

**Shelley J. Dropkin**  
Deputy Secretary, Regulatory  
and General Counsel  
Corporate Governance

Equinix  
300 Lakeside Ave.  
10th Floor  
New York, NY 10017

Equinix  
300 Lakeside Ave.  
10th Floor  
New York, NY 10017



December 19, 2017

**BY E-MAIL [shareholderproposals@sec.gov]**

U.S. Securities and Exchange Commission  
Office of Chief Counsel  
Division of Corporation Finance  
100 F Street, NE  
Washington, D.C. 20549

**Re: Stockholder Proposal to Citigroup Inc. from the AFL-CIO Reserve Fund**

Dear Sir or Madam:

Pursuant to Rule 14a-8(j) of the rules and regulations promulgated under the Securities Exchange Act of 1934, as amended (the "Act"), attached hereto for filing is a copy of the stockholder proposal and supporting statement (together, the "Proposal") submitted by the AFL-CIO Reserve Fund (the "Proponent") for inclusion in the proxy statement and form of proxy (together, the "2018 Proxy Materials") to be furnished to stockholders by Citigroup Inc. (the "Company") in connection with its 2018 annual meeting of stockholders. The Proponent's mailing address and telephone, as stated in the correspondence of the Proponent, is listed below.

Also attached for filing is a copy of a statement of explanation outlining the reasons the Company believes that it may exclude the Proposal from its 2018 Proxy Materials pursuant to Rule 14a-8(i)(5) and Rule 14a-8(i)(7).

By copy of this letter and the attached material, the Company is notifying the Proponent of its intention to exclude the Proposal from its 2018 Proxy Materials.

The Company is filing this letter with the U.S. Securities and Exchange Commission (the "Commission") not less than 80 calendar days before it intends to file its 2018 Proxy Materials. The Company intends to commence printing its Notice and Access materials on March 8, 2018 and file its 2018 Proxy Materials on or about March 15, 2018.

The Company respectfully requests that the Staff of the Division of Corporation Finance (the "Staff") of the Commission confirm that it will not recommend any enforcement action to the Commission if the Company excludes the Proposal from its 2018 Proxy Materials.

If you have any comments or questions concerning this matter, please contact me at (212) 793-7396.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Shelley J. Dropkin", with a long horizontal flourish extending to the right.

Shelley J. Dropkin

Deputy Corporate Secretary and  
General Counsel, Corporate Governance

cc: Brandon Rees  
American Federation of Labor and Congress of Industrial Organizations  
815 16th St., NW  
Washington, DC 20006

**ENCLOSURE A**

**THE PROPOSAL AND RELATED CORRESPONDENCE (IF ANY)**



# AFL-CIO

AMERICA'S UNIONS

**American Federation  
of Labor and  
Congress of Industrial  
Organizations**

815 16th St., NW  
Washington, DC 20006  
202-637-5000  
www.aflcio.org

November 8, 2017

Mr. Rohan Weerasinghe, General Counsel  
and Corporate Secretary  
Citigroup Inc.  
388 Greenwich Street  
New York, New York 10013

**EXECUTIVE COUNCIL**

**RICHARD L. TRUMKA**  
PRESIDENT

**ELIZABETH H. SHULER**  
SECRETARY-TREASURER

**TEFERE GEBRE**  
EXECUTIVE VICE PRESIDENT

Michael Sacco  
Robert A. Scardelletti  
Harold Schaitberger  
Clyde Rivers  
Cecil Roberts  
Leo W. Gerard  
William Hite  
Gregory J. Junemann  
Nancy Wohlforth  
Rose Ann DeMoro  
Fred Redmond  
Matthew Loeb  
Randi Weingarten  
Rogelio "Roy" A. Flores  
Fredric V. Rolando  
Diann Woodard  
Newton B. Jones  
D. Michael Langford  
Baldeemar Velasquez  
James Boland  
Bruce R. Smith  
Lee A. Saunders  
Terry O'Sullivan  
Lawrence J. Hanley  
Loretta Johnson  
James Callahan  
DeMaurice Smith  
Sean McGarvey  
Laura Reyes  
J. David Cox  
David Durkee  
D. Taylor  
Kenneth Rigmaiden  
Stuart Appelbaum  
Harold Daggett  
Bhairavi Desai  
Paul Rinaldi  
Mark Dimondstein  
Harry Lombardo  
Dennis D. Williams  
Cindy Estrada  
Capt. Timothy Canoll  
Sara Nelson  
Lori Pelletier  
Marc Perrone  
Jorge Ramirez  
Eric Dean  
Joseph Sellers Jr.  
Christopher Shelton  
Lonnie R. Stephenson  
Richard Lanigan  
Robert Martinez  
Gabrielle Carteris

Dear Mr. Weerasinghe:

On behalf of the AFL-CIO Reserve Fund (the "Fund"), I write to give notice that pursuant to the 2017 proxy statement of Citigroup Inc. (the "Company"), the Fund intends to present the attached proposal (the "Proposal") at the 2018 annual meeting of shareholders (the "Annual Meeting"). The Fund requests that the Company include the Proposal in the Company's proxy statement for the Annual Meeting.

The Fund is the beneficial owner of 1640 shares of voting common stock (the "Shares") of the Company. The Fund has held at least \$2,000 in market value of the Shares for over one year, and the Fund intends to hold at least \$2,000 in market value of the Shares through the date of the Annual Meeting. A letter from the Fund's custodian bank documenting the Fund's ownership of the Shares is enclosed.

The Proposal is attached. I represent that the Fund or its agent intends to appear in person or by proxy at the Annual Meeting to present the Proposal. I declare that the Fund has no "material interest" other than that believed to be shared by stockholders of the Company generally. Please direct all questions or correspondence regarding the Proposal to Brandon Rees at 202-637-5152 or [brees@aflcio.org](mailto:brees@aflcio.org).

Sincerely,

Heather Slavkin Corzo, Director  
Office of Investment

HSC/sdw  
opeiu #2, afl-cio

30 N. LaSalle Street  
Chicago, IL 60602  
Phone: 312-822-3220  
Fax: 312-267-8775



312/822-3220

Lawrence M. Kaplan  
Vice President  
[lkaplan@aboc.com](mailto:lkaplan@aboc.com)

November 8, 2017

Mr. Rohan Weerasinghe, General Counsel  
and Corporate Secretary  
Citigroup Inc.  
388 Greenwich Street  
New York, New York 10013

Dear Mr. Weerasinghe:

AmalgaTrust, a division of Amalgamated Bank of Chicago, is the record holder of 1640 shares of common stock (the "Shares") of Citigroup Inc. beneficially owned by the AFL-CIO Reserve Fund as of November 8, 2017. The AFL-CIO Reserve Fund has continuously held at least \$2,000 in market value of the Shares for over one year as of November 8, 2017. The Shares are held by AmalgaTrust at the Depository Trust Company in our participant account No. [REDACTED].

If you have any questions concerning this matter, please do not hesitate to contact me at (312) 822-3220.

Sincerely,

A handwritten signature in cursive script that reads "Lawrence M. Kaplan".

Lawrence M. Kaplan  
Vice President

cc: Heather Slavkin Corzo  
Director, AFL-CIO Office of Investment

RESOLVED: Shareholders of Citigroup Inc. (the “Company”) request that the Board of Directors adopt a policy prohibiting the vesting of equity-based awards for senior executives due to a voluntary resignation to enter government service (a “Government Service Golden Parachute”).

For purposes of this resolution, “equity-based awards” include stock options, restricted stock and other stock awards granted under an equity incentive plan. “Government service” includes employment with any U.S. federal, state or local government, any supranational or international organization, any self-regulatory organization, or any agency or instrumentality of any such government or organization, or any electoral campaign for public office.

This policy shall be implemented so as not to violate existing contractual obligations or the terms of any compensation or benefit plan currently in existence or approved by shareholders on the date this proposal is adopted, and it shall apply only to equity plans or plan amendments that shareholders approve after the date of the 2018 annual meeting.

**Supporting Statement:**

Our Company provides its senior executives with vesting of equity-based awards after their voluntary resignation of employment from the Company to pursue a career in government service. In other words, our Company gives a “golden parachute” for entering government service. For example, Stephen Bird, CEO of Global Consumer Banking, was entitled to \$12 million in unvested equity awards if he entered government service on December 31, 2016.

At most companies, equity-based awards vest over a period of time to compensate executives for their labor during the commensurate period. If an executive voluntarily resigns before the vesting criteria are satisfied, unvested awards are usually forfeited. While government service is commendable, we question the practice of our Company providing continued vesting of equity-based awards to executives who voluntarily resign to enter government service.

The vesting of equity-based awards over a period of time is a powerful tool for companies to attract and retain talented employees. But contrary to this goal, our Company’s award agreements contain a “Voluntary Resignation to Pursue Alternative Career” clause that provides for the continued vesting of restricted stock of executives who voluntarily resign to pursue a government service career.

In last year’s proxy statement, the Company responded to this proposal by stating its desire to facilitate “some degree of parity between private and public sector employment” because “unvested awards are typically ‘bought out’ by a new private sector employer.” In our view, it is simply not appropriate for our Company’s employees who choose to enter government service to be “bought out.”

We believe that compensation plans should align the interests of senior executives with the long-term interests of the Company. We oppose compensation plans that provide windfalls to executives that are unrelated to their performance. For these reasons, we question how our Company benefits from providing Government Service Golden Parachutes. Surely our Company does not expect to receive favorable treatment from its former executives?

**Paula F. Jones**  
Assistant Secretary  
Associate General  
Counsel, Corporate Governance

Organization  
of F. Jones  
100  
100

100  
100



**VIA UPS and Email**

November 10, 2017

American Federation of Labor and Congress of Industrial Organizations  
815 16<sup>th</sup> Street, NW  
Washington, DC 20006  
Attention: Heather Slavkin Corzo, Director

Dear Ms. Slavkin Corzo:

Citigroup Inc. acknowledges receipt of your stockholder proposal for submission to Citigroup stockholders at the Annual Meeting in April 2018.

Very truly yours,



**Paula F. Jones**  
Assistant Secretary and  
Associate General Counsel, Corporate Governance

## ENCLOSURE B

### STATEMENT OF INTENT TO EXCLUDE STOCKHOLDER PROPOSAL

The Proposal provides as follows:

RESOLVED: Shareholders of Citigroup Inc. (the “Company”) request that the Board of Directors adopt a policy prohibiting the vesting of equity-based awards for senior executives due to a voluntary resignation to enter government service (a “Government Service Golden Parachute”).

For purposes of this resolution, "equity-based awards" include stock options, restricted stock and other stock awards granted under an equity incentive plan. "Government service" includes employment with any U.S. federal, state or local government, any supranational or international organization, any self-regulatory organization, or any agency or instrumentality of any such government or organization, or any electoral campaign for public office.

This policy shall be implemented so as not to violate existing contractual obligations or the terms of any compensation or benefit plan currently in existence or approved by shareholders on the date this proposal is adopted, and it shall apply only to equity plans or plan amendments that shareholders approve after the date of the 2018 annual meeting.

### **THE PROPOSAL RELATES TO OPERATIONS WHICH ACCOUNT FOR LESS THAN 5 PERCENT OF THE COMPANY’S TOTAL ASSETS, NET EARNINGS AND GROSS SALES AND IS NOT OTHERWISE SIGNIFICANTLY RELATED TO THE COMPANY’S BUSINESS**

The Company may exclude the Proposal from the 2018 Proxy Materials in reliance on Rule 14a-8(i)(5) on the basis that it is not economically relevant to the Company’s operations and is not otherwise significantly related to the Company’s business. Rule 14a-8(i)(5) allows a company to exclude a proposal from its proxy materials if the proposal “relates to operations that account for less than 5 percent of the company’s total assets, net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company’s business.”

Prior to Staff Legal Bulletin No. 14I (November 1, 2017) (“SLB 14I”), where a shareholder proposal addressed an issue of broad social or ethical significance, the Staff generally denied no-action relief pursuant to Rule 14a-8(i)(5) even where a shareholder proposal was arguably not significantly related to a company’s business. In SLB 14I, the Staff stated that its “application of Rule 14a-8(i)(5) has unduly limited the exclusion’s availability because it has not fully considered the second prong of the rule as amended in 1982 – the question of whether the proposal ‘deals with a matter that is not significantly related to the issuer’s business’ and is therefore excludable.” The Staff further stated that going forward its “analysis will focus, as the rule directs, on a proposal’s significance to the company’s business when it otherwise relates to operations that account for less than 5% of total assets, net earnings and gross sales.”



***The Proposal Relates To Operations That Account For Less Than 5 Percent Of The Company's Total Assets, Net Earnings And Gross Sales***

To exclude a shareholder proposal pursuant to Rule 14a-8(i)(5), a company must first demonstrate that the proposal relates to operations that account for less than 5 percent of the company's total assets, net earnings and gross sales for its most recent fiscal year. The Company had total assets of approximately \$1.7 trillion as of December 31, 2016. For the year ended December 31, 2016, the Company had net revenues of approximately \$69.9 billion and net income of \$14.9 billion. As further discussed below, the Company has not made any payments to executive officers pursuant to the government service component of the alternate career provision (the "Provision") referred to in the Proposal in the last ten years. Additionally, no executive officer has resigned and continued to vest in his or her awards by reason of the government service component of the Provision in the last ten years. As a result, the subject matter of the Proposal relates to operations that account for 0% of the Company's current total assets, net income and net revenues.

***The Proposal Is Not Otherwise Significantly Related To The Company's Business***

In SLB 14I, the Staff stated that "proposals that raise issues of social or ethical significance may be included or excluded, notwithstanding their importance in the abstract, based on the application and analysis of each of the factors of Rule 14a-8(i)(5) in determining the proposal's relevance to the company's business." The Staff further noted that "where a proposal's significance to a company's business is not apparent on its face, a proposal may be excludable unless the proponent demonstrates that it is 'otherwise significantly related to the company's business', and that a proponent could continue to raise social or ethical issues in its arguments, but it would need to tie those to a significant effect on the company's business."

**Board Process**

In contemplation of this no-action request, management of the Company, the Nomination and Governance Committee of the Board of Directors (the "Board"), and the Board itself evaluated whether the Proposal was significantly related to the Company's business as contemplated by Rule 14a-8(i)(5). To facilitate this evaluation, management of the Company solicited detailed information from various functions at the Company, including its human resources department and its legal department regarding the historical application of the government service component of the Provision and the financial impact such Provision has had on the Company's operations. After gathering this information, management of the Company prepared a presentation for consideration by the Nomination, Governance and Public Affairs Committee. After hearing the presentation and considering the information presented, the Nomination, Governance and Public Affairs Committee concluded that neither the Proposal nor the public policy considerations raised by the Proposal are significantly related to the Company's business and recommended that the Board reach a similar conclusion. On December 13, 2017, following its consideration of the information included in the same presentation that had been considered by the Nomination, Governance and Public Affairs Committee, the Board reached the same conclusion.

## Board Analysis

As noted above, both the Nomination, Governance and Public Affairs Committee and the Board concluded that neither the Proposal nor the public policy considerations raised by the Proposal was significantly related to the Company's business. In reaching this conclusion, the Board, in addition to drawing on its own experience and expertise and knowledge of the Company and its business, consulted with senior management and outside legal counsel. The following discussion includes the material reasons and factors considered by the Board in making its recommendation.

- **Stated Purpose of the Proposal.** The Proposal requests that the Board adopt a policy prohibiting the vesting of equity-based awards for senior executives due to a voluntary resignation to enter into government service.
- **Underlying Goal of the Proposal.** The Proposal seeks changes to the Provision, by eliminating the applicability of the government service component of the Provision to the Company's executive officers. The Supporting Statement to the Proposal suggests that the government service component of the Provision is a "windfall for executives" and questions the application of the policy to executive officers of the Company. However, the government service component of the Provision is not limited to the Company's executive officers; rather, it is available to all employees of the Company who are eligible for deferred compensation awards. Further, no executive officer of the Company has resigned and continued to vest in his or her awards by reason of the Provision in the last ten years.
- As a result, we believe that the primary focus of the Proposal is related to addressing the design of the Company's deferred compensation plans and compensation of the Company's executive officers and its employees more generally. Further, the Proposal seems to question whether the Provision represents a good use of the Company's assets. Finally, we believe the Proposal also implies that the goal of the government service component of the Provision is to enable the Company to influence government policymakers. This is supported by the following statements in the Supporting Statement of the Proposal:
  - "While government service is commendable, we question the practice of our Company providing continued vesting of equity-based awards to executives who voluntarily resign to enter government service."
  - "The vesting of equity-based awards over a period of time is a powerful tool for companies to attract and retain talented employees. But contrary to this goal, our Company's award agreements contain a "Voluntary Resignation to Pursue Alternative Career" clause that provides for the continued vesting of restricted stock of executives who voluntarily resign to pursue a government service career."
  - "In our view, it is simply not appropriate for our Company's employees who choose to enter government service to be "bought out."

- “We oppose compensation plans that provide windfalls to executives that are unrelated to their performance. For these reasons, we question how our Company benefits from providing Government Service Golden Parachutes.”
- **The Provision Does Not Apply to Most of the Company’s Current Executive Officers.** The Provision, including the government service component of the Provision, does not apply to most of the Company’s current executive officers, including the five named executive officers identified in the Company’s proxy statement for its 2017 annual meeting of stockholders. Due to their service to the Company and under the terms of the Company’s existing deferred compensation plans, these executive officers will continue to vest on schedule after resignation as long as the executive officers do not work for a “significant competitor.” Consequently, even if these executive officers were to leave the Company for government service, the Provision would not apply to them.
- **The Provision is Not an Executive Perk and Very Few Employees Have Utilized the Provision.** The Provision is a feature of the Company’s broader-based incentive compensation programs covering approximately 8,300 employees globally as of December 31, 2016. As of December 5, 2017, only eight employees globally, none of which were executive officers, were vesting on schedule by reason of the Provision, and only one of those individuals was vesting on schedule by reason of the government service component of the Provision. The Provision promotes equitable treatment of employees seeking employment in public, charitable, educational and non-profit sectors because employees who join competitors often receive payments to reimburse them for forfeited equity. Further, the Provision operates at minimal cost to the Company and its stockholders, despite its broad eligibility.
- **The Goal of the Provision is to Encourage Public Service; Not to Influence Government - Which Would be Relevant to the Company’s Business.** The Provision is just one of many Company policies and practices that encourage public service at all levels of the Company and is not meant to influence government. For example, in the United States, all employees receive a paid day off annually to perform volunteer service. Further, the Company has designated policies and procedures to influence policy-making, including lobbying efforts by the Company’s Global Government Affairs function. The Provision is not designed to create an avenue of influence by former Company executive officers that have left their positions with the Company to enter into government service.
- **While the Company’s Deferred Compensation Plans Have Features that are Relevant to the Company’s Business, the Provision is Not Among the Most Significant Features.** While the Proponent alludes to an alleged significance of the government service component of the Provision with the statement that “[O]ur Company’s award agreements contain a “Voluntary Resignation to Pursue Alternative Career” clause that provides for the continued vesting of restricted stock of executives who voluntarily resign to pursue a government service career,” the government service component of the Provision is not among the most significant provisions of the Company’s deferred compensation plans. The Company’s deferred compensation plans

contain several exceptions to the general rule that awards are forfeited upon voluntary resignation and the Provision is just one of these exceptions and is not relied upon as frequently as other exceptions. Other exceptions in the Company's deferred compensation plans that are relied upon far more frequently include attainment of the Rule of 60 (which is a policy allowing employees over the age of 50 whose combination of age and years of service at the Company exceeds 60 to accelerate vesting of restricted stock), termination by reason of death or disability, and involuntary termination of employment not for gross misconduct.

- **The Company's Investors Have Not Expressed Interest in this Topic.** Outside of general discussions related to the Proposal itself, most of the Company's large institutional stockholders, clients and other stakeholders generally have not expressed interest in the government service component of the Provision.

The foregoing discussion of the information and factors considered by the Board is not intended to be exhaustive, but includes the material factors considered by the Board. In view of the variety of factors considered in connection with its evaluation of the Proposal, the Board did not find it practicable to, and did not, quantify or otherwise assign relative weights to the specific factors considered in reaching its determination and recommendation. In addition, individual directors may have given different weights to different factors. The Board did not undertake to make any specific determination as to whether any factor, or any particular aspect of any factor, supported or did not support its ultimate determination. The Board based its recommendation on the total mix of the information presented.

Based on the foregoing, in accordance with the framework set forth in SLB 14I, we believe that the Proposal's significance to the Company's business is not apparent on its face. The Proponent alludes to general policy issues but does not tie these to any significant effect on the Company's business. Accordingly, for the reasons set forth above, the Company believes the Proposal is excludable under Rule 14a-8(i)(5) for lack of economic relevance to the Company's operations and is otherwise not significantly related to the company's business.

## **THE PROPOSAL RELATES TO THE COMPANY'S ORDINARY BUSINESS.**

The Proposal may be excluded from the 2018 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal relates to the Company's ordinary business operations. The Staff has explained that the general policy underlying Rule 14a-8(i)(7) is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting."<sup>1</sup> The first central consideration upon which that policy rests is that "[c]ertain tasks are so 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."<sup>2</sup> A proposal may be excludable on this basis, unless the proposal raises policy issues that are sufficiently significant to transcend day-to-day business matters. The second central consideration underlying the exclusion for matters related to the Company's ordinary business operations is "the degree to which the

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<sup>1</sup> See SEC Release No. 34-40018 (May 21, 1998).

<sup>2</sup> Id.

proposal seeks to ‘micro-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.”<sup>3</sup>

Here, the Supporting Statement to the Proposal suggests that the government service component of the Provision is a “windfall for executives” and questions the application of the policy to executive officers of the Company. However, the government service component of the Provision is designed to encourage public service and is not limited to the Company’s executive officers; rather, it is available to all employees of the Company who are eligible for deferred compensation awards. Further, no executive officer of the Company has resigned and continued to vest in his or her awards by reason of the Provision in the last ten years. As a result, we believe that the real focus of the Proposal is related to addressing the design of the Company’s deferred compensation plans and compensation of the Company’s executive officers and its employees more generally. Further, the Proposal seems to question whether the Provision represents a good use of the Company’s assets. Finally, the Proposal also implies that the goal of the government service component of the Provision is to enable the Company to influence government policymakers.

In Staff Legal Bulletin No. 14A (July 12, 2002) (“SLB 14A”), the Staff reaffirmed its view that certain proposals relating to equity compensation plans may be properly excluded in reliance on Rule 14a-8(i)(7), as such proposals may relate to a company’s ordinary business matters. The Staff stated in SLB 14A that “[s]ince 1992, we have applied a bright-line analysis to proposals that relate to general employee compensation matters in reliance on rule 14a-8(i)(7). . . .” Under this analysis, a company may exclude proposals that relate to general employee compensation matters in reliance on Rule 14a-8(i)(7) but may not exclude proposals that concern only senior executive and director compensation.<sup>4</sup> Applying this approach, the Staff has recognized that proposals concerning a variety of benefit and compensation decisions relate to the ordinary business operations of a corporation.<sup>5</sup> Further, the Staff has recognized that matters relating to the ordinary business operations of a company, like employee benefits, cannot be transformed into significant policy matters merely by tying them to senior executive compensation.<sup>6</sup>

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<sup>3</sup> Id.

<sup>4</sup> See SLB 14A.

<sup>5</sup> See, e.g., *International Business Machines Corporation* (Dec. 11, 2009)(proposal to adjust pension plan payments to include cost of living increases excludable as a matter relating to ordinary business operations); *AT&T Inc.* (Nov. 19, 2008) (proposal requesting modifications to pension plan eligibility provisions excludable as a matter relating to ordinary business operations, i.e., employee benefits); *WGL Holdings* (Nov. 17, 2006)(proposal requesting that retired employees be given a moderate raise to their retirement pay excludable as a matter relating to ordinary business operations); and *BellSouth Corporation* (Jan. 3, 2005) (proposal to increase the pension of BellSouth retirees excludable as a matter relating to ordinary business operations).

<sup>6</sup> See, e.g., *Exelon Corp.*, (Mar. 10, 2005) (“There appears to be some basis for your view that Exelon may exclude the proposal under rule 14a-8(i)(7), as relating to Exelon’s ordinary business operations (i.e., general employee benefits). In this regard, we note that although the proposal mentions executive compensation, the thrust and focus of the proposal is on the ordinary business matter of general employee benefits.”).

The Staff has historically taken the position that a shareholder proposal that raises significant social policy issues may not be excluded under Rule 14a-8(i)(7) if the policy issue has a significant nexus to the company's business.<sup>7</sup> As demonstrated by the historical distinction the Staff has drawn between retailer and manufacturers of products that raise significant policy issues, a social policy issue that is significant to one company's business, may not have a sufficient nexus to another company's business for purposes of Rule 14a-8(i)(7).<sup>8</sup>

The Staff noted in SLB 14I that the applicability of the significant policy exception to Rule 14a-8(i)(7) "depends, in part, on the connection between the significant policy issue and the company's business operations." The Staff noted further that whether a policy issue is of sufficient significance to a particular company to warrant exclusion of a proposal that touches upon that issue may involve a "difficult judgment call" which the company's board of directors "is generally in a better position to determine," at least in the first instance. A well-informed board, the Staff said, exercising its fiduciary duty to oversee management and the strategic direction of the company, "is well situated to analyze, determine and explain whether a particular issue is sufficiently significant because the matter transcends ordinary business and would be appropriate for a shareholder vote." Accordingly, the analysis of a company's board of directors will be used to help the Staff decide whether a significant social policy issue has a sufficient "nexus" to the company's business.

### **Board Process**

In contemplation of this no-action request, management of the Company, the Nomination and Governance Committee of the Board of Directors, and the Board of Directors itself evaluated whether the policy issues raised by the proposal have a sufficient nexus to the Company's business for purposes of the Rule 14a-8(i)(7) analysis. To facilitate this evaluation, management of the Company solicited detailed information from various functions at the Company, including its human resources department and its legal department regarding the historical application of the government service component of the Provision. After gathering this information, management prepared a presentation for consideration by the Nomination, Governance and Public Affairs Committee. After hearing the presentation and considering the information presented, the Nomination, Governance and Public Affairs Committee concluded the Proposal does not implicate policy issues that are sufficiently significant to transcend day to day business matters, and that the policy issues that the Proposal does raise do not have a sufficient nexus to the Company's business. The Nomination, Governance and Public Affairs Committee recommended that the Board reach a similar conclusion. On December 13, 2017, following its consideration of the information included in the same presentation that had been considered by the Nomination, Governance and Public Affairs Committee, the Board reached the same conclusion.

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<sup>7</sup> See Staff Legal Bulletin No. 14E (Oct. 27, 2009).

<sup>8</sup> See e.g., *Kimberly-Clark Corp.*, (Feb. 22, 1990) ("In the Division's view, the proposal, which would call on the Board to take actions leading to the eventual cessation of the manufacture of tobacco products, goes beyond the realm of the Company's ordinary business"); compare, *Wal-Mart Stores, Inc.*, (Mar. 12, 1996) (granting relief under Rule 14a-8(c)(7) with respect to a proposal that the company refrain from selling tobacco products).

## Board Analysis

As noted above, both the Nomination, Governance and Public Affairs Committee and the Board of Directors concluded that the policy issues that the Proposal raises do not have a sufficient nexus to the Company's business. In reaching this conclusion, the Board, in addition to drawing on its own experience and expertise and knowledge of the Company and its business, consulted with senior management and outside legal counsel.

The following discussion includes the material reasons and factors considered by the Board in making its recommendation:

- All of the factors supporting a conclusion that the Proposal is not significantly related to the Company's business for purposes of the economic relevance exclusion in Rule 14a-8(i)(5) also support a conclusion that the policy issues raised by the Proposal have an insufficient nexus to the Company's business for purposes of the ordinary business exclusion in Rule 14a-(8)(i)(7).
- **The Company Has Made No Payments to Executive Officers in the Past Ten Years Pursuant to the Government Service Component of the Provision.** The Company has not made any payments to executive officers pursuant to the government service component of the Provision in the last ten years. Additionally, no executive officer has resigned and continued to vest in his or her awards by reason of the government service component of the Provision in the last ten years.
- **The Provision Does Not Apply to Most of the Company's Current Executive Officers.** Despite the Proposal referencing "senior executives", the Provision, including the government service component of the Provision, does not apply to most of the Company's current executive officers, including the five named executive officers identified in the Company's proxy statement for its 2017 annual meeting of stockholders. Due to their service to the Company and under the terms of the Company's existing deferred compensation plans, these executive officers will continue to vest on schedule after resignation as long as the executive officers do not work for a "significant competitor." Consequently, even if these executive officers were to leave the Company for government service, the Provision would not apply to them. Accordingly, the policy issue raised by the Proposal related to senior executive compensation does not have a sufficient nexus to the Company's business.
- **The Provision is Not an Executive Perk and Very Few Employees Have Utilized the Provision.** The Provision is a feature of the Company's broader-based incentive compensation programs covering approximately 8,300 employees globally as of December 31, 2016. As of December 5, 2017, only eight employees globally, none of which were executive officers, were vesting on schedule by reason of the Provision, and only one of those individuals were vesting on schedule by reason of the government service component of the Provision. The Provision promotes equitable treatment of employees seeking employment in public, charitable, educational and non-profit sectors because employees who join competitors often receive payments to reimburse them for

forfeited equity. Further, the Provision operates at minimal cost to the Company and its stockholders, despite its broad eligibility.

- **The Goal of the Provision is to Encourage Public Service; Not to Influence Government - Which Would Have a Sufficient Nexus to the Company's Business.** The Provision is just one of many Company policies and practices that encourage public service at all levels of the Company and is not meant to influence government. For example, in the United States, all employees receive a paid day off annually to perform volunteer service. Further, the Company has designated policies and procedures to influence policy-making, including lobbying efforts by the Company's Global Government Affairs function. The Provision is not designed to create an avenue of influence by former Company executive officers that have left their positions with the Company to enter into government service. As a result, the Proposal does not implicate a policy issue that is sufficiently significant to transcend day to day business matters
- **While the Company's Deferred Compensation Plans Have Features that are Relevant to the Company's Business, the Provision is Not Among the Most Significant Features.** While the Proponent alludes to an alleged significance of the government service component of the Provision with the statement that "[O]ur Company's award agreements contain a "Voluntary Resignation to Pursue Alternative Career" clause that provides for the continued vesting of restricted stock of executives who voluntarily resign to pursue a government service career," the government service component of the Provision is not among the most significant provisions of the Company's deferred compensation plans. The Company's deferred compensation plans contain several exceptions to the general rule that awards are forfeited upon voluntary resignation and the Provision is just one of these exceptions and is not relied upon as frequently as other exceptions. Other exceptions in the Company's deferred compensation plans that are relied upon far more frequently include attainment of the Rule of 60, which is a policy allowing employees over the age of 50 whose combination of age and years of service at the Company exceeds 60 to accelerate vesting of restricted stock, termination by reason of death or disability, and involuntary termination of employment not for gross misconduct.
- **The Company's Investors Have Not Expressed Interest in this Topic.** Outside of general discussions related to the Proposal itself, most of the Company's large institutional stockholders, clients and other stakeholders generally have not expressed interest in the government service component of the Provision.

The Provision also has not had a significant financial impact on the Company, nor, to the Company's understanding, has the Provision been a significant factor in the decision of any Company employee in deciding whether to accept an offer of employment from the Company or to stay at the Company.

Based on the foregoing, in accordance with the framework set forth in SLB 14I, we do not believe that the policy issues that the Proposal raises have a sufficient nexus to the



Company's business to prevent exclusion of the Proposal under Rule 14a-8(i)(7) as a matter relating to the Company's ordinary business operations.

### **CONCLUSION**

For the foregoing reasons, the Company believes that the Proposal may be excluded from the 2018 Proxy Materials pursuant to Rule 14a-8(i)(5) and Rule 14a-8(i)(7).