



DIVISION OF  
CORPORATION FINANCE

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

March 12, 2018

Jonas Kron  
Trillium Asset Management, LLC  
jkron@trilliuminvest.com

Re: EOG Resources, Inc.  
Incoming letter dated March 7, 2018

Dear Mr. Kron:

This letter is in response to your correspondence dated March 7, 2018 concerning the shareholder proposal (the "Proposal") submitted to EOG Resources, Inc. (the "Company") by the Sierra Club Foundation et al. We also have received correspondence from the Company dated March 8, 2018. On February 26, 2018, we issued a no-action response expressing our informal view that the Company could exclude the Proposal from its proxy materials for its upcoming annual meeting. You have asked us to reconsider our position. After reviewing the information contained in your correspondence, we find no basis to reconsider our position.

Under Part 202.1(d) of Section 17 of the Code of the Federal Regulations, the Division may present a request for Commission review of a Division no-action response relating to Rule 14a-8 under the Exchange Act if it concludes that the request involves "matters of substantial importance and where the issues are novel or highly complex." We have applied this standard to your request and determined not to present your request to the Commission.

Copies of all of the correspondence on which this response is based will be made available on our website at <http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml>. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Michele M. Anderson  
Associate Director

Enclosure

cc: Michael P. Donaldson  
EOG Resources, Inc.  
michael\_donaldson@eogresources.com



**Michael P. Donaldson**  
Executive Vice President,  
General Counsel and Corporate Secretary

**EOG Resources, Inc.**  
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Michael\_Donaldson@eogresources.com

March 8, 2018

**BY ELECTRONIC MAIL** ([shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov))

Mr. David Fredrickson  
Associate Director and Chief Counsel  
Division of Corporation Finance  
United States Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Re: Opposition to Request for Reconsideration of February 26, 2018 No-Action Letter (Issued to EOG Resources, Inc.) Submitted by Trillium Asset Management, LLC, dated March 7, 2018

Dear Mr. Fredrickson:

On February 26, 2018, the Staff of the Division of Corporation Finance stated that it would not recommend enforcement action to the Commission if EOG Resources, Inc. ("**EOG**") omits the shareholder proposal (the "**Proposal**") submitted by Trillium Asset Management, LLC ("**Trillium**") on behalf of various proponents seeking company-wide, quantitative, time-bound targets for reducing greenhouse gas emissions and seeking a related report on progress toward such targets. The Staff properly found that the proposal would impermissibly interfere with EOG's management of the company. Trillium now seeks your reconsideration of the Staff's position. Because the Staff's determination was correct and well-founded, the request should be denied.

The Staff's conclusion rests on an ample record. The Proposal itself offered its own justification, which the proponents supplemented with further submissions to the Staff on January 8, 2018, and January 17, 2018. The record before the Staff also included EOG's letter to the Staff dated December 20, 2017 setting forth EOG's substantive bases for exclusion of the Proposal (i.e., EOG's original "no-action" request letter), as well as additional correspondence from EOG dated January 12, 2018. The Staff reached its conclusion with due deliberation, giving over two months' consideration to the propriety of the Proposal in the specific case of EOG.

In short, the Staff was well informed of the issues and perspectives of the proponents and of EOG concerning the Proposal before stating its view that the Proposal would impermissibly

interfere with management of the company by seeking 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.” Trillium’s letter seeking reconsideration offers no new grounds upon which the Staff should conclude otherwise.

At the outset, it bears noting that, in our December 20, 2017 and January 12, 2018 letters to the Staff (and in our website and other public disclosures), EOG acknowledges that climate change and emissions reductions are social issues of general importance. Our December 20, 2017 letter to the Staff discusses, in detail, (i) the emissions-related practices and processes that we have implemented in furtherance of the reduction of greenhouse gas emissions throughout our operations and (ii) our emissions-related quantitative disclosures (i.e., metrics) on our website which allow investors to evaluate EOG’s year-to-year reductions in emissions from our operations.

However, as stated in EOG’s letters to the Staff, it is the implementation of the proponents’ Proposal that would require EOG’s management to potentially prioritize quantitative emissions reduction targets over a wide variety of factors involved in oil and gas exploration and production operations (such as geologic formation characteristics and operational considerations), in each case at the expense of our management’s own judgment. The quantitative targets requested by the Proposal would also potentially displace or disrupt management’s judgment regarding, among other operational factors, the location, timing, and mix of production, which are at the core of EOG’s daily business decisions as an exploration and production company. EOG continues to maintain that this is the very definition of micro-management.

The Staff’s recently published guidance regarding the “ordinary business operations” exception (set forth in Staff Legal Bulletin No. 14I (November 1, 2017)) provides important direction in this matter. The new guidance was widely disseminated, and was the subject of substantial legal commentary, well before the proponents submitted the Proposal. Additionally, the Staff’s new guidance is directly on point with our December 20, 2017 letter to the Staff, which discusses, in detail, the evaluation of the Proposal undertaken by EOG’s Nominating and Governance Committee and EOG’s Board of Directors, the various information considered by EOG’s directors in the course of such evaluations and the directors’ related discussions with EOG management. Further, the careful and deliberative decision reached by EOG’s Nominating and Governance Committee and Board of Directors is supported by the Staff’s new guidance.

As with any shareholder proposal and related “no-action” request, the determination of EOG’s Nominating and Governance Committee and Board of Directors and the Staff’s corresponding determination were appropriately premised on (i) the particular nature of EOG’s business operations and (ii) how the Proposal would affect the management of such operations on a day-to-day basis by EOG’s management and personnel. Contrary to the assertions in Trillium’s request for reconsideration, the Staff has not, in issuing its determination to EOG, rendered a comprehensive or “blanket” prohibition or other policy statement affecting all future shareholder proposals relating to greenhouse gas emissions.

Mr. David Fredrickson  
United States Securities and Exchange Commission  
March 8, 2018  
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Finally, Trillium has been aware since February 13, 2018, (i.e., before the Staff's determination) of EOG's March 15, 2018 deadline (under the Commission's "notice-and-access" rules) to print, file with the Commission and make available to stockholders the definitive proxy materials for EOG's 2018 annual stockholders meeting. In light of the ample record supporting the Staff's position, the new guidance supporting the Staff's position, and the absence of new grounds upon which to alter the Staff's position, we respectfully suggest that it would be inappropriate to overturn the settled expectations for an orderly and timely annual meeting of EOG's stockholders.

**For the reasons stated above, EOG respectfully requests that Trillium's request for reconsideration be denied.** For your ease of reference, I have attached the referenced correspondence previously submitted by EOG and Trillium to the Staff regarding this matter as well as the Staff's February 26, 2018 letter to EOG.

If you have any questions or desire further information, please contact me at (713) 651-6260 or at michael\_donaldson@eogresources.com.

Sincerely,



Michael P. Donaldson  
Executive Vice President, General Counsel and  
Corporate Secretary

#### Attachments

cc: Mr. Jonas D. Kron  
Senior Vice President and Director of Shareholder Advocacy  
Trillium Asset Management, LLC  
E-mail: jkron@trilliuminvest.com

SEC Office of the Investor Advocate  
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March 7, 2018

VIA e-mail: [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)

Mr. David Fredrickson  
Associate Director and Chief Counsel  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Re: Request for Reconsideration of February 26, 2018 No-Action Letter issued to EOG Resources, Inc.

Dear Associate Director and Chief Counsel Fredrickson,

This letter is submitted on behalf of the Proponents who are the beneficial owners of shares of common stock of EOG Resources, Inc. (hereinafter referred to as "EOG" or the "Company"), and who have submitted a shareholder proposal (hereinafter referred to as "the Proposal") to EOG the full text of which is attached as Attachment A, which requests:

EOG Resources, Inc. (EOG) adopt company-wide, quantitative, time-bound targets for reducing greenhouse gas (GHG) emissions and issue a report, at reasonable cost and omitting proprietary information, discussing its plans and progress towards achieving these targets.

On February 26, 2018, the Office of Chief Counsel issued a no-action letter (EOG no-action letter) which stated:

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(7), as relating to the Company's ordinary business operations. In our view, 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.

We hereby request reconsideration of the Staff's grant of the no-action letter and if reconsideration is denied that, pursuant to 17 CFR 202.1 (d), the matter be presented to the Commission for its consideration. A copy of this request is being provided to the Company at [Michael\\_Donaldson@eogresources.com](mailto:Michael_Donaldson@eogresources.com) and Amos Oekling, Senior Counsel and Deputy Corporate Secretary ([Amos\\_Oelking@eogresources.com](mailto:Amos_Oelking@eogresources.com)).

**In a dramatic move, the Staff has stopped a proponent from filing a shareholder proposal asking a company to set quantitative, time-bound targets to reduce greenhouse gas emissions to combat climate change. This is a time-tested proposal model that has been filed over 150 times in the last 15 years.**

It is impossible to overstate both the scope of the shareholder activity and interest in this issue that could be halted if the EOG no-action letter exemplifies a new interpretation of micromanagement. For over 15 years, shareholders have filed shareholder proposals at a wide variety of companies asking them to set quantitative, time-bound greenhouse gas emissions reduction goals. As a consequence, the EOG no-action letter can be seen by shareholders as a potentially dramatic interference with the marketplace. According to Institutional Shareholder Services records of shareholder proposals filed at the Russell 3000 since 2004, shareholders have filed over 150 shareholder proposals asking companies to set greenhouse gas emissions goals. From 2004 – 2017 these proposals received a median vote of 26%. And in the 2016-2017 time period the median vote was 31.9%. At EOG, a similar proposal, which focused on methane<sup>1</sup> reduction goals, was voted on in 2014 and 2015 receiving votes of 28% and 31% respectively. Clearly these are proposals that investors, including EOG shareholders, are quite familiar with and comfortable forming opinions upon.

While these proposals are filed at companies in many different industries and sectors, these GHG emission reduction goal proposals are often filed at oil and gas companies like EOG:

- Chevron Corporation – 2016, 2015
- Marathon Petroleum Corporation – 2016, 2015, 2014
- Exxon Mobil Corporation – 2015, 2014, 2013, 2012, 2011
- Phillips 66 Co. – 2015, 2014
- Valero Energy Corporation – 2015, 2014
- ConocoPhillips Co. – 2014, 2013, 2012, 2011
- HollyFrontier Corporation – 2014
- WPX Energy, Inc. – 2014

These efforts have contributed to numerous companies setting GHG reduction targets. Over 350 global businesses have committed to setting GHG emissions reduction targets consistent with the global 2-degree temperature rise goal set in the Paris Accords. Over half of EOG's peers in the S&P 500 have set GHG reduction goals. The oil and gas sector is not exempt from this broad movement to set GHG targets. Hess, Apache, Kinder Morgan, and Southwestern Energy are among EOG's peers in the U.S. Oil and Gas sector that have set quantitative, time-bound GHG and/or methane reduction goals. The 10 major international oil and gas companies that constitute the Oil and Gas Climate Initiative, including Shell and BP, recently announced their intention to work towards near-zero methane emissions.

This uptake of target setting by so many companies should be no surprise given the compelling arguments in favor of doing so. Setting GHG reduction targets is frequently found to be a sound business strategy. A 2013 report by CDP, WWF, and McKinsey & Company found that companies with GHG reduction targets achieved 9% better return on invested capital than companies without targets.

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<sup>1</sup> Methane, the primary component of natural gas, is an extremely powerful greenhouse gas.

We are also seeing large institutional investors demonstrating deep interest in this issue. For example, State Street Global Advisors recently published disclosure recommendations for oil and gas companies, wherein it states, “We view establishing company-specific GHG emissions targets as one of the most important steps in managing climate risk.”<sup>2</sup> One of the recommendations of The Task Force on Climate-related Financial Disclosures, whose members include JPMorgan Chase, UBS Asset Management, Generation Investment Management, and BlackRock, is: “Describe the targets used by the organization to manage climate-related risks and opportunities and performance against these targets.”

According to EY’s 2018 Proxy Preview report, “The percentage of investors noting climate change specifically is a priority has more than tripled since 2016.” This interest is not limited to just disclosures, but is specifically focused on improving corporate policies and practices. EY reports that 79% of investors have concluded that climate change is a “significant risk factor” and that 30% of investors believe improving corporate climate strategy is more important than enhancing reporting.<sup>3</sup>

Institutional Shareholder Services also issued a forecast for the 2018 season and by its count climate change:

proposals will likely feature even more prominently on the proxy landscape. ISS is aware of 59 filed proposals related to climate change for 2018 proxy season, including 15 two-degree scenario proposals (one already withdrawn—at Exxon Mobil) and seven proposals on climate change risk management. The two-degree scenario proposals were filed by ten different main filers (not counting any co-filers), which shows that these filings are not the result of a single campaign—as is often the case with environmental and social proposals—but the outcome of a widespread initiative.<sup>4</sup>

This comes on the heels of majority votes on climate change proposals in 2017 at ExxonMobil and Occidental Petroleum asking the companies to issue reports providing a 2 degree scenario analysis.<sup>5</sup>

The implications of the EOG no-action letter run directly contrary to all of this investor and corporate activity, and appears exceptionally out of step with the realities of investor/company engagement on climate change. It is direct government interference in the marketplace that will stop investors – from Mr. and Ms. 401K all the way up \$100 billion funds – from availing themselves of their rights as shareholders. Greenhouse gas emission shareholder proposals have been filed by firms as large as CalSTRS, New York City Pension Fund, the Presbyterian Church USA, the New York State Common Retirement Fund and as small as private individuals. They have been supported through the proxy ballot

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<sup>2</sup> <https://www.ssga.com/investment-topics/environmental-social-governance/2017/perspectives-on-effective-climate-change-disclosure.pdf>

<sup>3</sup> <http://www.ey.com/us/en/issues/governance-and-reporting/ey-2018-proxy-season-preview#section3>

<sup>4</sup> <https://corpgov.law.harvard.edu/2018/01/23/doubling-down-on-two-degrees-the-rise-in-support-for-climate-risk-proposals/#more-104394>

<sup>5</sup> <https://corpgov.law.harvard.edu/2017/06/21/are-shareholder-proposals-on-climate-change-becoming-a-thing/>

votes by investors such as JP Morgan, MFS, Morgan Stanley, Legg Mason, Charles Schwab, Eaton Vance, Hartford Financial, AllianceBernstein, Oppenheimer and Goldman Sachs.

Finally, the Climate Action 100+, an organization supported by 256 investors with \$28 trillion in assets under management, including PIMCO, Northern Trust Asset Management, Deutsche Asset Management, Manulife Asset Management, and HSBC Global Asset Management, is actively engaged with the world's 100 largest GHG emitters. This group is requesting that the companies publicly disclose their GHG emissions reduction targets and its plans to utilize existing technology solutions to meet such targets.<sup>6</sup>

If the EOG no-action letter is permitted to stand, it appears that investors may no longer be able to vote in support of these proposals. This represents a dramatic shift in the marketplace and limits the ability of investors to speak to management and other investors on an important issue of widespread interest.

### **The EOG no-action letter calls into question all target and goal setting shareholder proposals.**

In our opinion, there is nothing in the Company's activities or board opinion that justifies finding micromanagement at this company, and it is hard to understand how, if this radical departure on finding micromanagement is allowed to stand, the same logic would not apply to many other companies and proposals.

Casting a wider view than the approximately 150 GHG emission reduction target proposals, it is clear that the EOG no-action letter puts into question all target and goal setting shareholder proposals. Since 2004, investors have successfully filed at least an additional 70 shareholder proposals seeking company goals and targets. These proposals received a median vote of 25%. Subjects of these proposals include, naming a few:

- Water use reduction goals
- Deforestation reduction goals
- Renewable energy goals
- Energy productivity goals
- Animal sourced material reduction goals

As such, when viewed in light of *Apple Inc.* (December 21, 2017), *Deere & Company* (December 27, 2017), and *Verizon Communications Inc.* (March 6, 2018) the concern about the EOG no-action letter becomes even more concerning. In this context we also note that Staff Legal Bulletin 14I (November 1, 2017), while mentioning micromanagement in passing, focused its 14a-8(i)(7) discussion almost exclusively on questions of whether a proposal focuses on a matter of sufficiently significant policy importance. Recognizing that EOG did discuss Board views on the matters raised in the shareholder proposal, nevertheless Staff Legal Bulletin 14I appears inapposite to this discussion given that

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<sup>6</sup> <http://www.climateaction100.org>

micromanagement received only meager reference in Staff Legal Bulletin 14I. However, if the Staff is extending Staff Legal Bulletin 14I invitation to boards of directors to assert micromanagement this (1) has not been made clear to shareholders and (2) would be a dramatic deviation from past practice and Commission guidance. As discussed elsewhere in this letter, micromanagement has heretofore been used to exclude proposals that are focused on the minutia of operations rather than the permissible and practicable policy and goal setting level which investors are appropriately and well suited to address.

**The EOG no-action letter is a sharp deviation from the way the Staff has treated micromanagement analysis in the past.**

In 1998, the Commission articulated the micromanagement component of the Rule 14a-8(i)(7) analysis this way:

The second consideration relates to the degree to which the 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. This consideration may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies.<sup>7</sup>

See also, *Roosevelt v. E.I. DuPont de Nemours & Company*, 958 F.2d 416 (D.C. Cir. 1992). In that case, the Appellate Court noted the difference between a micromanaging timeline and one that does not micromanage. Judge Ruth Bader Ginsburg, in the Circuit Court appeal, stated in the *Roosevelt* decision that:

Timing questions no doubt reflect "significant policy" when large differences are at stake. That would be the case, for example, if Du Pont projected a phase-out period extending into the new century. On the other hand, were Roosevelt seeking to move up Du Pont's target date by barely a season, the matter would appear much more of an "ordinary" than an extraordinary business judgment. *Roosevelt v Dupont*, at 37.

Over time this analytical structure has led the Staff to permit shareholder proposals at companies that seek GHG emission reduction goals. The following are four examples of such proposals, including an oil and gas company, and Staff responses.

*FirstEnergy Corp.* (March 4, 2015)

Proposal:

Resolved: Shareholders request that First Energy create specific, quantitative, time bound carbon dioxide reduction goals to decrease the company's corporate carbon

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<sup>7</sup> SEC Release No. 34-40018 (May 21, 1998) citing Exchange Act Release No. 12999 (Nov. 22, 1976).

emissions, and report by September 1, 2015 on its plans to achieve the carbon goals the company adopts

Staff letter:

In our view, the proposal focuses on reducing greenhouse gas emissions and does not seek to micromanage the company to such a degree that exclusion of the proposal would be appropriate.

*Great Plains Energy* (February 5, 2015)

Proposal:

Resolved: Shareholders request that Great Plains Energy create specific, quantitative, time bound carbon dioxide reduction goals to decrease the company's corporate carbon emissions, and report by September 1, 2015 on its plans to achieve the carbon goals the company adopts

Staff letter:

In our view, the proposal focuses on reducing greenhouse gas emissions and does not seek to micromanage the company to such a degree that exclusion of the proposal would be appropriate.

*Centex Corporation* (March 18, 2008)

Proposal:

Shareholders request that the Board of Directors adopt quantitative goals based on available technologies, for reducing total greenhouse gas emissions from the Company's products and operations; and report to shareholders by December 31, 2008 on its plans to achieve these goals. Such report will omit proprietary information and be prepared at reasonable cost.

Staff letter:

We are unable to concur in your view that Centex may exclude the proposal under rule 14a-8(i)(7). Accordingly we do not believe that Centex may omit the proposal from its proxy materials in reliance on rule 14a-8(i)(7).

*ONEOK, Inc.* (February 25, 2008)

Proposal:

RESOLVED: Shareholders request that the Board of Directors prepare report concerning the feasibility of adopting quantitative goals, based on current and emerging technologies, for reducing total greenhouse gas emissions from the company's operations; and that the company should submit this report to shareholders by December 31, 2008. Such report will omit proprietary information and be prepared at reasonable cost.

Staff letter:

We are unable to concur in your view that ONEOK may exclude the proposal under rule 14a-8(i)(7). Accordingly we do not believe that ONEOK may omit the proposal from its proxy materials in reliance on rule 14a-8(i)(7).

There are also examples of shareholder proposals filed at oil and gas companies which are significantly more complicated. Identical proposals in *Chesapeake Energy Corp.* (April 13, 2010), *Ultra Petroleum Corp.* (March 26, 2010), *EOG Resources, Inc.* (February 3, 2010) and *Cabot Oil & Gas Corp.* (January 28, 2010), which passed muster under the micromanagement standard, requested a report on:

1. the environmental impact of fracturing operations of [company name];
2. potential policies for the company to adopt, above and beyond regulatory requirements, to reduce or eliminate hazards to air, water, and soil quality from fracturing;
3. other information regarding the scale, likelihood and/or impacts of potential material risks, short or long-term to the company's finances or operations, due to environmental concerns regarding fracturing.

But even beyond the example of GHG emission goals at these companies, it is evident that the Staff has considered comparable or even more complex proposals to be appropriate under Rule 14a-8(i)(7). Take for example the following proposals that were challenged on Rule 14a-8(i)(7) grounds and were found to be permissible by the Staff:

*Verizon Communications* (February 13, 2012)

Resolved, shareholders request the company publicly commit (while not conceding or forfeiting any issue in litigation related to network neutrality) to operate voluntarily its wireless broadband network consistent with network neutrality principles – i.e., operate a neutral network with neutral routing along the company's wireless infrastructure such that the company does not privilege, degrade or prioritize any packet transmitted over its wireless infrastructure based on its source, ownership or destination.

*Halliburton Company* (March 11, 2009)

Resolved, that the shareholders of Halliburton Company ("Company") hereby request that the Company provide a report, updated semi-annually, disclosing the Company's:

1. Policies and procedures for political contributions and expenditures (both direct and indirect) made with corporate funds.
2. Monetary and non-monetary political contributions and expenditures not deductible under section 162 (e)(1)(B) of the Internal Revenue Code, including but not limited to contributions to or expenditures on behalf of political candidates, political parties, political committees and other political entities organized and operating under 26 USC Sec. 527 of the Internal Revenue Code and any portion of any dues or similar payments made to any tax exempt organization that is used for an expenditure or

contribution if made directly by the corporation would not be deductible under section 162 (e)(1)(B) of the Internal Revenue Code. The report shall include the following:

- a) An accounting of the Company's funds that are used for political contributions or expenditures as described above;
- b) Identification of the person or persons in the Company who participated in making the decisions to make the political contribution or expenditure; and
- c) The internal guidelines or policies, if any, governing the Company's political contributions and expenditures

The report shall be presented to the board of directors' audit committee or other relevant oversight committee and posted on the company's website to reduce costs to shareholders.

*JPMorgan Chase & Co.* (March 19, 2010), *Bank of America Corp.* (February 24, 2010), and *Citigroup Inc.* (February 23, 2010)

Be it resolved that the Board of Directors report to shareholders (at reasonable cost and omitting proprietary information) by December 1, 2010, the firm's policy concerning the use of initial and variance margin (collateral) on all over the counter derivatives trades and its procedures to ensure that the collateral is maintained in segregated accounts and is not rehypothecated.

*Wal-Mart Stores, Inc.* (March 31, 2010)

Resolved, that to advance the company's financial interests and the welfare of chicken and turkeys killed for its stores, shareholders encourage the board to require the company's chicken and turkey suppliers to switch to animal welfare-friendly controlled-atmosphere killing (CAK), a less cruel method of slaughter, within five years.

These examples of proposals that passed muster under 14a-8(i)(7) are consistent with the Commission's 1998 Release, which cited favorably to *Amalgamated Clothing and Textile Workers Union v. Wal-Mart Stores, Inc.*, 821 F. Supp. 877, 891 (S.D.N.Y. 1993) ("*ACTWU*") in a discussion of how to determine whether a proposal probed too deeply into matters of a complex nature. In *ACTWU*, the court was addressing the ordinary business exclusion in the context of employment discrimination at a retailer. The court concluded that the following request did not violate the micromanagement standard by probing too deeply into the company's business:

1. A chart identifying employees according to their sex and race in each of the nine major EEOC defined job categories for 1990, 1991, and 1992, listing either numbers or percentages in each category.
2. A summary description of any Affirmative Action policies and programs to improve performances, including job categories where women and minorities are underutilized.

3. A description of any policies and programs oriented specifically toward increasing the number of managers who are qualified females and/or belong to ethnic minorities.
4. A general description of how Wal-Mart publicizes our company's Affirmative Action policies and programs to merchandise suppliers and service providers.
5. A description of any policies and programs favoring the purchase of goods and services from minority- and/or female-owned business enterprises.

While the EOG no-action letter does not provide investors with any guidance as to Staff's current approach to "micro-management" under 14a-8(i)(7), the letter does leave us with serious concerns. In addition to the long track record of allowing shareholders to evaluate matters more complex than GHG emissions reduction targets, as shown above, the Staff has permitted shareholders to make proposals for corporate action or requests for information that was not limited to a high-level significant policy issue. For example, a proposal regarding Wal-Mart animal welfare policies<sup>8</sup> was not limited to simply asking the company to have a policy, but was permitted to focus on a particular policy. Similarly, a proposal regarding political spending disclosures at Halliburton was not limited to simply asking the company to have a policy, but was permitted to focus on a *specific* policy, with very specific articulated elements. We are concerned that the apparent approach applied in the EOG no-action letter, if allowed to stand, would restrict shareholder proposals with vast and far reaching consequences for many investors and many significant issues.

Furthermore, there are many shareholder proposals that are currently being considered by investors and are getting very high votes, but are not being challenged by companies, presumably because the Staff approach has been consistently permissive of these types of requests, at least until now. Take, for example, the following:

CF Industries Holdings, Inc. – voted on at the company 2013 AGM and received a 50.7% vote

Resolved, Shareholders request that the Board of Directors of CF Industries Holdings, Inc. ("CF") adopt a policy on Board diversity that requires the Corporate Governance and Nominating Committee of the Board (the "Committee"), consistent with its fiduciary duties, to:

1. include women and minority candidates in the pool from which Board nominees are chosen;
2. expand director searches to include nominees from both non-executive corporate positions and non-traditional environments such government, academia, and non-profit organizations;
3. review periodically the composition of the Board to ensure it reflects the knowledge, experience, skills, and diversity required to fulfill its duties; and
4. report to shareholders, at reasonable expense and omitting proprietary information, its efforts to encourage diversified representation on the Board.

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<sup>8</sup> 76 percent of US companies have now published farm animal welfare policies.  
[http://www.meatpoultry.com/articles/news\\_home/Business/2017/01/Benchmark\\_report\\_examines\\_corp.aspx?ID=%7B1007BECF-2BD4-4ACB-8C34-8EFD10E1BD23%7D&cck=1](http://www.meatpoultry.com/articles/news_home/Business/2017/01/Benchmark_report_examines_corp.aspx?ID=%7B1007BECF-2BD4-4ACB-8C34-8EFD10E1BD23%7D&cck=1)

J.B. Hunt – voted on at the company 2016 AGM and received a 54.7% vote

**RESOLVED**

Shareholders request that JB Hunt amend its written equal employment opportunity policy to explicitly prohibit discrimination based on sexual orientation, gender identity or expression and to take concrete action to implement the policy.

KBR Inc. – voted on at the company 2010 AGM and received a 41% vote

**RESOLVED**, Shareholders request management to review policies related to human rights to assess areas where the company needs to adopt and implement additional policies and to report its findings by December 2010, omitting proprietary information and prepared at reasonable expense.

**Supporting Statement:**

We recommend the review include:

1. Risk assessment to determine potential for human rights abuses in locations, such as the Middle East, Nigeria, former U.S.S.R. republics, China and other civil-strife/war-torn areas, where the company operates.
2. A report on current systems in place to ensure that KBR contractors and suppliers are implementing human rights policies in their operations, including monitoring, training, addressing issues of non-compliance and assurance that trafficking-related concerns have been addressed.
3. KBR's strategy of engagement with internal and external stakeholders.

These types of proposals have not been challenged under Rule 14a-8(i)(7) for many years, presumably because investors and companies alike have assumed that the proponents have struck the appropriate level of detail on the significant policy issues they seek to address. Disrupting this equilibrium could result in dramatic increases in no-action letter requests and additional costs to all parties as they seek to understand the contours of the Staff's Rule 14a-8(i)(7) analysis. Further, we are concerned that the approach taken in the EOG no-action letter threatens to undermine the efficacy of Rule 14a-8, by reducing proponents to requests that lack the specifics needed to address the underlying issues.

**Conclusion**

For the reasons provided above, we respectfully request that the Division conclude EOG's request for a no-action letter should have been denied. If the no-action letter is allowed to stand it will be in stark contrast to numerous no-action letters on this precise proposal model, over many years, and will call into question numerous proposals on a wide range of issues.

The far-reaching consequences of the EOG no-action letter, coupled with the radical departure it represents from the 1998 Release and Staff's consistently applied analytical framework for deciding

“micromanagement” claims, without the benefit of a rulemaking or Staff Legal Bulletin, illustrates that this is a matter of substantial importance, thereby calling for reconsideration pursuant to 17 CFR 202.1 (d).

In the event that upon reconsideration of the February 26, 2018 decision the Staff maintains its position, we hereby request the matter be referred to the Commission for its review.

Please contact me at 503-894-7551 or [jkron@trilliuminvest.com](mailto:jkron@trilliuminvest.com) with any questions in connection with this matter, or if you wish any further information.

Sincerely,



Jonas Kron

Cc

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## Attachment A

**Resolved:** Shareholders request EOG Resources, Inc. (EOG) adopt company-wide, quantitative, time-bound targets for reducing greenhouse gas (GHG) emissions and issue a report, at reasonable cost and omitting proprietary information, discussing its plans and progress towards achieving these targets.

**Whereas:** The Paris Climate Agreement of 2015, agreed to by 195 countries, established a target to limit global temperature increases to 2-degrees Celsius above pre-industrial levels. To meet the 2-degree goal and mitigate the most severe impacts of climate change, climate scientists estimate it is necessary to reduce global emissions 55 percent by 2050 (relative to 2010 levels), entailing a US reduction target of 80 percent.

According to a 2015 report by Citigroup the costs of failing to address climate change could lead to a \$72 trillion loss to global GDP.

EOG states: “Our safety and environmental management processes are based on a goal setting philosophy. The company sets safety and environmental expectations and provides a framework within which management can achieve safety and environmental goals in a systematic way.” Despite this philosophy, EOG has not established time-bound or quantitative emissions reductions goals.

Motivated by the imperative to reduce emissions, cut costs, and/or achieve the goals of the Paris Agreement, many companies are setting goals:

- Over 300 global businesses have committed to setting GHG emissions reduction targets consistent with the 2-degree goal.
- Hess, Apache, Kinder Morgan, and Southwestern, are among EOG’s peers in the U.S. Oil and Gas sector that have set quantitative, time-bound GHG and/or methane reduction targets.
- The 10 major international oil and gas companies that constitute the Oil and Gas Climate Initiative recently announced their intention to work towards near-zero methane emissions.
- Over half of EOG’s peers in the S&P 500 have set GHG reduction targets.

Setting GHG reduction targets is frequently found to be a sound business strategy. A 2013 report by CDP, WWF, and McKinsey & Company found that companies with GHG reduction targets achieved 9% better return on invested capital than companies without targets.

Setting targets would address a common concern of investors that are increasingly attune to the risks of climate change. State Street Global Advisors recently published disclosure recommendations for oil and gas companies, wherein it states, “We view establishing company-specific GHG emissions targets as one of the most important steps in managing climate risk.”

One of the recommendations of The Task Force on Climate-related Financial Disclosures, whose members include JPMorgan Chase, UBS Asset Management, Generation Investment Management, and BlackRock, is: “Describe the targets used by the organization to manage climate-related risks and opportunities and performance against these targets.”

While EOG has implemented various emissions reduction strategies, proponents believe establishing time-bound, quantitative emissions reduction targets would serve to align new and existing initiatives, spur innovation to drive further emissions reductions, lower costs through enhanced efficiency, mitigate risk, and enhance shareholder value.