 2023) (concurring with exclusion of a proposal requesting the company to create a service and provide a daily report on certain shareholding information, a service that was not related to any existing business offering of the company); *Phillips 66* (Mar. 20, 2023) (concurring with exclusion of a proposal requesting the company to disclose specific and detailed information related to the undiscounted expected value to settle obligations for asset retirement obligations with indeterminate settlement dates); and *Valero Energy Corporation* (Mar. 20, 2023) (same).

The Proposal quotes the Institutional Investors Group on Climate Change, noting that, to deliver on their targets, banks should disclose protocols and strategies specific to each business activity, including "phasing out financing of inconsistent activities which present particular risks… while pivoting financing towards climate solutions." The Proposal further suggest phasing out financing any client whose overall activities are not in line with such climate goals. Shareholders would not be able to make an informed assessment of what steps the Company can or should take to meaningfully analyze its financing decisions with respect to emissions. The Proposal would improperly micromanage the Company by delegating to shareholders supervision over emissions-related financing, an area where shareholders are not well positioned to make an informed judgment.

The Proposal May Be Excluded under Rule 14a-8(i)(3) Because the Proposal 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, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials. The Staff has consistently 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) ("**SLB 14B**").

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) (Dec. 6, 2019), the Staff 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) (Jan. 19, 2022) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal that requests 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 [c]ompany, neither shareholders nor the [c]ompany would be able to determine with reasonable certainty exactly what actions or measures the [p]roposal requests"); *The Boeing Co.* (Feb. 23, 2021) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal requiring that 60% of the company's directors "must have an aerospace/aviation/engineering executive background" where such phrase was undefined); *The Home Depot, Inc.* (avail. Mar. 12, 2014, recon. denied Mar. 27, 2014) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal requesting a sustainability report where the company argued that the meaning of "benchmark objective footprint information" was unclear); *AT&T Inc.* (Feb. 21, 2014) (concurring with the exclusion under Rule 14a8(i)(3) 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); *Berkshire Hathaway Inc.* (Jan. 31, 2012) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal that specified company personnel "sign off [by] means of an electronic key . . . that they . . . approve or disapprove of [certain] figures and policies" because it did not "sufficiently explain the meaning of 'electronic key' or 'figures and policies'"); *International Paper Co.* (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"); and *Puget Energy, Inc.* (Mar. 7, 2002) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal requesting that the company's board of directors implement "a policy of improved corporate governance" where it also included a broad array of unrelated topics that could be covered by such a policy).

The Proposal requests "that, for each of its sectors with a Net Zero-aligned 2030 target, [the Company] annually disclose the proportion of sector emissions attributable to clients that are not aligned with a credible Net Zero pathway." Understanding the meaning of the term "a credible Net Zero pathway" is essential to the Company's efforts to implement the Proposal if adopted, and essential to shareholders' understanding of the Proposal as they consider how to vote on the Proposal. "A credible Net Zero pathway" is a crucial component of the Proposal since it defines the standard against which the Company would be required to assess its broad and diverse set of clients before it could identify and calculate the impacts of the requested emissions and understanding the meaning of the term is necessary for being able to report on "whether this proportion of unaligned clients will prevent [the Company] from meeting its 2030 targets." However, this key term does not have an ordinary, commonly understood meaning, and the Proposal does not define the term or explain its meaning. There is significant debate regarding what constitutes a "credible" pathway to net zero,[24] and such pathway can vary based on the net zero timeline (e.g., by 2030, 2040, or 2050) or industry selected. Further, a credible Net Zero pathway likely depends on parallel and immediate action from a variety of other actors, including policymakers, as anticipated in the Company's own targets. Given that the Company has employed varied standards in its target-setting, and the Proposal fails to specify any definition for a "credible Net Zero pathway," the Proposal's vague and indefinite use of this key term makes it impossible for shareholders and the Company to know with any clarity the scope of the requested disclosure, including the potential gaps (if any) to be assessed.

[24] See, e.g., For a Livable Climate: Net-Zero Commitments Must Be Backed by Credible Action, United Nations (last visited Dec. 18, 2023), available at https://www.un.org/en/climatechange/net-zero-coalition (noting that "[t]he growth in net-zero pledges has been accompanied by a proliferation of criteria with varying levels of robustness").

Moreover, neither the preamble to the Proposal nor the supporting statement clarify what “credible Net Zero pathway” the Company is expected to use when assessing its clients for the requested disclosure. The preamble to the Proposal generally asserts that “[i]ndependent assessments show that many companies in [certain] sectors are failing to align with ***a*** Net Zero-aligned 2030 pathway” (emphasis added). The subsequent sentences cite purported failures in different industries to “have 2030 targets aligned with a 1.5° C scenario,” being “on ***a*** 2030 Net Zero pathway,” and being “on track with the Net Zero Emissions by 2050 Scenario” (emphasis added). The preamble also asserts that for the Company to “have a fully informed, realistic transition plan,” it must “assess[] its clients’ likelihood of meeting Net Zero-aligned 2030 goals.” The preamble does not discuss the targets that the Company has developed as part of the Methodology Report and thus provides no guidance on whether the Company’s current targets would be deemed “credible” by the Proponent. No clarification is provided in the supporting statement. Further ambiguity is caused in light of the fact that even clients who may not be deemed to align with a Net Zero pathway can contribute to the achievement of the overall portfolio goals by reducing their emissions. As a result, the language across the full body of the Proposal does nothing to allay the inherent ambiguity and creates confusion over the meaning of the term “credible Net Zero pathway,” which could refer to, among other things: (i) the Company’s particular target for each sector (which, as described, are not all aligned to a 1.5° C scenario), (ii) net zero pathways aligned to 2050, 2030, or any other year, (iii) the scenario for each sector to the extent cited by the Proponent, (iv) any net zero pathway deemed “credible,” or (v) some other net-zero pathway.

As a result of the Proposal’s lack of guidance or clarity in its use of the term “credible Net Zero pathway,” shareholders would be unable to determine the scope and nature of the credibility assessment they are being asked to support and the type of new disclosures to be made, and the Company would be unable to determine how to implement the Proposal. In order to implement the Proposal, including to undertake an assessment of the credibility of the client alignment, the Company must have a clear understanding about which of the numerous potential standards each of its 2030 target sectors are to be assessed against, and yet the Proposal provides no guidance on that point.

Without knowing what standard constitutes “a credible Net Zero pathway,” it is impossible for the Company or stockholders to determine the scope of the “proportion of unaligned client[]” emissions and the “emissions reduction shortfalls” it is supposed to address under the Proposal. See *Bank of America Corp.* (Feb. 25, 2008) (concurring with the exclusion of a proposal requesting that the company’s board of directors revise its policies on GHG emissions to cease operations including “further involvement in activities that support MTR coal mining,” as such term invited too much speculation as to what actions the proposal would proscribe if implemented). Accordingly, the Proposal’s failure to define the meaning of the term “a credible Net Zero pathway” causes the Proposal to be impermissibly vague and indefinite and renders it excludable under Rule 14a-8(i)(3).

CONCLUSION

The Proposal micromanages the Company by imposing precise, granular requirements for assessing and publishing specific information on the Company’s due diligence function, which improperly limits the board and management’s discretion over ordinary business matters and probes matters too complex for shareholders to make an informed judgment upon. In addition, the Proposal’s inability to define “a credible Net Zero pathway,” and lack of acknowledgement that no standard frameworks exist that would allow a company to determine whether a client’s pathway is “credible,” renders the Proposal to be impermissibly vague and indefinite.

For the reasons set forth above, the Company believes that the Proposal may be excluded from its 2024 Proxy Materials pursuant to Rule 14a-8(i)(7) and Rule 14a-8(i)(3).

Respectfully yours,

Ning Chiu

Ning Chiu

Attachment

cc w/ att: Martin Cohen, Morgan Stanley

Danielle Fugere, As You Sow
Michael Monteiro, Michael Monteiro 2016 Rev Tr

Exhibit A

Proposal

WHEREAS: Morgan Stanley has established a Net Zero by 2050 goal and aligned 2030 emission reduction targets for financing activity in the energy, auto manufacturing, and power sectors. Despite investor demand for clearer disclosure on banks' transition plans,[1] shareholders lack critical information as to whether Morgan Stanley is on a path to meet its 2030 targets.

Morgan Stanley's disclosures fail to disclose the impact that high-emitting sectors will have on its ability to meet its 2030 targets or its responsive actions. Independent assessments show that many companies in these sectors are failing to align with a Net Zero-aligned 2030 pathway. The Transition Pathway Initiative finds no public companies in the oil and gas energy sector have 2030 targets aligned with a 1.5°C-scenario, and no public auto manufacturers, besides dedicated electric vehicle manufacturers, are on a 2030 Net Zero-aligned pathway.[2] For the electricity generation sector to reach a Net Zero aligned 2030 goal, the speed of electrification needs to double.[3]

The firm's omission leaves investors unable to assess the potential for misalignment between Morgan Stanley's 2030 targets, its clients' transition progress, and what actions, if any, Morgan Stanley is taking to address such misalignment.

As the Institutional Investors Group on Climate Change explains, to deliver on their targets, banks should disclose protocols and strategies specific to each business activity, including "phasing out financing of inconsistent activities which present particular risks… while pivoting financing towards climate solutions."[4] Other actions may include developing criteria related to financing misaligned clients and setting firmwide targets to increase the share of financing, facilitation, and revenue derived from 1.5°C-aligned companies and activities.

Morgan Stanley must disclose a fully informed, realistic transition plan to meet its goals. This requires assessing its clients' likelihood of meeting Net Zero-aligned 2030 goals and creating clear plans to address likely misalignment.

The potential for misalignment between clients and Morgan Stanley's GHG emission reduction goals carries significant risk. If the firm fails to meet its targets, it faces the possibility of reputational harm, litigation risk (including from greenwashing claims), and financial costs.[5] Failure to meet targets also contributes to systemic climate risk, harming Morgan Stanley and investors' portfolios.

RESOLVED: Shareholders request that, for each of its sectors with a Net Zero-aligned 2030 target, Morgan Stanley annually disclose the proportion of sector emissions attributable to clients that are not aligned with a credible Net Zero pathway, whether this proportion of unaligned clients will prevent

[1] https://www.ft.com/content/8318f146-a41c-49f8-94df-811799b0c60f

[2] https://www.transitionpathwayinitiative.org/sectors/oil-gas; https://www.transitionpathwayinitiative.org/sectors/autos

[3] https://www.iea.org/energy-system/electricity/electrification

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

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

Morgan Stanley from meeting its 2030 targets, and actions it proposes to address any such emissions reduction shortfalls.

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