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

DIVISION OF
CORPORATION FINANCE

March 12, 2019

Beverly L. O'Toole
The Goldman Sachs Group, Inc.
beverly.otoole@gs.com

Re: The Goldman Sachs Group, Inc.
Incoming letter dated December 28, 2018

Dear Ms. O'Toole:

This letter is in response to your correspondence dated December 28, 2018 concerning the shareholder proposal (the "Proposal") submitted to The Goldman Sachs Group, Inc. (the "Company") by K.F.P. A California Limited Partnership et al. (the "Proponents") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence on the Proponents' behalf dated February 5, 2019. 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,

M. Hughes Bates
Special Counsel

Enclosure

cc:

Sanford Lewis
sanfordlewis@strategiccounsel.net

March 12, 2019

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: The Goldman Sachs Group, Inc.
Incoming letter dated December 28, 2018

The Proposal requests that the Company adopt a policy to reduce the carbon footprint of its loan and investment portfolios in alignment with the 2015 Paris goal of maintaining global warming well below 2 degrees, and issue annual reports describing targets, plans and progress under this policy.

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 would require the Company to manage its lending and investment activities in alignment with the goals of the 2015 Paris Climate Agreement of maintaining global warming well below 2 degrees Celsius. By imposing this overarching requirement, the Proposal would micromanage the Company by seeking to impose specific methods for implementing complex policies in place of the ongoing judgments of management as overseen by its board of directors. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on rule 14a-8(i)(7). In reaching this position, we have not found it necessary to address the alternative bases for omission upon which the Company relies.

Sincerely,

Courtney Haseley
Special Counsel

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the company in support of its intention to exclude the proposal from the company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes and rules administered by the Commission, including arguments as to whether or not activities proposed to be taken would violate the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversarial procedure.

It is important to note that the staff's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly, a discretionary determination not to recommend or take Commission enforcement action does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the company's management omit the proposal from the company's proxy materials.

SANFORD J. LEWIS, ATTORNEY

Via electronic mail

February 5, 2019
Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Shareholder Proposal to The Goldman Sachs Group, Inc. Regarding Carbon Footprint on Behalf of As You Sow purportedly on behalf of: K.F.P. A California Limited Partnership; the Campbell Irrevocable Trust for Nancy Dtd 12/7/1990; the Corning 5A Trust; the Daveen Fox Revocable Trust; the Edwards Mother Earth Foundation; the John B. and Linda C. Mason Comm Prop; the Mulliken Family Trust; Samajak LP; The Gun Denhart Living Trust; The Nicola Miner Revocable Trust; and The Rafael Living Trust

Ladies and Gentlemen:

As You Sow on behalf of: K.F.P. A California Limited Partnership; the Campbell Irrevocable Trust for Nancy Dtd 12/7/1990; the Corning 5A Trust; the Daveen Fox Revocable Trust; the Edwards Mother Earth Foundation; the John B. and Linda C. Mason Comm Prop; the Mulliken Family Trust; Samajak LP; The Gun Denhart Living Trust; The Nicola Miner Revocable Trust; and The Rafael Living Trust (the "Proponent") is beneficial owner of common stock of The Goldman Sachs Group, Inc. (the "Company") and has submitted a shareholder proposal (the "Proposal") to the Company. I have been asked by the Proponent to respond to the letter dated December 27, 2018 ("Company Letter") sent to the Securities and Exchange Commission by Beverly L. O'Toole of Goldman Sachs Group, Inc. In that letter, the Company contends that the Proposal may be excluded from the Company's 2019 proxy statement. A copy of this letter is being emailed concurrently to Beverly L. O'Toole of Goldman Sachs Group, Inc.

SUMMARY

The Proposal asks that the Company adopt a policy for reducing the greenhouse gas emissions resulting from its loan and investment portfolios to align with the Paris Agreement's goal of maintaining the global temperature increase substantially below 2 degrees Celsius, and issue annual reports describing targets, plans, and progress under this policy.

The Company's argument for exclusion under Rule 14a-8(i)(7) is that the Proposal imposes prescriptive standards that micromanage the Company's ordinary business. To the contrary, the only "standards" requested of the Company by the Proposal are for the company to develop and share with its investors a coherent policy for bringing its loan and investment practices into alignment with the global Paris climate agreement. The Proposal does not require specific actions or dictate what investment choices must occur. Nor does it specify timelines or targets,

leaving the company to assess what it means to be "aligned with" Paris goals.

The Company's current climate policies do not meet the objectives of the Proposal. Given the impacts of climate change and the short amount of time in which to address it, the Proponent believes that Goldman Sachs Group has a clear responsibility to shareholders to account for whether and how it plans to align its carbon footprint with global climate goals.

In addition, the Company Letter claims that proof of authorization for filing of the Proposal was insufficient because of a self-evident clerical error in one of the letters from the Proponents' agent, As You Sow. However, the initial authorization letter, as well as the documented chain of communications between the Proponents and the Company, were sufficient to demonstrate to the Company that the Proponents were aware of the nature of the proposal at the time it was filed, and that they had authorized the filing of such a proposal at the Company for the upcoming proxy statement. In addition, the Proponent had requested the company to notify it of any further deficiencies when it submitted its proof of authorization. Instead of communicating with the Proponent's agent about the obvious clerical error, the Company instead withheld notice and has sought in this no action request to treat this technicality as a basis for excluding this Proposal. The imposition of this level of specificity goes beyond what is required under the state law of agency, and neither the purposes of Rule 14a-8 nor the purposes of Staff guidelines on authorization would be fulfilled in excluding the Proposal on this basis.

BACKGROUND

Investment and economic analysts are increasingly recognizing and planning for the economically disruptive effects of climate change, from the economic, environmental, and human toll that increasingly destructive climate events are having, to the transition risks posed by an inevitable need to sharply regulate and curtail carbon dioxide emissions from every sector.

The 2015 Paris Climate Agreement set a global goal of maintaining global warming well below 2 degrees Celsius. In addition to establishing a process for implementing public policies on a nation by nation basis, the Agreement tasked the financial sector with action. Clause 2.1c of the Agreement establishes the goal of "Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development."

The capital markets have begun to register and implement this provision by including carbon asset risk in portfolio analysis, and through engagements with portfolio companies requesting disclosure and improved performance in alignment with the global climate goal. A state of the industry report, "Tipping Points 2016,"[1] collected data from a group of 50 institutions, including 28 asset owners and 22 asset managers selected based on their diversity including size, geographical locations, institutional missions, and clients. The report found that institutional investors consider and manage their impacts on environmental, societal, and financial systems, and consider those systems' impacts on their portfolios, with financial returns and risk reduction being two primary motivators for approaching investment decisions on a systemic basis. The

[1] http://tiiproject.com/tiiping-points-2016

report shows asset owners not only consider the financial risks they perceive from environmental, social, and governance risk at the level of specific securities and industries, but are also concerned with measuring and managing climate risk on a portfolio basis. Nowhere is this more the case than with climate change. Investor portfolios commonly hold investments from a wide spectrum of economic sectors vulnerable to widespread disruptions associated with climate change. Therefore, the effects of climate change are are likely to have negative, long-term, portfolio-wide implications.

One of the forms of implementation of this portfolio-based climate strategy is through shareholder proposals. Institutional Shareholder Services (ISS) issued a report in early 2019 assessing historic support for shareholder proposals during the last decade.[2] The analysis notes that proposals requesting goal-setting and results-oriented risk management approaches (similar to the current proposal) have drawn increasing support.

> The December 2015 Paris Agreement . . . made climate change risk management a top policy priority for governments, regulators, and financial institutions. **Climate change mitigation now required concrete results in the form of carbon emission reductions and alignment with the goal of keeping global temperatures from exceeding 1.5 or 2 degrees Celsius compared to pre-industrial levels.**[3] [Emphasis added]

ISS also notes a stepped up support for proposals on ESG in voting trends from 2000 to 2018, and the two following trends:

> • More shareholders voting in support of environmental and social proposals, witnessed by the rapidly growing proportion of shareholder proposals receiving at least 30-percent support.
>
> • Increased willingness of companies and proponents to work together to forge a solution, supported by a record proportion of environmental and social proposals being withdrawn prior to the vote.

Globally speaking, current efforts by national governments and financial services companies are not in alignment with the goals of the Paris Climate Agreement. As a result, investors and policymakers are beginning to recognize that more assertive regulatory action will likely be needed soon.[4] It is evident that the longer the delay in reducing global carbon emissions, the

---

[2] ISS, The Long View: US Proxy Voting Trends on E&S Issues from 2000 to 2018 (2019)

[3] ISS also notes the growing support: "By 2017, climate change proposals peaked in volume, with a large number receiving significant support, while high-profile proposals at Exxon Mobil and Occidental Petroleum received majority support."

[4] The Principles for Responsible Investment, supported by investors with $80 trillion in assets under management, has begun aiding its participating investors in development of portfolio management strategies responsive to the likelihood of an "***inevitable policy response***" (IPR) to climate, when national and global policymakers impose rapid, stringent carbon constraints to head off a worsening global climate change catastrophe. IPR can be considered a "backstop" scenario – and a call to action – to accelerate current efforts to align with the Paris Agreement. https://www.unpri.org/download?ac=5368

greater the resulting economic disruption, and the higher the need will be for rapid transition. This bolsters the rationale for an escalation in action now to refine and make decisions more efficiently, and to improve the resilience of investment portfolios.

The Proponent and many other investors believe that avoiding climate disruption requires a strategic appraisal and well-considered realignment of financing activities,[5] following the directive of the Paris Climate Agreement, to redirect finance flows and reduce climate footprints of investment and loan portfolios at systemically important financial institutions like Goldman Sachs Group. While the Company is undertaking certain activities to address climate change risk in aspects of its lending and financing, the current efforts do not demonstrate that the Company is aligning its portfolio with the Paris Climate Agreement's goals. The current Proposal is intended to address that need.

THE PROPOSAL
LIMIT HIGH CARBON FINANCING

WHEREAS: Banks with financial ties to carbon intensive fossils fuel investments face reputational harm, boycotts, divestment, and litigation that adversely affects shareholder value. Goldman Sachs has suffered extensive reputational damage from, and has been the target of significant public protests, based on its support of the Dakota Access Pipeline and other similarly controversial projects.

The Intergovernmental Panel on Climate Change recently underscored the harm of climate change, announcing that "rapid, far-reaching" changes are necessary to avoid disastrous levels of global warming; net emissions of carbon dioxide must fall 45 percent by 2030, reaching "net zero" by 2050.

Banks' financing choices have a major role to play in promoting these goals. Bank lending and investments make up a significant source of external capital for carbon intensive industries. **Every dollar banks invest in new fossil fuel infrastructure increases risk and slows the transition to a clean energy economy.**

Goldman Sachs recognizes climate change[6] and has taken certain related actions including pledging to conduct a carbon footprint analysis in its equity work, increase clean energy financing, and reduce direct carbon emissions from its offices and travel. Goldman's *Environmental Policy Framework* requires assessing client climate risk and avoiding coal projects in developed nations (where there is limited demand for such projects). Significantly, Goldman's climate change policies do not require reductions in the bank's largest contribution to climate change -- its investments and loans in carbon-intensive fossil fuel projects and companies.

To the contrary, Goldman continues to make investments and loans in the most extreme fossil fuel projects. Last year, Goldman added coal loans to its portfolio.[7] Between 2015 and 2017, Goldman poured

[5] Along the same vein, the economy wide impacts posed by climate disruption, and responses of systemically important institutions is also reflected in reports like the Brookings Institution's report: *Climate change and monetary policy: Dealing with disruption.* Warwick J. McKibbin, Adele Morris, Peter J. Wilcoxen, and Augustus J. Panton, Friday, December 1, 2017.
https://www.brookings.edu/research/climate-change-and-monetary-policy-dealing-with-disruption/
[6] https://www.goldmansachs.com/citizenship/environmental-stewardship/market-solutions-to-address-climate-change/
[7] https://www.nytimes.com/2018/05/28/business/banks-coal-loans.html

nearly $9 billion into financing of tar sands, Arctic oil, and coal.[8]

In contrast, peer banks have adopted policies reducing carbon in their loan and investment portfolios, including reducing or avoiding investments in extreme fossil fuels. ING adopted a methodology to measure the carbon content of its portfolio and decrease the climate impact of its loans.[9] BNP Paribas' policies phase out financing for companies tied to Arctic drilling, oil sands, shale development, and restrict financing for those tied to coal.[10] Natixis committed to end financing of tar sands and Arctic drilling.[11] The World Bank committed to end upstream oil and gas financing. Eleven banks adopted policies to end or substantially reduce financing for Arctic oil and/or tar sands projects.[12]

BE IT RESOLVED: Shareholders request that Goldman Sachs adopt a policy to reduce the carbon footprint of its loan and investment portfolios in alignment with the 2015 Paris goal of maintaining global warming well below 2 degrees, and issue annual reports (at reasonable cost, omitting proprietary information) describing targets, plans, and progress under this policy.

SUPPORTING STATEMENT: Shareholders recommend the report include, among other issues at board and management discretion:

- The carbon reduction benefits of expeditiously reducing exposure to extreme fossil fuel projects such as such as coal, Arctic oil and gas, and tar sands.

ANALYSIS

I. The Proposal may not be Excluded under Rule 14a-8(i)(7) Where it Exclusively Addresses Matters Related to the Significant Policy Issue of Climate Change, and Does Not Micromanage the Company.

The Company Claims that the proposal is excludable pursuant to Rule 14a-8(i)(7) as it micromanages by impermissibly interfering with the Company's complex operational decisions and day-to-day lending, financing, and investment decisions related to its loan and investment portfolios for sustainability. However, the Proposal is not excludable under Rule 14a-8(i)(7) because it directly and solely focuses climate change – a significant policy issue facing the Company and the economy, and one that transcends ordinary business. The Proposal focuses on an essential aspect of this issue for shareholders – whether the Company plans to reduce its investments and loans in projects that increase greenhouse gas emissions.

It is well settled in Staff determinations that proposals addressing the subject matter of climate change fall within a significant policy issue that transcends ordinary business. See, e.g., *DTE Energy Company* (January 26, 2015), *J.B. Hunt Transport Services, Inc.* (January 12, 2015),

---

[8] http://www.ran.org/wpcontent/uploads/rainforestactionnetwork/pages/19540/attachments/original/1525099181/Banking_on_Climate_Change_2018_vWEB.pdf?1525099181, p.6.

[9] https://www.eco-business.com/press-releases/ing-reveals-2c-scenario-analysis-method-for-corporate-lending-portfolios/

[10] https://www.upi.com/BNP-Paribas-says-it-will-no-longer-back-oil/4921507715402/

[11] https://www.banktrack.org/download/natixis_deepens_its_commitment_to_the_climate_and_the_environment/pr_natixis__new_commitments__december_11_2017.pdf

[12] https://www.banktrack.org/campaign/banks_that_ended_direct_finance_for_arctic_oil_andor_gas_projects

FirstEnergy Corp. (March 4, 2015)(proposals not excludable as ordinary business because they focused on reducing GHG and did not seek to micromanage the company); *Dominion Resources* (February 27, 2014), *Devon Energy Corp.* (March 19, 2014), *PNC Financial Services Group, Inc.* (February 13, 2013), *Goldman Sachs Group, Inc.* (February 7, 2011)(proposals not excludable as ordinary business because they focused on significant policy issue of climate change); *NRG Inc.* (March 12, 2009)(proposal seeking carbon principles report not excludable as ordinary business); *Exxon Mobil Corp.* (March 23, 2007)(proposal asking board to adopt quantitative goals to reduce GHG emissions from the company's products and operations not excludable as ordinary business); *Exxon Mobil Corp.* (March 12, 2007)(proposal asking board to adopt policy significantly increasing renewable energy sourcing globally not excludable as ordinary business); *General Electric Co.* (January 31, 2007)(proposal asking board to prepare a global warming report not excludable as ordinary business).

Moreover, Staff Legal Bulletin 14H has made it clear that if a proposal addresses in its entirety a significant policy issue like climate change, it can certainly request information about "nitty-gritty" business matters that are directly related, *such as strategic financial and investment decisions etc.* Indeed, any proposal addressing a complex policy issue like climate change necessarily must delve into such issues if it is to be meaningful to the company and its investors.

The Proposal here is consistent with prior proposals Staff has considered in light of the 1998 Release and which have been found to not be excludable under Rule 14a-8(i)(7) because they were directed toward the company's goals on climate change and did not dictate intricate details or methods for achieving the proposal, despite company claims asserting ordinary business or micromanagement of daily activities.

A. The Proposal Is Consistent with Staff Precedents on Climate and Financial Services in Which Proposals Have Been Found Not Excludable As Micromanagement Under Rule 14a-8(i)(7).

The significance of climate issues to Goldman Sachs is unquestioned by the Company Letter and the Staff has previously rendered decisions at the Company determining that climate change is a significant policy issue that transcends ordinary business for Goldman Sachs. Two *Goldman Sachs* decisions dated February 7, 2011 and March 1, 2011, reversed the prior staff position[13] and found that proposals at a financial institution on climate change were not excludable as ordinary business, regardless of whether they related to an analysis of risk to the environment (March 1, 2011) or an analysis of climate related business risk to the firm (February 7, 2011).

Goldman Sachs (February 7, 2011) related to a proposal requesting the board of Goldman Sachs prepare a report disclosing the business risk related to developments in the political, legislative, regulatory and scientific landscape regarding climate change. The Company had argued that the proposal was excludable under Rule 14a-8(i)(7). However, that argument proved unsuccessful because in addition to the new SEC recognition in its Climate Guidance that climate change is a

[13] The mid-2000's staff decisions in *Wachovia Corporation* (January 28, 2005), *American International Group Inc.* (February 11, 2004), and *Chubb Corporation* (January 25, 2004) were reached prior to Staff Legal Bulletin 14E as well as the Guidance on climate disclosure. These prior cases failed to find a significant policy issue and/or a nexus to the companies receiving the proposals.

significant social policy issue, the proposal included a nexus: that the company would be materially affected by developments concerning climate change. The Company's status as one of the leading financiers of the fossil fuel industry subject to regulation and reputational damage rendered the existence of nexus beyond doubt.

Similarly, in *Goldman Sachs* (March 1, 2011), the Staff rejected an ordinary business argument in a proposal requesting that the board prepare a global warming report which may discuss specific scientific data and studies relied on to formulate Goldman Sachs original climate policy, the extent to which Goldman Sachs now believes human activity will significantly alter the global climate, and an estimate of costs and benefits to Goldman Sachs of its climate policy.

B. *The Proposal Does Not Micromanage, but Rather Affords an Appropriate Opportunity for Strategic Direction from Investors on a Significant Policy Issue.*

The Company Claims that the Proposal is excludable pursuant to Rule 14a-8(i)(7) as micromanaging by impermissibly interfering with the Company's complex operational and business decisions. It asserts that asking the Company to bring its carbon footprint into alignment with global climate goals would "be so onerous as to directly dictate certain lending, financing and investment choices made by the Company" or interfere with the Company's ability to direct its lending, financing, and investment banking, as well as other arrayed financial services.

The claim that exclusion is appropriate because existing company processes are complex, decisions and strategies are well-considered, and priorities have been set, amounts to an assertion that the performance and goals that the Company has adopted are not subject to any intervention or redirection by the Company's investors. If this were the case, it would eliminate the vast majority of shareholder proposals directed toward improving performance or reducing negative impacts of companies.

A long line of staff decisions have held that Proposals are excludable on the basis of micromanagement only where they seek *prescriptive* actions on *day-to-day levels of minutia.* For instance, in *Marriott International Inc.* (March 17, 2010) the proposal addressed minutia of operations – prescribing the flow limits on showerheads. In *Duke Energy Corporation* (February 16, 2001) the proposal attempted to set what were essentially regulatory limits on the company — 80% reduction in nitrogen oxide emissions from the company's coal-fired plant and a limit of 0.15 lbs of nitrogen oxide per million British Thermal Units of heat input for each boiler, which was excludable despite the proposal's objective of addressing significant environmental policy issues.

Contrary to the Company's argument, the Proposal here does not dictate the company's day-to-day decision-making, but rather provides a larger strategic redirection that is part and parcel of the shareholder proposal process. The Company's day-to-day decisions would be made within this strategic framework, but the minutia would not be dictated by it. It is one of the most fundamental truths, and a long-standing bedrock principle of the shareholder proposal process, that a proposal redirecting company policy or business models on an issue of significant social or environmental impacts of the company is the right of investors through the shareholder proposal

process and is not reserved to management, regardless of how intricate and detailed the company's policies are on the issue. As the Commission and case law have declared, strategic direction is the prerogative of investors in the shareholder proposal process and proposals framed toward redirecting business strategy on important public policy issues are not excludable under Rule 14a-8(i)(7).

The Commission has made it clear since 1976 that proposals addressing business choices with major implications for society transcend ordinary business:

> [A] proposal that a utility company not construct a proposed nuclear power plant has in the past been considered excludable … In retrospect, however, it seems apparent that the economic and safety considerations attendant to nuclear power plants are of such magnitude that a determination whether to construct one is not an "ordinary" business matter. Accordingly, proposals of that nature, as well as others that have major implications, will in the future be considered beyond the realm of an issuer's ordinary business operations, and future interpretative letters of the Commission's staff will reflect that view. (Exchange Act Release 3412999 (Nov. 22, 1976)).

The Staff decisions in the decades subsequent to 1976 identified various significant policy issues that transcend ordinary business where the proposal asked the company to reduce its impacts on society in various arenas, some of which include: pollution, human rights violations, climate change, discrimination, slavery, doing business with governments and companies implicated in genocide.

This concept was judicially clarified in *Medical Committee for Human Rights v. SEC*, 432 F.2d 659 (D.C. Cir. 1985) in which the D.C. Circuit Court found that shareholder proposals are proper (not ordinary business) when they raise issues of corporate social responsibility or question the "political and moral predilections" of board or management. The take-away from this decision is that board and management have no monopoly on expertise over investors when it comes to guiding company strategy on issues with broad and significant social consequence. Investors are entitled to weigh in through the shareholder proposal process.

Medical Committee involved a proposal at Dow Chemical seeking an end to the production and sale of napalm during the Vietnam War. The proposal requested the Board of Directors to adopt a resolution setting forth an amendment to the Composite Certificate of Incorporation of the Dow Chemical Company that napalm shall not be sold to any buyer unless that buyer gives reasonable assurance that the substance will not be used on or against human beings. The SEC initially found the proposal was excludable. The appellate court in *Medical Committee* remanded the no-action decision to the SEC for further deliberation by the SEC consistent with the court's conclusion that the SEC should defend the rights of shareholders to file proposals directed toward significant social issues facing a company.

In deciding *Medical Committee*, the court noted that it would be appropriate for shareholders to use the mechanism of shareholder democracy to pose "to their co-owners, in accord with applicable state law, the question of whether they wish to have their assets used in a manner

which they believe to be more socially responsible." The court had noted such a choice was not appropriately reserved to the board or management. The same logic applies here - directing the business away from harmful and financially risky activities associated with increasing carbon emissions - is not a choice reserved exclusively to management or board.

As stated in *Medical Committee*:

> [T]he clear import of the language, legislative history, and record of administration of section 14(a) is that its overriding purpose is to assure to corporate shareholders the ability to exercise their right — some would say their duty — to control the important decisions which affect them in their capacity as stockholders and owners of the corporation. (*SEC v. Transamerica Corp*., 163 F.2d 511, 517 (3d Cir. 1947), cert. denied, 332 U.S. 847, 68 S. Ct. 351, 92 L. Ed. 418 (1948)).
>
> * * *
>
> What is of immediate concern… is the question of whether the corporate proxy rules can be employed as a shield to isolate such managerial decisions from shareholder control. After all, it must be remembered that "[t]he control of great corporations by a very few persons was the abuse at which Congress struck in enacting Section 14(a)." SEC v. Transamerica Corp., supra, 163 F.2d at 518.

In the decades that followed, numerous proposals on diverse subject matters have appropriately asked companies to change their business model in some way that reduced impact, and were not excluded. The strategic choices regarding reducing large impacts of the company on society have long been established as within the protected zone of shareholder democracy.

The newly minted focus by companies on challenging nearly all environmental and social impact proposals as *micromanagement based on the complexity of existing company policies and practices* is a misdirected interpretation of the concept of micromanagement and a disservice to the shareholder proposal process and the capital markets.

The Company's assertions of micromanagement and its detailed articulation of the complexity of the underlying decision-making terrain would imply that many long-standing types of shareholder proposals, including issues raising important public policy concerns, suddenly entail micromanagement when applied at a particular company. This new approach by companies has resulted in numerous no-action requests for the 2019 season going to great lengths to assert that "complex issues" like management of greenhouse gases, the use of antibiotics in the supply chain, promotion of gender equity, management of the firm's pollution impacts, impacts on civil rights, etc. – essentially a broad range of long-standing and established areas of shareholder concern – have suddenly become prohibited areas whose consideration creates a risk of undermining the board and management's well-considered decisions, priorities, and strategies regarding how to address such issues.

This line of argument has been rejected previously by the SEC. In a decision closely analogous to the current Proposal, the Staff ruled that it was not excludable under Rule 14a-8(i)(7), to request that **the board report to shareholders the company's assessment of the greenhouse gas**

emissions resulting from its lending portfolio and its exposure to climate change risk in lending, investing, and financing activities. *PNC Financial Services Group, Inc.* (February 13, 2013). As in the present Proposal directed toward Goldman Sachs Group, PNC had argued that the proposal addressed ordinary business and micromanagement because any proposal involving an evaluation of a wide range of factors associated with its lending, investing, and financing activities are part of its day-to-day lending and investment operations.

PNC, in attempting to assert the complexity of the issue, and therefore that the proposal micromanaged, had similarly argued:

> Any assessment of the effects of the greenhouse gas emissions resulting from PNC's lending portfolio and its exposure to climate change risk as a result of its lending, investing and financing activities ("GHG/Climate Exposure") involves an evaluation of a wide range of factors, including the risk that GHG/Climate Exposure will impact the revenues and cash flow of the Company's borrowers, its trading partners and the institutions comprising its investment portfolio. For example, the Company evaluates the risks associated with GHG/Climate Exposure, to the extent that such risks might impact customers, in connection with the Company's underwriting and investing standards, policies and procedures, as well as in establishing loan pricing policies and loan loss reserves. In addition, GHG/Climate Exposure is just one of many risks that the Company considers as part of its daily operations in conducting its various lines of business, including its daily lending and investment operations.
>
> *In essence, the Proposal focuses on matters that involve the Company's fundamental day-to-day business activities and the manner, time and expense that the Company allocates or incurs with respect to one particular category of risk,* and would require the Company to allocate significant resources to provide a detailed report that, in effect, summarizes certain aspects of the Company's ordinary business operations.
>
> *That the risk in question relates to an environmental issue does not change the focus of the Proposal -- PNC's day-to-day choices in extending credit, managing assets, and investing capital, and how PNC measures the totality of the risk associated with doing business with particular customers or making certain investments.* . . . In the end, the problem of balancing of the risks arising from GHG/Climate Exposure relative to other risks and considerations relates to the resolution of ordinary business problems and, in the words of the 1998 Release, it is clearly "impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." (Emphasis added).

The Staff rejected the Company's argument and found that the proposal did not intrude on ordinary business or micromanage the bank.[14] This follows the logic of numerous other

[14] We note that the Task Force on Climate-Related Financial Disclosures (TCFD) process that was concluded last year emphasizes the importance for banks and other financial institutions of assessing and disclosing to shareholders climate risk and what companies are doing to reduce such risk. Early shareholder proposals such as *PNC Financial,*

proposals beyond the financial sector that similarly asked for action to reduce social or environmental impacts, both before and after the *PNC* decision, and found non-excludable under Rule 14a-8(i)(7).

For example, the Staff has allowed proposals to go forward in the human rights arena even where those proposals might redirect investment decisions made by the companies. An example is *Franklin Resources, Inc.* (December 30, 2013), a proposal addressing a significant policy issue of human rights associated with investment in companies that contribute to genocide or crimes against humanity. That proposal requested ". . . that the Board institute transparent procedures to avoid holding or recommending investments in companies that, in management's judgment, substantially contribute to genocide or crimes against humanity, the most egregious violations of human rights." The company argued that the proposal was excludable on the basis of 14a-8(i)(7) because, among other points, the proposal dealt with the company's ordinary business of buying and selling securities and the proposal, if implemented, would not only interfere with the company's buying and selling of portfolio securities, but would micro-manage the company's communications with its Portfolio Companies, and micro-manage the investment process overall by defining the subject matter and goals of the company's discussions with its clients, specifying which companies it could engage with, and requiring divestment along set deadlines.

However, the proponents successfully argued that their proposal did not micro-manage because it did not specify the details of the procedures requested, nor implement them on a day-to-day basis, leaving to the board and management's judgment how to define the companies to be avoided and the procedures to be implemented. Proponents also noted that the company's peers in the industry had already implemented such investment policies. The Staff found that the proposal focused on the significant policy issue of human rights and did not seek to micromanage the company to such a degree that exclusion of the proposal would be appropriate.

ING Emerging Countries Fund (May 7, 2012) similarly dealt with a proposal requesting that the company institute procedures to prevent holding investments in companies implicated in genocide. The company in this case also sought exclusion on the basis of Rule 14a-8(i)(7), arguing that the proposal would micro-manage the company's day-to-day investment decisions. The Staff was unable to concur with the company's view, in spite of arguments that the Staff had earlier found that "requiring an investment company to divest its holdings in one specific company impermissibly interferes with the conduct of the investment company's ordinary business" and "requiring an investment company to divest from a select group of companies also impermissibly interferes with the conduct of an investment company's ordinary business" (the Company *citing College Retirement Equities Fund*, (May 3, 2004) and *College Retirement Equities Fund*, (May 23, 2005)), and did not allow exclusion on the basis of Rule 14a-8(i)(7).

The logic applicable to proposals on redirecting financing on human rights violations is transferable to the instant case. Financial institutions not only experience climate risk, but also have an outsized impact in creating climate risk. The larger and more carbon intensive their loans and investments, the more emissions are locked in over the next 30 to 40 years, and the more

---

Goldman Sachs and others helped pave the way in emphasizing the importance to shareholders of understanding in detail how companies, including financial institutions, are addressing the growing risks of climate change. *See https://www.fsb-tcfd.org/publications/final-recommendations-report/*

difficult it is for the world to achieve its goal of maintaining global temperatures within a range that will preserve the climate as we know it.

Other financial institutions are adopting and publicly announcing a variety of policies to bring their companies' investments and/or loans in line with Paris targets. It is rational for shareholders to ask the Company to adopt goals similar to its competitors or to report its unwillingness to do so. It is equally acceptable for investors to ask for annual disclosures about the bank's plans, targets, and progress in implementing its plan, if any. Such information will assist shareholders in their investment decisions including: evaluating the direction and magnitude of Company risk; whether the bank is facing more or less carbon risk than competitor banks; whether its investments are increasing climate risk to the economy; whether shareholders want to continue financing such growth in greenhouse gas emissions; and, whether, in a competitive marketplace, the Company is well-situated to take advantage of climate-related opportunities, or is focused more on activities that generate climate-related risk. Disclosure is critical to investor decision making.

C. A Focus on Timeframes and Methods Does Not Necessarily Entail Micromanagement

In Staff Legal Bulletin 14J, Staff attempted to consolidate its discussion of micromanagement and noted an intent to consider the potential for micromanagement in proposals addressing "specific timelines and methods."[15] However, the Bulletin also noted that it was the Staff's intention to implement this new framework "consistent with the Commission's guidance in this area."[16] The Commission's prior pronouncements on this issue have made it abundantly clear that it has not endorsed or proposed a prohibition against requests for timelines or specific methods. Quite to the contrary, the Commission in the 1998 Release the most recent and authoritative Commission-level statement regarding the application of micromanagement -- made it clear that requests regarding methods and timelines can be acceptable:

> . . . . in the Proposing Release we explained that one of the considerations in making the ordinary business determination was the degree to which the proposal seeks to micromanage the company. We cited examples such as where the proposal seeks intricate detail, or seeks to impose specific timeframes or to impose specific methods for implementing complex policies. **Some commenters thought that the examples cited seemed to imply that all proposals seeking detail, or seeking to promote timeframes or methods, necessarily amount to ordinary business. . . We did not intend such an implication. Timing questions, for instance, could involve significant policy where large differences are at stake, and proposals may seek a reasonable level of detail without running afoul of these considerations. (*Emphasis added*).**

An often-cited example of a "small" difference between a proposal's request and company

[15] Staff Legal Bulletin 14J, Oct. 23, 2018.
[16] *See* Release No. 34-40018 (May 21, 1998).

actions was highlighted by a proposal filed with DuPont over the timing of the phaseout of ozone-depleting CFCs. Where the company had effectively come into line with the proponent's original requested phaseout date for CFCs, the court held that the negligible difference from the proponent's requested date and the company's planned phaseout date no longer amounted to a significant policy issue and could be considered a matter of ordinary business. *Roosevelt v. E.I. Du Pont De Nemours & Company*, 958 F.2d 416 (1992) ("Dupont").

In contrast, it has never been the case, and would be an incorrect interpretation of the Commission's Release, to conclude that a request to set a GHG reduction goal to be met in a specific number of years would constitute micromanagement. *See Dupont*. Nor is it inappropriate to include details in a proposal sufficient to allow shareholders and management to understand what is being requested, and how it differs from the company's current policies. Every proposal must strike a correct balance between specificity and vagueness.[17]

The Proposal here, which addresses the significant policy issue of climate change and achieving greenhouse gas reductions in line with a global policy goal, where large differences between Company action and the Proposal's request are at stake, is consistent with the Commission's Release. It is also consistent with prior proposals the Staff has considered which have been found to not be excludable under Rule 14a-8(i)(7) despite Company claims asserting ordinary business or micromanagement. As in the present Proposal, they were directed toward the Company's plans on the important public policy issue of climate change and did not dictate intricate details, specific timelines, or methods for achieving the proposal.

D. *While Allowable, the Proposal Here Does Not Set nor Require Specific Targets or Timelines*

In this instance, the Proposal does not seek specific timelines or targets. It requests that greenhouse gas emissions be *aligned* with Paris targets, leaving the specifics of how that alignment occurs – as to both timing and methods – to the Company's judgement.

The Company Letter asserts incorrectly that the Proposal requires the Company to achieve an impermissible time-bound, quantitative target of net zero emissions by 2100. The Company creatively draws this conclusion by noting that in order to maintain global temperature increase below 2 degrees, "net zero emissions must occur globally in the second half of this century."[18]

The Proposal, however, specifically and intentionally *does not ask Goldman Sachs Group to adopt the Paris goal*. The Paris Agreement does not allocate emissions targets to sectors, let alone to individual companies. Achieving net zero carbon emissions is a global goal that will be achieved only by aligning global government and corporate climate policies, together with

[17] If a proposal is too vague in defining what is requested, the Staff will exclude it under Rule 14a-8(i)(3). Further, a vague proposal that ***fails*** to ask for action scaled and paced to global needs - merely asking for a climate strategy - may also be subject to challenge by even the most poorly performing companies under Rule 14a-8(i)(10).

[18] The Paris Agreement assigns no specific allocation of emissions targets to sectors, let alone to individual companies. Achieving net zero carbon emissions is a global goal that will be achieved only by aligning global government climate policies, global corporate climate policies, individual actions, and a range of other factors with the physics of the world's environmental systems to achieve necessary reductions.

individual actions, and a range of other factors, with the physics of the world's environmental systems, to achieve necessary reductions. What the Proposal does ask is that the Company create a plan based on its own assessment of its alignment with the Paris goal. The Supporting Statement suggests ways the Company might do so, at its discretion. Many companies, including some banks, have adopted science-based targets, as one example of how such a plan might work.

The Company, similarly, may set whatever timeline it chooses to achieve its plan so long as the timeline is aligned with the Paris goal. The Company could, for example, adopt early emission reductions, incremental emissions over time, back-loaded emissions, or a combination thereof. Since the Proposal allows the Company's plan to encompass a broad range of actions along a timeline that it sets so long as both are reasonably aligned with Paris goals, the Proposal does not fall within the long-standing prohibitions on micromanagement.

The Company Letter cites recent Staff decisions that found certain proposals requesting targets, timelines, or specific methods to constitute micromanagement (*JPMorgan Chase*, *EOG, Apple*, etc.). These decisions are inapposite here. The Proposal does not set an interim timeline for action, nor does it ask the Company to set a net zero emissions goal. It does not ask for a specific time bound target, seeking instead a policy for reduction of the Company's portfolio greenhouse gas emissions to align with the Paris Agreement goal, and reporting of targets, plans, and progress under the policy. If such a request – asking for reductions in greenhouse gas emissions in line with a global policy – were found to be micromanagement, shareholders would effectively be denied any meaningful requests relating to the important public policy of global warming. This does not appear to be the intent of Staff.

E. *A Proposal May Not Be Excluded as Micromanagement where the Company Has Climate-Related Policies, but There Is a Large Difference Between the Company's Climate Actions and the Proposed Action.*

The Company Letter asserts that the Proposal micromanages the Company's responses to climate change because the Company already has certain policies and disclosures in place in relation to climate change that would be required to be supplemented with additional disclosures and management efforts if the Proposal were to be implemented.

As demonstrated in the Company Letter, the Company is taking some climate actions, including:

- Acknowledging the scientific consensus that climate change poses catastrophic risks,
- Deploying capital to expand clean energy solutions,
- Withdrawing financing of coal fired plants in developed economies only,
- Engaging in environmental and social due diligence and risk management,
- Structuring securities to help clients manage and transfer risk from extreme weather events,
- Identifying the carbon footprint of the Fundamental Equity business but not all asset classes.

The Company, correctly, does not claim that these current policies or disclosures "substantially

implement" the guidelines or essential purpose of the Proposal as would be required under Rule 14a-8(i)(10). The Company's actions are *ad hoc*, not quantifiable, and apparently not calculated to reduce the Company's carbon footprint for its investments and loans consistent with global goals. While the Company reports that it calculates the carbon footprint in one area of equity investment, and that it has limited investment in one high carbon asset class, there is no assertion by the Company that it is directing its efforts toward systematically aligning the carbon footprint of its lending and investing to align with global needs.

The Company's current practices involve a case-by-case assessment of climate risk on certain transactions, within the framework of Company policies, including in making lending, financing and investment decisions. While these policies imply a certain level of action by the Company, there is no way for investors to know or even assess from existing disclosures whether its activities are scaled to addressing carbon risk at a level consistent and aligned with Paris goals.

In the present instance, the Proposal is intended to address the significant difference between the Company's current climate related practices and the types of action necessary to help attain the Paris climate goal of ***maintaining global temperatures in a range where people, the economy, and the environment can avoid cataclysmic harm***. The difference between actions currently adopted by the Company and what shareholders expect is quite large. It is therefore reasonable under the 1988 Release to address this issue and to expect a reasonable level of detail without running into micromanagement prohibitions.[19]

The details in the proposal are limited to strategy questions that are practical for shareholder consideration. There is nothing impractical about shareholders considering, and encouraging the Company, to discuss opportunities to expeditiously reduce the portfolio's greenhouse gas emissions by avoiding investment in high carbon, high-risk fossil fuel projects. This is neither outside the expertise of shareholders, nor does it delve too deeply into intricate details. Similarly, a request for reporting on "targets, plans and progress" is a request for the Company to clarify the scale, pace, and rigor of its efforts to know and reduce the greenhouse gas emissions of its lending portfolio.

Contrary to the Company Letter's claims, the Proposal strikes an appropriate balance of respecting Board and management discretion while providing direction from shareholders that the Company needs a much better mechanism for assessing where its carbon footprint fits into global climate policy and needs.

F. The Practicality and Importance of Shareholder Consideration is Demonstrated by Current Market Action and Expectations

The proposal directly supports current investment community strategies on capital allocation and engagement. The business community, investment analysts, the accounting community and others are engaged in activities aligned with promoting the same kind of accountability as requested by the Proposal.[20]

[19] 1988 Release, p. 6.

[20] Making finance consistent with climate goals, Insights for operationalising Article 2.1c of the UNFCCC Paris

As described in more detail in the background section of this letter, financial sector initiatives seeking an assessment of alignment of an investment firm's carbon footprint with global policy demands under the Paris Agreement include:

Principles of Responsible Investment "Inevitable Policy Response" Investment Strategy for portfolio allocation, which anticipates the disruptive economic impacts of global regulatory responses as climate change worsens, and therefore provides strategies for diversification and risk transfer to protect the investors long-term portfolio value. Through this report, PRI seeks engagement with portfolio companies to increase disclosure of climate risk and to align companies with the transition to a low carbon economy as the only way to "future proof" their companies to ensure sustainable economic growth.

Other activities are underway to support this form of analysis and engagement. For instance, the International Standards Organization is developing a **climate finance standard**: ISO 14097, which will track the impact of investment decisions on GHG emissions; measure the alignment of investment and financing decisions with low-carbon transition pathways and the Paris Agreement; and identify the risk from international climate targets or national climate policies to financial value for asset owners. The standard will help define benchmarks for decarbonization pathways and goals, and track progress of investment portfolios and financing activities against those benchmarks; identify methodologies for the definition of science-based targets for investment portfolios; and develop metrics for tracking progress.

Another initiative, Sustainable Energy Investment (SEI) Metrics, **has already tested $500 billion of equity for 2°C alignment** (SEI Metrics, 2018). SEI Metrics covers a limited number of sectors with public equity and corporate portfolios. The project was recently relaunched as Paris Agreement Capital Transition Assessment (PACTA), which aims to measure the current and future alignment of investment portfolios with a 2°C scenario analysis, allowing investors to measure climate performance and address the challenge of shifting capital towards clean energy investments. Since its launch, over 2,000 portfolios have been tested for 2°C alignment with over $3 trillion in assets under management. **Of the 25% of surveyed investors involved in the road-test, 88% said they were likely or very likely to use the assessment in portfolio management, engagement, and / or investment mandate design.** In 2017, the model will be expanded to corporate bonds and credit, as well as a broader range of sectors.[21]

Further, the Science Based Targets initiative (SBTi) is currently creating methods and implementation guidance to support financial institutions in setting targets for their investing and lending activities (Cumis et al., 2018). This carbon reduction initiative[22] mobilizes companies to set science-based targets and boost their competitive advantage in the transition to the low-carbon economy. The initiative defines and promotes best practice in setting targets, offers resources and guidance to reduce barriers to adoption, and independently assesses and approves

Agreement Shelagh Whitley, Joe Thwaites, Helena Wright and Caroline Ott December 2018 https://www.odi.org/sites/odi.org.uk/files/resource-documents/12557.pdf

[21] https://2degrees-investing.org/sei-metrics/

[22] https://sciencebasedtargets.org/

companies' targets. Science-based targets provide companies with a clearly defined pathway to future-proof growth by specifying how much and how quickly they need to reduce their greenhouse gas emissions. Targets adopted by companies to reduce greenhouse gas (GHG) emissions are considered "science-based" if they are in line with the level of decarbonization required to keep global temperature increase below 2 degrees Celsius compared to pre-industrial temperatures, as described in the Fifth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC AR5).

Investor demand for climate disclosures in general and science-based targets specifically has increased substantially as the risks have become more apparent.[23] For instance:

> Anne Simpson, Investment Director, Sustainability, at California Public Employees' Retirement System: "Mapping a company's carbon footprint, or the emissions it produces, and measuring its progress in this area is an important and growing part of our portfolio analysis. Over the long-term investors are saying to these companies that we want them to align their business strategy with the Paris Agreement."
>
> Jeanett Bergan, Head of Responsible Investment at KLP states the potential of better long term returns from setting SBTs: "If we as active owners improve the performance of CO2 intensive companies, that will help us secure better returns in the future."
>
> Andy Howard, Head of Sustainable Research at Schroders has stated: "We want to know how exposed a particular business is to the changing context on climate and what it is practically doing to make the changes required; including its targets, timeframes and the extent of its ambition."

The support for better disclosure and target setting by individual investment firms and experts has been accompanied by increasing recognition of the need for investor disclosure on climate change, including through the recommendations of the global Task Force on Climate-Related Financial Disclosures[24] issued in 2017 by the Global Financial Stability Board. The report focuses on recommendations for disclosure of climate risk in annual financial reports. The report offers recommendations for how companies can better disclose clear, comparable and consistent information about the risks and opportunities presented by climate change, in hopes that improved disclosure will lead to more efficient allocation of capital, and help smooth the transition to a low-carbon economy.

Another of the many examples of investor engagement is the Climate Action 100+ initiative, backed by 310 investors with more than $32 trillion in assets under management, including 87 North American investors. Climate Action 100+, launched in December 2017, is an initiative led by investors to engage systemically important greenhouse gas emitters and other companies across the global economy that have significant opportunities to drive the clean energy transition and achieve the goals of the Paris Agreement.

---

[23] http://sciencebasedtargets.org/what-investors-are-saying/
[24] https://www.fsb-tcfd.org/

To summarize: the approach requested by the Proposal is supportive of and aligned with these and other benchmarks emerging in the capital markets for considering and integrating climate risk and action in capital allocation as well as company engagement. These investment strategies are already resulting in demands from investors to require investee measurement and planning regarding companywide carbon footprints, as well as actions to reduce GHG emissions.

II. Proof of Authorization Was Sufficient to Satisfy Federal and State Law and the Purposes of SEC Rules and Bulletins

The Company Letter asserts that Proponents failed to provide appropriate shareholder authorization to *As You Sow* to submit the Proposal, and therefore the proposal may be excluded under Rule 14a-8(b) and Rule 14a-8(f)(1). The Staff has made it clear that the purpose of the authorization guidance under Staff Legal Bulletin 14I is to ensure that a company has sufficient evidence that the proponent understands that a particular proposal has been filed on their behalf. In this instance, that purpose was fulfilled and, therefore, the Proposal is not excludable on this basis.

While Rule 14a-8 does not address shareholders' ability to submit proposals through a representative, shareholders frequently elect to do so, a practice commonly referred to as "proposal by proxy." As stated in 14I, the Division has been, and continues to be, of the view that a shareholder's submission by proxy is consistent with Rule 14a-8. The Bulletin goes on to describe the content of an authorization letter that will "generally be expected" by the staff to fulfill proof of such authorization, including "identify the specific proposal to be presented" and a signature of the proponent authorizing the proposal to be filed on their behalf.

The Company letter claims that the original proof of authorization from the Proponent which identified the Proposal as "Report on Climate Asset Transition," insufficiently identifies the Proposal. As You Sow, who filed the proposal on behalf of the Proponents, sent a letter to the Company in response to the notice of deficiency. It noted:

> The authorization letters [of proponents] describe the Proposal as "Report on Climate Asset Transition" or "reporting on climate asset transition," descriptions which accurately encapsulate the objective of the Proposal. Goldman Sachs must transition its assets – its loans and investments – in order to "reduce the carbon footprint of its loan and investment portfolios to meet the Paris goals." The title of the Proposal is another way of stating the same thing; in order to transition investment and loan assets to be compatible with a 2-degree Celsius world, high carbon financing must be limited. The title was included in the proposal as a frame for those non-proponent shareholders that do not currently have a deep understanding of climate issues.

The Proponent was within its rights under state and federal law to delegate an agent to develop a "climate asset transition" proposal, which is exactly what the Company received. No valid purpose is served in requiring the proponent to know every detail of the proposal prior to the filing, and indeed a normal course of events in filing of a proposal involves numerous iterations

and feedback such that the level of specificity that Goldman Sachs seeks to enforce in its Company Letter would be an unworkable constraint on many proponents. Certainly the Proponent's authorization letter demonstrates that it understood the nature of the Proposal being filed on its behalf.

As noted in the Company Letter, *As You Sow* made an obvious clerical error in its response to the request for further documentation regarding proof of authorization in that it provided a letter that mentioned the filing at *Goldman Sachs* several times, but then noted that the proposal filed by the proponent requested "[a] detailed description identifying the Proposal as requesting a report on how ***J.P. Morgan*** 'plans to align its business model with a Paris compliant low carbon economy.' See Exhibit A.

Instead of notifying As You Sow of the defect, the Company seized on the typo to try to make a claim that there was inadequate proof of authorization. We believe this is not at all the intent of the Staff's requirements for proof of authorization and such an overreaching interpretation would undermine the legal rights of share owners to appoint an agent to act on their behalf if this exclusion were allowed. A corrected letter, referring only to Goldman Sachs, from *As You Sow* is included with this letter as Appendix B. We note that unlike the proof of ownership requirements, there is no clear deadline related to proof of authorization under SLB14I, and therefore we believe Appendix B sufficiently clears up this question to defeat the Company's effort to exclude the proposal on this basis.

Furthermore, we believe that there was sufficient context in the December 14 letter from *As You Sow* that the Company had an obligation, as requested in the letter, to notify the Proponent if there were any remaining deficiencies or questions: "SEC Rule 14a-8(f) requires a company to provide notice of specific deficiencies in a shareholder's proof of eligibility to submit a proposal. We therefore request that you notify us if believe any deficiencies remain."

It has long been the case that the Staff interprets the proof of ownership requirements in a manner that takes account of context. Rather than overly technical and rigid format for accomplishing the purposes of the proof of ownership requirements, the Staff looks to the full context and wording of documentation to assess whether proof of ownership was sufficient. The same principles should be equally applied with regard to authorization letters.

In *AES Corporation* (Jan. 21, 2015), the Company requested permission to omit a shareholder proposal from its 2015 proxy materials pursuant to Rule 14a-8(f) arguing that the Proponent had failed to supply, within 14 days of receipt of AES's request, documentary support sufficiently evidencing that it satisfied the minimum ownership requirement as required by Rule 14a-8(b). The Proponent in this case had submitted two proof of ownership letters from different custodian banks, which listed consecutive dates – one letter demonstrated ownership until October 31st, and the other demonstrated ownership beginning on November 1st. The date range covered by the two letters demonstrated continuous ownership for the required period, yet the Company argued that since the Proponent's communication did not <u>explicitly</u> state that they held "continuous ownership" in the Company – the Proponent's letter stated simply that the two proof of ownership letters "certified ownership, for over a year" – the Proponent's investment managers *might* have sold all of their collective holdings on October 31 and repurchased them

the next day, creating an interruption in the requisite ownership continuity. The Proponent argued that there was no basis for this claim, that the combination of the two letters evidenced continuous ownership, and furthermore that the Company's Deficiency Notices never gave any indication that notwithstanding the otherwise facially adequate ownership letters, the Company was asking for proof that the Proponent's holdings had not all been sold one day and bought back the next. The Division of Corporation Finance was unable to accept AES's view and concluded that the exclusion of the proposal from the proxy materials was not appropriate under Rule 14a-8(f). The Staff denied effectively identical requests of Chevron Corporation and Southern Company. *Chevron Corporation* (Feb. 23, 2015); *Southern Company* (Feb. 16, 2015).

In *McKesson Corporation* (April 30, 2013), the Company sought to exclude a proposal under rules 14a-8(b) and 14a-8(f), claiming that the Proponent's proof of ownership did not demonstrate continuous ownership for the required one-year period. In this case, the Proposal was submitted on February 7, 2013. Two ownership letters were submitted in response to a Deficiency Notice sent on February 20, 2013. The first letter, dated February 26, 2013, stated that the Proponent's shares had "been held continuously since *at least* January 1, 2012," (emphasis added). The second letter, dated February 27, 2013, stated that the "account has continuously held at least 60 shares of MCK common stock since *at least* January 1, 2012" (emphasis added). The Company argued that the language "at least", in the grammatical context of these two letters, could only reasonably be construed to indicate that the shares had been held for a one-year period from January 1, 2012 to January 1, 2013, thereby creating a gap between the Proponent's continuous one-year period of ownership of the Company's common stock as of January 1, 2013 and February 7, 2013. The Staff did not agree, finding instead that these letters did demonstrate continuous ownership for the required period, and was unable to concur with the Company's request to omit the proposal. Although the ownership letters did not explicitly note the date February 7, 2013, the context of the communication indicated that proof of ownership was inclusive of this date.

Similarly, in *General Electric Company* (Dec. 16, 2014), where the Proponent's proof of ownership letter did not explicitly state ownership through the date of the Proposal submission and the Company sought exclusion on the basis of Rule 14a-8(f), the Staff also was unable to concur with the Company's request for exclusion. This case dealt with a Proposal submitted October 14, 2014. A proof of ownership letter sent by the Proponent's broker dated October 21, 2014, which was received by facsimile October 22, 2014, evidenced continuous ownership of the requisite shares "since October 1, 2013." It would appear that, similarly to *McKesson Corporation*, here too the Staff was also able to discern from the context and timing of the communications that ownership was continuous through the latter correspondence.

In this instance, interpretation of proof of authorization must similarly consider the full context. As an example of the Staff applying similar contextual interpretation of proof of authorization, see *Baker Hughes Inc.*(February 22, 2016).

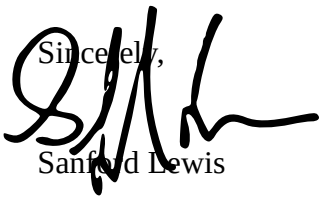
In summary, we believe it is inappropriate to exclude the proposal on the basis that the Proponent did indeed understand that a proposal asking that the Company to transition its assets to align with Paris' low carbon goal was filed on its behalf, a characterization that accurately describes the Proposal. Investments and loan assets must indeed be transitioned for the Company's assets – its investments and loans -- to be aligned and compatible with a 2-degree Celsius world.

Shareholders proponents have a right to appoint an agent to engage in reasonable drafting, advocacy, and revision regarding a proposal, and the purposes of the Staff Legal Bulletin 14I were satisfied. The Proponent was aware of the nature of the proposal at the time of filing.

CONCLUSION

We believe it is clear that the Company has provided no basis for the conclusion that the Proposal is excludable from the 2018 proxy statement pursuant to Rule 14a-8. As such, we respectfully request that the Staff inform the Company that it is denying the no-action letter request. If you have any questions, please contact me at 413 549-7333 or sanfordlewis@strategiccounsel.net.

Sincerely,



Sanford Lewis

cc: Beverly L. O'Toole

APPENDIX A
INITIAL PROOF OF AUTHORIZATION

AS YOU SOW

1611 Telegraph Ave, Suite 1450
Oakland, CA 94612

www.asyousow.org
BUILDING A SAFE, JUST, AND SUSTAINABLE WORLD SINCE 1992

November 21, 2018

John F.W. Rogers
Corporate Secretary
The Goldman Sachs Group, Inc.
200 West Street
New York, New York 10282

Dear Mr. Rogers:

As You Sow is filing a shareholder proposal on behalf of K.F.P. A California Limited Partnership ("Proponent"), a shareholder of The Goldman Sachs Group, for action at the next annual meeting of Goldman Sachs. Proponent submits the enclosed shareholder proposal for inclusion in Goldman Sach's 2019 proxy statement, for consideration by shareholders, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.

A letter from the Proponent authorizing *As You Sow* to act on its behalf is enclosed. A representative of the Proponent will attend the stockholders' meeting to move the resolution as required.

We are available to discuss this issue and are optimistic that such discussion may result in resolution of the Proponent's concerns. To schedule such a dialogue, please feel free to contact me via email at dfugere@asyousow.org or telephone at (510) 735-8141.

Sincerely,

Danielle R. Fugere
President

Enclosures

- Shareholder Proposal
- Shareholder Authorization

LIMIT HIGH CARBON FINANCING

Whereas: Banks with financial ties to carbon intensive fossils fuel investments face reputational harm, boycotts, divestment, and litigation that adversely affects shareholder value. Goldman Sachs has suffered extensive reputational damage from, and has been the target of significant public protests, based on its support of the Dakota Access Pipeline and other similarly controversial projects.

The Intergovernmental Panel on Climate Change recently underscored the harm of climate change, announcing that "rapid, far-reaching" changes are necessary to avoid disastrous levels of global warming; net emissions of carbon dioxide must fall 45 percent by 2030, reaching "net zero" by 2050.

Banks' financing choices have a major role to play in promoting these goals. Bank lending and investments make up a significant source of external capital for carbon intensive industries. **Every dollar banks invest in new fossil fuel infrastructure increases risk and slows the transition to a clean energy economy.**

Goldman Sachs recognizes climate change[1] and has taken certain related actions including pledging to conduct a carbon footprint analysis in its equity work, increase clean energy financing, and reduce direct carbon emissions from its offices and travel. Goldman's *Environmental Policy Framework* requires assessing client climate risk and avoiding coal projects in developed nations (where there is limited demand for such projects). Significantly, Goldman's climate change policies do not require reductions in the bank's largest contribution to climate change -- its investments and loans in carbon-intensive fossil fuel projects and companies.

To the contrary, Goldman continues to make investments and loans in the most extreme fossil fuel projects. Last year, Goldman added coal loans to its portfolio.[2] Between 2015 and 2017, Goldman poured nearly $9 billion into financing of tar sands, Arctic oil, and coal.[3]

In contrast, peer banks have adopted policies reducing carbon in their loan and investment portfolios, including reducing or avoiding investments in extreme fossil fuels. ING adopted a methodology to measure the carbon content of its portfolio and decrease the climate impact of its loans.[4] BNP Paribas' policies phase out financing for companies tied to Arctic drilling, oil sands, shale development, and restrict financing for those tied to coal.[5] Natixis committed to end financing of tar sands and Arctic drilling.[6] The World Bank committed to end upstream oil and gas financing. Eleven banks adopted policies to end or substantially reduce financing for Arctic oil and/or tar sands projects.[7]

---

[1] https://www.goldmansachs.com/citizenship/environmental-stewardship/market-solutions-to-address-climate-change/

[2] https://www.nytimes.com/2018/05/28/business/banks-coal-loans.html

[3] http://www.ran.org/wp-content/uploads/rainforestactionnetwork/pages/19540/attachments/original/1525099181/Banking_on_Climate_Change_2018_vWEB.pdf?1525099181, p.6.

[4] https://www.eco-business.com/press-releases/ing-reveals-2c-scenario-analysis-method-for-corporate-lending-portfolios/

[5] https://www.upi.com/BNP-Paribas-says-it-will-no-longer-back-oil/4921507715402/

[6] https://www.banktrack.org/download/natixis_deepens_its_commitment_to_the_climate_and_the_environment/pr_natixis__new_commitments__december_11_2017.pdf

[7] https://www.banktrack.org/campaign/banks_that_ended_direct_finance_for_arctic_oil_andor_gas_projects

Resolved: Shareholders request that Goldman Sachs adopt a policy to reduce the carbon footprint of its loan and investment portfolios in alignment with the 2015 Paris goal of maintaining global warming well below 2 degrees, and issue annual reports (at reasonable cost, omitting proprietary information) describing targets, plans, and progress under this policy.

Supporting Statement: Shareholders recommend the report include, among other issues at board and management discretion:

- The carbon reduction benefits of expeditiously reducing exposure to extreme fossil fuel projects such as such as coal, Arctic oil and gas, and tar sands.

October 19, 2018

Andrew Behar
CEO
As You Sow
1611 Telegraph Ave., Ste. 1450
Oakland, CA 94612

Re: Authorization to File Shareholder Resolution

Dear Andrew Behar,

The undersigned Stockholder authorizes As You Sow to file or co-file a shareholder resolution on the Stockholder's behalf with below mentioned Company, and that it be included in below mentioned Company's 2019 proxy statement as specified below, in accordance with Rule 14-a8 of the General Rules and Regulations of the Securities and Exchange Act of 1934.

Stockholder:	K.F.P. A California Limited Partnership
Company:	Goldman Sachs Group Inc
Resolution Request:	Report on Climate Asset Transition

The Stockholder has continuously owned over $2,000 worth of stock of the above mentioned Company, with voting rights, for over a year. The Stockholder intends to hold the required amount of stock through the date of the Company's annual meeting in 2019.

The Stockholder gives As You Sow the authority to deal on the Stockholder's behalf with any and all aspects of the shareholder resolution, including designating another entity as lead filer and representative of the shareholder.

The Stockholder understands that the Stockholder's name may appear on the Company's proxy statement as the filer of the aforementioned resolution, and that the media may mention the Stockholder's name related to the resolution.

Sincerely,

DocuSigned by:
Karen Leech
A4E88381457E4E8...

Karen Leech

Special Power of Attorney

K.F.P. A California Limited Partnership

AS YOU SOW
1611 Telegraph Ave, Suite 1450
Oakland, CA 94612
www.asyousow.org
BUILDING A SAFE, JUST, AND SUSTAINABLE WORLD SINCE 1992

December 14, 2018

VIA E-MAIL

Jamie Greenberg
Vice President / Associate General Counsel
200 West Street
New York, NY 10282
E-Mail: jamie.greenberg@gs.com

Re: Response to Notice of Deficiency Letter

Dear Ms. Greenberg,

We are writing in response to your letter issued November 30, 2018 alleging deficiencies in our November 21, 2018 authorization letters for the Goldman Sachs proposal (the Proposal) submitted for inclusion in Goldman Sachs' (the Company) 2019 proxy statement.

The Proposal asks the Company to adopt a policy to reduce the carbon footprint of its loan and investment portfolios to meet the Paris Climate Agreement's goal of maintaining global warming well below 2 degrees Celsius, and to issue annual reports describing the targets, plans, and progress under this policy. Both the authorization letters and our prior transmittals to shareholders about the Proposal make clear that the Proponent and co-filers had sufficient information about the focus of the Proposal prior to authorizing the filing.

The authorization letters describe the Proposal as "report on climate asset transition" or "reporting on climate asset transition" -- descriptions which accurately encapsulate the objective of the Proposal. Goldman Sachs must transition its assets – its loans and investments – to lower carbon loans and investments to "reduce the carbon footprint of its loan and investment portfolios to meet the Paris goals." The title given to the Proposal is another way of stating the same thing; in order to transition investment and loan assets to be compatible with a 2-degree Celsius world, high carbon financing must be limited. The title was included in the proposal as a frame for those non-proponent shareholders that do not currently have an understanding of climate issues.

A detailed description identifying the Proposal as requesting a report on how J.P. Morgan "plans to align its business model with a Paris compliant low carbon economy" was also transmitted to the following shareholders prior to their signing authorization letters: *K.F.P. A California Limited Partnership; Campbell Irrevocable Trust for Nancy Dtd 12/7/1990; Corning 5A Trust*, *Daveen Fox Revocable Trust; Edwards Mother Earth Foundation; John B. and Linda C. Mason Comm Prop; Mulliken Family Trust; Samajak, LP; The Gun Denhart Living Trust; The Nicola Miner Revocable Trust DTD 02/19/1999*; and *The Rafael Living Trust* (collectively, the Proponents) prior to authorization. The full description was as follows:

Energy	Climate Change	Report on Climate Asset Transition	Report on how the Company plans to align its business model or portfolio with a Paris compliant low carbon economy

AS YOU SOW

Finally, in response to the alleged deficiency concerning proof of the Proponents' continuous ownership of the Company's shares, we also enclose proof of ownership letters establishing the above-named Proponents' ownership of the Company's common stock in the requisite amount and in the timeframe necessary to meet eligibility requirements.

SEC Rule 14a-8(f) requires a company to provide notice of specific deficiencies in a shareholder's proof of eligibility to submit a proposal. We therefore request that you notify us if believe any deficiencies remain.

Please confirm receipt of this correspondence.

Sincerely,

Danielle Fugere
President, Chief Counsel
As You Sow Foundation

APPENDIX B
AMENDED PROOF OF AUTHORIZATION

AS YOU SOW

1611 Telegraph Ave, Suite 1450
Oakland, CA 94612

www.asyousow.org
BUILDING A SAFE, JUST, AND SUSTAINABLE WORLD SINCE 1992

January 29, 2019

VIA E-MAIL

Jamie Greenberg
Vice President / Associate General Counsel
200 West Street
New York, NY 10282
E-Mail: jamie.greenberg@gs.com

Re: As You Sow's December 14, 2018 Response to Goldman Sachs Group, Inc's Notice of Deficiency

Dear Ms. Greenberg,

We are writing to follow up and correct a clerical error in our December 14, 2018 response (the "Response to Notice of Deficiency") to your letter issued November 30, 2018 (the "Notice of Deficiency") alleging deficiencies with the shareholder proposal (the "Proposal"), submitted November 21, 2018, from As You Sow to Goldman Sachs Group, Inc., on behalf of K.F.P. A California Limited Partnership; the Campbell Irrevocable Trust for Nancy Dtd 12/7/1990; the Corning SA Trust; the Daveen Fox Revocable Trust; the Edwards Mother Earth Foundation; the John B. and Linda C. Mason Comm Prop; the Mulliken Family Trust; Samajak LP; The Gun Denhart Living Trust; The Nicola Miner Revocable Trust; and The Rafael Living Trust (each a "Proponent" and collectively, the "Proponents").

It has come to our attention that in the first sentence of paragraph 4 of our Response to Notice of Deficiency, we inadvertently referred to Goldman Sachs Group, Inc. ("Goldman Sachs") as "J.P. Morgan." This reference was the result of a clerical error in drafting. The intended sentence should have read:

> Finally, a detailed description identifying the Proposal as requesting a report on how **Goldman Sachs** 'plans to align its business model with a Paris compliant low carbon economy' was also transmitted to the following shareholders: *K.F.P. A California Limited Partnership; Corning 5A Trust*, *Daveen Fox Revocable Trust; Edwards Mother Earth Foundation; John B. and Linda C. Mason Comm Prop; Samajak, LP; The Gun Denhart Living Trust; The Nicola Miner Revocable Trust DTD 02/19/1999*; and *The Rafael Living Trust* (collectively, the Proponents) prior to authorization.

(Correction in bold). A revised Response to Notice of Deficiency correcting this error is also attached.

We understand that this clerical error was cited in Goldman Sachs' December 28, 2018 letter to the Securities and Exchange Commission ("SEC") informing the SEC of Goldman Sachs' intent to omit the Proposal from its proxy statement and form of proxy for its 2019 Annual Meeting of Shareholders. However, in our original Response to Notice of Deficiency, we had specifically asked you to immediately notify us of any remaining deficiencies. You did not notify us of this issue.

Accordingly, given the clerical nature of this mistake, your failure to notify us of this error, and our correction herein, we ask you to withdraw the relevant portions of your December 28, 2018 letter, and

submit a revised letter to the SEC. In any event, we reserve our right to respond to the December 28, 2018 letter in full.

Please confirm receipt of this correspondence.

Sincerely,

Danielle Fugere
President, Chief Counsel
As You Sow Foundation

AS YOU SOW
1611 Telegraph Ave, Suite 1450
Oakland, CA 94612
www.asyousow.org
BUILDING A SAFE, JUST, AND SUSTAINABLE WORLD SINCE 1992

January 29, 2018

VIA E-MAIL

Jamie Greenberg
Vice President / Associate General Counsel
200 West Street
New York, NY 10282
E-Mail: jamie.greenberg@gs.com

Re: CORRECTED Response to Notice of Deficiency Letter

Dear Ms. Greenberg,

We are writing in response to your letter issued November 30, 2018 alleging deficiencies in our November 21, 2018 authorization letters for the Goldman Sachs proposal (the Proposal) submitted for inclusion in Goldman Sachs' (the Company) 2019 proxy statement.

The Proposal asks the Company to adopt a policy to reduce the carbon footprint of its loan and investment portfolios to meet the goal of 2015 Paris Climate Agreement of maintaining global warming well below 2 degrees Celsius, and to issue annual reports describing the targets, plans, and progress under this policy. Both the authorization letters and transmittals make clear that the Proponent had sufficient information about the focus of the Proposal prior to authorizing the filing.

The authorization letters describe the Proposal as "Report on Climate Asset Transition" or "reporting on climate asset transition," descriptions which accurately encapsulate the objective of the Proposal. Goldman Sachs must transition its assets – its loans and investments – in order to "reduce the carbon footprint of its loan and investment portfolios to meet the Paris goals." The title of the Proposal is another way of stating the same thing; in order to transition investment and loan assets to be compatible with a 2-degree Celsius world, high carbon financing must be limited. The title was included in the proposal as a frame for those non-proponent shareholders that do not currently have a deep understanding of climate issues.

Finally, a detailed description identifying the Proposal as requesting a report on how Goldman Sachs' "plans to align its business model with a Paris compliant low carbon economy" was also transmitted to the following shareholders: *K.F.P. A California Limited Partnership; Corning 5A Trust*, *Daveen Fox Revocable Trust; Edwards Mother Earth Foundation; John B. and Linda C. Mason Comm Prop; Samajak, LP; The Gun Denhart Living Trust; The Nicola Miner Revocable Trust DTD 02/19/1999*; and *The Rafael Living Trust* (collectively, the Proponents) prior to authorization. The full description was as follows:

Energy	Climate Change	Report on Climate Asset Transition	Report on how the Company plans to align its business model or portfolio with a Paris compliant low carbon economy

AS YOU SOW

Finally, in response to the alleged deficiency concerning proof of the Proponents' continuous ownership of the Company's shares, we also enclose proof of ownership letters establishing the above-named Proponents' ownership of the Company's common stock in the requisite amount and in the timeframe necessary to meet eligibility requirements.

SEC Rule 14a-8(f) requires a company to provide notice of specific deficiencies in a shareholder's proof of eligibility to submit a proposal. We therefore request that you notify us if believe any deficiencies remain.

Please confirm receipt of this correspondence.

Sincerely,

Danielle Fugere
President, Chief Counsel
As You Sow Foundation

200 West Street | New York, New York 10282
Tel: 212-357-1584 | Fax: 212-428-9103 | e-mail: beverly.otoole@gs.com

Beverly L. O'Toole
Managing Director
Associate General Counsel

Goldman Sachs

December 28, 2018

VIA E-MAIL

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

Re: *The Goldman Sachs Group, Inc.*
Shareholder Proposal of As You Sow on behalf of K.F.P. A California Limited Partnership et al.
Securities Exchange Act of 1934 ("Exchange Act")—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, The Goldman Sachs Group, Inc. (the "Company"), intends to omit from its proxy statement and form of proxy for its 2019 Annual Meeting of Shareholders (collectively, the "2019 Proxy Materials") a shareholder proposal (the "Proposal") and statements in support thereof received from As You Sow purportedly on behalf of: K.F.P. A California Limited Partnership; the Campbell Irrevocable Trust for Nancy Dtd 12/7/1990; the Corning 5A Trust; the Daveen Fox Revocable Trust; the Edwards Mother Earth Foundation; the John B. and Linda C. Mason Comm Prop; the Mulliken Family Trust; Samajak LP; The Gun Denhart Living Trust; The Nicola Miner Revocable Trust; and The Rafael Living Trust (each a "Proponent" and collectively, the "Proponents").

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the date the Company expects to file its definitive 2019 Proxy Materials with the Commission; and

- concurrently sent copies of this correspondence to the Proponents.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D") provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the "Staff"). Accordingly, we are taking this opportunity to inform the Proponents that if the Proponents elect to submit additional correspondence to the Commission or the

*** FISMA & OMB Memorandum M-07-16

Staff with respect to this Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

THE PROPOSAL

The Proposal states:

> **Resolved:** Shareholders request that Goldman Sachs adopt a policy to reduce the carbon footprint of its loan and investment portfolios in alignment with the 2015 Paris goal of maintaining global warming well below 2 degrees, and issue annual reports (at reasonable cost, omitting proprietary information) describing targets, plans, and progress under this policy.

The supporting statement states:

> **Supporting Statement:** Shareholders recommend the report include, among other issues at board and management discretion:
>
> - The carbon reduction benefits of expeditiously reducing exposure to extreme fossil fuel projects such as such as [sic] coal, Arctic oil and gas, and tar sands.

BASES FOR EXCLUSION

The Company acknowledges the scientific consensus, led by the Intergovernmental Panel on Climate Change, that climate change is a reality and that human activities are responsible for increasing concentrations of greenhouse gases in the earth's atmosphere. The Company recognizes that it has an impact on the environment through its operations, its investments, and the production and services it finances on behalf of its clients. The Company believes that a healthy environment is necessary for the well-being of society, the firm's people and its business, and is the foundation for a sustainable and strong economy. To this end, the Company's commitment to environmental sustainability encompasses each of its businesses, whether it is deploying capital to expand clean energy solutions, underwriting green bonds or structuring catastrophe-linked securities to help clients better manage risk from extreme weather events through diversification and the transfer of risk into the capital markets. The Company is also committed to minimizing its own environmental impact.

However, we do not believe that the Proposal complies with Rule 14a-8. Thus, we hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2019 Proxy Materials pursuant to:

- Rule 14a-8(i)(7) because the Proposal impermissibly seeks to impose prescriptive standards on the Company's existing and complex policies and

procedures for assessing sustainability matters as part of its day-to-day lending, financing, and investment decisions related to its loan and investment portfolios; and

- Rule 14a-8(b) and Rule 14a-8(f)(1) because each of the Proponents failed to provide appropriate authorization to As You Sow to submit the Proposal.

Alternatively, if the Staff does not agree that the Proposal may be excluded in its entirety under Rule 14a-8(i)(7) or Rule 14a-8(b), we believe that several Proponents may be excluded as filers of the Proposal under Rule 14a-8(b)(1) because they failed to properly document the required ownership of Company shares.

ANALYSIS

I. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because The Proposal Deals With Matters Relating To The Company's Ordinary Business Operations.

A. Background

Pursuant to Rule 14a-8(i)(7), a shareholder proposal may be excluded if it "deals with a matter relating to the company's ordinary business operations." According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" refers to matters that are not necessarily "ordinary" in the common meaning of the word, but instead the term "is rooted in the corporate law concept [of] providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release"). In the 1998 Release, the Commission explained that the underlying policy of the ordinary business exclusion 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," and identified two central considerations that underlie this policy. The first 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." 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." *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)). Moreover, as is relevant here, under Rule 14a-8(i)(7) a proposal that seeks to micromanage a company's business operations is excludable even if it touches on a significant policy issue.

Framing a shareholder proposal in the form of a request for a report, or multiple reports as is the case with the Proposal, does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the

issuer. *See* Exchange Act Release No. 20091 (Aug. 16, 1983) (the "1983 Release"); *Johnson Controls, Inc.* (avail. Oct. 26, 1999) ("[Where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under [R]ule 14a-8(i)(7)."). *See also* Staff Legal Bulletin No. 14J (Oct. 23, 2018); *Ford Motor Co.* (avail. Mar. 2, 2004) (concurring with the exclusion of a proposal requesting that the company publish a report about global warming/cooling, where the report was required to include details such as the measured temperature at certain locations and the method of measurement, the effect on temperature of increases or decreases in certain atmospheric gases, the effects of radiation from the sun on global warming/cooling, carbon dioxide production and absorption, and a discussion of certain costs and benefits).

In applying the micromanagement prong of Rule 14a-8(i)(7), the Staff consistently has concurred that shareholder proposals attempting to micromanage a company by providing specific details for implementing a proposal as a substitute for the judgment of management are excludable under Rule 14a-8(i)(7). While the proposal addressed in *Ford Motor Co.* (avail. Mar. 2, 2004) set forth specific and detailed reporting requirements in the text of the proposal itself, the Staff has concurred with the exclusion of proposals that lack such detailed reporting requirements where the nature of the proposal (including implementation) nonetheless "prob[es] too deeply into matters of a complex nature." *See Marriott International Inc.* (avail. Mar. 17, 2010) (concurring with the exclusion of a proposal to install and test low-flow shower heads in some of the company's hotels because it impermissibly micromanaged the company by requiring the use of specific technologies); *Duke Energy Carolinas, LLC* (avail. Feb. 16, 2001) (concurring with the exclusion of a proposal that recommended to the company's board that they take specific steps to reduce nitrogen oxide emissions from the company's coal-fired power plants by 80% and to limit each boiler to 0.15 pounds of nitrogen oxide per million BTUs of heat input by a certain year). As with the shareholder proposals in these and other precedents discussed below, the Proposal is excludable under Rule 14a-8(i)(7) because it seeks to micromanage the Company, even if it also addresses a significant policy issue.

B. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Seeks To Micromanage The Company

As noted above, the Commission stated in the 1998 Release that one of the considerations underlying the ordinary business exclusion in Rule 14a-8(i)(7) was "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." The 1998 Release further states, "[t]his 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."

Here, the manner in which the Proposal seeks to address the subject covered renders it excludable as the Proposal requests that the Company (1) adopt a policy for reducing to a specific level the carbon footprint resulting from lending, financing, and investment

decisions the Company makes with respect to its loan and investment portfolios—this level is required to align with the Paris Agreement's goal of maintaining global temperatures substantially below 2 degrees Celsius (the "Policy"), and (2) issue reports annually that each describe (a) targets, (b) plans, and (c) progress related to implementing the adopted Policy. Notably, the Paris Agreement's 2 degree goal referenced in the Proposal expressly includes achieving "net zero" emissions in the second half of this century.[1] Thus, the Proposal also includes a time-bound, quantitative target in order to align with the 2 degree goal in the Policy.[2] Moreover, implementing the Proposal and thus requiring the Company to align with this "net zero" requirement would be so onerous as to directly dictate certain lending, financing, and investment choices made by the Company. Furthermore, carbon emissions data is not uniformly available across all companies, industries and geographies. The Company already has guidelines that effectively help it move towards more clean energy in its financing and investing practices. As applied to the Company, the Proposal thus addresses the complex, multifaceted issue of reducing the carbon footprint within the Company's loan and investment portfolios by imposing a specific quantitative standard to be achieved in a specific time-frame and requiring annual updates on the specific targets, plans, and progress towards meeting the relevant standard. As a result, the Company would be required to continuously dedicate significant time, effort, and resources to satisfy these burdensome requirements without regard to the Company's existing comprehensive and complex policies and procedures (as discussed below). The Proposal thus falls squarely within the scope of the 1998 Release.

The Staff recently concurred that a similar shareholder proposal regarding a company's lending, financing, and investment decisions was excludable under Rule 14a-8(i)(7) because it sought to micromanage the company. In *JPMorgan Chase & Co. (The Christensen Fund)* (avail. Mar. 30, 2018), the proposal requested the company to "prepare a report . . . by September 2018, on reputational, financial and climate risks associated with project and corporate lending, underwriting, advising and investing for tar sands production and transportation." The proposal requested that the report include assessments of: (1) the risk of portfolio devaluation due to stranding of high-cost tar sand assets; (2) whether the financing was consistent with the Paris Agreement's goal of limiting global temperature

---

[1] *See* Article 4 of the Paris Agreement: "In order to [achieve Article 2], Parties aim to reach global peaking of greenhouse gas emissions as soon as possible, recognizing that peaking will take longer for developing country Parties, and to undertake rapid reductions thereafter in accordance with best available science, *so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century*, on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty" (emphasis added), *available at* https://unfccc.int/resource/docs/2015/cop21/eng/l09.pdf.

[2] *See* Track 0, The 2015 Paris Agreement: "The long-term emissions reduction goal the Agreement expresses can be summarised as aiming for 'net zero' in the second half of this century as a way of keeping maximum global temperature rise well below 2°C/1.5°C," *available at* http://track0.org/why-net-zero/the-2015-paris-agreement/.

increase to "well below 2 degrees Celsius"; (3) how the tar sands financing aligned with the company's support for Indigenous People's rights; and (4) the impact on risk from establishing a specific policy restricting financing for tar sands projects and companies. The Staff granted no-action relief, noting that "the [p]roposal micromanages the [c]ompany by seeking to impose specific methods for implementing complex policies."

Like in *JPMorgan Chase*, the Proposal impermissibly seeks to restrict the Company's decision-making regarding its loan and investment portfolios. Specifically, the Policy would require that the Company's lending, financing, and investment decisions regarding its loan and investment portfolios be materially driven by the objective of satisfying specific quantitative standards within a specific time-frame in accordance with the Paris Agreement's goals. Thus, in order to achieve the Proposal's prescriptive standards, the Proposal necessarily would restrict the Company from financing certain projects, just like the proposal in *JPMorgan Chase*, which sought to impose financing restrictions with respect to tar sands projects and companies. Also similar to *JPMorgan*, the Proposal's supporting statement specifically calls out the Company's lending, financing and investment decisions related to its loan and investments in various areas "such as coal, Artic oil and gas, and *tar sands*" (emphasis added). More generally, each of the Company's decisions regarding the appropriate policies and practices to implement with respect to lending, financing, and investment as they relate to the Company's loan and investment portfolios requires a deep and thorough understanding of the Company's business and operations—information which the Company's shareholders do not have access to. Determining the appropriate policies and framework to approaching these decisions requires a complex analysis of various factors, including transaction types, customer activities, and an understanding of the risks specific to a client's particular industry, among others (the Company's relevant policies and framework—in particular those related to carbon footprints—are described in more detail below in Section C). The Company's management focuses extensively on establishing these standards for making these types of decisions, which fall squarely into the day-to-day operations of lending, financing, and investment decisions related to its loan and investment portfolios.

In other contexts related to the business operations of a company, the Staff has consistently agreed that shareholder proposals imposing specific time-frames on complex policies to achieve specific quantitative targets applicable to parts of a company's business were excludable under Rule 14a-8(i)(7), even if the time-frames or quantitative targets were not expressly stated in the proposal, because they attempted to micromanage the company. For example, in *Verizon Communications Inc.* (avail. Mar. 6, 2018), the Staff concurred with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company "prepare a report to shareholders that evaluates the feasibility of the Company achieving by 2030 'net-zero' emissions of greenhouse gases from parts of the business directly owned and operated by the [c]ompany, as well as the feasibility of reducing other emissions associated with [c]ompany

activities."[3] Moreover, in *EOG Resources, Inc.* (avail. Feb. 26, 2018), the Staff concurred with exclusion of a proposal requesting that the company "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." Despite the fact that the *EOG Resources* proposal did not specify a time-frame, the Staff stated that the proposal "micromanage[d] 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."

Here, the Proposal is considerably more prescriptive, and thus micromanages to a greater extent, than the shareholder proposal in *EOG Resources* because: (1) the Proposal's resolved clause specifically references the Paris Agreement as the guide by which all "targets [and] plans" must be aligned, whereas the *EOG Resources* proposal did not specify any standard for the requested targets; and (2) the Proposal's requirement for annual updates on "targets, plans and progress" under the Policy would require the Company and management to constantly be constrained by the Policy in their decision-making regarding this highly complex issue.

Thus, the requested Policy would impose specific quantitative standards to be achieved within a specific time-frame (in order to align with the Paris Agreement), as well as require significant time and effort to annually report on the specific targets, plans, and progress towards meeting the relevant standard. For these reasons, we believe that the Proposal impermissibly seeks to micromanage the Company's existing and complex policies and procedures for making day-to-day lending, financing, and investment decisions as they relate to the Company's loan and investment portfolios by substituting management's judgment with that of the Company's shareholders, who as a group, are not in a position to make an informed judgment in this regard.

C. The Proposal Involves Complex Operational And Business Decisions

The Company is a leading global investment banking, securities and investment management firm that provides a wide range of financial services to a substantial and diversified client

---

[3] *See also Amazon.com, Inc.* (avail. Mar. 6, 2018) (allowing for exclusion of a similar "net-zero" emissions proposal noting that the proposal sought to "micromanage the [c]ompany by probing too deeply into matters of a complex nature"); *PayPal Holdings, Inc.* (avail. Mar. 6, 2018) (same); *Deere & Co.* (avail. Dec. 27, 2017) (concurring with the exclusion of a similar proposal requesting that the company "prepare a report to shareholders by December 31, 2018 that evaluates the potential for the [c]ompany . . . to achiev[e] 'net-zero' emissions of greenhouse gases by a fixed future target date"); *Apple Inc. (Jantz)* (avail. Dec. 21, 2017) (concurring with the exclusion of a proposal requesting that the company "prepare a report to shareholders by December 31, 2019 that evaluates the potential for the [c]ompany to achieve, by a fixed date, 'net-zero' emissions of greenhouse gases by the [c]ompany and its major suppliers").

base that includes corporations, financial institutions, governments and individuals. The Company is an active participant in financial markets around the world, with offices in over 30 countries, and serves clients worldwide. Specifically, the Company engages in various lines of businesses, such as investment banking, institutional client services, investing and lending, and investment management, among others. As such, the Company's lending, financing, and investment decisions with respect to its loan and investment portfolios are central to its ability to run the business on a day-to-day basis. The Company's management invests a significant amount of time, energy and effort on a daily basis in determining how to best make lending, financing and investment decisions related to its loan and investment portfolios, which includes working to deliver long-term shareholder value. These lending, financing, and investment decisions are discussed regularly at meetings held by management. Management focuses extensively on establishing appropriate environmental and social risk management standards for making investment decisions, including those related to carbon footprint impacts, where appropriate.

Specifically, with respect to the lending, financing, and investment decisions relating to the types of risk raised by the Proposal, the Company relies on its Business Principles and the Goldman Sachs Environmental Policy Framework ("GS Environmental Framework")[4], each of which guide the Company's overall approach to environmental and social risk. As stated in the GS Environmental Framework (which is approved at the Board level), the Company's advisory, financing and direct investing teams integrate environmental and social due diligence as part of their normal course due diligence requirements where relevant. Transactions which may have significant environmental or social risk are elevated for enhanced review and business selection discussion. The Company's Environmental Markets Group assists business teams by providing guidance on environmental-related matters, conducting independent reviews and identifying mitigants and positive engagement opportunities with the client to reduce material risk. In certain cases, an in-house team of environmental consultants with strong technical expertise will also conduct in-depth due diligence on environmental, health, safety, and social issues to identify and mitigate transactional risk for business teams. Furthermore, the Company has various management-level committees to oversee lending, financing, and investment decisions and risk management. These committees coordinate and apply consistent business standards, practices, policies and procedures across the firm, and are integral to the management of environmental, social and reputational risks. Transactions that have significant environmental and social issues are elevated for discussion and a final business selection decision involving key committees, senior business and control-side leaders and/or the Company's Chairman.

---

[4] *See* Goldman Sachs Environmental Policy Framework, *available at* https://www.goldmansachs.com/s/environmental-policy-framework/index.html#environmentalSocialRiskManagement.

In addition to the firmwide review process, the Company has specific due diligence guidelines to evaluate lending, financing, and investment decisions in certain sensitive sectors. This review includes sector-specific background on current environmental and social issues and sensitivities, as well as potential due diligence questions to discuss with a company, in each case as detailed in the GS Environmental Framework. Sectors with specific due diligence guidelines are: biofuels, chemicals, coal power generation, forestry, gas power generation, hydro-power generation, metals & mining, nuclear generation, oil & gas, oil sands, palm oil, transportation, unconventional oil & gas, and water.[5]

Given the size and scope of the Company's global loan and investment portfolios, implementation of the Proposal would require replacing management's judgments on complex operational and business decisions, including with respect to the thorough, carefully vetted and expansive procedures and guidelines set forth in the GS Environmental Framework described above, with those selected by the Proponents and would interfere with management's ability to operate the Company's business. The Proposal would require the Company to undertake additional analyses that would be expensive and complex in light of the size, scope, and global nature of the Company's loan and investment portfolios. Moreover, recurring annual evaluations on the progress of the various "targets" and "plans" required by the Policy, in addition to those already published by the Company, would require significant effort from the Company.

D. The Company Has Already Made Complex Business Decisions That Prioritize Certain Environmental Strategies

The Company has already carefully evaluated how best to address environmental and sustainability concerns, including those related to carbon footprints, with respect to lending, financing, and investment decisions related to its loan and investment portfolios. The Company has focused on meaningful initiatives to reduce its environmental impact that the Company believes has a positive impact on its lending, financing, and investment decisions as well as being good for the environment. For example, in the GS Environmental Framework, the Company has guidelines that it will not finance the development of new coal-fired power plants in developed economies. Furthermore, the Company has reduced its overall lending to the coal mining sector since the initial adoption of the GS Environmental Framework in 2005.

Moreover, given that energy is the largest greenhouse gas emitting section, the Company has already set targets and goals for investing and financing in the clean energy sector. In 2012, the Company committed to financing and investing at least $40 billion by 2022, a goal the

---

[5] Highlights of the various environmental guidelines with respect to these sectors are available at: Goldman Sachs Environmental Policy Framework, Sector Guidelines, https://www.goldmansachs.com/s/environmental-policy-framework/index.html#guidelines.

Company met in 2016.[6] In November of 2015, the Company actually revised its goal to $150 billion invested and financed in clean energy by 2025. Since 2012, the Company has invested more than $2.5 billion in capital across 35 companies and projects, which has led to 4.5 gigawatts of new renewable capacity, which avoided an estimated 6.7 million metric tons of greenhouse gases in 2016 alone. As of 2017, the Company has financed almost $71 billion into clean energy, bringing the Company halfway to its target of $150 billion by 2025.[7]

The Company's determination on how best to approach sustainability issues including carbon footprints within the framework in which the Company makes lending, financing, and investment decisions related to its loan and investment portfolios, including any resulting carbon footprints, via the initiatives described above involved complex considerations of a variety of factors, including the myriad environmental regulations in the various jurisdictions in which companies within the Company's loan and investment portfolios operate, evolving technologies, rapidly-developing scientific advancements, industry-accepted standards for preparing carbon emissions inventories and accounting for and reporting carbon emissions and local, and in some cases, volatile energy markets. Because the Proposal seeks to delve too deeply into these complex determinations by asking shareholders to vote on a policy that would impact the goals, deadlines and factors taken into account that have already been established by the Company, the Proposal seeks to micromanage the Company's business.

E. Regardless Of Whether The Proposal Touches Upon A Significant Policy Issue, The Proposal Is Excludable Under Rule 14a-8(i)(7) Because It Seeks To Micromanage The Company

As discussed in the "Background" section above, a shareholder proposal may nevertheless be excluded under Rule 14a-8(i)(7) if it seeks to micromanage a 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, even if the proposal touches on a significant policy issue. For example, in *JPMorgan Chase*, the Staff concurred with the exclusion of a shareholder proposal that addressed climate change because the proposal intruded on lending decisions made as part of management's day-to-day determinations on financing practices. Here, even though the Proposal concerns the related issue of carbon footprints, the Proposal similarly intrudes in a prescriptive manner on the Company's processes and procedures regarding how the Company evaluates lending, financing, and investment decisions related to its loan and investment portfolios. As discussed above, these are complex matters on which shareholders, as a group, would not be in a position to make an informed judgment.

---

[6] *See* Goldman Sachs Clean Energy Impact Report, *available at* https://www.goldmansachs.com/citizenship/environmental-stewardship/market-opportunities/clean-energy/impact-report/report.pdf.

[7] *See* Goldman Sachs Purpose & Progress: 2017 Environmental, Social and Governance Report.

Thus, as with the proposal in *JPMorgan Chase*, even if the Proposal touches on a significant policy issue, the Proposal is properly excludable under Rule 14a-8(i)(7).

II. The Proposal May Be Excluded Under Rule 14a-8(b) And Rule 14a-8(f)(1) Because Each Proponent Failed To Establish The Requisite Eligibility To Submit The Proposal.

A. Background

As You Sow submitted the Proposal to the Company via email on November 21, 2018, which the Company received on the same day. *See* Exhibit A. In its letter dated November 21, 2018, As You Sow indicated that it was submitting the Proposal on behalf of lead filer K.F.P. A California Limited Partnership and included a letter dated October 19, 2018 purporting to authorize As You Sow to submit a proposal on behalf of K.F.P. A California Limited Partnership. *See* Exhibit A. The authorization letter did not identify the Proposal, but instead identified the "Resolution Request" authorized to be submitted as a "Report on Climate Asset Transition." *See* Exhibit A.

In the same email sent to the Company on November 21, 2018, As You Sow purported to submit the Proposal on behalf of 10 co-filers: Campbell Irrevocable Trust for Nancy Dtd 12/7/1990; the Corning 5A Trust; the Daveen Fox Revocable Trust; the Edwards Mother Earth Foundation; John B. and Linda C. Mason Comm Prop; the Mulliken Family Trust; Samajak LP; The Gun Denhart Living Trust; The Nicola Miner Revocable Trust; and The Rafael Living Trust. *See* Exhibit B. As with the documentation submitted on behalf of K.F.P. A California Limited Partnership, the documentation submitted on behalf of the co-filing Proponents did not identify the Proposal but instead identified the resolution authorized to be submitted as "Climate Asset Transition," "Report on Climate Asset Transition," or "relating to reporting on climate asset transition." *See* Exhibit B. In addition, the documentation submitted on behalf of The Rafael Living Trust and Edwards Mother Earth Foundation was not dated by the shareholders. *See* Exhibit B.

Neither of As You Sow's submissions on November 21, 2018 were accompanied by any documentary evidence of any Proponent's ownership of Company shares. *See* Exhibits A and B. The Company also reviewed its stock records, which did not indicate that any Proponent was a record owner of Company shares.

Accordingly, the Company sent As You Sow a letter dated November 30, 2018, identifying the deficiencies, notifying As You Sow of the requirements of Rule 14a-8 and explaining how the Proponents could cure the procedural deficiencies (the "Deficiency Notice"). The Deficiency Notice, attached hereto as Exhibit C, provided detailed information regarding the "proposals by proxy" and "record" holder requirements, as clarified by Staff Legal Bulletin No. 14F (Oct. 18, 2011) ("SLB 14F") and Staff Legal Bulletin No. 14I (Nov. 1, 2017) ("SLB 14I"). The Deficiency Notice also included a copy of Rule 14a-8, SLB 14F and SLB 14I. Specifically, the Deficiency Notice stated:

- the eligibility requirements of Rule 14a-8(b) and the guidance of SLB 14I regarding proposals by proxy, including the list of requirements that the Staff indicated sufficient documentation should include;

- that the documentation from each Proponent purporting to authorize As You Sow to act on its behalf was insufficient because the documentation did not identify the Proposal as the specific proposal to be submitted and, in the case of The Rafael Living Trust and Edwards Mother Earth Foundation, was not dated;

- that in order to comply with the requirements of Rule 14a-8(b) and SLB 14I each Proponent should provide documentation that confirms that as of November 21, 2018, each Proponent had instructed As You Sow to submit the Proposal to the Company on the Proponent's behalf, that such documentation should identify the specific proposal authorized to be submitted and, in the case of The Rafael Living Trust and Edwards Mother Earth Foundation, should also be dated by the shareholder;

- the ownership requirements of Rule 14a-8(b);

- that, according to the Company's stock records, the Proponents were not each record owners of sufficient shares;

- the type of statement or documentation necessary to demonstrate beneficial ownership under Rule 14a-8(b); and

- that any response had to be postmarked or transmitted electronically no later than 14 calendar days from the date that As You Sow received the Deficiency Notice.

The Company sent the Deficiency Notice via email to As You Sow on November 30, 2018, which was within 14 calendar days of the Company's receipt of the Proposal. *See* Exhibit C. Accordingly, the Proponents' responses to the Deficiency Notice were required to be postmarked or transmitted electronically on or before December 14, 2018 (*i.e.*, 14 calendar days from the Proponent's receipt of the Deficiency Notice).

On December 14, 2018, As You Sow responded via email to the Deficiency Notice and attached a letter dated December 14, 2018. *See* Exhibit D. In its response, which was not sent until 8:19 p.m. on December 14, 2018, As You Sow did not provide any new documentation from the Proponents purporting to authorize As You Sow to submit the Proposal on its behalf, nor did As You Sow assert that any of the Proponents received a copy of the Proposal prior to signing their authorization letters. Instead, in its letter dated December 14, 2018, As You Sow claimed that "[b]oth the authorization letters and [its] prior transmittals to shareholders *about* the Proposal make clear that the Proponent and co-filers had sufficient information about *the focus of* the Proposal prior to authorizing the filing." *Id.* (emphasis added). However, in its response, As You Sow clarified that it actually solicited

authorization from the Proponents for the Proposal to be submitted to a different company: As You Sow stated to the Company that it transmitted to the Proponents "[a] detailed description identifying the Proposal as requesting ***a report*** on how ***J.P. Morgan*** 'plans to align its business model with a Paris compliant low carbon economy.'" *Id.* (emphasis added).

In addition, As You Sow submitted letters purporting to provide proof of ownership of Company shares for the following Proponents: the Daveen Fox Revocable Trust; The Rafael Living Trust; K.F.P. A California Limited Partnership; The Nicola Miner Revocable Trust; Samajak LP; the Corning 5A Trust; the Edwards Mother Earth Foundation; The Gun Denhart Living Trust; and John B. and Linda C. Mason Comm Prop. *See* Exhibit E. No proof of ownership was provided for the Mulliken Family Trust or the Campbell Irrevocable Trust for Nancy Dtd 12/7/1990.

Of the letters submitted, only the letters provided for K.F.P. A California Limited Partnership, Samajak LP, The Nicola Miner Revocable Trust, the Corning 5A Trust, the Daveen Fox Revocable Trust, the Edwards Mother Earth Foundation, John B. and Linda C. Mason Comm Prop, and The Gun Denhart Living Trust demonstrated such Proponent's continuous share ownership for the full one-year period preceding and including November 21, 2018, the date on which the Proposal was submitted. *Id.* The letter provided for The Rafael Living Trust failed to demonstrate the applicable Proponent's ownership as required by Rule 14a-8(b).

For The Rafael Living Trust, As You Sow submitted a letter from TD Ameritrade Institutional, dated December 13, 2018 (the "Trust Ameritrade Letter"), which stated, in pertinent part:

> TD Ameritrade Institutional, a DTC participant, acts as the custodian for the accounting ending in *** : THE RAFAEL LIVING TRUST, UA March 26th 2009 . As of the date of this letter, this trust holds, and has held continuously for at least 395 days, 4 shares of GS : Goldman Sachs.

Id. As such, the Trust Ameritrade Letter failed to provide verification of The Rafael Living Trust's continuous ownership of the required number or amount of Company shares for at least one year prior to and including the date on which Proposal was submitted (*i.e.*, November 21, 2018) because it did not indicate that The Rafael Living Trust had continuously owned a sufficient number or amount of Company shares as of November 21, 2018.[8]

---

[8] We note that As You Sow also provided a letter from Charles Schwab & Co., Inc. dated December 5, 2018 and addressed to Deborah Cooper, Richard Chamberlain, and Drummond Pike. However, the Company received no other correspondence or submission materials from As You Sow related to these individuals.

B. Analysis

The Company may exclude the Proposal under Rule 14a-8(f)(1) because none of the Proponents substantiated its eligibility to submit the Proposal under Rule 14a-8(b), as requested by, and described in, the Company's timely Deficiency Notice. Specifically, no Proponent has provided the Company with both (i) sufficient documentation describing such Proponent's delegation of authority to As You Sow to submit the Proposal to the Company and (ii) the beneficial ownership information required under Rule 14a-8(b) and (ii).

i. No Proponent Provided Sufficient Documentation Describing Its Sufficient Delegation Of Authority To As You Sow To Submit The Proposal.

Rule 14a-8(b) provides guidance regarding what information must be provided to demonstrate that a person is eligible to submit a shareholder proposal. Rule 14a-8(f)(1) permits a company to exclude a shareholder proposal from the company's proxy materials if a shareholder proponent fails to comply with the eligibility or procedural requirements under Rule 14a-8, provided that the company has timely notified the proponent of any eligibility or procedural deficiencies, and the proponent has failed to correct such deficiencies within 14 days of receipt of such notice.

In SLB 14I, the Staff provided additional guidance as to what information must be provided under Rule 14a-8(b) where, as is the case with the Proposal, a shareholder submits a proposal through a representative (*i.e.*, a "proposal by proxy"). In SLB 14I, the Staff indicated that such submission by proxy is consistent with Rule 14a-8 and the eligibility requirements of Rule 14a-8(b) if the shareholder who submits a proposal by proxy provides sufficient documentation describing the shareholder's delegation of authority to the proxy. The Staff stated that where such sufficient documentation has not been provided, there "may be a basis to exclude the proposal under Rule 14a-8(b)." *See* Section D, SLB 14L The Staff indicated it "would expect this documentation to:

- identify the shareholder-proponent and the person or entity selected as proxy;
- identify the company to which the proposal is directed;
- identify the annual or special meeting for which the proposal is submitted;
- identify the specific proposal to be submitted (e.g., proposal to lower the threshold for calling a special meeting from 25% to 10%); and
- be signed and dated by the shareholder."

The Staff indicated that such documentation is intended to address concerns about proposals by proxy, including that "shareholders may not know that proposals are being submitted on

their behalf." *Id.* In addition, the Staff instructed companies seeking exclusion of a proposal under Rule 14a-8(b) based on a shareholder's failure to provide some or all of the information described above that such companies "must notify the proponent of the specific defect(s) within 14 calendar days of receiving the proposal so that the proponent has an opportunity to cure the defect." *Id.* n.12.

Here, the documentation submitted by As You Sow with the Proposal on November 21, 2018 was insufficient to demonstrate any Proponent's proper delegation of authority to As You Sow to submit the Proposal to the Company on behalf of each such Proponent. The Deficiency Notice clearly explained that the documentation submitted was not sufficient because the documentation "does not identify the Proposal to be submitted" on behalf of the Proponents. The Deficiency Notice explained that "the Proposal submitted is entitled 'Limit High Carbon Financing,' but the authorization documentation from the Proponents refers instead to 'Report on Climate Asset Transition,' 'Climate Asset Transition' and 'reporting on climate asset transition.'" The Deficiency Notice further noted that the documentation from two Proponents—The Rafael Living Trust and the Edwards Mother Earth Foundation—was not dated. The Deficiency Notice explained that in order to cure these deficiencies, "each Proponent should provide documentation that confirms that as of the date [As You Sow] submitted the Proposal, the Proponent had instructed or authorized [As You Sow] to submit the specific proposal to the Company on the Proponent's behalf" and that such documentation "should identify the specific proposal to be submitted and be dated by the shareholder." *See* Exhibit C.

Despite the Deficiency Notice's clear instructions, in its December 14, 2018 response to the Deficiency Notice, As You Sow provided no additional or revised documentation for the Proponents. *See* Exhibit D.

Instead, As You Sow claimed in its December 14, 2018 letter to the Company that "[b]oth the authorization letters and [its] prior transmittals to shareholders *about* the Proposal make clear that the Proponent and co-filers had sufficient information about *the focus of* the Proposal prior to authorizing the filing." *Id.* Addressing the authorization letters first, As You Sow acknowledged that they "describe the Proposal as 'report on climate asset transition' or 'reporting on climate asset transition.'" Without explaining how the "report" or "reporting" referenced in the authorization letters is the same as the Proposal's clear request that the Company "adopt a policy," As You Sow instead asserted that the descriptions "accurately encapsulate *the objective* of the Proposal" and that "[t]he title given to the Proposal [was] another way of stating the same thing" and "was included in the proposal *as a frame* for those non-proponent shareholders that do not currently have an understanding of climate issues."

The Proposal's purported "objective" is that the Company "must transition its assets – its loans and investments – to lower carbon loans and investments." *Id.* The Company must do so, As You Sow quoted, "to 'reduce the carbon footprint of its loan and investment portfolios *to meet the Paris goals.*'" *Id.* (emphasis added). However, the quoted language is not from

the Proposal. The cause for this error becomes clear when As You Sow describes what it actually provided to the Proponents prior to their signing of the authorization letters: As You Sow transmitted "[a] detailed description identifying the Proposal as requesting ***a report*** on how ***J.P. Morgan*** 'plans to align its business model with a Paris compliant low carbon economy.'" *Id.* (emphasis added). The "full description" similarly asks for a "[r]eport on how the Company plans to align its business model or portfolio with a Paris compliant low carbon economy." *Id.* In sum, As You Sow provided the Proponents with the description of a *different* proposal (seeking a report) intended for a *different* company (J.P. Morgan). As You Sow's representation in its December 14, 2018 letter is not sufficient to cure the deficiencies with the documentation submitted by As You Sow on behalf of the Proponents.

As discussed above, when evaluating a proposal by proxy, the Staff will evaluate whether the proponent provides sufficient documentation "describing the shareholder's delegation of authority to the proxy," including whether the documentation "identif[ies] the *specific proposal* to be submitted (*e.g.*, proposal to lower the threshold for calling a special meeting from 25% to 10%)" (emphasis added). *See* Section D, SLB 14I. Requiring such information is intended to "alleviate concerns about proposal by proxy," including whether shareholders know that proposals are being submitted on their behalf. *Id.*

The Company submits that the evidentiary issues raised by the Proposal and the inconsistencies with respect to the documentation provided by As You Sow – including references to a different company – are exactly the issues that the Staff described in SLB 14I. Despite the Deficiency Notice's clear instructions, no Proponent provided sufficient documentation that confirmed that as of the date the Proposal was submitted each had authorized As You Sow to submit the Proposal to the Company on its behalf. Accordingly, consistent with the precedent cited above, the Proposal is excludable because, despite receiving a timely and proper Deficiency Notice pursuant to Rule 14a-8(f)(1), none of the Proponents have established the requisite eligibility to submit the Proposal as required by Rule 14a-8(b).

ii. Only Eight of Eleven Proponents Provided Proof Of Beneficial Ownership Required Under Rule 14a-8(b).

If the Staff does not agree that the Proposal may be excluded in its entirety under Rule 14a-8(i)(7) or Rule 14a-8(b), we believe that several Proponents may be excluded as filers of the Proposal. Rule 14a-8(b)(1) provides, in part, that "[i]n order to be eligible to submit a proposal, a shareholder must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date [the shareholder] submit[s] the proposal." Staff Legal Bulletin No. 14 (July 13, 2001) ("SLB 14") specifies that when the shareholder is not the registered holder, the shareholder "is responsible for proving his or her eligibility to submit a proposal to the company," which the shareholder may do by one of the two ways provided in Rule 14a-8(b)(2). *See* Section C.1.c, SLB 14.

Rule 14a-8(f) provides that a company may exclude a shareholder proposal if the proponent fails to provide evidence of eligibility under Rule 14a-8, including the beneficial ownership requirements of Rule 14a-8(b), provided that the company timely notifies the proponent of the problem and the proponent fails to correct the deficiency within the required time. The Company satisfied its obligation under Rule 14a-8 by transmitting to the Proponents in a timely manner the Deficiency Notice, which specifically set forth the information listed above and included a copy of both Rule 14a-8 and SLB 14F. *See* Exhibit C.

Here, As You Sow submitted the Proposal on November 21, 2018. Therefore the Proponents were each required to verify continuous ownership for the one-year period preceding and including this date, *i.e.*, November 21, 2017 through November 21, 2018. However, As You Sow did not include in its original submission any documentary evidence of any Proponent's ownership of Company shares. *See* Exhibit A. While As You Sow's response on December 14, 2018, cured this deficiency with respect to eight Proponents—K.F.P. A California Limited Partnership, Samajak LP, The Nicola Miner Revocable Trust, the Corning 5A Trust, the Edwards Mother Earth Foundation, the John B. and Linda C. Mason Comm Prop, and The Gun Denhart Living Trust—it failed to cure this deficiency with respect to the other Proponents as follows:

- *Mulliken Family Trust*—As You Sow failed to provide any documentary support indicating that the Mulliken Family Trust has satisfied the minimum ownership requirement for the one-year period required by Rule 14a-8(b).

- *Campbell Irrevocable Trust for Nancy Dtd 12/7/1990*—As You Sow failed to provide any documentary support indicating that the Campbell Irrevocable Trust for Nancy Dtd 12/7/1990 has satisfied the minimum ownership requirement for the one-year period required by Rule 14a-8(b).

- *The Rafael Living Trust*—The Trust Ameritrade Letter indicates that The Rafael Living Trust's account "holds, and has held continuously for at least 395 days, 4 shares of GS : Goldman Sachs." According to Yahoo! Finance, in the 60 days prior to and including November 21, 2018, the date As You Sow submitted the Proposal, the highest selling price for the Company's stock was $235.74 on September 24, 2018. *See* Exhibit F. The Rafael Living Trust's four shares at this peak price total only $942.96, less than half the $2,000 required by Rule 14a-8(b). As such, the Trust Ameritrade Letter failed to provide verification of The Rafael Living Trust's continuous ownership of the required number or amount of Company shares for at least one year prior to and including the date on which Proposal was submitted (i.e., November 21, 2018) because it did not indicate that The Rafael Living Trust had continuously owned a sufficient number or amount of Company shares as of November 21, 2018.

The Deficiency Notice clearly stated the necessity for each Proponent to prove continuous ownership for the one-year period preceding and including November 21, 2018. The

Deficiency Notice instructed it must submit "sufficient proof of the continuous ownership by each of the 11 Proponents of the requisite number of Goldman Sachs common stock" in the form of "a written statement from the 'record' holder of such Proponent's shares (usually a broker or a bank) verifying that such Proponent continuously held the required number of shares for the" one-year period preceding and including November 21, 2018. In doing so, the Company complied with the Staff's guidance in SLB 14G for providing the Proponents with adequate instruction as to Rule 14a-8's proof of ownership requirements, including by attaching copies of both Rule 14a-8 and SLB 14F.

Despite the Deficiency Notice's instructions, the Mulliken Family Trust, the Campbell Irrevocable Trust for Nancy Dtd 12/7/1990, and The Rafael Living Trust failed to provide, within the required 14-day time period from the date As You Sow received the Company's timely Deficiency Notice, the proof of ownership required by Rule 14a-8(b)(2), and as described in the Deficiency Notice and in SLB 14F.

Importantly, even if any of these Proponents *were* to provide proof of such Proponent's ownership of Company shares now, such proof is not timely and thus does not satisfy Rule 14a-8(b) because the 14-day period expired on December 14, 2018. *See*, *e.g.*, *ITC Holdings Corp.* (avail. Feb. 9, 2016) (concurring with exclusion of proposal because the proponent failed to supply, in response to the company's deficiency notice, sufficient proof that the proponent satisfied the minimum ownership requirement as required by Rule 14a-8(b) where the proponent supplied proof of ownership 35 days after receiving the timely deficiency notice); *Prudential Financial, Inc.* (avail. Dec. 28, 2015) (concurring with exclusion of proposal because the proponent failed to supply, in response to the company's deficiency notice, sufficient proof that the proponent satisfied the minimum ownership requirement as required by Rule 14a-8(b) where the proponent supplied proof of ownership 23 days after receiving the timely deficiency notice); *Mondelēz International, Inc.* (avail. Feb. 27, 2015) (concurring with exclusion of proposal because the proponent failed to supply, in response to the company's deficiency notice, sufficient proof that the proponent satisfied the minimum ownership requirement as required by Rule 14a-8(b) where the proponent supplied proof of ownership 16 days after receiving the timely deficiency notice); *Pitney Bowes Inc.* (avail. Jan. 13, 2012) (concurring with exclusion of proposal because the proponents failed to supply, in response to the company's deficiency notice, sufficient proof that the proponents satisfied the minimum ownership requirement as required by Rule 14a-8(b) where proponents supplied proof of ownership 34 days after receiving the timely deficiency notice).

*****

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2019 Proxy Materials.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to Beverly.OToole@gs.com. Should you have any questions or if you would like any additional information regarding the foregoing, please do not hesitate to contact me (212-357-1584; Beverly.OToole@gs.com) or Jamie Greenberg (212-902-0254; Jamie.Greenberg@gs.com). Thank you for your attention to this matter.

Very truly yours,

Beverly O'Toole

Beverly L. O'Toole

Enclosures

cc: Danielle R. Fugere, As You Sow

EXHIBIT A

From: Kwan Hong Teoh [mailto:Kwan@asyousow.org]
Sent: Wednesday, November 21, 2018 6:31 PM
To: Shareholder Proposals_GS
Cc: Lila Holzman; Danielle Fugere
Subject: GS - Shareholder Proposal - ATTN: Corp Sec.

Dear Mr. Rogers,

Please find enclosed filing letters for a shareholder proposal submitted for inclusion in Goldman Sachâ€™s 2019 proxy statement. Receipt confirmation of this email would be appreciated.

Thank you

Best Regards,
Kwan Hong

Kwan Hong Teoh
Environmental Health Program
Research Manager
As You Sow
1611 Telegraph Ave., Ste. 1450
Oakland, CA 94612
(510) 735-8147 (direct line) | (605) 651-5517 (cell)
kwan@asyousow.org | www.asyousow.org

~Building a Safe, Just and Sustainable World since 1992~

AS YOU SOW

1611 Telegraph Ave, Suite 1450
Oakland, CA 94612

www.asyousow.org
BUILDING A SAFE, JUST, AND SUSTAINABLE WORLD SINCE 1992

November 21, 2018

John F.W. Rogers
Corporate Secretary
The Goldman Sachs Group, Inc.
200 West Street
New York, New York 10282

Dear Mr. Rogers:

As You Sow is filing a shareholder proposal on behalf of K.F.P. A California Limited Partnership ("Proponent"), a shareholder of The Goldman Sachs Group, for action at the next annual meeting of Goldman Sachs. Proponent submits the enclosed shareholder proposal for inclusion in Goldman Sach's 2019 proxy statement, for consideration by shareholders, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.

A letter from the Proponent authorizing *As You Sow* to act on its behalf is enclosed. A representative of the Proponent will attend the stockholders' meeting to move the resolution as required.

We are available to discuss this issue and are optimistic that such discussion may result in resolution of the Proponent's concerns. To schedule such a dialogue, please feel free to contact me via email at dfugere@asyousow.org or telephone at (510) 735-8141.

Sincerely,

Danielle R. Fugere
President

Enclosures

- Shareholder Proposal
- Shareholder Authorization

LIMIT HIGH CARBON FINANCING

Whereas: Banks with financial ties to carbon intensive fossils fuel investments face reputational harm, boycotts, divestment, and litigation that adversely affects shareholder value. Goldman Sachs has suffered extensive reputational damage from, and has been the target of significant public protests, based on its support of the Dakota Access Pipeline and other similarly controversial projects.

The Intergovernmental Panel on Climate Change recently underscored the harm of climate change, announcing that "rapid, far-reaching" changes are necessary to avoid disastrous levels of global warming; net emissions of carbon dioxide must fall 45 percent by 2030, reaching "net zero" by 2050.

Banks' financing choices have a major role to play in promoting these goals. Bank lending and investments make up a significant source of external capital for carbon intensive industries. **Every dollar banks invest in new fossil fuel infrastructure increases risk and slows the transition to a clean energy economy.**

Goldman Sachs recognizes climate change[1] and has taken certain related actions including pledging to conduct a carbon footprint analysis in its equity work, increase clean energy financing, and reduce direct carbon emissions from its offices and travel. Goldman's *Environmental Policy Framework* requires assessing client climate risk and avoiding coal projects in developed nations (where there is limited demand for such projects). Significantly, Goldman's climate change policies do not require reductions in the bank's largest contribution to climate change -- its investments and loans in carbon-intensive fossil fuel projects and companies.

To the contrary, Goldman continues to make investments and loans in the most extreme fossil fuel projects. Last year, Goldman added coal loans to its portfolio.[2] Between 2015 and 2017, Goldman poured nearly $9 billion into financing of tar sands, Arctic oil, and coal.[3]

In contrast, peer banks have adopted policies reducing carbon in their loan and investment portfolios, including reducing or avoiding investments in extreme fossil fuels. ING adopted a methodology to measure the carbon content of its portfolio and decrease the climate impact of its loans.[4] BNP Paribas' policies phase out financing for companies tied to Arctic drilling, oil sands, shale development, and restrict financing for those tied to coal.[5] Natixis committed to end financing of tar sands and Arctic drilling.[6] The World Bank committed to end upstream oil and gas financing. Eleven banks adopted policies to end or substantially reduce financing for Arctic oil and/or tar sands projects.[7]

---

[1] https://www.goldmansachs.com/citizenship/environmental-stewardship/market-solutions-to-address-climate-change/

[2] https://www.nytimes.com/2018/05/28/business/banks-coal-loans.html

[3] http://www.ran.org/wp-content/uploads/rainforestactionnetwork/pages/19540/attachments/original/1525099181/Banking_on_Climate_Change_2018_vWEB.pdf?1525099181, p.6.

[4] https://www.eco-business.com/press-releases/ing-reveals-2c-scenario-analysis-method-for-corporate-lending-portfolios/

[5] https://www.upi.com/BNP-Paribas-says-it-will-no-longer-back-oil/4921507715402/

[6] https://www.banktrack.org/download/natixis_deepens_its_commitment_to_the_climate_and_the_environment/pr_natixis__new_commitments__december_11_2017.pdf

[7] https://www.banktrack.org/campaign/banks_that_ended_direct_finance_for_arctic_oil_andor_gas_projects

Resolved: Shareholders request that Goldman Sachs adopt a policy to reduce the carbon footprint of its loan and investment portfolios in alignment with the 2015 Paris goal of maintaining global warming well below 2 degrees, and issue annual reports (at reasonable cost, omitting proprietary information) describing targets, plans, and progress under this policy.

Supporting Statement: Shareholders recommend the report include, among other issues at board and management discretion:

- The carbon reduction benefits of expeditiously reducing exposure to extreme fossil fuel projects such as such as coal, Arctic oil and gas, and tar sands.

October 19, 2018

Andrew Behar
CEO
As You Sow
1611 Telegraph Ave., Ste. 1450
Oakland, CA 94612

Re: Authorization to File Shareholder Resolution

Dear Andrew Behar,

The undersigned Stockholder authorizes As You Sow to file or co-file a shareholder resolution on the Stockholder's behalf with below mentioned Company, and that it be included in below mentioned Company's 2019 proxy statement as specified below, in accordance with Rule 14-a8 of the General Rules and Regulations of the Securities and Exchange Act of 1934.

Stockholder:	K.F.P. A California Limited Partnership
Company:	Goldman Sachs Group Inc
Resolution Request:	Report on Climate Asset Transition

The Stockholder has continuously owned over $2,000 worth of stock of the above mentioned Company, with voting rights, for over a year. The Stockholder intends to hold the required amount of stock through the date of the Company's annual meeting in 2019.

The Stockholder gives As You Sow the authority to deal on the Stockholder's behalf with any and all aspects of the shareholder resolution, including designating another entity as lead filer and representative of the shareholder.

The Stockholder understands that the Stockholder's name may appear on the Company's proxy statement as the filer of the aforementioned resolution, and that the media may mention the Stockholder's name related to the resolution.

Sincerely,

DocuSigned by:
Karen Leech
A4E88381457E4E8...

Karen Leech

Special Power of Attorney

K.F.P. A California Limited Partnership

EXHIBIT B

AS YOU SOW

1611 Telegraph Ave, Suite 1450
Oakland, CA 94612

www.asyousow.org
BUILDING A SAFE, JUST, AND SUSTAINABLE WORLD SINCE 1992

November 21, 2018

John F.W. Rogers
Corporate Secretary
The Goldman Sachs Group, Inc.
200 West Street
New York, New York 10282

Dear Mr. Rogers:

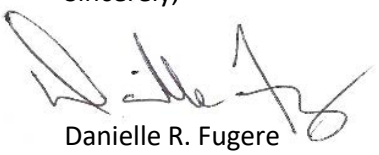
As You Sow is co-filing a shareholder proposal on behalf of the following Goldman Sachs shareholders for action at the next annual meeting of Goldman Sachs:

- Campbell Irrevocable Trust for Nancy Dtd 12/7/1990
- Corning 5A Trust
- Daveen Fox Revocable Trust
- Edwards Mother Earth Foundation
- John B. and Linda C. Mason Comm Prop
- Mulliken Family Trust
- Samajak LP
- The Gun Denhart Living Trust
- The Nicola Miner Revocable Trust
- The Rafael Living Trust

The lead filer, K.F.P.A California Limited Partnership, has submitted the enclosed shareholder proposal for inclusion in the 2019 proxy statement for consideration by shareholders, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934. Please note that *As You Sow* also represents the lead filer of this proposal.

Letters authorizing *As You Sow* to act on co-filers' behalf are enclosed. A representative of the lead filer will attend the stockholders' meeting to move the resolution as required.

Sincerely,



Danielle R. Fugere
President

Enclosures

- Shareholder Proposal
- Shareholder Authorizations

LIMIT HIGH CARBON FINANCING

Whereas: Banks with financial ties to carbon intensive fossils fuel investments face reputational harm, boycotts, divestment, and litigation that adversely affects shareholder value. Goldman Sachs has suffered extensive reputational damage from, and has been the target of significant public protests, based on its support of the Dakota Access Pipeline and other similarly controversial projects.

The Intergovernmental Panel on Climate Change recently underscored the harm of climate change, announcing that "rapid, far-reaching" changes are necessary to avoid disastrous levels of global warming; net emissions of carbon dioxide must fall 45 percent by 2030, reaching "net zero" by 2050.

Banks' financing choices have a major role to play in promoting these goals. Bank lending and investments make up a significant source of external capital for carbon intensive industries. **Every dollar banks invest in new fossil fuel infrastructure increases risk and slows the transition to a clean energy economy.**

Goldman Sachs recognizes climate change[1] and has taken certain related actions including pledging to conduct a carbon footprint analysis in its equity work, increase clean energy financing, and reduce direct carbon emissions from its offices and travel. Goldman's *Environmental Policy Framework* requires assessing client climate risk and avoiding coal projects in developed nations (where there is limited demand for such projects). Significantly, Goldman's climate change policies do not require reductions in the bank's largest contribution to climate change -- its investments and loans in carbon-intensive fossil fuel projects and companies.

To the contrary, Goldman continues to make investments and loans in the most extreme fossil fuel projects. Last year, Goldman added coal loans to its portfolio.[2] Between 2015 and 2017, Goldman poured nearly $9 billion into financing of tar sands, Arctic oil, and coal.[3]

In contrast, peer banks have adopted policies reducing carbon in their loan and investment portfolios, including reducing or avoiding investments in extreme fossil fuels. ING adopted a methodology to measure the carbon content of its portfolio and decrease the climate impact of its loans.[4] BNP Paribas' policies phase out financing for companies tied to Arctic drilling, oil sands, shale development, and restrict financing for those tied to coal.[5] Natixis committed to end financing of tar sands and Arctic drilling.[6] The World Bank committed to end upstream oil and gas financing. Eleven banks adopted policies to end or substantially reduce financing for Arctic oil and/or tar sands projects.[7]

---

[1] https://www.goldmansachs.com/citizenship/environmental-stewardship/market-solutions-to-address-climate-change/

[2] https://www.nytimes.com/2018/05/28/business/banks-coal-loans.html

[3] http://www.ran.org/wp-content/uploads/rainforestactionnetwork/pages/19540/attachments/original/1525099181/Banking_on_Climate_Change_2018_vWEB.pdf?1525099181, p.6.

[4] https://www.eco-business.com/press-releases/ing-reveals-2c-scenario-analysis-method-for-corporate-lending-portfolios/

[5] https://www.upi.com/BNP-Paribas-says-it-will-no-longer-back-oil/4921507715402/

[6] https://www.banktrack.org/download/natixis_deepens_its_commitment_to_the_climate_and_the_environment/pr_natixis__new_commitments__december_11_2017.pdf

[7] https://www.banktrack.org/campaign/banks_that_ended_direct_finance_for_arctic_oil_andor_gas_projects

Resolved: Shareholders request that Goldman Sachs adopt a policy to reduce the carbon footprint of its loan and investment portfolios in alignment with the 2015 Paris goal of maintaining global warming well below 2 degrees, and issue annual reports (at reasonable cost, omitting proprietary information) describing targets, plans, and progress under this policy.

Supporting Statement: Shareholders recommend the report include, among other issues at board and management discretion:

- The carbon reduction benefits of expeditiously reducing exposure to extreme fossil fuel projects such as such as coal, Arctic oil and gas, and tar sands.

November 5, 2018

Andrew Behar
CEO
As You Sow
1611 Telegraph Ave., Ste. 1450
Oakland, CA 94612

Re: Authorization to File Shareholder Resolution

Dear Andrew Behar,

The undersigned (the "Stockholder") authorizes As You Sow to file or cofile a shareholder resolution on Stockholder's behalf with **Goldman Sachs** (the "Company"), relating to **Report on Climate Asset Transition**, and that it be included in the Company's 2019 proxy statement, in accordance with Rule 14-a8 of the General Rules and Regulations of the Securities and Exchange Act of 1934.

The Stockholder has continuously owned over $2,000 worth of Company stock, with voting rights, for over a year. The Stockholder intends to hold the required amount of stock through the date of the company's annual meeting in 2019.

The Stockholder gives As You Sow the authority to deal on the Stockholder's behalf with any and all aspects of the shareholder resolution, including designating another entity as lead filer and representative of the shareholder. The Stockholder understands that the Stockholder's name may appear on the company's proxy statement as the filer of the aforementioned resolution, and that the media may mention the Stockholder's name related to the resolution.

Sincerely,

RICHARD W. CHAMBERLAIN
Trustee
Campbell Irrevocable Trust for Nancy Dtd 12/7/1990

AS YOU SOW

Date: November 7, 2018

Andrew Behar
CEO
As You Sow
1611 Telegraph Ave., Ste. 1450
Oakland, CA 94612

Re: Authorization to File Shareholder Resolution

Dear Andrew Behar,

The undersigned (the "Stockholder") authorizes As You Sow to file or cofile a shareholder resolution on Stockholder's behalf with The Goldman Sachs Group (the "Company"), relating to reporting on climate asset transition, and that it be included in the Company's 2019 proxy statement, in accordance with Rule 14-a8 of the General Rules and Regulations of the Securities and Exchange Act of 1934.

The Stockholder has continuously owned over $2,000 worth of Company stock, with voting rights, for over a year. The Stockholder intends to hold the required amount of stock through the date of the company's annual meeting in 2019.

The Stockholder gives As You Sow the authority to deal on the Stockholder's behalf with any and all aspects of the shareholder resolution, including designating another entity as lead filer and representative of the shareholder. The Stockholder understands that the Stockholder's name may appear on the company's proxy statement as the filer of the aforementioned resolution, and that the media may mention the Stockholder's name related to the resolution.

Sincerely,

DocuSigned by:
Daria Victorov
BB69CD193E4A406...

11/7/2018 | 1:00 PM PST

Daria Victorov
Financial Advisor
Corning 5A Trust

AS YOU SOW

AS YOU SOW

Date: 10/19/2018 | 8:45 PM PDT

Andrew Behar
CEO
As You Sow
1611 Telegraph Ave., Ste. 1450
Oakland, CA 94612

Re: Authorization to File Shareholder Resolution

Dear Andrew Behar,

The undersigned (the "Stockholder") authorizes As You Sow to file or cofile a shareholder resolution on Stockholder's behalf with The Goldman Sachs Group (the "Company"), relating to reporting on climate asset transition, and that it be included in the Company's 2019 proxy statement, in accordance with Rule 14-a8 of the General Rules and Regulations of the Securities and Exchange Act of 1934.

The Stockholder has continuously owned over $2,000 worth of Company stock, with voting rights, for over a year. The Stockholder intends to hold the required amount of stock through the date of the company's annual meeting in 2019.

The Stockholder gives As You Sow the authority to deal on the Stockholder's behalf with any and all aspects of the shareholder resolution, including designating another entity as lead filer and representative of the shareholder. The Stockholder understands that the Stockholder's name may appear on the company's proxy statement as the filer of the aforementioned resolution, and that the media may mention the Stockholder's name related to the resolution.

Sincerely,

DocuSigned by:
Daveen Fox
344B5D6AB5A04F7...

Daveen Fox
Trustee
Daveen Fox Revocable Trust

11/3/2018

Andrew Behar
CEO
As You Sow
1611 Telegraph Ave., Ste. 1450
Oakland, CA 94612

Re: Authorization to File Shareholder Resolution

Dear Andrew Behar,

The undersigned (the "Stockholder") authorizes As You Sow to file or cofile a shareholder resolution on Stockholder's behalf with The Goldman Sachs Group (the "Company"), relating to reporting on climate asset transition, and that it be included in the Company's 2019 proxy statement, in accordance with Rule 14-a8 of the General Rules and Regulations of the Securities and Exchange Act of 1934.

The Stockholder has continuously owned over $2,000 worth of Company stock, with voting rights, for over a year. The Stockholder intends to hold the required amount of stock through the date of the company's annual meeting in 2019.

The Stockholder gives As You Sow the authority to deal on the Stockholder's behalf with any and all aspects of the shareholder resolution, including designating another entity as lead filer and representative of the shareholder. The Stockholder understands that the Stockholder's name may appear on the company's proxy statement as the filer of the aforementioned resolution, and that the media may mention the Stockholder's name related to the resolution.

Sincerely,

DocuSigned by:

Gun Denhart
Trustee
The Gun Denhart Living Trust

AS YOU SOW

Date:

Andrew Behar
CEO
As You Sow
1611 Telegraph Ave., Ste. 1450
Oakland, CA 94612

Re: Authorization to File Shareholder Resolution

Dear Andrew Behar,

The undersigned (the "Stockholder") authorizes As You Sow to file or cofile a shareholder resolution on Stockholder's behalf with The Goldman Sachs Group (the "Company"), relating to reporting on climate asset transition, and that it be included in the Company's 2019 proxy statement, in accordance with Rule 14-a8 of the General Rules and Regulations of the Securities and Exchange Act of 1934.

The Stockholder has continuously owned over $2,000 worth of Company stock, with voting rights, for over a year. The Stockholder intends to hold the required amount of stock through the date of the company's annual meeting in 2019.

The Stockholder gives As You Sow the authority to deal on the Stockholder's behalf with any and all aspects of the shareholder resolution, including designating another entity as lead filer and representative of the shareholder. The Stockholder understands that the Stockholder's name may appear on the company's proxy statement as the filer of the aforementioned resolution, and that the media may mention the Stockholder's name related to the resolution.

Sincerely,

DocuSigned by:
44C089C2B75940E...

10/31/2018 | 7:36 PM PDT

David Mulliken
Trustee
Mulliken Family Trust

October 29, 2018

Andrew Behar
CEO
As You Sow
1611 Telegraph Ave., Ste. 1450
Oakland, CA 94612

Re: Authorization to File Shareholder Resolution

Dear Andrew Behar,

The undersigned Stockholder authorizes As You Sow to file or co-file a shareholder resolution on the Stockholder's behalf with below mentioned Company, and that it be included in below mentioned Company's 2019 proxy statement as specified below, in accordance with Rule 14-a8 of the General Rules and Regulations of the Securities and Exchange Act of 1934.

Stockholder:	The Nicola Miner Revocable Trust DTD 02/19/1999
Company:	Goldman Sachs Group Inc
Resolution Request:	Report on Climate Asset Transition

The Stockholder has continuously owned over $2,000 worth of stock of the above mentioned Company, with voting rights, for over a year. The Stockholder intends to hold the required amount of stock through the date of the Company's annual meeting in 2019.

The Stockholder gives As You Sow the authority to deal on the Stockholder's behalf with any and all aspects of the shareholder resolution, including designating another entity as lead filer and representative of the shareholder.

The Stockholder understands that the Stockholder's name may appear on the Company's proxy statement as the filer of the aforementioned resolution, and that the media may mention the Stockholder's name related to the resolution.

Sincerely,

DocuSigned by:
Karen Leech
A4E88381457E4E8...

Karen Leech

Special Power of Attorney

The Nicola Miner Revocable Trust DTD 02/19/1999

AS YOU SOW

AS YOU SOW

Date:

Andrew Behar
CEO
As You Sow
1611 Telegraph Ave., Ste. 1450
Oakland, CA 94612

Re: Authorization to File Shareholder Resolution

Dear Andrew Behar,

The undersigned (the "Stockholder") authorizes As You Sow to file or cofile a shareholder resolution on Stockholder's behalf with The Goldman Sachs Group (the "Company"), relating to reporting on climate asset transition, and that it be included in the Company's 2019 proxy statement, in accordance with Rule 14-a8 of the General Rules and Regulations of the Securities and Exchange Act of 1934.

The Stockholder has continuously owned over $2,000 worth of Company stock, with voting rights, for over a year. The Stockholder intends to hold the required amount of stock through the date of the company's annual meeting in 2019.

The Stockholder gives As You Sow the authority to deal on the Stockholder's behalf with any and all aspects of the shareholder resolution, including designating another entity as lead filer and representative of the shareholder. The Stockholder understands that the Stockholder's name may appear on the company's proxy statement as the filer of the aforementioned resolution, and that the media may mention the Stockholder's name related to the resolution.

Sincerely,

DocuSigned by:
62C8BC2C282F440...

Betsy Rafael
Trustee
The Rafael Living Trust

October 19, 2018

Andrew Behar
CEO
As You Sow
1611 Telegraph Ave., Ste. 1450
Oakland, CA 94612

Re: Authorization to File Shareholder Resolution

Dear Andrew Behar,

The undersigned Stockholder authorizes As You Sow to file or co-file a shareholder resolution on the Stockholder's behalf with below mentioned Company, and that it be included in below mentioned Company's 2019 proxy statement as specified below, in accordance with Rule 14-a8 of the General Rules and Regulations of the Securities and Exchange Act of 1934.

Stockholder:	Samajak, LP
Company:	Goldman Sachs Group Inc
Resolution Request:	Report on Climate Asset Transition

The Stockholder has continuously owned over $2,000 worth of stock of the above mentioned Company, with voting rights, for over a year. The Stockholder intends to hold the required amount of stock through the date of the Company's annual meeting in 2019.

The Stockholder gives As You Sow the authority to deal on the Stockholder's behalf with any and all aspects of the shareholder resolution, including designating another entity as lead filer and representative of the shareholder.

The Stockholder understands that the Stockholder's name may appear on the Company's proxy statement as the filer of the aforementioned resolution, and that the media may mention the Stockholder's name related to the resolution.

Sincerely,

DocuSigned by:
Karen Leech
A4E88381457E4E8...

Karen Leech

Special Power of Attorney

Samajak, LP

Andrew Behar
CEO
As You Sow
1611 Telegraph Ave., Ste. 1450
Oakland, CA 94612

Re: Authorization to File Shareholder Resolution

Dear Andrew Behar,

The undersigned (the "Stockholder") authorizes As You Sow to file or cofile a shareholder resolution on Stockholder's behalf with The Goldman Sachs Group (the "Company"), relating to reporting on climate asset transition, and that it be included in the Company's 2019 proxy statement, in accordance with Rule 14-a8 of the General Rules and Regulations of the Securities and Exchange Act of 1934.

The Stockholder has continuously owned over $2,000 worth of Company stock, with voting rights, for over a year. The Stockholder intends to hold the required amount of stock through the date of the company's annual meeting in 2019.

The Stockholder gives As You Sow the authority to deal on the Stockholder's behalf with any and all aspects of the shareholder resolution, including designating another entity as lead filer and representative of the shareholder. The Stockholder understands that the Stockholder's name may appear on the company's proxy statement as the filer of the aforementioned resolution, and that the media may mention the Stockholder's name related to the resolution.

Sincerely,

DocuSigned by:
BB837F737EB74ED...

Tara Reinertson
President
Edwards Mother Earth Foundation

10/24/2018
Andrew Behar
CEO
As You Sow Foundation
1611 Telegraph Ave., Ste. 1450
Oakland, CA 94612

Re: Authorization to File Shareholder Resolution

Dear Andrew Behar,

As of the date of this letter, the undersigned authorizes As You Sow (AYS) file, cofile, or endorse the shareholder resolution identified below on Stockholder's behalf with the identified company, and that it be included in the proxy statement as specified below, in accordance with Rule 14-a8 of the General Rules and Regulations of the Securities and Exchange Act of 1934.

The Stockholder: John B & Linda C Mason Comm Prop (S)
Company: Goldman Sachs
Annual Meeting/Proxy Statement Year: 2019
Resolution: Climate Asset Transition
Background information re: AYS Campaign: https://www.asyousow.org/our-work/energy/climate-change

The Stockholder has continuously owned over $2,000 worth of company stock, with voting rights, for over a year. The Stockholder intends to hold the required amount of stock through the date of the company's annual meeting in 2019 .

The Stockholder gives As You Sow the authority to deal on the Stockholder's behalf with any and all aspects of the shareholder resolution, including designating another entity as lead filer and representative of the shareholder. The Stockholder understands that the Stockholder's name may appear on the company's proxy statement as the filer of the aforementioned resolution, and that the media may mention the Stockholder's name related to the resolution.

Sincerely,

DocuSigned by:
John B & Linda C Mason
1A2546F5C31941A...
John B & Linda C Mason

EXHIBIT C

From: Greenberg, Jamie <Jamie.Greenberg@gs.com>
Sent: Friday, November 30, 2018 1:11 PM
To: 'DFugere@asyousow.org'
Cc: O'Toole, Beverly L
Subject: Correspondence from The Goldman Sachs Group, Inc.
Attachments: AYS Notice Executed.pdf

[External Email]
Please see the attached correspondence from The Goldman Sachs Group, Inc.

Jamie Greenberg
Vice President and Associate General Counsel | Goldman Sachs & Co. LLC
200 West Street | 15th Floor | New York, NY 10282
Telephone: 212-902-0254 | Fax: 212-291-5816
Email: jamie.greenberg@gs.com

200 West Street | New York, New York 10282
Tel: 212-902-0254 | Fax: 212-291-5816 | e-mail: jamie.greenberg@gs.com

Jamie Greenberg
Vice President
Associate General Counsel

Goldman Sachs

November 30, 2018

Via Email

Danielle R. Fugere
President
As You Sow
1611 Telegraph Ave., Ste. 1450
Oakland, CA 94612
Email: dfugere@asyousow.org

Re: The Goldman Sachs Group, Inc. ("Goldman Sachs")

Dear Ms. Fugere:

This letter is being sent to you, as agent of lead filer K.F.P. A California Limited Partnership and co-filers Campbell Irrevocable Trust for Nancy Dtd 12/7/1990, Corning 5A Trust, Daveen Fox Revocable Trust, Edwards Mother Earth Foundation, John B. and Linda C. Mason Comm Prop, Mulliken Family Trust, Samajak, LP, The Gun Denhart Living Trust, The Nicola Miner Revocable Trust DTD 02/19/1999 and The Rafael Living Trust (together, the "Proponents"), in accordance with Rule 14a-8 under the Securities and Exchange Act of 1934 (the "Exchange Act"), in connection with the shareholder proposal you submitted to Goldman Sachs on behalf of the Proponents on November 21, 2018 (the "Proposal"). We note that you have been delegated by the Proponents the authority to act regarding the Proposal, including its submission, negotiation and/or modification, and presentation at the forthcoming shareholder meeting. Rule 14a-8(f) provides that we must notify you of any procedural or eligibility deficiencies with respect to the Proposal, as well as the time frame for your response to this letter. We are hereby notifying you of the following procedural deficiencies with respect to the Proposal. References in this letter to "you" mean the Proponents as well as you acting in your capacity as their agent.

1. Proposals by Proxy

We do not believe that your correspondence included sufficient documentation demonstrating that you had the legal authority to submit the Proposal on behalf of the Proponents as of the date the Proposal was submitted (November 21, 2018). In Staff Legal Bulletin No. 14I

(Nov. 1, 2017) ("SLB 14I"), the SEC's Division of Corporation Finance ("Division") noted that proposals submitted by proxy, such as the Proposal, may present challenges and concerns, including "concerns raised that shareholders may not know that proposals are being submitted on their behalf." Accordingly, in evaluating whether there is a basis to exclude a proposal under the eligibility requirements of Rule 14a-8(b), as addressed below, SLB 14I states that in general the Division would expect any shareholder who submits a proposal by proxy to provide documentation to:

- identify the shareholder-proponent and the person or entity selected as proxy;
- identify the company to which the proposal is directed;
- identify the annual or special meeting for which the proposal is submitted;
- identify the specific proposal to be submitted (e.g., proposal to lower the threshold for calling a special meeting from 25% to 10%); and
- be signed and dated by the shareholder.

We believe that the documentation that you provided with the Proposal raises the concerns referred to in SLB 14I because the authorization documentation from each of the Proponents does not identify the Proposal to be submitted. Specifically, the Proposal submitted is entitled "Limit High Carbon Financing," but the authorization documentation from the Proponents refers instead to "Report on Climate Asset Transition," "Climate Asset Transition" and "reporting on climate asset transition." In addition, the documentation from The Rafael Living Trust and Edwards Mother Foundation is not dated by the shareholders. To remedy these defects, each Proponent should provide documentation that confirms that as of the date you submitted the Proposal, the Proponent had instructed or authorized you to submit the specific proposal to the Company on the Proponent's behalf. The documentation should identify the specific proposal to be submitted and be dated by the shareholder.

2. Proof of Continuous Ownership

To the extent that the Proponents authorized you to submit the Proposal to the Company, please note the following. Rule 14a-8(b)(2) provides that shareholder proponents must submit sufficient proof of their continuous ownership of at least $2,000 in market value, or 1%, of the company's shares entitled to vote on the shareholder proposal, for at least one year prior to the date the shareholder proposal was submitted. You did not submit to Goldman Sachs proof of ownership by each Proponent for the one year prior to and including November 21, 2018, the submission date (the "Required Ownership Period"). The Company's stock records do not indicate that the Proponents are each the record owner of sufficient shares to satisfy this requirement.

As noted in Staff Legal Bulletin No. 14G ("SLB 14G"), dated October 16, 2012, published by the staff (the "Staff") of the Securities and Exchange Commission (the "SEC"), a copy of which is attached for your reference, Rule 14a-8(b) provides that, to be eligible to submit a proposal under Rule 14a-8, a shareholder must provide sufficient proof of the shareholder proponent's ownership of the requisite number of securities for the entire one-year period preceding and including the date the shareholder proposal was submitted. Because you did not

provide suitable proof of ownership by the Proponents, we believe that the Proposal may be excluded from our proxy statement for our upcoming 2019 annual meeting of shareholders unless this deficiency is cured within 14 calendar days of your receipt of this letter.

To remedy this deficiency, you must provide sufficient proof of the continuous ownership by each of the 11 Proponents of the requisite number of shares of Goldman Sachs common stock for the Required Ownership Period. As explained in Rule 14a-8(b), sufficient proof may be in the form of:

- a written statement from the "record" holder of such Proponent's shares (usually a broker or a bank) verifying that such Proponent continuously held the requisite number of shares for the Required Ownership Period; or

- if such Proponent has filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 and/or Form 5, or amendments to those documents or updated forms, reflecting such Proponent's ownership of the requisite number of shares for the Required Ownership Period, a copy of the schedule and/or form, and any subsequent amendments reporting a change in such Proponent's ownership level and a written statement that such Proponent has continuously held the requisite number of shares for the Required Ownership Period.

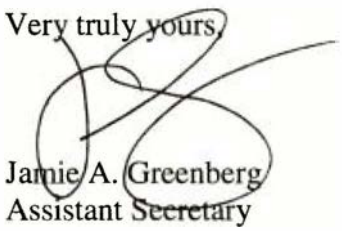
We note that all the foregoing information must be provided for each of the 11 Proponents in order for that Proponent to satisfy the eligibility requirements.

Please note that in SEC Staff Legal Bulletin No. 14F ("SLB 14F"), dated October 18, 2011, the Staff has provided guidance on the definition of "record" holder for purposes of Rule 14a-8(b). SLB 14F provides that for securities held through The Depository Trust Company ("DTC"), only DTC participants should be viewed as "record" holders. If the Proponent holds shares through a bank, broker or other securities intermediary that is not a DTC participant, the Proponent will need to obtain proof of ownership from the DTC participant through which the bank, broker or other securities intermediary holds the shares. As indicated in SLB 14F, this may require you to provide two proof of ownership statements – one from the bank, broker or other securities intermediary confirming each Proponent's ownership, and the other from the DTC participant confirming the bank's, broker's or other securities intermediary's ownership. We urge you to review SLB 14F carefully before submitting the proof of ownership by each Proponent to ensure it is compliant. A list of DTC participants can be found at http://www.dtcc.com/~/media/Files/Downloads/client-center/DTC/alpha.pdf?la=en.

Under Rule 14a-8(f), we are required to inform you that if you would like to respond to this letter or remedy the deficiencies described above, your response must be postmarked, or transmitted electronically, no later than 14 calendar days from the date that you first received this letter. We have attached for your reference copies of Rule 14a-8, SLB 14F and SLB 14G. We urge you to review the SEC rule and Staff guidance carefully before submitting the proof of ownership by the Proponent to ensure it is compliant.

If you have any questions with respect to the foregoing, please contact me at (212) 902-0254. You may send any response to me at the address on the letterhead of this letter, by e-mail to jamie.greenberg@gs.com or by facsimile to (212) 291-5816.

Very truly yours,



Jamie A. Greenberg
Assistant Secretary

Regulation 14A

Regulation 14A Rule 14a-8

http://www.rbsourcefilings.com/document/read/R19-IDANDNQ-R19-IDA0JPQ

Rule 14a-8. Shareholder Proposals.

This section addresses when a company must include a shareholder's proposal in its proxy statement and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company's proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured this section in a question-and-answer format so that it is easier to understand. The references to "you" are to a shareholder seeking to submit the proposal.

(a) **Question 1: What is a proposal?**

A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word "proposal" as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).

(b) **Question 2: Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?**

(1) In order to be eligible to submit a proposal, you must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal. You must continue to hold those securities through the date of the meeting.

(2) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the securities through the date of the meeting of shareholders. However, if like many shareholders you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

(i) The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held the securities for at least one year. You must also include your own written statement that you intend to continue to hold the securities through the date of the meeting of shareholders; or

(ii) The second way to prove ownership applies only if you have filed a Schedule 13D, Schedule 13G, Form 3, Form 4 and/or Form 5, or amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins. If you have filed one of these documents with the SEC, you may demonstrate your eligibility by submitting to the company:

(A) A copy of the schedule and/or form, and any subsequent amendments reporting a change in your ownership level;

(B) Your written statement that you continuously held the required number of shares for the one-year period as of the date of the statement; and

(C) Your written statement that you intend to continue ownership of the shares through the date of the company's annual or special meeting.

(c) **Question 3: How many proposals may I submit?**

Each shareholder may submit no more than one proposal to a company for a particular shareholders' meeting.

(d) **Question 4: How long can my proposal be?**

The proposal, including any accompanying supporting statement, may not exceed 500 words.

(e) **Question 5: What is the deadline for submitting a proposal?**

(1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q (§ 249.308a of this chapter), or in shareholder reports of investment companies under § 270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

(2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.

(3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.

(f) **Question 6: What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this Rule 14a-8?**

(1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under Rule 14a-8 and provide you with a copy under Question 10 below, Rule 14a-8(j).

(2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.

(g) **Question 7: Who has the burden of persuading the Commission or its staff that my proposal can be excluded?**

Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.

(h) **Question 8: Must I appear personally at the shareholders' meeting to present the proposal?**

(1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

(2) If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.

(3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.

(i) **Question 9: If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal?**

(1) ***Improper Under State Law:*** If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

> *Note to Paragraph (i)(1):* Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

(2) ***Violation of Law:*** If the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject;

> *Note to Paragraph (i)(2):* We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law would result in a violation of any state or federal law.

(3) ***Violation of Proxy Rules:*** 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;

(4) ***Personal Grievance; Special Interest:*** If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;

(5) ***Relevance:*** If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;

(6) ***Absence of Power/Authority:*** If the company would lack the power or authority to implement the proposal;

(7) ***Management Functions:*** If the proposal deals with a matter relating to the company's ordinary business operations;

(8) ***Director Elections***: If the proposal:

(i) Would disqualify a nominee who is standing for election;

(ii) Would remove a director from office before his or her term expired;

(iii) Questions the competence, business judgment, or character of one or more nominees or directors;

(iv) Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or

(v) Otherwise could affect the outcome of the upcoming election of directors.

(9) ***Conflicts with Company's Proposal:*** If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;

Note to Paragraph (i)(9): A company's submission to the Commission under this Rule 14a-8 should specify the points of conflict with the company's proposal.

(10) ***Substantially Implemented:*** If the company has already substantially implemented the proposal;

Note to Paragraph (i)(10): A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S-K (§ 229.402 of this chapter) or any successor to Item 402 (a "say-on-pay vote") or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by § 240.14a-21(b) of this chapter a single year (*i.e.*, one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by § 240.14a-21(b) of this chapter.

(11) ***Duplication:*** If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;

(12) ***Resubmissions:*** If the proposal deals with substantially the same subject matter as another proposal or proposals that has or have been previously included in the company's proxy materials within the preceding 5 calendar years, a company may exclude it from its proxy materials for any meeting held within 3 calendar years of the last time it was included if the proposal received:

(i) Less than 3% of the vote if proposed once within the preceding 5 calendar years;

(ii) Less than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years; or

(iii) Less than 10% of the vote on its last submission to shareholders if proposed three times or more previously within the preceding 5 calendar years; and

(13) ***Specific Amount of Dividends:*** If the proposal relates to specific amounts of cash or stock dividends.

(j) **Question 10: What procedures must the company follow if it intends to exclude my proposal?**

(1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

(2) The company must file six paper copies of the following:

(i) The proposal;

(ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and

(iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

(k) **Question 11: May I submit my own statement to the Commission responding to the company's arguments?**

Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

(l) **Question 12: If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?**

(1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.

(2) The company is not responsible for the contents of your proposal or supporting statement.

(m) **Question 13: What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?**

(1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.

(2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, Rule 14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

(3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:

(i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or

(ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before it files definitive copies of its proxy statement and form of proxy under Rule 14a-6.

Staff Legal Bulletin

Staff Legal Bulletin (SLB) No 14F

http://www.rbsourcefilings.com/document/read/G04-IDAMDNQ-G04-IDAL1PQ

Staff Legal Bulletin No. 14F (CF)

Shareholder Proposals

Action: Publication of CF Staff Legal Bulletin

Date: October 18, 2011

Summary: This staff legal bulletin provides information for companies and shareholders regarding Rule 14a-8 under the Securities Exchange Act of 1934.

Supplementary Information: The statements in this bulletin represent the views of the Division of Corporation Finance (the "Division"). This bulletin is not a rule, regulation or statement of the Securities and Exchange Commission (the "Commission"). Further, the Commission has neither approved nor disapproved its content.

Contacts: For further information, please contact the Division's Office of Chief Counsel by calling (202) 551-3500 or by submitting a web-based request form at *https://tts.sec.gov/cgi-bin/corp_fin_interpretive*.

A. **The purpose of this bulletin**

This bulletin is part of a continuing effort by the Division to provide guidance on important issues arising under Exchange Act Rule 14a-8. Specifically, this bulletin contains information regarding:

- Brokers and banks that constitute "record" holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8;
- Common errors shareholders can avoid when submitting proof of ownership to companies;
- The submission of revised proposals;
- Procedures for withdrawing no-action requests regarding proposals submitted by multiple proponents; and
- The Division's new process for transmitting Rule 14a-8 no-action responses by email.

You can find additional guidance regarding Rule 14a-8 in the following bulletins that are available on the Commission's website: *SLB No. 14*, *SLB No. 14A*, *SLB No. 14B*, *SLB No. 14C*, *SLB No. 14D* and *SLB No. 14E*.

B. **The types of brokers and banks that constitute "record" holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8**

1. **Eligibility to submit a proposal under Rule 14a-8**

To be eligible to submit a shareholder proposal, a shareholder must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the shareholder meeting for at least one year as of the date the shareholder submits the proposal. The shareholder must also continue to hold the required amount of securities through the date of the meeting and must provide the company with a written statement of intent to do so.[1]

The steps that a shareholder must take to verify his or her eligibility to submit a proposal depend on how the shareholder owns the securities. There are two types of security holders in the U.S.: registered owners and beneficial owners.[2] Registered owners have a direct relationship with the issuer because their ownership of shares is listed on the records maintained by the issuer or its transfer agent. If a shareholder

is a registered owner, the company can independently confirm that the shareholder's holdings satisfy Rule 14a-8(b)'s eligibility requirement.

The vast majority of investors in shares issued by U.S. companies, however, are beneficial owners, which means that they hold their securities in book-entry form through a securities intermediary, such as a broker or a bank. Beneficial owners are sometimes referred to as “street name” holders. Rule 14a-8(b)(2)(i) provides that a beneficial owner can provide proof of ownership to support his or her eligibility to submit a proposal by submitting a written statement “from the ‘record’ holder of [the] securities (usually a broker or bank),” verifying that, at the time the proposal was submitted, the shareholder held the required amount of securities continuously for at least one year.[3]

2. **The role of the Depository Trust Company**

Most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company (“DTC”), a registered clearing agency acting as a securities depository. Such brokers and banks are often referred to as “participants” in DTC.[4] The names of these DTC participants, however, do not appear as the registered owners of the securities deposited with DTC on the list of shareholders maintained by the company or, more typically, by its transfer agent. Rather, DTC's nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants. A company can request from DTC a “securities position listing” as of a specified date, which identifies the DTC participants having a position in the company's securities and the number of securities held by each DTC participant on that date.[5]

3. **Brokers and banks that constitute “record” holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8**

In *The Hain Celestial Group, Inc.* (Oct. 1, 2008), we took the position that an introducing broker could be considered a “record” holder for purposes of Rule 14a-8(b)(2)(i). An introducing broker is a broker that engages in sales and other activities involving customer contact, such as opening customer accounts and accepting customer orders, but is not permitted to maintain custody of customer funds and securities.[6] Instead, an introducing broker engages another broker, known as a “clearing broker,” to hold custody of client funds and securities, to clear and execute customer trades, and to handle other functions such as issuing confirmations of customer trades and customer account statements. Clearing brokers generally are DTC participants; introducing brokers generally are not. As introducing brokers generally are not DTC participants, and therefore typically do not appear on DTC's securities position listing, *Hain Celestial* has required companies to accept proof of ownership letters from brokers in cases where, unlike the positions of registered owners and brokers and banks that are DTC participants, the company is unable to verify the positions against its own or its transfer agent's records or against DTC's securities position listing.

In light of questions we have received following two recent court cases relating to proof of ownership under Rule 14a-8[7] and in light of the Commission's discussion of registered and beneficial owners in the Proxy Mechanics Concept Release, we have reconsidered our views as to what types of brokers and banks should be considered “record” holders under Rule 14a-8(b)(2)(i). Because of the transparency of DTC participants' positions in a company's securities, we will take the view going forward that, for Rule 14a-8(b)(2)(i) purposes, only DTC participants should be viewed as “record” holders of securities that are deposited at DTC. As a result, we will no longer follow *Hain Celestial*.

We believe that taking this approach as to who constitutes a “record” holder for purposes of Rule 14a-8(b)(2)(i) will provide greater certainty to beneficial owners and companies. We also note that this approach is consistent with Exchange Act Rule 12g5-1 and a 1988 staff no-action letter addressing that rule,[8] under which brokers and banks that are DTC participants are considered to be the record holders of securities on deposit with DTC when calculating the number of record holders for purposes of Sections 12(g) and 15(d) of the Exchange Act.

Companies have occasionally expressed the view that, because DTC's nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants, only DTC or Cede & Co. should be viewed as the “record” holder of the securities held on deposit at DTC

for purposes of Rule 14a-8(b)(2)(i). We have never interpreted the rule to require a shareholder to obtain a proof of ownership letter from DTC or Cede & Co., and nothing in this guidance should be construed as changing that view.

How can a shareholder determine whether his or her broker or bank is a DTC participant?

Shareholders and companies can confirm whether a particular broker or bank is a DTC participant by checking DTC's participant list, which is currently available on the Internet at *http://www.dtcc.com/downloads/membership/directories/dtc/alpha.pdf*.

What if a shareholder's broker or bank is not on DTC's participant list?

The shareholder will need to obtain proof of ownership from the DTC participant through which the securities are held. The shareholder should be able to find out who this DTC participant is by asking the shareholder's broker or bank.[9]

If the DTC participant knows the shareholder's broker or bank's holdings, but does not know the shareholder's holdings, a shareholder could satisfy Rule 14a-8(b)(2)(i) by obtaining and submitting two proof of ownership statements verifying that, at the time the proposal was submitted, the required amount of securities were continuously held for at least one year - one from the shareholder's broker or bank confirming the shareholder's ownership, and the other from the DTC participant confirming the broker or bank's ownership.

How will the staff process no-action requests that argue for exclusion on the basis that the shareholder's proof of ownership is not from a DTC participant?

The staff will grant no-action relief to a company on the basis that the shareholder's proof of ownership is not from a DTC participant only if the company's notice of defect describes the required proof of ownership in a manner that is consistent with the guidance contained in this bulletin. Under Rule 14a-8(f)(1), the shareholder will have an opportunity to obtain the requisite proof of ownership after receiving the notice of defect.

C. **Common errors shareholders can avoid when submitting proof of ownership to companies**

In this section, we describe two common errors shareholders make when submitting proof of ownership for purposes of Rule 14a-8(b)(2), and we provide guidance on how to avoid these errors.

First, Rule 14a-8(b) requires a shareholder to provide proof of ownership that he or she has "continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year *by the date you submit the proposal*" (emphasis added).[10] We note that many proof of ownership letters do not satisfy this requirement because they do not verify the shareholder's beneficial ownership for the entire one-year period preceding and including the date the proposal is submitted. In some cases, the letter speaks as of a date *before* the date the proposal is submitted, thereby leaving a gap between the date of the verification and the date the proposal is submitted. In other cases, the letter speaks as of a date *after* the date the proposal was submitted but covers a period of only one year, thus failing to verify the shareholder's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

Second, many letters fail to confirm continuous ownership of the securities. This can occur when a broker or bank submits a letter that confirms the shareholder's beneficial ownership only as of a specified date but omits any reference to continuous ownership for a one-year period.

We recognize that the requirements of Rule 14a-8(b) are highly prescriptive and can cause inconvenience for shareholders when submitting proposals. Although our administration of Rule 14a-8(b) is constrained by the terms of the rule, we believe that shareholders can avoid the two errors highlighted above by arranging

to have their broker or bank provide the required verification of ownership as of the date they plan to submit the proposal using the following format:

> "As of [date the proposal is submitted], [name of shareholder] held, and has held continuously for at least one year, [number of securities] shares of [company name] [class of securities]."[11]

As discussed above, a shareholder may also need to provide a separate written statement from the DTC participant through which the shareholder's securities are held if the shareholder's broker or bank is not a DTC participant.

D. **The submission of revised proposals**

On occasion, a shareholder will revise a proposal after submitting it to a company. This section addresses questions we have received regarding revisions to a proposal or supporting statement.

1. **A shareholder submits a timely proposal. The shareholder then submits a revised proposal before the company's deadline for receiving proposals. Must the company accept the revisions?**

Yes. In this situation, we believe the revised proposal serves as a replacement of the initial proposal. By submitting a revised proposal, the shareholder has effectively withdrawn the initial proposal. Therefore, the shareholder is not in violation of the one-proposal limitation in Rule 14a-8(c).[12] If the company intends to submit a no-action request, it must do so with respect to the revised proposal.

We recognize that in Question and Answer E.2 of SLB No. 14, we indicated that if a shareholder makes revisions to a proposal before the company submits its no-action request, the company can choose whether to accept the revisions. However, this guidance has led some companies to believe that, in cases where shareholders attempt to make changes to an initial proposal, the company is free to ignore such revisions even if the revised proposal is submitted before the company's deadline for receiving shareholder proposals. We are revising our guidance on this issue to make clear that a company may not ignore a revised proposal in this situation.[13]

2. **A shareholder submits a timely proposal. After the deadline for receiving proposals, the shareholder submits a revised proposal. Must the company accept the revisions?**

No. If a shareholder submits revisions to a proposal after the deadline for receiving proposals under Rule 14a-8(e), the company is not required to accept the revisions. However, if the company does not accept the revisions, it must treat the revised proposal as a second proposal and submit a notice stating its intention to exclude the revised proposal, as required by Rule 14a-8(j). The company's notice may cite Rule 14a-8(e) as the reason for excluding the revised proposal. If the company does not accept the revisions and intends to exclude the initial proposal, it would also need to submit its reasons for excluding the initial proposal.

3. **If a shareholder submits a revised proposal, as of which date must the shareholder prove his or her share ownership?**

A shareholder must prove ownership as of the date the original proposal is submitted. When the Commission has discussed revisions to proposals,[14] it has not suggested that a revision triggers a requirement to provide proof of ownership a second time. As outlined in Rule 14a-8(b), proving ownership includes providing a written statement that the shareholder intends to continue to hold the securities through the date of the shareholder meeting. Rule 14a-8(f)(2) provides that if the shareholder "fails in [his or her] promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of [the same shareholder's] proposals from its proxy materials for any meeting held in the following two calendar years." With these provisions in mind, we do not interpret Rule 14a-8 as requiring additional proof of ownership when a shareholder submits a revised proposal.[15]

E. **Procedures for withdrawing no-action requests for proposals submitted by multiple proponents**

We have previously addressed the requirements for withdrawing a Rule 14a-8 no-action request in SLB Nos. 14 and 14C. SLB No. 14 notes that a company should include with a withdrawal letter documentation demonstrating that a shareholder has withdrawn the proposal. In cases where a proposal submitted by multiple shareholders is withdrawn, SLB No. 14C states that, if each shareholder has designated a lead individual to act on its behalf and the company is able to demonstrate that the individual is authorized to act on behalf of all of the proponents, the company need only provide a letter from that lead individual indicating that the lead individual is withdrawing the proposal on behalf of all of the proponents.

Because there is no relief granted by the staff in cases where a no-action request is withdrawn following the withdrawal of the related proposal, we recognize that the threshold for withdrawing a no-action request need not be overly burdensome. Going forward, we will process a withdrawal request if the company provides a letter from the lead filer that includes a representation that the lead filer is authorized to withdraw the proposal on behalf of each proponent identified in the company's no-action request.[16]

F. **Use of email to transmit our Rule 14a-8 no-action responses to companies and proponents**

To date, the Division has transmitted copies of our Rule 14a-8 no-action responses, including copies of the correspondence we have received in connection with such requests, by U.S. mail to companies and proponents. We also post our response and the related correspondence to the Commission's website shortly after issuance of our response.

In order to accelerate delivery of staff responses to companies and proponents, and to reduce our copying and postage costs, going forward, we intend to transmit our Rule 14a-8 no-action responses by email to companies and proponents. We therefore encourage both companies and proponents to include email contact information in any correspondence to each other and to us. We will use U.S. mail to transmit our no-action response to any company or proponent for which we do not have email contact information.

Given the availability of our responses and the related correspondence on the Commission's website and the requirement under Rule 14a-8 for companies and proponents to copy each other on correspondence submitted to the Commission, we believe it is unnecessary to transmit copies of the related correspondence along with our no-action response. Therefore, we intend to transmit only our staff response and not the correspondence we receive from the parties. We will continue to post to the Commission's website copies of this correspondence at the same time that we post our staff no-action response.

Footnotes

[1] *See* Rule 14a-8(b).

[2] For an explanation of the types of share ownership in the U.S., see Concept Release on U.S. Proxy System, Release No. 34-62495 (July 14, 2010) [75 FR 42982] ("Proxy Mechanics Concept Release"), at Section II.A. The term "beneficial owner" does not have a uniform meaning under the federal securities laws. It has a different meaning in this bulletin as compared to "beneficial owner" and "beneficial ownership" in Sections 13 and 16 of the Exchange Act. Our use of the term in this bulletin is not intended to suggest that registered owners are not beneficial owners for purposes of those Exchange Act provisions. *See* Proposed Amendments to Rule 14a-8 under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders, Release No. 34-12598 (July 7, 1976) [41 FR 29982], at n.2 ("The term 'beneficial owner' when used in the context of the proxy rules, and in light of the purposes of those rules, may be interpreted to have a broader meaning than it would for certain other purpose[s] under the federal securities laws, such as reporting pursuant to the Williams Act.").

[3] If a shareholder has filed a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5 reflecting ownership of the required amount of shares, the shareholder may instead prove ownership by submitting a copy of such filings and providing the additional information that is described in Rule 14a-8(b)(2)(ii).

[4] DTC holds the deposited securities in "fungible bulk," meaning that there are no specifically identifiable shares directly owned by the DTC participants. Rather, each DTC participant holds a pro

rata interest or position in the aggregate number of shares of a particular issuer held at DTC. Correspondingly, each customer of a DTC participant - such as an individual investor - owns a pro rata interest in the shares in which the DTC participant has a pro rata interest. *See* Proxy Mechanics Concept Release, at Section II.B.2.a.

[5] *See* Exchange Act Rule 17Ad-8.

[6] *See* Net Capital Rule, Release No. 34-31511 (Nov. 24, 1992) [57 FR 56973] ("Net Capital Rule Release"), at Section II.C.

[7] *See KBR Inc. v. Chevedden*, Civil Action No. H-11-0196, 2011 U.S. Dist. LEXIS 36431, 2011 WL 1463611 (S.D. Tex. Apr. 4, 2011); *Apache Corp. v. Chevedden,* 696 F. Supp. 2d 723 (S.D. Tex. 2010). In both cases, the court concluded that a securities intermediary was not a record holder for purposes of Rule 14a-8(b) because it did not appear on a list of the company's non-objecting beneficial owners or on any DTC securities position listing, nor was the intermediary a DTC participant.

[8] *Techne Corp.* (Sept. 20, 1988).

[9] In addition, if the shareholder's broker is an introducing broker, the shareholder's account statements should include the clearing broker's identity and telephone number. *See* Net Capital Rule Release, at Section II.C.(iii). The clearing broker will generally be a DTC participant.

[10] For purposes of Rule 14a-8(b), the submission date of a proposal will generally precede the company's receipt date of the proposal, absent the use of electronic or other means of same-day delivery.

[11] This format is acceptable for purposes of Rule 14a-8(b), but it is not mandatory or exclusive.

[12] As such, it is not appropriate for a company to send a notice of defect for multiple proposals under Rule 14a-8(c) upon receiving a revised proposal.

[13] This position will apply to all proposals submitted after an initial proposal but before the company's deadline for receiving proposals, regardless of whether they are explicitly labeled as "revisions" to an initial proposal, unless the shareholder affirmatively indicates an intent to submit a second, *additional* proposal for inclusion in the company's proxy materials. In that case, the company must send the shareholder a notice of defect pursuant to Rule 14a-8(f)(1) if it intends to exclude either proposal from its proxy materials in reliance on Rule 14a-8(c). In light of this guidance, with respect to proposals or revisions received before a company's deadline for submission, we will no longer follow *Layne Christensen Co.* (Mar. 21, 2011) and other prior staff no-action letters in which we took the view that a proposal would violate the Rule 14a-8(c) one-proposal limitation if such proposal is submitted to a company after the company has either submitted a Rule 14a-8 no-action request to exclude an earlier proposal submitted by the same proponent or notified the proponent that the earlier proposal was excludable under the rule.

[14] *See, e.g.*, Adoption of Amendments Relating to Proposals by Security Holders, Release No. 34-12999 (Nov. 22, 1976) [41 FR 52994].

[15] Because the relevant date for proving ownership under Rule 14a-8(b) is the date the proposal is submitted, a proponent who does not adequately prove ownership in connection with a proposal is not permitted to submit another proposal for the same meeting on a later date.

[16] Nothing in this staff position has any effect on the status of any shareholder proposal that is not withdrawn by the proponent or its authorized representative.

Staff Legal Bulletin

Staff Legal Bulletin (SLB) No 14G

http://www.rbsourcefilings.com/document/read/G04-IDAMDNQ-SLB-00000120-LVL1

Staff Legal Bulletin No. 14G (CF)

Shareholder Proposals

Action: Publication of CF Staff Legal Bulletin

Date: October 16, 2012

Summary: This staff legal bulletin provides information for companies and shareholders regarding Rule 14a-8 under the Securities Exchange Act of 1934.

Supplementary Information: The statements in this bulletin represent the views of the Division of Corporation Finance (the "Division"). This bulletin is not a rule, regulation or statement of the Securities and Exchange Commission (the "Commission"). Further, the Commission has neither approved nor disapproved its content.

Contacts: For further information, please contact the Division's Office of Chief Counsel by calling (202) 551-3500 or by submitting a web-based request form at https://tts.sec.gov/cgi-bin/corp_fin_interpretive.

A. The purpose of this bulletin

This bulletin is part of a continuing effort by the Division to provide guidance on important issues arising under Exchange Act Rule 14a-8. Specifically, this bulletin contains information regarding:

- the parties that can provide proof of ownership under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8;
- the manner in which companies should notify proponents of a failure to provide proof of ownership for the one-year period required under Rule 14a-8(b)(1); and
- the use of website references in proposals and supporting statements.

You can find additional guidance regarding Rule 14a-8 in the following bulletins that are available on the Commission's website: *SLB No. 14*, *SLB No. 14A*, *SLB No. 14B*, *SLB No. 14C*, *SLB No. 14D*, *SLB No. 14E* and *SLB No. 14F*.

B. Parties that can provide proof of ownership under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

1. Sufficiency of proof of ownership letters provided by affiliates of DTC participants for purposes of Rule 14a-8(b)(2)(i)

To be eligible to submit a proposal under Rule 14a-8, a shareholder must, among other things, provide documentation evidencing that the shareholder has continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the shareholder meeting for at least one year as of the date the shareholder submits the proposal. If the shareholder is a beneficial owner of the securities, which means that the securities are held in book-entry form through a securities intermediary, Rule 14a-8(b)(2)(i) provides that this documentation can be in the form of a "written statement from the 'record' holder of your securities (usually a broker or bank)…."

In SLB No. 14F, the Division described its view that only securities intermediaries that are participants in

the Depository Trust Company ("DTC") should be viewed as "record" holders of securities that are deposited at DTC for purposes of Rule 14a-8(b)(2)(i). Therefore, a beneficial owner must obtain a proof of ownership letter from the DTC participant through which its securities are held at DTC in order to satisfy the proof of ownership requirements in Rule 14a-8.

During the most recent proxy season, some companies questioned the sufficiency of proof of ownership letters from entities that were not themselves DTC participants, but were affiliates of DTC participants.[1] By virtue of the affiliate relationship, we believe that a securities intermediary holding shares through its affiliated DTC participant should be in a position to verify its customers' ownership of securities. Accordingly, we are of the view that, for purposes of Rule 14a-8(b)(2)(i), a proof of ownership letter from an affiliate of a DTC participant satisfies the requirement to provide a proof of ownership letter from a DTC participant.

2. Adequacy of proof of ownership letters from securities intermediaries that are not brokers or banks

We understand that there are circumstances in which securities intermediaries that are not brokers or banks maintain securities accounts in the ordinary course of their business. A shareholder who holds securities through a securities intermediary that is not a broker or bank can satisfy Rule 14a-8's documentation requirement by submitting a proof of ownership letter from that securities intermediary.[2] If the securities intermediary is not a DTC participant or an affiliate of a DTC participant, then the shareholder will also need to obtain a proof of ownership letter from the DTC participant or an affiliate of a DTC participant that can verify the holdings of the securities intermediary.

C. Manner in which companies should notify proponents of a failure to provide proof of ownership for the one-year period required under Rule 14a-8(b)(1)

As discussed in Section C of SLB No. 14F, a common error in proof of ownership letters is that they do not verify a proponent's beneficial ownership for the entire one-year period preceding and including the date the proposal was submitted, as required by Rule 14a-8(b)(1). In some cases, the letter speaks as of a date *before* the date the proposal was submitted, thereby leaving a gap between the date of verification and the date the proposal was submitted. In other cases, the letter speaks as of a date *after* the date the proposal was submitted but covers a period of only one year, thus failing to verify the proponent's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

Under Rule 14a-8(f), if a proponent fails to follow one of the eligibility or procedural requirements of the rule, a company may exclude the proposal only if it notifies the proponent of the defect and the proponent fails to correct it. In SLB No. 14 and SLB No. 14B, we explained that companies should provide adequate detail about what a proponent must do to remedy all eligibility or procedural defects.

We are concerned that companies' notices of defect are not adequately describing the defects or explaining what a proponent must do to remedy defects in proof of ownership letters. For example, some companies' notices of defect make no mention of the gap in the period of ownership covered by the proponent's proof of ownership letter or other specific deficiencies that the company has identified. We do not believe that such notices of defect serve the purpose of Rule 14a-8(f).

Accordingly, going forward, we will not concur in the exclusion of a proposal under Rules 14a-8(b) and 14a-8(f) on the basis that a proponent's proof of ownership does not cover the one-year period preceding and including the date the proposal is submitted unless the company provides a notice of defect that identifies the specific date on which the proposal was submitted and explains that the proponent must obtain a new proof of ownership letter verifying continuous ownership of the requisite amount of securities for the one-year period preceding and including such date to cure the defect. We view the proposal's date of submission as the date the proposal is postmarked or transmitted electronically. Identifying in the notice of defect the specific date on which the proposal was submitted will help a proponent better understand how to remedy the defects described above and will be particularly helpful in those instances in which it may be difficult for a proponent to determine the date of submission, such as when the proposal is not postmarked on the same day it is placed in the mail. In addition, companies should include copies of the postmark or evidence of

electronic transmission with their no-action requests.

D. Use of website addresses in proposals and supporting statements

Recently, a number of proponents have included in their proposals or in their supporting statements the addresses to websites that provide more information about their proposals. In some cases, companies have sought to exclude either the website address or the entire proposal due to the reference to the website address.

In SLB No. 14, we explained that a reference to a website address in a proposal does not raise the concerns addressed by the 500-word limitation in Rule 14a-8(d). We continue to be of this view and, accordingly, we will continue to count a website address as one word for purposes of Rule 14a-8(d). To the extent that the company seeks the exclusion of a website reference in a proposal, but not the proposal itself, we will continue to follow the guidance stated in SLB No. 14, which provides that references to website addresses in proposals or supporting statements could be subject to exclusion under Rule 14a-8(i)(3) if the information contained on the website is materially false or misleading, irrelevant to the subject matter of the proposal or otherwise in contravention of the proxy rules, including Rule 14a-9.[3]

In light of the growing interest in including references to website addresses in proposals and supporting statements, we are providing additional guidance on the appropriate use of website addresses in proposals and supporting statements.[4]

1. References to website addresses in a proposal or supporting statement and Rule 14a-8(i)(3)

References to websites in a proposal or supporting statement may raise concerns under Rule 14a-8(i)(3). In SLB No. 14B, we stated that the exclusion of a proposal under Rule 14a-8(i)(3) as vague and indefinite may be appropriate if neither the shareholders 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. In evaluating whether a proposal may be excluded on this basis, we consider only the information contained in the proposal and supporting statement and determine whether, based on that information, shareholders and the company can determine what actions the proposal seeks.

If a proposal or supporting statement refers to a website that provides information necessary for shareholders and the company to understand with reasonable certainty exactly what actions or measures the proposal requires, and such information is not also contained in the proposal or in the supporting statement, then we believe the proposal would raise concerns under Rule 14a-9 and would be subject to exclusion under Rule 14a-8(i)(3) as vague and indefinite. By contrast, if shareholders and the company can understand with reasonable certainty exactly what actions or measures the proposal requires without reviewing the information provided on the website, then we believe that the proposal would not be subject to exclusion under Rule 14a-8(i)(3) on the basis of the reference to the website address. In this case, the information on the website only supplements the information contained in the proposal and in the supporting statement.

2. Providing the company with the materials that will be published on the referenced website

We recognize that if a proposal references a website that is not operational at the time the proposal is submitted, it will be impossible for a company or the staff to evaluate whether the website reference may be excluded. In our view, a reference to a non-operational website in a proposal or supporting statement could be excluded under Rule 14a-8(i)(3) as irrelevant to the subject matter of a proposal. We understand, however, that a proponent may wish to include a reference to a website containing information related to the proposal but wait to activate the website until it becomes clear that the proposal will be included in the company's proxy materials. Therefore, we will not concur that a reference to a website may be excluded as irrelevant under Rule 14a-8(i)(3) on the basis that it is not yet operational if the proponent, at the time the proposal is submitted, provides the company with the materials that are intended for publication on the website and a representation that the website will become operational at, or prior to, the time the company

files its definitive proxy materials.

3. Potential issues that may arise if the content of a referenced website changes after the proposal is submitted

To the extent the information on a website changes after submission of a proposal and the company believes the revised information renders the website reference excludable under Rule 14a-8, a company seeking our concurrence that the website reference may be excluded must submit a letter presenting its reasons for doing so. While Rule 14a-8(j) requires a company to submit its reasons for exclusion with the Commission no later than 80 calendar days before it files its definitive proxy materials, we may concur that the changes to the referenced website constitute “good cause” for the company to file its reasons for excluding the website reference after the 80-day deadline and grant the company's request that the 80-day requirement be waived.

Footnotes

[1] An entity is an "affiliate" of a DTC participant if such entity directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the DTC participant.

[2] Rule 14a-8(b)(2)(i) itself acknowledges that the record holder is "usually," but not always, a broker or bank.

[3] Rule 14a-9 prohibits statements in proxy materials which, at the time and in the light of the circumstances under which they are made, are false or misleading with respect to any material fact, or which omit to state any material fact necessary in order to make the statements not false or misleading.

[4] A website that provides more information about a shareholder proposal may constitute a proxy solicitation under the proxy rules. Accordingly, we remind shareholders who elect to include website addresses in their proposals to comply with all applicable rules regarding proxy solicitations.

U.S. Securities and Exchange Commission

Division of Corporation Finance
Securities and Exchange Commission

Shareholder Proposals

Staff Legal Bulletin No. 14I (CF)

Action: Publication of CF Staff Legal Bulletin

Date: November 1, 2017

Summary: This staff legal bulletin provides information for companies and shareholders regarding Rule 14a-8 under the Securities Exchange Act of 1934.

Supplementary Information: The statements in this bulletin represent the views of the Division of Corporation Finance (the "Division"). This bulletin is not a rule, regulation or statement of the Securities and Exchange Commission (the "Commission"). Further, the Commission has neither approved nor disapproved its content.

Contacts: For further information, please contact the Division's Office of Chief Counsel by submitting a web-based request form at https://www.sec.gov/forms/corp_fin_interpretive.

A. The purpose of this bulletin

This bulletin is part of a continuing effort by the Division to provide guidance on important issues arising under Exchange Act Rule 14a-8. Specifically, this bulletin contains information about the Division's views on:

- the scope and application of Rule 14a-8(i)(7);
- the scope and application of Rule 14a-8(i)(5);
- proposals submitted on behalf of shareholders; and
- the use of graphs and images consistent with Rule 14a-8(d).

You can find additional guidance about Rule 14a-8 in the following bulletins that are available on the Commission's website: SLB No. 14, SLB No. 14A, SLB No. 14B, SLB No. 14C, SLB No. 14D, SLB No. 14E, SLB No. 14F, SLB No. 14G and SLB No. 14H.

B. Rule 14a-8(i)(7)

1. Background

Rule 14a-8(i)(7), the "ordinary business" exception, is one of the substantive bases for exclusion of a shareholder proposal in Rule 14a-8. It permits a company to exclude a proposal that "deals with a matter relating to the company's ordinary business operations." The purpose of the exception 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."[1]

2. The Division's application of Rule 14a-8(i)(7)

The Commission has stated that the policy underlying the "ordinary business" exception rests on two central considerations.[2] The first relates to the proposal's subject matter; the second, the degree to which the proposal "micromanages" the company. Under the first consideration, proposals that raise matters that 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" may be excluded, unless such a proposal focuses on policy issues that are sufficiently significant because they transcend ordinary business and would be appropriate for a shareholder vote.[3] Whether the significant policy exception applies depends, in part, on the connection between the significant policy issue and the company's business operations.[4]

At issue in many Rule 14a-8(i)(7) no-action requests is whether a proposal that addresses ordinary business matters nonetheless focuses on a policy issue that is sufficiently significant. These determinations often raise difficult judgment calls that the Division believes are in the first instance matters that the board of directors is generally in a better position to determine. A board of directors, acting as steward with fiduciary duties to a company's shareholders, generally has significant duties of loyalty and care in overseeing management and the strategic direction of the company. A board acting in this capacity and with the knowledge of the company's business and the implications for a particular proposal on that company's business 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, going forward, we would expect a company's no-action request to include a discussion that reflects the board's analysis of the particular policy issue raised and its significance. That explanation would be most helpful if it detailed the specific processes employed by the board to ensure that its conclusions are well-informed and well-reasoned. We believe that a well-developed discussion of the board's analysis of these matters will greatly assist the staff with its review of no-action requests under Rule 14a-8(i)(7).

C. Rule 14a-8(i)(5)

1. Background

Rule 14a-8(i)(5), the "economic relevance" exception, is one of the substantive bases for exclusion of a shareholder proposal in Rule 14a-8. It permits a company to exclude a proposal that "relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business."

2. History of Rule 14a-8(i)(5)

Prior to adoption of the current version of the exclusion in Rule 14a-8(i)(5), the rule permitted companies to omit any proposal that "deals with a matter that is not significantly related to the issuer's business." In proposing changes to that version of the rule in 1982, the Commission noted that the staff's practice had been to agree with exclusion of proposals that bore no economic relationship to a company's business, but that "where the proposal has reflected social or ethical issues, rather than economic concerns, raised by the issuer's business, and the issuer conducts any such business, no matter how small, the staff has not issued a no-action letter with respect to the omission of the proposal."[5] The

Commission stated that this interpretation of the rule may have "unduly limit[ed] the exclusion," and proposed adopting the economic tests that appear in the rule today.[6] In adopting the rule, the Commission characterized it as relating "to proposals concerning the functioning of the economic business of an issuer and not to such matters as shareholders' rights, e.g., cumulative voting."[7]

Shortly after the 1983 amendments, however, the District Court for the District of Columbia in *Lovenheim v. Iroquois Brands, Ltd.*, 618 F. Supp. 554 (D.D.C. 1985) preliminarily enjoined a company from excluding a proposal regarding sales of a product line that represented only 0.05% of assets, $79,000 in sales and a net loss of ($3,121), compared to the company's total assets of $78 million, annual revenues of $141 million and net earnings of $6 million. The court based its decision to grant the injunction "in light of the ethical and social significance" of the proposal and on "the fact that it implicates significant levels of sales." Since that time, the Division has interpreted *Lovenheim* in a manner that has significantly narrowed the scope of Rule 14a-8(i)(5).

3. The Division's application of Rule 14a-8(i)(5)

Over the years, the Division has only infrequently agreed with exclusion under the "economic relevance" exception. Under its historical application, the Division has not agreed with exclusion under Rule 14a-8(i)(5), even where a proposal has related to operations that accounted for less than 5% of total assets, net earnings and gross sales, where the company conducted business, no matter how small, related to the issue raised in the proposal. The Division's analysis has not focused on a proposal's significance to the company's business. As a result, the Division's analysis has been similar to its analysis prior to 1983, with which the Commission expressed concern.

That analysis simply considered whether a company conducted any amount of business related to the issue in the proposal and whether that issue was of broad social or ethical concern. We believe the Division's 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. Accordingly, going forward, the Division's 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. Under this framework, 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.

Because the test only allows exclusion when the matter is not "otherwise significantly related to the company," we view the analysis as dependent upon the particular circumstances of the company to which the proposal is submitted. That is, a matter significant to one company may not be significant to another. On the other hand, we would generally view substantive governance matters to be significantly related to almost all companies.

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."[8] For example, the proponent can provide information demonstrating that the proposal "may have a significant impact on other segments of the issuer's business or subject the issuer to significant contingent liabilities."[9] The 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. The mere possibility of reputational or economic harm will not preclude no-action relief. In evaluating significance, the staff will consider the proposal in light of the "total mix" of information about the issuer.

As with the "ordinary business" exception in Rule 14a-8(i)(7), determining whether a proposal is "otherwise significantly related to the company's business" can raise difficult judgment calls. Similarly, we believe that the board of directors is generally in a better position to determine these matters in the first instance. A board acting with the knowledge of the company's business and the implications for a particular proposal on that company's business is better situated than the staff to determine whether a particular proposal is "otherwise significantly related to the company's business." Accordingly, we would expect a company's Rule 14a-8(i)(5) no-action request to include a discussion that reflects the board's analysis of the proposal's significance to the company. That explanation would be most helpful if it detailed the specific processes employed by the board to ensure that its conclusions are well-informed and well-reasoned.

In addition, the Division's analysis of whether a proposal is "otherwise significantly related" under Rule 14a-8(i)(5) has historically been informed by its analysis under the "ordinary business" exception, Rule 14a-8(i)(7). As a result, the availability or unavailability of Rule 14a-8(i)(7) has been largely determinative of the availability or unavailability of Rule 14a-8(i)(5). Going forward, the Division will no longer look to its analysis under Rule 14a-8(i)(7) when evaluating arguments under Rule 14a-8(i)(5). In our view, applying separate analytical frameworks will ensure that each basis for exclusion serves its intended purpose.

We believe the approach going forward is more appropriately rooted in the intended purpose and language of Rule 14a-8(i)(5), and better helps companies, proponents and the staff determine whether a proposal is "otherwise significantly related to the company's business."

D. Proposals submitted on behalf of shareholders

While Rule 14a-8 does not address shareholders' ability to submit proposals through a representative, shareholders frequently elect to do so, a practice commonly referred to as "proposal by proxy." The Division has been, and continues to be, of the view that a shareholder's submission by proxy is consistent with Rule 14a-8.[10]

The Division is nevertheless mindful of challenges and concerns that proposals by proxy may present. For example, there may be questions about whether the eligibility requirements of Rule 14a-8(b) have been satisfied. There have also been concerns raised that shareholders may not know that proposals are being submitted on their behalf. In light of these challenges and concerns, and to help the staff and companies better evaluate whether the eligibility requirements of Rule 14a-8(b) have been satisfied, going forward, the staff will look to whether the shareholders who submit a proposal by proxy provide documentation describing the shareholder's delegation of authority to the proxy.[11] In general, we would expect this documentation to:

- identify the shareholder-proponent and the person or entity selected as proxy;
- identify the company to which the proposal is directed;
- identify the annual or special meeting for which the proposal is submitted;

- identify the specific proposal to be submitted (e.g., proposal to lower the threshold for calling a special meeting from 25% to 10%); and
- be signed and dated by the shareholder.

We believe this documentation will help alleviate concerns about proposals by proxy, and will also help companies and the staff better evaluate whether the eligibility requirements of Rule 14a-8(b) have been satisfied in connection with a proposal's submission by proxy. Where this information is not provided, there may be a basis to exclude the proposal under Rule 14a-8(b).[12]

E. Rule 14a-8(d)

1. Background

Rule 14a-8(d) is one of the procedural bases for exclusion of a shareholder proposal in Rule 14a-8. It provides that a "proposal, including any accompanying supporting statement, may not exceed 500 words."

2. The use of images in shareholder proposals

Questions have recently arisen concerning the application of Rule 14a-8(d) to proposals that include graphs and/or images.[13] In two recent no-action decisions,[14] the Division expressed the view that the use of "500 words" and absence of express reference to graphics or images in Rule 14a-8(d) do not prohibit the inclusion of graphs and/or images in proposals.[15] Just as companies include graphics that are not expressly permitted under the disclosure rules, the Division is of the view that Rule 14a-8(d) does not preclude shareholders from using graphics to convey information about their proposals.[16]

The Division recognizes the potential for abuse in this area. The Division believes, however, that these potential abuses can be addressed through other provisions of Rule 14a-8. For example, exclusion of graphs and/or images would be appropriate under Rule 14a-8(i)(3) where they:

- make the proposal materially false or misleading;
- render the proposal so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing it, would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires;
- directly or indirectly impugn character, integrity or personal reputation, or directly or indirectly make charges concerning improper, illegal, or immoral conduct or association, without factual foundation; or
- are irrelevant to a consideration of the subject matter of the proposal, such that there is a strong likelihood that a reasonable shareholder would be uncertain as to the matter on which he or she is being asked to vote.[17]

Exclusion would also be appropriate under Rule 14a-8(d) if the total number of words in a proposal, including words in the graphics, exceeds 500.

---

[1] Release No. 34-40018 (May 21, 1998).

[2] *Id*.

[3] *Id*.

[4] *See* Staff Legal Bulletin No. 14H (Oct. 22, 2015), *citing* Staff Legal Bulletin No. 14E (Oct. 27, 2009) (stating that a proposal generally will not be excludable "as long as a sufficient nexus exists between the nature of the proposal and the company").

[5] Release No. 34-19135 (Oct. 14, 1982).

[6] *Id*.

[7] Release No. 34-20091 (Aug. 16, 1983).

[8] Proponents bear the burden of demonstrating that a proposal is "otherwise significantly related to the company's business." *See* Release No. 34-39093 (Sep. 18, 1997), *citing* Release No. 34-19135.

[9] Release No. 34-19135.

[10] We view a shareholder's ability to submit a proposal by proxy as largely a function of state agency law provided it is consistent with Rule 14a-8.

[11] This guidance applies only to proposals submitted by proxy after the date on which this staff legal bulletin is published.

[12] Companies that intend to seek exclusion under Rule 14a-8(b) based on a shareholder's failure to provide some or all of this information must notify the proponent of the specific defect(s) within 14 calendar days of receiving the proposal so that the proponent has an opportunity to cure the defect. *See* Rule 14a-8(f)(1).

[13] Rule 14a-8(d) is intended to limit the amount of space a shareholder proposal may occupy in a company's proxy statement. *See* Release No. 34-12999 (Nov. 22, 1976).

[14] *General Electric Co.* (Feb. 3, 2017, *recon. granted* Feb. 23, 2017); *General Electric Co.* (Feb. 23, 2016).

[15] These decisions were consistent with a longstanding Division position. *See Ferrofluidics Corp.* (Sep. 18, 1992).

[16] Companies should not minimize or otherwise diminish the appearance of a shareholder's graphic. For example, if the company includes its own graphics in its proxy statement, it should give similar prominence to a shareholder's graphics. If a company's proxy statement appears in black and white, however, the shareholder proposal and accompanying graphics may also appear in black and white.

[17] *See General Electric Co.* (Feb. 23, 2017).

http://www.sec.gov/interps/legal/cfslb14i.htm

Home | Previous Page Modified: 11/01/2017

EXHIBIT D

From: Danielle Fugere [mailto:DFugere@asyousow.org]
Sent: Friday, December 14, 2018 8:19 PM
To: Greenberg, Jamie [Legal]
Subject: As You Sow response to Goldman Sachs deficiency notice

Ms. Greenberg,

We are in receipt of your letter issued November 30, 2018 alleging notice of a deficiency in our November 21, 2018 letter transmitting a proposal for inclusion on Goldman Sachs' 2019 proxy. Enclosed is a response to your cited deficiencies.

SEC Rule 14a-8(f) requires a company to provide notice of specific deficiencies in a shareholder's proof of eligibility to submit a proposal. We therefore request that you notify us if you identify any deficiencies in the enclosed documentation.

Please confirm receipt of this correspondence.

Best regards,

Danielle

_____

Danielle Fugere
President
As You Sow
1611 Telegraph Ave., Ste. 1450
Oakland, CA 94612
(510) 735-8141 (direct line) | (415) 577-5594 (cell)
dfugere@asyousow.org | www.asyousow.org

~Promoting corporate social and environmental responsibility since 1992~

AS YOU SOW
1611 Telegraph Ave, Suite 1450
Oakland, CA 94612
www.asyousow.org
BUILDING A SAFE, JUST, AND SUSTAINABLE WORLD SINCE 1992

December 14, 2018

VIA E-MAIL

Jamie Greenberg
Vice President / Associate General Counsel
200 West Street
New York, NY 10282
E-Mail: jamie.greenberg@gs.com

Re: Response to Notice of Deficiency Letter

Dear Ms. Greenberg,

We are writing in response to your letter issued November 30, 2018 alleging deficiencies in our November 21, 2018 authorization letters for the Goldman Sachs proposal (the Proposal) submitted for inclusion in Goldman Sachs' (the Company) 2019 proxy statement.

The Proposal asks the Company to adopt a policy to reduce the carbon footprint of its loan and investment portfolios to meet the Paris Climate Agreement's goal of maintaining global warming well below 2 degrees Celsius, and to issue annual reports describing the targets, plans, and progress under this policy. Both the authorization letters and our prior transmittals to shareholders about the Proposal make clear that the Proponent and co-filers had sufficient information about the focus of the Proposal prior to authorizing the filing.

The authorization letters describe the Proposal as "report on climate asset transition" or "reporting on climate asset transition" -- descriptions which accurately encapsulate the objective of the Proposal. Goldman Sachs must transition its assets – its loans and investments – to lower carbon loans and investments to "reduce the carbon footprint of its loan and investment portfolios to meet the Paris goals." The title given to the Proposal is another way of stating the same thing; in order to transition investment and loan assets to be compatible with a 2-degree Celsius world, high carbon financing must be limited. The title was included in the proposal as a frame for those non-proponent shareholders that do not currently have an understanding of climate issues.

A detailed description identifying the Proposal as requesting a report on how J.P. Morgan "plans to align its business model with a Paris compliant low carbon economy" was also transmitted to the following shareholders prior to their signing authorization letters: *K.F.P. A California Limited Partnership; Campbell Irrevocable Trust for Nancy Dtd 12/7/1990; Corning 5A Trust*, *Daveen Fox Revocable Trust; Edwards Mother Earth Foundation; John B. and Linda C. Mason Comm Prop; Mulliken Family Trust; Samajak, LP; The Gun Denhart Living Trust; The Nicola Miner Revocable Trust DTD 02/19/1999*; and *The Rafael Living Trust* (collectively, the Proponents) prior to authorization. The full description was as follows:

Energy	Climate Change	Report on Climate Asset Transition	Report on how the Company plans to align its business model or portfolio with a Paris compliant low carbon economy

AS YOU SOW

Finally, in response to the alleged deficiency concerning proof of the Proponents' continuous ownership of the Company's shares, we also enclose proof of ownership letters establishing the above-named Proponents' ownership of the Company's common stock in the requisite amount and in the timeframe necessary to meet eligibility requirements.

SEC Rule 14a-8(f) requires a company to provide notice of specific deficiencies in a shareholder's proof of eligibility to submit a proposal. We therefore request that you notify us if believe any deficiencies remain.

Please confirm receipt of this correspondence.

Sincerely,

Danielle Fugere
President, Chief Counsel
As You Sow Foundation

EXHIBIT E

TD Ameritrade
Institutional

Dec. 13, 2018

Re: DAVEEN FOX REV TRUST, UA Dec. 2, 1999

TD Ameritrade Institutional, a DTC participant, acts as the custodian for the account ending in *** DAVEEN FOX REV TRUST, UA Dec. 2, 1999 . As of the date of this letter, this trust holds, and has held continuously for at least 395 days, 29 shares of GS : Goldman Sachs.

Thank you for choosing TD Ameritrade. If you have any further questions or inquiries please contact 1-800-431-3500

Sincerely,

Jhojilyn Malicdan
Sr. Relationship Manager
TD Ameritrade Institutional
5010 Wateridge Vista Drive
San Diego, CA 92121

TD Ameritrade
Institutional

Dec. 13, 2018

THE RAFAEL LIVING TRUST, UA March 26th 2009

TD Ameritrade Institutional, a DTC participant, acts as the custodian for the account ending in *** THE RAFAEL LIVING TRUST, UA March 26th 2009 . As of the date of this letter, this trust holds, and has held continuously for at least 395 days, 4 shares of GS : Goldman Sachs.

Thank you for choosing TD Ameritrade. If you have any further questions or inquiries please contact 1-800-431-3500

Sincerely,

Jhojilyn Malicdan
Sr. Relationship Manager
TD Ameritrade Institutional
5010 Wateridge Vista Drive
San Diego, CA 92121

December 12, 2018

K.F.P. A California Limited Partnership
P.O. Box 1247
Sonoma, CA 95476

Account number ending in:
***

Questions: Contact your advisor or call Schwab Alliance at 1-800-515-2157.

Important information regarding shares in your account.

Dear Margaret Kaplan,

We're writing to confirm information about the account listed above, which Charles Schwab & Co., Inc. holds as custodian. This account holds in trust 15 shares of GOLDMAN SACHS GS common stock. These shares have been held in the account continuously for at least one year prior to and including November 21, 2018.

These shares are held at Depository Trust Company under the nominee name of Charles Schwab & Co., Inc., which serves as custodian for the registration listed above.

Thank you for choosing Schwab. If you have questions, please contact your advisor or Schwab Alliance at 1-800-515-2157. We appreciate your business and look forward to serving you in the future.

Sincerely,

Jason Almquist
Sr. Specialist, Institutional
IST/STAR PHOENIX SERVICE
2423 E Lincoln Dr
Phoenix, AZ 85050

December 12, 2018

NICOLA MINER REVOCABLE TRUST
***

Account number ending in:
***

Questions: Contact your advisor or call Schwab Alliance at 1-800-515-2157.

Important information regarding shares in your account.

Dear Nicola Miner,

We're writing to confirm information about the account listed above, which Charles Schwab & Co., Inc. holds as custodian. This account holds in trust 154 shares of GOLDMAN SACHS GS common stock. These shares have been held in the account continuously for at least one year prior to and including November 21, 2018.

These shares are held at Depository Trust Company under the nominee name of Charles Schwab & Co., Inc., which serves as custodian for the registration listed above.

Thank you for choosing Schwab. If you have questions, please contact your advisor or Schwab Alliance at 1-800-515-2157. We appreciate your business and look forward to serving you in the future.

Sincerely,

Jason Almquist
Sr. Specialist, Institutional
IST/STAR PHOENIX SERVICE
2423 E Lincoln Dr
Phoenix, AZ 85050

Independent investment advisors are not owned by, affiliated with, or supervised by Charles Schwab & Co., Inc. ("Schwab").

December 12, 2018

SAMAJAK, LP
P.O. Box 1247
Sonoma, CA 95476

Account number ending in:
***

Questions: Contact your advisor or call Schwab Alliance at 1-800-515-2157.

Important information regarding shares in your account.

Dear Margaret Kaplan and Mejak Llc,

We're writing to confirm information about the account listed above, which Charles Schwab & Co., Inc. holds as custodian. This account holds in trust 25 shares of GOLDMAN SACHS GS common stock. These shares have been held in the account continuously for at least one year prior to and including November 21, 2018.

These shares are held at Depository Trust Company under the nominee name of Charles Schwab & Co., Inc., which serves as custodian for the registration listed above.

Thank you for choosing Schwab. If you have questions, please contact your advisor or Schwab Alliance at 1-800-515-2157. We appreciate your business and look forward to serving you in the future.

Sincerely,

Jason Almquist
Sr. Specialist, Institutional
IST/STAR PHOENIX SERVICE
2423 E Lincoln Dr
Phoenix, AZ 85050

December 5, 2018

Deborah Cooper, Richard Chamberlain,& Drummond Pike
***

Reference #: CB-219672
Account number ending in:
***

Questions: Contact your advisor or call Schwab Alliance at 1-800-515-2157.

Important information regarding shares in your account.

Dear Deborah Cooper, Richard Chamberlain,& Drummond Pike,

We're writing to confirm information about the account listed above, which Charles Schwab & Co., Inc. holds as custodian. This account holds in trust 58 shares of Goldman Sachs GS common stock. These shares have been held in the account continuously for at least one year prior to and including November 21, 2018.

These shares are held at Depository Trust Company under the nominee name of Charles Schwab & Co., Inc., which serves as custodian for the registration listed above.

Thank you for choosing Schwab. If you have questions, please contact your advisor or Schwab Alliance at 1-800-515-2157. We appreciate your business and look forward to serving you in the future.

Sincerely,

Sarah Van Buren

Sarah Van Buren
Manager, Institutional
IST/STAR PHOENIX SERVICE
2423 E Lincoln Dr
Phoenix, AZ 85016

Independent investment advisors are not owned by, affiliated with, or supervised by Charles Schwab & Co., Inc. ("Schwab").

Key Private Bank

investments | trust | banking

Mail Code: OH-01-16-0166
166 Crocker Park Blvd
Westlake, OH 44116

December 11, 2018

Daria Victorov:

Key Private Bnak, a DTC participant, acts as the custodian for Corning 5A Trust. As of the date of this letter, Corning 5A Trust held, and has held continuously for at least 395 days, 11 shares of The Goldman Sachs Group, Inc. common stock.

Best Regards,

Christopher A. Naso, CEPA
Senior Vice President
Family Wealth Group
OH-01-16-0166
166 Crocker Park Boulevard, Westlake, OH 44145
Office: 440-788-4481
Cell: 440-479-1921
christopher_naso@keybank.com

Advisor Services

Advisor Family Office
P.O. Box 628290
Orlando, FL 62829

December 6, 2018

Edwards Mother Earth Foundation
1501 E Madison St Suite 650
Seattle WA 98122

Re: Account ***

We are writing to confirm information about the account number listed above, which Charles Schwab & Co., Inc. holds as custodian. This account holds the following:

- 43 shares of Goldman Sachs Group, symbol GS

These shares have been held in the account continuously for at least 395 days (13 months) prior to and including December 6, 2018.

These shares are held at Depository Trust Company under the nominee name of Charles Schwab & Co., Inc., which serves as custodian for the registration listed above.

Thank you for choosing Schwab. We appreciate your business and look forward to serving you in the future.

Sincerely,

Thomas Putz
Service Relationship Manager
Advisor Family Office
2423 E Lincoln Drive
Phoenix, AZ 85016

Fidelity Family Office Services
Two Destiny Way
Westlake, TX 76262

December 5, 2018

Gun Denhart:

National Financial Services, a DTC participant, acts as the custodian for The Gun Denhart Living Trust. As of the date of this letter, The Gun Denhart Living Trust held, and has held continuously for at least 395 days, 15 shares of The Goldman Sachs Group, Inc. common stock.

Best Regards,

Allen Servais
Client Service Manager
Fidelity Family Office

Advisor Services

December 6, 2018

Advisor Family Office
P.O. Box 628290
Orlando, FL 62829

John B Mason & Linda C Mason Comm/Prop
***

Re: Account ***

We are writing to confirm information about the account number listed above, which Charles Schwab & Co., Inc. holds as custodian. This account holds the following:

- 100 shares of Amazon, Inc. symbol AMZN
- 118 shares Dominion Energy, Inc., symbol D
- 116 shares DTE Energy Co., symbol DTE
- 64 shares of Consolidated Edison, symbol ED
- 89 shares of Entergy Corp., symbol ETR
- 339 shares of Ford Motor Co., symbol F
- 150 shares of Goldman Sachs Group, symbol GS
- 660 shares of J P Morgan Chase & Co., symbol JPM
- 292 shares of McDonalds Corp., symbol MCD
- 373 shares of Morgan Stanley, symbol MS
- 145 shares of Sempra Energy, symbol SRE
- 710 shares of Verizon Communications, Inc., symbol VZ
- 42 shares of W E C Energy Group, Inc., symbol WEC
- 170 shares of Yum Brands, Inc., symbol YUM

These shares have been held in the account continuously for at least 395 days (13 months) prior to and including December 6, 2018.

These shares are held at Depository Trust Company under the nominee name of Charles Schwab & Co., Inc., which serves as custodian for the registration listed above.

Thank you for choosing Schwab. We appreciate your business and look forward to serving you in the future.

Sincerely,

Thomas Putz
Service Relationship Manager
Advisor Family Office
2423 E Lincoln Drive
Phoenix, AZ 85016

EXHIBIT F

Date	Open	High	Low	Close	Adj Close	Volume
9/24/2018	234.74	235.74	232.24	232.9	231.9606	2057000
9/25/2018	234.64	234.64	232.23	232.5	231.5623	2003200
9/26/2018	232.96	233	228.24	228.88	227.9569	2372700
9/27/2018	228.77	229.85	227.52	227.74	226.8215	2451500
9/28/2018	225.75	227.4	223.8	224.24	223.3356	3097800
10/1/2018	226.22	227.59	225	225.33	224.4212	2451300
10/2/2018	225.28	226.33	223.97	226.07	225.1582	2272700
10/3/2018	227.75	229.77	226.58	227.78	226.8613	2573900
10/4/2018	229.26	231.4	225.39	227.48	226.5625	2903600
10/5/2018	228	228.41	224.21	225.71	224.7997	1722400
10/8/2018	224.26	226.92	222.5	225.35	224.4411	2522900
10/9/2018	224.99	225.12	222.53	222.91	222.0109	1862900
10/10/2018	223.24	223.64	214.56	214.89	214.0233	3955500
10/11/2018	214.2	216.03	210.95	212.97	212.111	6217400
10/12/2018	217	217.98	211.46	213.87	213.0074	4161300
10/15/2018	214.45	217.14	213.05	215.22	214.352	3333800
10/16/2018	219.35	222	216.3	221.7	220.8058	5924200
10/17/2018	220.53	228.9	220.05	228.28	227.3593	4953700
10/18/2018	227.5	228.73	223.86	224.95	224.0427	2995400
10/19/2018	225.26	228.3	224.19	226.96	226.0446	2759100
10/22/2018	226.93	228.87	221.52	221.6	220.7062	2736800
10/23/2018	216.59	219.52	214.32	218.56	217.6785	3318200
10/24/2018	218.14	218.93	208.4	209.18	208.3363	4152700
10/25/2018	211.27	215.69	210.34	214.01	213.1468	3179700
10/26/2018	210.73	214.8	209.53	212.36	211.5035	3557900
10/29/2018	214.15	218.21	212.05	214.49	213.6249	3278200
10/30/2018	215.99	220.35	215.04	219.28	218.3956	3897400
10/31/2018	221.89	229	221.4	225.37	224.461	4369600
11/1/2018	225.76	228.88	225.47	226.97	226.0546	2557600
11/2/2018	230	231.69	226.29	229.69	228.7636	3699000
11/5/2018	228.32	231.1	226.95	228.72	227.7975	2565200
11/6/2018	228.19	229.52	227.05	228.2	227.2796	2275600
11/7/2018	230.05	232.8	226.9	231.28	230.3472	3514300
11/8/2018	231	234.06	230.6	231.65	230.7157	2404800
11/9/2018	231.69	231.69	222.3	222.65	221.752	3721700
11/12/2018	222	222.31	205.13	206.05	205.2189	11019400
11/13/2018	204.4	209.59	202.33	205.05	204.223	6984800
11/14/2018	206.24	207.34	198.44	202.49	201.6733	5742500
11/15/2018	201.8	204.5	199.32	203.74	202.9183	4260000
11/16/2018	202.93	204.74	200.35	202.12	201.3048	2829600
11/19/2018	201.83	202.3	197.35	198.22	197.4205	3419100
11/20/2018	195.1	195.89	190.35	191.34	190.5683	5513800
11/21/2018	192.09	195.24	191.19	192.6	191.8232	4111700