



DIVISION OF  
CORPORATION FINANCE

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

March 28, 2019

Louis L. Goldberg  
Davis Polk & Wardwell LLP  
louis.goldberg@davispolk.com

Re: Exxon Mobil Corporation  
Incoming letter dated January 31, 2019

Dear Mr. Goldberg:

This letter is in response to your correspondence dated January 31, 2019 concerning the shareholder proposal (the "Proposal") submitted to Exxon Mobil Corporation (the "Company") by Andrew Behar (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence on the Proponent's behalf dated March 27, 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 J. Lewis  
sanfordlewis@strategiccounsel.net

March 28, 2019

**Response of the Office of Chief Counsel**  
**Division of Corporation Finance**

Re: Exxon Mobil Corporation  
Incoming letter dated January 31, 2019

The Proposal requests that the Company publish a report assessing the public health risks of expanding petrochemical operations and investments in areas increasingly prone to climate change-induced storms, flooding and sea level rise.

We are unable to concur in your view that the Company may exclude the Proposal under rule 14a-8(i)(7). In our view, the Proposal transcends ordinary business matters and does not seek to micromanage the Company to such a degree that exclusion of the Proposal would be appropriate. Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(i)(7).

We are unable to concur in your view that the Company may exclude the Proposal under rule 14a-8(i)(10). Based on the information you have presented, it does not appear that Company's public disclosures compare favorably with the guidelines of the Proposal. Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(i)(10).

Sincerely,

Eric Envall  
Attorney-Adviser

**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**

March 27, 2019

Via electronic mail

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 Exxon Mobil Corporation Regarding Public Health Impacts of Petrochemical Operations in Flood-Prone Regions on Behalf of As You Sow and Andrew Behar

Ladies and Gentlemen:

Andrew Behar (the “Proponent”) is beneficial owner of common stock of Exxon Mobil Corporation (the “Company”). As You Sow has submitted a shareholder proposal (the “Proposal”) on behalf of the proponent to the Company. This letter hereby responds to the letter dated January 31, 2019 (“Company Letter”) sent to the Securities and Exchange Commission by Louis L. Goldberg, Davis Polk & Wardwell LLP. In that letter, the Company contends that the Proposal may be excluded from the Company’s 2019 proxy statement.

Based upon a review of the Proposal, the letter sent by the Company, and the relevant rules, the Proposal is not excludable and must be included in the Company’s 2019 proxy materials under Rule 14a-8. A copy of this letter is being emailed concurrently to Louis L. Goldberg, Davis Polk & Wardwell LLP.

## **SUMMARY**

The proposal asks the Company to provide shareholders with information on the public health risks of petrochemical operations in areas increasingly prone to climate-induced extreme storms and flooding and an assessment of the adequacy of measures used to prevent public health impacts from associated chemical releases.

The Company argues first for exclusion on the basis of ordinary business, claiming the Proposal impermissibly involves financial and operational decisions. To the contrary, the Proposal addresses the Company’s response to a critical public policy issue of public health, asking only that the Company provide information on public health risks associated with operations that are increasingly exposed to physical climate risks. The need for companies in which shareholders are investing to mitigate health and resiliency risks is indeed an area on which shareholders can make an informed judgment. This request does not meet the Commission’s standards for

ordinary business: the Proposal does not require specific actions or dictate how site-placement or engineering decisions must occur. Nor does it substitute shareholder judgment for management. Instead, it requests information on Company practices to address ensuing harmful impacts to communities.

This Proposal -- requesting assessment of public health risks related to the company's operations without mandating the minutia of the company's day-to-day management -- is appropriate and practical for investors to weigh in on, and is of increasing and pivotal concern to a significant portion of investors. Therefore, the proposal does not micromanage and is not excludable pursuant to Rule 14a- 8(i)(7).

The Company also argues for exclusion on the basis of substantial implementation under Rule 14a-8(i)(10), claiming that the Company has already largely implemented the Proposal by addressing its underlying concerns and satisfying its essential objective. In fact, the Company fails to make even a colorable claim that the Proposal has been substantially implemented. The Company's current safety-related and other disclosures described in the Company Letter do not meet the objectives of the Proposal. Reported actions do not appear to have prevented the Company's facilities from harming or endangering nearby communities. In fact, community risk appears to be increasing. Since the impacts of climate change are escalating, Exxon Mobil Corporation has a clear responsibility to shareholders to account for whether and how it might improve measures to mitigate public health consequences from chemical releases during extreme weather events. Disclosures provided to date have yet to satisfy this Proposal.

## **THE PROPOSAL**

### **Report on Petrochemical Resiliency Risks**

**RESOLVED:** Shareholders request that ExxonMobil, with board oversight, publish a report, omitting proprietary information and prepared at reasonable cost, assessing the public health risks of expanding petrochemical operations and investments in areas increasingly prone to climate change-induced storms, flooding, and sea level rise.

**Supporting Statement:** Investors request the company assess, among other related issues at management and Board discretion: The adequacy of measures the company is employing to prevent public health impacts from associated chemical releases.

**WHEREAS:** Investors are concerned about the financial, health, environmental, and reputational risks associated with operating and building-out new chemical plants and related infrastructure in Gulf Coast locations increasingly prone to catastrophic storms and flooding associated with climate change. Civil society groups have mobilized to oppose the expansion of petrochemical facilities in their communities due to concerns regarding direct impacts to their health and livelihoods from unintentional air and water pollutant releases. Such opposition threatens to jeopardize ExxonMobil's social license to operate in the region.

Petrochemical facilities like ethane crackers and polyethylene processing plants produce dangerous pollutants including benzene (a known carcinogen), Volatile Organic Compounds, and sulfur dioxide. These operations can become inundated and pose severe chemical release risks during extreme weather events. Flooding from Hurricane Harvey in 2017 resulted in ExxonMobil plant shut downs and the release of unpermitted, unsafe levels of pollutants. Nearby Houston residents reported respiratory and skin problems following ExxonMobil's releases during Hurricane Harvey.

Growing storms and the costs they bring our company are predicted to increase in frequency and intensity as global warming escalates. Flood-related damage is projected to be highest in Texas, where many of ExxonMobil's petrochemical plants are concentrated. Houston alone has seen three 500-year floods in the span of three years. Hurricane Harvey contributed to decreased earnings of approximately \$40 million for ExxonMobil in 2017.

Historically, releases from ExxonMobil's petrochemical operations have exceeded legal limits, exposing the company to liability and millions in payment for violations of environmental laws including the Clean Air and Clean Water Acts. As climate change intensifies flooding and storm strength, the potential for unplanned chemical releases grows. Investors are concerned that ExxonMobil has not adequately demonstrated how it will prevent such unsafe chemical releases.

In spite of these risks, Exxon has accelerated its petrochemical activity in the Gulf Coast, investing heavily in further expansion in flood-prone areas of Texas and Louisiana. The company has generally disclosed that risks from storms may impact its business and that extreme storms are among the factors considered in its Operations Integrity Management System. The impacts to Exxon's operations from Hurricane Harvey, however, indicate the company's level of preparedness was insufficient. While the Company rapidly expands its petrochemical assets in climate-impacted areas, its available disclosures do not provide investors adequate information to understand whether ExxonMobil is effectively assessing and managing the drastic increase in material public health and financial risks presented by climate-related storm impacts and sea level rise.

## ANALYSIS

### **The Proposal may not be excluded under Rule 14a-8(i)(7)**

#### **The Proposal Exclusively Addresses Matters Related to the Significant Policy Issue of Public Health and Does Not Micromanage, Even Where It May Impact Day-to-Day Business Matters**

The Proposal is not excludable under Rule 14a-8(i)(7) because it directly and solely focuses on a significant policy issue facing the Company and the economy: public health. The Proposal focuses on an essential aspect of this issue for shareholders – how the Company plans to adapt its measures to mitigate growing health risks resulting from chemical releases during climate-induced extreme weather.

Heightened storm intensity and frequency as well as rising sea levels in regions like the Gulf Coast have shown that physical risks associated with climate change are increasing faster than previously predicted. However, Exxon has announced significant investment plans to expand and build new petrochemical infrastructure in Gulf Coast areas that are already being affected by such climate impacts. Given the highly toxic chemicals involved in petrochemical operations (including benzene, Volatile Organic Compounds, and sulfur dioxide), the location of these investments in the Gulf Coast is likely to pose significant public health risks to local communities and the environment. Disruptions such as those experienced during Hurricane Harvey result in upsets and equipment malfunctions, releasing toxic chemicals beyond permitted levels. Shareholders require specific information to assess whether Exxon is sufficiently prepared for the increased likelihood of such events, and, critically, how the company will mitigate their public health impacts as it continues to develop at-risk infrastructure in areas experiencing climate-induced extreme weather and sea level rise.

Physical damage that occurs from storm surge and flooding can result in major hazardous leaks, impacting local communities. The Center for International Environmental Law (CIEL) recently published a report noting the extent to which petrochemical refining operations utilize hazardous pollutants that cause health impacts including cancer, reproductive and birth defects, etc. The report emphasized that fence-line communities are especially at risk, and that risk is exacerbated by extreme weather events—during Hurricane Harvey roughly one million pounds of dangerous air pollutants like benzene, 1,3-butadiene, sulfur dioxide, and toluene were released by refineries and plants.<sup>1</sup> Exxon was noted as being the source of some of the largest pollution leaks during Hurricane Harvey indicating that the Company is ill-prepared to manage the health risks posed by climate change. Exxon's Baytown refinery had the fourth largest reported storm-related pollution in the Houston area during Hurricane Harvey: 561,240lbs.<sup>2</sup> Volatile Organic Compounds released totaled 234,565lbs—also the fourth largest of any company in the area.<sup>3</sup> Following Harvey, community members reported health impacts such as skin infections, respiratory illness, nausea, and headaches, among others. Some health impacts may be long-term and worse than captured by initial reports.<sup>4,5</sup>

Emerging health risks associated with insufficient preparation for climate change are increasingly being recognized by legal proceedings. For example, charges were brought against Arkema CEO Richard Rowe for reckless chemical release and endangerment of persons during Hurricane Harvey, which could lead to jail time and fines for the corporation.<sup>6</sup> California utility

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<sup>1</sup> <https://www.ciel.org/wp-content/uploads/2019/02/Plastic-and-Health-The-Hidden-Costs-of-a-Plastic-Planet-February-2019.pdf>, p. 17-22

<sup>2</sup> <https://www.environmentalintegrity.org/wp-content/uploads/2018/08/Hurricane-Harvey-Report-Final.pdf>, p.12

<sup>3</sup> <https://www.environmentalintegrity.org/wp-content/uploads/2018/08/Hurricane-Harvey-Report-Final.pdf>, p.14

<sup>4</sup> <https://www.politico.com/story/2017/08/29/hurricane-harvey-chemical-danger-242142>

<sup>5</sup> <https://www.apnews.com/e0ceae76d5894734b0041210a902218d>

<sup>6</sup> <https://www.texastribune.org/2018/08/03/arkema-indictment-chemical-fire-hurricane-harvey/>

PG&E has filed for bankruptcy after facing liability charges related to broad community destruction and tragedy from catastrophic fires in its service territory.<sup>7</sup> Recently, a judge in Boston ruled that the court will see a case brought against Exxon alleging that communities near the Company's facilities along the Mystic River have been exposed to health risks from toxic chemical releases during inundations caused by intensifying storms and sea level rise. The lawsuit, brought by the Conservation Law Foundation, will move forward seeking \$110 million for Exxon's failure to fortify an oil storage facility from the physical impacts of climate change, putting local residents at risk of exposure to hazardous chemicals.<sup>8</sup> Awareness of the linkage between the physical impacts of climate change and community health hazards is increasing. Costs incurred from associated repair and cleanup activities after an incident can be considerable—for example, two corporations were ordered to pay \$115 million to clean up a toxic waste site in Texas after damage from flooding during Hurricane Harvey.<sup>9</sup>

The Company Letter incorrectly states that the Proposal's Supporting Statement suggests financial and health risks are of equal importance to the core of the Proposal. While financial risks are of concern to investors, the Proposal's resolved clause and supporting statement make clear the sole intent of the Proposal to address the social policy issue of public health, beyond being a mere part of the Company Letter's described "basket of risks considered."

The Company incorrectly characterizes the issues raised in the proposal as ordinary business and asserts that the request would impermissibly interfere with core matters involving the Company's complex operational and business decisions. The Company Letter asserts that asking the company to disclose information on health impact mitigation practices "delves too deeply into ordinary business matters by having shareholders vote on determining how best to weigh the various factors that go into site location and expansion."

This argument holds no water; the Staff has made the standard for evaluating the relationship between a "subject matter" such as public health, and business matters, such as assessing and applying metrics for making financial and operating decisions, very clear. A proposal which is squarely focused on a significant policy issue, and for which there is a clear nexus to the Company, will not be found to be excludable under Rule 14a-8(i)(7). This is the case even if a proposal requires the company to delve into nitty-gritty business matters such as related strategic financial and investment decisions, etc. Indeed, any Proposal addressing a complex policy issue like public health necessarily must delve into such issues if it is to provide useful information to the company and its investors.

### **The Proposal Does Not Micromanage Exxon: It does Not Impose Specific Methods or Impermissibly Interfere with the Company's Ordinary Business**

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<sup>7</sup> <https://www.wsj.com/articles/pg-e-wildfires-and-the-first-climate-change-bankruptcy-11547820006>

<sup>8</sup> <https://www.wbur.org/news/2019/03/13/exxonmobil-conservation-law-foundation-lawsuit-moves-forward>

<sup>9</sup> <https://www.chicagotribune.com/news/nationworld/ct-epa-cleanup-toxic-site-flooded-harvey-20171012-story.html>

There is nothing impractical about shareholders considering and encouraging the company to investigate and disclose its exposure to resulting health harms from physical climate risks facing a significant portion of its infrastructure. This basic issue is neither outside the expertise of shareholders, nor does it delve too deeply into intricate details best left to management. In fact, as indicated by growing examples of companies facing climate-related physical impacts that put their communities at risk, information about the resiliency measures a Company might be taking to adapt to clear trends is fundamental to good investment planning.

While the Company Letter appears to assert that the Proposal relates narrowly to financial and operational decisions regarding where to locate its petrochemical facilities, this is not the case. The Proposal does not dictate which or how decisions might be adapted to demonstrate sufficient preparation for physical climate impacts and their role in exacerbating public health hazards.

The Company Letter further alleges that the Proposal probes too deeply into matters of a complex nature beyond what shareholders should practically consider. The Company asserts that the Proposal is a vote on “how best to weigh the various factors that go into site location and expansion.” The Proposal does and is neither of these. Like any other requested report element, the Company can respond at the level of detail it believes appropriate. **There are no mandatory parameters or criteria other than producing a report discussing the public health risks of expanding petrochemical operations in the face of increasing physical climate impacts and the adequacy of measures taken by the Company to address this issue.**

### **The Proposal is not excludable under Rule 14a-8(i)(10)**

#### **The Company’s disclosures do not substantially implement the Proposal.**

The proposal requests that ExxonMobil, with board oversight, publish a report assessing the public health risks of expanding petrochemical operations and investments in areas increasingly prone to climate change-induced storms, flooding, and sea level rise. The supporting statement and that the company should assess the adequacy of measures the company is employing to prevent public health impacts from associated chemical releases.

*Information provided does not satisfy the “essential objective” of the proposal.*

Information referenced in the Company Letter is high level and missing elements key to shareholder understanding of the issue raised in the Proposal. For instance, the Company Letter states that it has a *health policy* with “corporate expectations for identifying, evaluating and managing health risks related to our operations that can potentially affect our employees, contractors or the public.”<sup>10</sup> This does not answer the Proposal’s request for an assessment of

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<sup>10</sup> <https://corporate.exxonmobil.com/en/Community-engagement/sustainability-report/safety-health-and-the-workplace/worksites-health-and-wellness>

what the health risks are that may result from its petrochemical operations in flood-prone areas or whether its current risk mitigation measures are sufficient. The Company does not describe the toxic nature of substances used by petrochemical facilities or what the risks are to communities exposed to high levels of these chemicals, as occurs during upsets caused by storms of increasing intensity and frequency. The few relevant quantitative indicators provided by Exxon's Performance data table<sup>11</sup> are provided without context to understand how significant the amounts of chemicals released are, what community health consequences may occur as a result, or what actions the Company took to remedy such releases.

Language offered by Exxon in its 2019 Energy and Carbon Summary report,<sup>12</sup> its 10-K,<sup>13</sup> and other documents referenced in the Company Letter is similarly vague and unresponsive to the Proposal's request, lacking the requested focus on the dynamic and evolving issue of climate change's impact the Company's ability to mitigate health risks. The high-level information lacks critical details sought by investors in the face of such significant and rapidly-changing risks in areas where Exxon operates. This lack of transparency is especially worrisome considering Exxon's large pollution leaks from damages during Hurricane Harvey, which underscore how Exxon's current risk management strategy is inadequate to deal with these growing risks. For instance, specific details that would be useful to shareholders might include, at management description, but not are not limited to: identifying which of its current or planned facilities are in areas at high risk of experiencing climate-related severe weather events, providing assumptions made and models used to evaluate how climate change will affect its Gulf Coast facilities, reporting estimated emissions from unplanned upsets such as those that occur during hurricanes, outlining strategies to communicate with key local stakeholders during emergency situations, or describing measures taken to minimize health impacts of associated chemical releases when these occur. By only describing imprecise practices; for example, "The company is aware of the risks posed by weather and other natural elements, and actively designs its facilities and operations in consideration of this risk," without additional detail on how it does so and whether it sufficiently incorporates climate change into its planning, the Company fails to adequately demonstrate any coherent strategy to mitigate the unique and growing physical risks that climate change poses.

Indeed, investors have reason to believe the Company's practices are inadequate, as Exxon is now facing a lawsuit related to its failure to protect its Massachusetts-based infrastructure from the effects of climate change, leaving nearby residents exposed to dangerous leaks. The lawsuit specifically calls attention to the fact that "the Terminal is likely to discharge and/or release pollutants into surrounding waters, groundwater, the community, and the air because it has not

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<sup>11</sup> <https://corporate.exxonmobil.com/en/Community-engagement/sustainability-report/performance-data-table>

<sup>12</sup> <https://corporate.exxonmobil.com/-/media/Global/Files/energy-and-carbon-summary/Energy-and-carbon-summary.pdf>, p.33

<sup>13</sup> <https://ir.exxonmobil.com/static-files/37b7e1b7-620b-4248-a329-f2e152b4d7c3>, p.4

been designed to withstand flooding associated with storm events and storm surge, tides, sea level rise, and increasing sea surface temperatures.”<sup>14</sup>

Ultimately, disclosures provided by the Company do not address the core concern raised in the Proposal regarding community health impacts. Furthermore, available disclosures do not address the rapidly intensifying effect that climate change has on exacerbating this concern, but rather seem to demonstrate that Exxon has no plans to evaluate whether existing practices are sufficient to withstand changing conditions. The risk embedded in this omission is compounded by Exxon’s apparent plans to massively grow its petrochemical operations in vulnerable areas, thereby increasing its exposure and providing no more assurance as to how it will meet this evolving challenge.

*Partial availability of information in public domains does not negate or substantially implement request for a report assessing impacts on the Company.*

A request for a company report is not fulfilled by showing that some of the information, with great effort, maybe obtainable in a variety of different places. Access to partial information in scattered locations does not fulfill the request for a Company report assessing health impacts associated petrochemical operations vulnerable to climate events. Only the Company can offer such an assessment to shareholders as requested by the Proposal.

In addition it should be noted that contrary to the company's assertion that the Proponent has demonstrated that it has access to adequate information, the information provided is fractional information requiring a spotty search in those corners of the internet where information is available. Lacking the internal knowledge that the Company itself would have in issuing a report, this response is far from a demonstration of the adequacy of available information. Only the company itself would be in the position of having the knowledge necessary to fulfill the request of the proposal.

## CONCLUSION

We believe that the Company has provided no basis for the conclusion that the Proposal is excludable from the 2019 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.

Sincerely,



Sanford Lewis

Cc: Louis L. Goldberg

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<sup>14</sup> <https://www.climateliabilitynews.org/2019/03/14/exxon-climate-risks-everett-mass-clf/>

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# Davis Polk

Louis L. Goldberg

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January 31, 2019

## VIA Email

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549  
via email: [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)

Ladies and Gentlemen:

On behalf of Exxon Mobil Corporation, a New Jersey corporation (the "**Company**" or "**Exxon Mobil**"), and in accordance with Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), we are filing this letter with respect to the shareholder proposal (the "**Proposal**") submitted by As You Sow (the "**Proponent**") for inclusion in the proxy materials the Company intends to distribute in connection with its 2019 Annual Meeting of Shareholders (the "**2019 Proxy Materials**"). The Proposal is attached hereto as Exhibit A.

We hereby request confirmation that the Staff of the Division of Corporation Finance (the "**Staff**") will not recommend any enforcement action if, in reliance on Rule 14a-8, the Company omits the Proposal from the 2019 Proxy Materials.

Pursuant to Staff Legal Bulletin No. 14D (CF), Shareholder Proposals (November 7, 2008), Question C, we have submitted this letter and any related correspondence via email to [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov). Also, in accordance with Rule 14a-8(j), a copy of this submission is being sent simultaneously to the Proponent as notification of the Company's intention to omit the Proposal from the 2019 Proxy Materials. This letter constitutes the Company's statement of the reasons it deems the omission of the Proposal to be proper.

## THE PROPOSAL

The Proposal states:

**RESOLVED:** Shareholders request that ExxonMobil, with board oversight, publish a report, omitting proprietary information and prepared at reasonable cost, assessing the public health risks of expanding petrochemical operations and investments in areas increasingly prone to climate change-induced storms, flooding, and sea level rise.

The Company believes that the Proposal may be properly omitted from the 2019 Proxy Materials pursuant to Rule 14a-8(i)(7) because it relates to the Company's ordinary business operations and Rule 14a-8(i)(10) because the Company has already substantially implemented the Proposal.

## REASONS FOR EXCLUSION OF THE PROPOSAL

### 1. The Company may omit the Proposal pursuant to Rule 14a-8(i)(7) because it relates to the Company's ordinary business operations.

#### *A. Background*

Rule 14a-8(i)(7) allows a company to omit a shareholder proposal from its proxy materials if such proposal deals with a matter relating to the company's ordinary business operations. The general policy underlying 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 annual shareholders meetings." Exchange Act Release No. 34-40018 (May 21, 1998) (the "**1998 Release**"). This general policy reflects two central considerations: (i) "[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" and (ii) 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."

A proposal generally will not be excludable under Rule 14a-8(i)(7) where it raises a significant policy issue. Staff Legal Bulletin 14E (October 27, 2009). However, the Staff has indicated that even proposals relating to social policy issues may be excludable in their entirety if they do not "transcend the day-to-day business matters" discussed in the proposals. 1998 Release. In line with the 1998 Release, the Staff has permitted the exclusion of proposals that, while addressing a significant social policy issue, nonetheless relate to ordinary business matters. For instance, in *FMC Corp.* (February 25, 2011, recon. denied March 16, 2011), the Staff concurred that a company could exclude a proposal requesting that the company implement a "product stewardship program" that would pause the sale of certain pesticides that were allegedly harmful to wildlife and humans. Even though the relevant proposal in *FMC Corp* touched on issues of environmental harm, the Staff concluded that the Proposal "relates to the products offered for sale by the company." *See also FedEx Corporation* (July 14, 2009) (proposal requesting establishment of an independent committee to prepare a report on compliance with regulations classifying employees and independent contractors); *Apache Corporation* (March 5, 2008) (proposal requesting implementation of equal employment opportunity policies with a list of specific non-discrimination requirements to be included); *The Walt Disney Company* (November 30, 2007) (proposal requesting a report on steps taken to avoid the use of racial, ethnic and gender stereotypes, one of the elements being a description of the existing process to ensuring non-discriminatory depictions and images in all its products).

#### *B. The Proposal involves ordinary business matters because it relates to fundamental business decisions regarding the location and expansion of the Company's facilities.*

The Staff has consistently concurred with the exclusion of shareholder proposals under Rule 14a-8(i)(7) to the extent that they relate to decisions concerning the location of company facilities. For example, in *The Boeing Company* (January 9, 2018), the Staff allowed exclusion of a proposal on ordinary business grounds for implicating decisions related to the location of the company's facilities when the proposal requested disclosure of information regarding the company's selection process for new or expanded facilities. *See also*, among numerous such examples, *Minnesota Com Processors, LLC* (Apr. 3, 2002) (proposal recommending company build a new plant based on nine factors allowed to be excluded because it implicated ordinary business operations by involving decisions related to location of plants); *Hershey Co.* (Feb. 2, 2009) (proposal requiring a company to manufacture in the U.S. or Canada allowed to be excluded because the proposal addressed

decisions related to manufacturing locations); and *McDonald's Corp.* (Mar. 3, 1997) (proposal requesting that a company's site selection process protect the integrity of public park land allowed to be excluded because it related to the ordinary business of the company's location choices)

The Proposal directly involves ordinary business matters because it directly relates to the location and expansion of the Company's petrochemical facilities, which decisions are fundamentally about financial and operational risks. The Proposal acknowledges that locating plants and related infrastructure in the Gulf Coast region and in other areas potentially prone to storms, flooding and sea level rise are decisions that implicate financial risk assessment and management by the Company, as it notes that "investors are concerned about the financial...risks associated with operating and building out new chemical plants..." "storms and the costs they bring to our company," and the impact on earnings from Hurricane Harvey.

The Company's petrochemical operations and investments are highly complex and occur at numerous properties and locations in over fifteen countries. Deciding on the location of the Company's petrochemical operations involves multiple business and financial factors, including: anticipated customer demand and how best to succeed in a highly competitive global market in terms of where to locate the petrochemical operations; how the facilities' locations would impact the management of the operational and other risks inherent in the Company's petrochemical operations; the cost of building, operating and maintaining the facilities; the consideration of multiple risks, including environmental; the availability of the necessary and cost-efficient human capital resources to employ at the facilities; and the evolving legal and environmental requirements that vary widely across the many jurisdictions in which the Company, either directly or through affiliated entities, conducts business.

In addition, the Company has disclosed<sup>1</sup> that the facilities are designed, constructed and operated to withstand a variety of extreme climatic and other conditions, with safety factors built to cover a number of engineering uncertainties, including those associated with wave, wind, and current intensity, marine ice flow patterns, permafrost stability, storm surge magnitude, temperature extremes, extreme rainfall events, and earthquakes. This consideration of weather conditions and inclusion of safety factors in facility design are significant responsibilities of management in determining the location of facilities and the timing and manner of enhancement of facilities. The ability to mitigate the adverse impacts of these events depends in part upon the effectiveness of the Company's robust facility engineering, as well as the Company's rigorous disaster preparedness and response and business continuity planning, all of which are within the scope of management's role within the Company.

Decisions regarding where to locate the Company's facilities directly relate to the Company's financial condition and affect the value of the Company's operations and investments. As discussed above, as part of the many factors management considers when assessing whether to expand operations or make investments, Company management assesses the financial and other risks that severe weather-related events pose to the value of the Company's assets. In addition to factors discussed above, management assesses the costs of designing the facilities with certain materials and implementing preparedness activities to withstand these types of events, while also preparing for and possibly absorbing the potential or actual costs of any business interruption or shutdown that may occur due to weather-related events. The Proposal states that investors are "concerned about the financial...risks" associated with operating and building out new chemical plants and related infrastructure in areas that may be prone to storms and flooding, noting the alleged impact that

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<sup>1</sup> Form 10-K for the year ended 2017. Available at <https://www.sec.gov/Archives/edgar/data/34088/000003408818000015/xom10k2017.htm>

Hurricane Harvey had on the Company's earnings. As demonstrated above, these risks are the types of financial and operational risks routinely assessed by the Company.

The process of selecting locations for the Company's petrochemical operations (including any expansions of such operations or investments therein) is highly complex and depends on numerous factors that must be analyzed and balanced by management, including financial and operating considerations, in addition to a broad array of risks (generally including strategic, reputational, financial, operations, compliance, and safety, health and environmental risks). The Proposal delves too deeply into ordinary business matters by having shareholders vote on determining how best to weigh the various factors that go into site location and expansion. This decision-making process is so fundamental to management's ability to run the Company on a day to day basis that it cannot, as a practical matter, be subject to direct shareholder oversight.

### *C. The Proposal Does Not Relate to a Social Policy Issue*

While the Proposal refers to climate change and related public health risks, the ultimate focus is management's ordinary business decisions regarding the expansion of, and investments in, its petrochemical operations. As disclosed by the Company in its Form 10-K,<sup>2</sup> management considers the potential disruption of operations by severe weather events at the Company's facilities in designing, constructing and operating its facilities, and it also has processes in place to further mitigate the adverse impact of those events. Part of the ordinary business, financial risk assessment involved in determining where to locate and operate facilities includes analysis of design and building costs, costs of disaster preparedness and response, and business continuity planning. Management's decisions to place operations in areas subject to weather-prone events may impact the Company's financial results, as seen by the effects Hurricane Harvey had on the Company's operations. While public health risks comprise part of the basket of risks considered by the Company, an equally important risk addressed in the Proposal, as it states in the final paragraph of the Proposal's supporting statement, is whether the Company is effectively assessing and managing the increase in *financial* risks presented by these types of storm impacts and sea level rise.

As such, the Proposal is principally related to risk management decisions related to the Company's operations, implicating fundamental business issues and thus failing to transcend the Company's ordinary business matters. A proposal may touch on social policy issues but still have as its key objective ordinary business matters. See *McDonald's Corp.* (March 3, 1997) where the Staff agreed with exclusion of a proposal requesting the board to extend their commitment to environmental conservation related to park land.

For all the reasons stated above, the Company believes the Proposal is properly excludable under Rule 14a-8(i)(7).

**2. The Company may omit the Proposal pursuant to Rule 14a-8(i)(10) as it has been substantially implemented and its practices, policies and procedures compare favorably to the Proposal.**

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal if the company has already substantially implemented the proposal. The Securities and Exchange Commission has stated that "substantial" implementation under the rule does not require implementation in full or exactly as presented by the proponent. See *Exchange Act Release No. 34-40018* (May 21, 1998, n.30). The Staff has provided no-action relief under Rule 14a-8(i)(10) when a company has

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<sup>2</sup> See page 4 of ExxonMobil's Form 10-K for the year ended 2017. Available at <https://www.sec.gov/Archives/edgar/data/34088/000003408818000015/xom10k2017.htm>

substantially implemented and therefore satisfied the “essential objective” of a proposal, even if the company did not take the exact action requested by the proponent, did not implement the proposal in every detail or exercised discretion in determining how to implement the proposal. *See Walgreens Boots Alliance, Inc.* (November 13, 2018) (permitting exclusion of a shareholder proposal requesting that the company issue a report describing how the company’s policies and practices advance the UN Sustainable Development Goals where the requested information was already available in the company’s corporate social responsibility report); *Exxon Mobil Corporation* (March 23, 2018) (permitting exclusion of a shareholder proposal requesting that the company issue a report describing how the company could adapt its business model to align with a decarbonizing economy where the requested information was already available in two published reports describing the company’s long term outlook for energy and how it would position itself for a lower-carbon energy future); *Ford Motor Company* (February 22, 2016) (permitting exclusion of a shareholder proposal requesting that the company adopt a policy disclosing the gender, race/ethnicity, skills and experiences of each board nominee where the requested information was already available in a chart disclosing the aggregate gender and minority status of the company’s directors in its sustainability report and the specific qualifications required of board nominees as well as each director’s actual skills and experiences as it relates to those qualifications in its proxy materials); *Wal-Mart Stores, Inc.* (March 25, 2015) (permitting exclusion of a shareholder proposal requesting an employee engagement metric for executive compensation where a “diversity and inclusion metric related to employee engagement” was already included in the company’s management incentive plan); *Entergy Corp.* (February 14, 2014) (permitting exclusion of a shareholder proposal requesting a report “on policies the company could adopt . . . to reduce its greenhouse gas emissions consistent with the national goal of 80% reduction in greenhouse gas emissions by 2050” where the requested information was already available in its sustainability and carbon disclosure reports); *Duke Energy Corp.* (February 21, 2012) (permitting exclusion of a shareholder proposal requesting that the company assess potential actions to reduce greenhouse gas and other emissions where the requested information was available in the Form 10-K and its annual sustainability report); and *Exelon Corp.* (February 26, 2010) (concurring in the exclusion of a proposal that requested a report on different aspects of the company’s political contributions when the company had already adopted its own set of corporate political contribution guidelines and issued a political contributions report that, together, provided “an up-to-date view of the [c]ompany’s policies and procedures with regard to political contributions”). “[A] determination that the company has substantially implemented the proposal depends upon whether [the Company’s] particular policies, practices, and procedures compare favorably with the guidelines of the proposal.” *See Texaco, Inc.* (March 28, 1991) (permitting exclusion on substantial implementation grounds of a proposal requesting that the company adopt the Valdez Principles where the company had already adopted policies, practices and procedures regarding the environment).

The core of the Proposal, or its “essential objective,” is for the Company to “publish a report . . . assessing the public health risks of expanding petrochemical operations and investments in areas increasingly prone to climate change-induced storms, flooding, and sea level rise,” as well as the financial risks of such decisions. The Company publishes both its 2018 Energy & Carbon Summary (“ECS”)<sup>3</sup> and its Sustainability Report<sup>4</sup> on its website. As described further below, these publications, along with the Company’s Form 10-K and other material made available by the Company on its website, demonstrate that the Company has substantially implemented the Proposal by satisfying its essential objective, and thus the Proposal is excludable under Rule 14a-8(i)(10).

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<sup>3</sup> <https://cdn.exxonmobil.com/~media/global/files/energy-and-environment/2018-energy-and-carbon-summary.pdf>

<sup>4</sup> <https://corporate.exxonmobil.com/en/community/sustainability-report>

In the table below we have succinctly demonstrated how the ECS, the Sustainability Report and other Company information are responsive to the Proposal’s request for “a report . . . assessing the public health risks of expanding petrochemical operations and investments in areas increasingly prone to climate change-induced storms, flooding, and sea level rise.” A more detailed discussion of the disclosures contained in these reports that address the essential objective of the Proposal is set forth following the summary table. Please note that the Company intends to make publicly available an updated 2019 version of the ECS in the coming weeks and, if appropriate, will supplement this no-action letter request with equally relevant information from this updated 2019 ECS.

Proposal request	ExxonMobil Sustainability Report, ECS, 10-K and Environmental Aspects Guide Disclosures
“assessing the public health risks”	Sustainability Report sections captioned: “Environmental management,” <sup>5</sup> “Spill performance,” <sup>6</sup> “Air emissions” <sup>7</sup> and “Safety, health and the workplace” <sup>8</sup>  ECS “Managing risks to meet energy demand” section, p 22  10-K, p 4 <sup>9</sup>  Environmental Aspects Guide <sup>10</sup>
“prevent public health impacts from associated . . . releases”	Sustainability Report sections captioned: “Safety, health and the workplace” <sup>11</sup> and “Emergency preparedness and response” <sup>12</sup>

**Sustainability Report.** With respect to the Proposal’s request for a “a report . . . assessing the public health risks” of certain operations and investments, the Sustainability Report provides extensive disclosure regarding the Company’s practices for reducing spills<sup>13</sup> and air emissions<sup>14</sup> and

5 <https://corporate.exxonmobil.com/en/community/sustainability-report/environmental-performance/environmental-management>

6 <https://corporate.exxonmobil.com/en/community/sustainability-report/environmental-performance/spill-performance>

7 <https://corporate.exxonmobil.com/en/community/sustainability-report/environmental-performance/air-emissions>

8 <https://corporate.exxonmobil.com/en/community/sustainability-report/safety-health-workplace>

9 <https://www.sec.gov/Archives/edgar/data/34088/000003408818000015/xom10k2017.htm>

10 [https://cdn.exxonmobil.com/~media/global/files/energy-and-environment/environmental\\_brochure.pdf](https://cdn.exxonmobil.com/~media/global/files/energy-and-environment/environmental_brochure.pdf)

11 <https://corporate.exxonmobil.com/en/community/sustainability-report/safety-health-workplace/worksites-health-and-wellness>

12 <https://corporate.exxonmobil.com/en/community/sustainability-report/safety-health-workplace/safety#/section/5-emergency-preparedness-and-response>

13 See footnote 6.

14 See footnote 7.

protecting workplace health and safety,<sup>15</sup> and it also discloses detailed quantitative metrics for environmental, health and safety performance.<sup>16</sup>

The “Environmental management” section of the Sustainability Report also discusses in detail how the Company manages the environmental impacts of its operations via use of its Operations Integrity Management System, which “is the framework that helps put [the Company’s] Corporate Environment Policy into action by establishing common worldwide expectations for addressing environmental risks.”<sup>17</sup>

This section of the Sustainability Report further notes:

“Our Environmental Aspects Assessment process allows us to identify, assess, manage and monitor environmental and social risks throughout the life of our assets. Environmental Business Planning is undertaken to plan, oversee and steward environmental performance.”<sup>18</sup>

In the “Safety, health and the workplace” section, the Company states that its health policy communicates “corporate expectations for identifying, evaluating and managing health risks related to our operations that can potentially affect our employees, contractors or the public.”<sup>19</sup>

And finally, in the “Emergency preparedness and response” sub-part of this section of the Sustainability Report, ExxonMobil describes the process in place in order to respond to a multitude of possible events:

“We establish emergency support groups and incident management teams around the world. They comprise representatives from across business functions to develop and practice emergency response strategies. We test these teams on a range of possible scenarios, including simulated spills, fires, explosions, natural disasters and security incidents.”<sup>20</sup>

**ECS.** The Company’s ECS includes extensive discussion and elaboration of the processes the Company has implemented and the types of risk assessments it makes in connection with all its facilities. The following excerpts from the “Managing risks to meet energy demand” section of the ECS demonstrate that the Company already provides the disclosure requested in the Proposal:

“Many things we do contain an element of risk, whether technical, operational, environmental, or financial. Equipped with mature risk-management systems, we identify the risks inherent in our businesses, look to understand implications, and implement safeguards to eliminate or mitigate exposures.

“ExxonMobil has long operated facilities in a wide range of challenging physical environments around the globe. Our long history of design, construction, and operations provides us a solid foundation to address risks associated with different physical environments. The company is aware of the risks posed by weather and other natural elements, and actively designs its facilities and operations in consideration of this risk.”

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15 See footnote 8.

16 <https://corporate.exxonmobil.com/en/community/sustainability-report/performance-data-table>

17 See footnote 5.

18 *Id.*

19 <https://corporate.exxonmobil.com/en/community/sustainability-report/safety-health-workplace/worksites-health-and-wellness> (see second paragraph)

20 <https://corporate.exxonmobil.com/en/community/sustainability-report/safety-health-workplace/safety#/section/5-emergency-preparedness-and-response>

"When considering physical environmental risks, we evaluate the type and location of our current and planned facilities. As an example, [...] onshore facilities could be vulnerable to sea level rise, changes in storm surge, or geo-technical considerations."

"Our facilities are designed, constructed, and operated to withstand a variety of extreme weather and environmental conditions. We use historical experience with additional safety factors to cover a range of uncertainties."

"Once facilities are in operation, we maintain disaster preparedness, response, and business continuity plans. Detailed, well-practiced, and continuously improved emergency response plans tailored to each facility help ExxonMobil prepare for unplanned events, including extreme weather. Regular emergency drills are practiced in partnership with appropriate government agencies and community coalitions to help ensure readiness and minimize the impacts of such events."

"ExxonMobil's comprehensive approach and established systems enable us to manage a wide variety of possible outcomes."<sup>21</sup>

The excerpts above clearly demonstrate that the Company is already "assessing and managing" the "material health and financial risks presented by climate-related storm impacts and sea level rise," as requested in the Proposal.

**Other.** In addition, as previously discussed, the Company's Form 10-K states that as part of managing risks associated with severe weather events, the Company's facilities are "designed, constructed, and operated to withstand a variety of extreme climatic and other conditions, with safety factors built in to cover a number of engineering uncertainties, including those associated with wave, wind, and current intensity, marine ice flow patterns, permafrost stability, storm surge magnitude, temperature extremes, extreme rain fall events, and earthquakes."<sup>22</sup> The Company notes that this "consideration of changing weather conditions and inclusion of safety factors in design covers the engineering uncertainties that climate change and other events may potentially introduce."<sup>23</sup> Mitigating these adverse impacts "depends in part upon the effectiveness of our robust facility engineering as well as our rigorous disaster preparedness and response and business continuity planning."<sup>24</sup>

The Company also makes available its "Environmental Aspects Guide"<sup>25</sup>, which is aligned with corporate policy, expectations and systems, and supports the implementation of environmental management expectations as applicable to ExxonMobil operations, particularly:

- Management commitment and leadership;
- Identification and mitigation of environmental risk;
- Integration of Environmental Business Planning into base business; and
- Identification and management of community impacts and concerns.

Substantial implementation does not require implementation in full or exactly as presented by a Proposal, and the Staff has found proposals related to climate change excludable pursuant to 14a-

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21 ECS, p 22.

22 See page 4 of ExxonMobil's Form 10-K for the year ended 2017. Available at <https://www.sec.gov/Archives/edgar/data/34088/000003408818000015/xom10k2017.htm>

23 *Id.*

24 *Id.*

25 [https://cdn.exxonmobil.com/~media/global/files/energy-and-environment/environmental\\_brochure.pdf](https://cdn.exxonmobil.com/~media/global/files/energy-and-environment/environmental_brochure.pdf)

8(i)(10) even if the Company's actions were not identical to the guidelines of the proposal. *See, e.g., Merck & Co., Inc.* (March 14, 2012) (permitting exclusion of a shareholder proposal requesting a report on the safe and humane treatment of animals because the company had already provided information on its website and further information was publicly available through disclosures made to the United States Department of Agriculture); *ExxonMobil Corp.* (March 17, 2011) (permitting exclusion of a shareholder proposal requesting a report on the steps the company had taken to address ongoing safety concerns where the company's "public disclosures compare[d] favorably with the guidelines of the proposal"); and *ExxonMobil Corp.* (January 24, 2001) (permitting exclusion of a shareholder proposal requesting the review of a pipeline project, the development of criteria for involvement in the project and a report to shareholders because it was substantially implemented by prior analysis of the project and publication of such information on the company's website).

The essential objective of the Proposal is for the Company to "publish a report . . . assessing the public health risks of expanding petrochemical operations and investments in areas increasingly prone to climate change-induced storms, flooding, and sea level rise," as well as the financial risks of such decisions, and this has been substantially implemented by the Company through its public disclosure. The reports and disclosures prepared by the Company and available to the public compare favorably with the essence of the Proposal, and thus the Proposal is excludable under Rule 14a-8(i)(10).

#### CONCLUSION

The Company requests confirmation that the Staff will not recommend any enforcement action if, in reliance on the foregoing, the Company omits the Proposal from its 2019 Proxy Materials. If you should have any questions or need additional information, please contact the undersigned at (212) 450-4539 or [louis.goldberg@davispolk.com](mailto:louis.goldberg@davispolk.com). If the Staff does not concur with the Company's position, we would appreciate an opportunity to confer with the Staff concerning these matters prior to the issuance of its response.

Respectfully yours,



Louis L. Goldberg

Enclosures

cc w/ enc: James E. Parsons, Exxon Mobil Corporation

As You Sow

## Proposal

**RESOLVED:** Shareholders request that ExxonMobil, with board oversight, publish a report, omitting proprietary information and prepared at reasonable cost, assessing the public health risks of expanding petrochemical operations and investments in areas increasingly prone to climate change-induced storms, flooding, and sea level rise.

**Supporting Statement:** Investors request the company assess, among other related issues at management and Board discretion: The adequacy of measures the company is employing to prevent public health impacts from associated chemical releases.

**WHEREAS:** Investors are concerned about the financial, health, environmental, and reputational risks associated with operating and building-out new chemical plants and related infrastructure in Gulf Coast locations increasingly prone to catastrophic storms and flooding associated with climate change. Civil society groups have mobilized to oppose the expansion of petrochemical facilities in their communities due to concerns regarding direct impacts to their health and livelihoods from unintentional air and water pollutant releases. Such opposition threatens to jeopardize ExxonMobil's social license to operate in the region.

Petrochemical facilities like ethane crackers and polyethylene processing plants produce dangerous pollutants including benzene (a known carcinogen), Volatile Organic Compounds, and sulfur dioxide. These operations can become inundated and pose severe chemical release risks during extreme weather events. Flooding from Hurricane Harvey in 2017 resulted in ExxonMobil plant shut downs and the release of unpermitted, unsafe levels of pollutants. Nearby Houston residents reported respiratory and skin problems following ExxonMobil's releases during Hurricane Harvey.

Growing storms and the costs they bring our company are predicted to increase in frequency and intensity as global warming escalates. Flood-related damage is projected to be highest in Texas, where many of ExxonMobil's petrochemical plants are concentrated. Houston alone has seen three 500-year floods in the span of three years. Hurricane Harvey contributed to decreased earnings of approximately \$40 million for ExxonMobil in 2017.

Historically, releases from ExxonMobil's petrochemical operations have exceeded legal limits, exposing the company to liability and millions in payment for violations of environmental laws including the Clean Air and Clean Water Acts. As climate change intensifies flooding and storm strength, the potential for unplanned chemical releases grows. Investors are concerned that ExxonMobil has not adequately demonstrated how it will prevent such unsafe chemical releases.

In spite of these risks, Exxon has accelerated its petrochemical activity in the Gulf Coast, investing heavily in further expansion in flood-prone areas of Texas and Louisiana. The company has generally disclosed that risks from storms may impact its business and that extreme storms are among the factors considered in its Operations Integrity Management System. The impacts to Exxon's operations from Hurricane Harvey, however, indicate the company's level of preparedness was insufficient. While the Company rapidly expands its petrochemical assets in climate-impacted areas, its available disclosures do not provide investors adequate information to understand whether

ExxonMobil is effectively assessing and managing the drastic increase in material public health and financial risks presented by climate-related storm impacts and sea level rise.

**Exhibit B**

**Shareholder Correspondence**



1611 Telegraph Avenue, Suite 1450  
Oakland, CA 94612

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

**Received**

**DEC 13 2018**

**N.A. HANSEN**

December 12, 2018

Mr. Neil Hansen  
Vice President of Investor Relations and Secretary  
Exxon Mobil Corporation  
5959 Las Colinas Boulevard  
Irving, TX 75039-2298

Dear Mr. Hansen:

*As You Sow* is filing a shareholder proposal on behalf of Andrew Behar ("Proponent"), a shareholder of Exxon Mobil Corporation, for action at the next annual meeting of Exxon Mobil. Proponent submits the enclosed shareholder proposal for inclusion in Exxon Mobil'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 his 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 could result in resolution of the Proponent's concerns. To schedule a dialogue, please contact Lila Holzman, Energy Program Manager at [lholzman@asyousow.org](mailto:lholzman@asyousow.org).

Sincerely,

A handwritten signature in black ink that reads "Lila Holzman".

Lila Holzman  
Energy Program Manager

Enclosures

- Shareholder Proposal
- *Shareholder Authorization*

**RESOLVED:** Shareholders request that ExxonMobil, with board oversight, publish a report, omitting proprietary information and prepared at reasonable cost, assessing the public health risks of expanding petrochemical operations and investments in areas increasingly prone to climate change-induced storms, flooding, and sea level rise.

**Supporting Statement:** Investors request the company assess, among other related issues at management and Board discretion: The adequacy of measures the company is employing to prevent public health impacts from associated chemical releases.

**WHEREAS:** Investors are concerned about the financial, health, environmental, and reputational risks associated with operating and building-out new chemical plants and related infrastructure in Gulf Coast locations increasingly prone to catastrophic storms and flooding associated with climate change. Civil society groups have mobilized to oppose the expansion of petrochemical facilities in their communities due to concerns regarding direct impacts to their health and livelihoods from unintentional air and water pollutant releases. Such opposition threatens to jeopardize ExxonMobil's social license to operate in the region.

Petrochemical facilities like ethane crackers and polyethylene processing plants produce dangerous pollutants including benzene (a known carcinogen), Volatile Organic Compounds, and sulfur dioxide. These operations can become inundated and pose severe chemical release risks during extreme weather events. Flooding from Hurricane Harvey in 2017 resulted in ExxonMobil plant shut downs and the release of unpermitted, unsafe levels of pollutants. Nearby Houston residents reported respiratory and skin problems following ExxonMobil's releases during Hurricane Harvey.

Growing storms and the costs they bring our company are predicted to increase in frequency and intensity as global warming escalates. Flood-related damage is projected to be highest in Texas, where many of ExxonMobil's petrochemical plants are concentrated. Houston alone has seen three 500-year floods in the span of three years. Hurricane Harvey contributed to decreased earnings of approximately \$40 million for ExxonMobil in 2017.

Historically, releases from ExxonMobil's petrochemical operations have exceeded legal limits, exposing the company to liability and millions in payment for violations of environmental laws including the Clean Air and Clean Water Acts. As climate change intensifies flooding and storm strength, the potential for unplanned chemical releases grows. Investors are concerned that ExxonMobil has not adequately demonstrated how it will prevent such unsafe chemical releases.

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In spite of these risks, Exxon has accelerated its petrochemical activity in the Gulf Coast, investing heavily in further expansion in flood-prone areas of Texas and Louisiana. The company has generally disclosed that risks from storms may impact its business and that extreme storms are among the factors considered in its Operations Integrity Management System. The impacts to Exxon's operations from Hurricane Harvey, however, indicate the company's level of preparedness was insufficient. While the Company rapidly expands its petrochemical assets in climate-impacted areas, its available disclosures do not provide investors adequate information to understand whether ExxonMobil is effectively assessing and managing the drastic increase in material public health and financial risks presented by climate-related storm impacts and sea level rise.

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November 6, 2018

Danielle Fugere  
President  
As You Sow  
1611 Telegraph Ave., Ste. 1450  
Oakland, CA 94612

**Re: Authorization to File Shareholder Resolution**

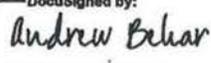
Dear Danielle Fugere,

The undersigned (the "Stockholder") authorizes As You Sow to file or cofile a shareholder resolution on Stockholder's behalf with Exxon Mobil Corporation (the "Company"), relating to petrochemical and health, 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:  
  
AF21D05EE57E4F1

Andrew Behar

FedEx First Overnight®



FO

151069 REV 7/08 RRD

12/12/18, 3:22 PM



ORIGIN ID: JEMA (510) 735-8151  
ANDREW BEHAR  
AS YOU SOW  
1611 TELEGRAPH AVE  
SUITE 1450  
OAKLAND, CA 94612  
UNITED STATES US

SHIP DATE: 12DEC18  
ACTWGT: 0.25 LB  
CAD: 103055598/NET4040

BILL SENDER

TO NEIL HANSEN, CORP SEC.  
EXXON MOBIL CORPORATION  
5959 LAS COLINAS BOULEVARD

552J2/E4F/DCR5

IRVING TX 75039

(800) 243-9966  
INV:  
PO:

REF: CLIMATE CHANGE

DEPT:

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THU - 13 DEC 8:00A  
FIRST OVERNIGHT

TRK#  
0201

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FedEx  
TRK#  
0201

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THU - 13 DEC 8:00A  
FIRST OVERNIGHT W

A1 DALA

75039

TX-US DFW

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03620607 12/12 552J2/E4F/DCR5

**Exxon Mobil Corporation**  
5959 Las Colinas Boulevard  
Irving, Texas 75039-2298

**Neil A. Hansen**  
Vice President, Investor Relations  
and Corporate Secretary



**VIA UPS – OVERNIGHT DELIVERY**

December 14, 2018

Ms. Lila Holzman  
Energy Program Manager  
As You Sow  
1611 Telegraph Ave., Suite 1450  
Oakland, CA 94612

Dear Ms. Holzman:

This will acknowledge receipt of the proposal concerning a Report on Risks of Expanding Petrochemical Operations (the "Proposal"), which you have submitted on behalf of Andrew Behar (the "Proponent") in connection with ExxonMobil's 2019 annual meeting of shareholders. However, proof of share ownership was not included with your December 12, 2018, submission.

In order to be eligible to submit a shareholder proposal, Rule 14a-8 (copy enclosed) requires a proponent to submit sufficient proof that he or she has continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to vote on the proposal for at least one year through and including the date the shareholder proposal was submitted. For this Proposal, the date of submission is December 12, 2018, which is the date the Proposal was received by the overnight delivery service.

The Proponent does not appear in our records as a registered shareholder. Moreover, to date we have not received proof that the Proponent has satisfied these ownership requirements. To remedy this defect, the Proponent must submit sufficient proof verifying their continuous ownership of the requisite number of ExxonMobil shares for the one-year period preceding and including December 12, 2018.

*As explained in Rule 14a-8(b), sufficient proof must be in the form of:*

- a written statement from the "record" holder of the Proponent's shares (usually a broker or a bank) verifying that the Proponent continuously held the requisite number of ExxonMobil shares for the one-year period preceding and including December 12, 2018; or
- if the Proponent has filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting the Proponent's ownership of the requisite number of ExxonMobil shares as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that the Proponent continuously held the requisite number of ExxonMobil shares for the one-year period.

If the Proponent intends to demonstrate ownership by submitting a written statement from the "record" holder of their shares as set forth in the first bullet point above, please note that 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 that acts as a securities depository (DTC is also known through the account name of Cede & Co.). Such brokers and banks are often referred to as "participants" in DTC. In Staff Legal Bulletin No. 14F (October 18, 2011) (copy enclosed), the SEC staff has taken the view that only DTC participants should be viewed as "record" holders of securities that are deposited with DTC.

The Proponent can confirm whether its broker or bank is a DTC participant by asking its broker or bank or by checking the listing of current DTC participants, which is available on the internet at: <http://www.dtcc.com/~media/Files/Downloads/client-center/DTC/alpha.ashx>. In these situations, shareholders need to obtain proof of ownership from the DTC participant through which the securities are held, as follows:

- If the Proponent's broker or bank is a DTC participant, then the Proponent needs to submit a written statement from its broker or bank verifying that the Proponent continuously held the requisite number of ExxonMobil shares for the one-year period preceding and including December 12, 2018.
- If the Proponent's broker or bank is not a DTC participant, then the Proponent needs to submit proof of ownership from the DTC participant through which the securities are held verifying that the Proponent continuously held the requisite number of ExxonMobil shares for the one-year period preceding and including December 12, 2018. The Proponent should be able to find out who this DTC participant is by asking the Proponent's broker or bank. If the Proponent's broker is an introducing broker, the Proponent may also be able to learn the identity and telephone number of the DTC participant through the Proponent's account statements because the clearing broker identified on the Proponent's account statements will generally be a DTC participant. If the DTC participant that holds the Proponent's shares knows the Proponent's broker's or bank's holdings, but does not know the Proponent's holdings, the Proponent needs to satisfy the proof of ownership requirement by obtaining and submitting two proof of ownership statements verifying that for the one-year period preceding and including December 12, 2018, the required amount of securities were continuously held – one from the Proponent's broker or bank, confirming the Proponent's ownership, and the other from the DTC participant, confirming the broker or bank's ownership.

Pursuant to SEC Staff Legal Bulletin 14I, the submission of a proposal by proxy (i.e., by a representative rather than by the shareholder directly) must include proper documentation describing the shareholder's delegation of authority to the proxy. This documentation must:

- 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 SEC's rules require that any response to this letter must be postmarked or transmitted electronically to us no later than 14 calendar days from the date this letter is received. Please mail any response to me at ExxonMobil at the address shown above. Alternatively, you may send your response to me via facsimile at 972-940-6748, or by email to [shareholderrelations@exxonmobil.com](mailto:shareholderrelations@exxonmobil.com).

You should note that, if the Proposal is not withdrawn or excluded, the Proponent or the Proponent's representative, who is qualified under New Jersey law to present the Proposal on the Proponent's behalf, must attend the annual meeting in person to present the Proposal. Under New Jersey law, only shareholders or their duly constituted proxies are entitled as a matter of right to attend the meeting.

If the Proponent intends for a representative to present the Proposal, the Proponent must provide documentation that specifically identifies their intended representative by name and specifically authorizes the representative to act as the Proponent's proxy at the annual meeting. To be a valid proxy entitled to attend the annual meeting, the representative must have the authority to vote the Proponent's shares at the meeting. A copy of this authorization meeting state law requirements should be sent to my attention in advance of the meeting. The authorized representative should also bring an original signed copy of the proxy documentation to the meeting and present it at the admissions desk, together with photo identification if requested, so that our counsel may verify the representative's authority to act on the Proponent's behalf prior to the start of the meeting.

In the event there are co-filers for this Proposal and in light of the guidance in SEC Staff Legal Bulletin No. 14F dealing with co-filers of shareholder proposals, it is important to ensure that the lead filer has clear authority to act on behalf of all co-filers, including with respect to any potential negotiated withdrawal of the proposal. Unless the lead filer can represent that it holds such authority on behalf of all co-filers, and considering SEC staff guidance, it will be difficult for us to engage in productive dialogue concerning this Proposal.

Note that under Staff Legal Bulletin No. 14F, the SEC will distribute no-action responses under Rule 14a-8 by email to companies and proponents. We encourage all proponents and any co-filers to include an email contact address on any additional correspondence to ensure timely communication in the event the Proposal is subject to a no-action request.

We are interested in discussing this Proposal and will contact you in the near future.

Sincerely,



NAH/ljg

Enclosures

**Attachments 14F and Rule 14a-8 omitted for copying and scanning purposes only.**

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## Gilbert, Jeanine

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**From:** UPS Quantum View <pkginfo@ups.com>  
**Sent:** Monday, December 17, 2018 1:53 PM  
**To:** Gilbert, Jeanine  
**Subject:** UPS Delivery Notification, Tracking Number \*\*\*

**Categories:** External Sender



### Your package has been delivered.

**Delivery Date:** Monday, 12/17/2018  
**Delivery Time:** 11:46 AM

At the request of EXXON MOBIL GLOBAL SERVICES CO this notice alerts you that the status of the shipment listed below has changed.

## Shipment Detail

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<b>Tracking Number:</b>	***
<b>Ship To:</b>	As You Sow Ms. Lila Holzman 1611 TELEGRAPH AVE FLOOR 14 ROOM 1450 OAKLAND, CA 94612 US
<b>UPS Service:</b>	UPS NEXT DAY AIR SAVER
<b>Number of Packages:</b>	1
<b>Shipment Type:</b>	Letter
<b>Delivery Location:</b>	RECEIVER CHO
<b>Reference Number 1:</b>	6401
<b>Reference Number 2:</b>	XOM ACK-LTR_Rpt Rsks Exp Petrchem



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**Wealth  
Management**

345 California Street  
29th Floor  
San Francisco, CA 94104-2642

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S.M. ENGLANDE

12/18/18

Neil Hansen  
Vice President of Investor Relations and Secretary  
Exxon Mobil Corporation  
5959 Las Colinas Boulevard  
Irving, TX 75039-2298

To Whom It May Concern:

RBC Capital Markets, LLC, acts as custodian for Andrew Behar.

We are writing to verify that our books and records reflect that, as of market close on December 12, 2018, Andrew Behar owned 40 shares of Exxon Mobil Corporation (Cusip: 30231G102) representing a market value of approximately \$2900 and that, Andrew Behar has owned such shares since 10/05/2015. We are providing this information at the request of Andrew Behar in support of its activities pursuant to rule 14a-8(a)(1) of the Securities Exchange Act of 1934.

In addition, we confirm that we are a DTC participant.

Should you require further information, please contact me directly at 415-445-8378.

Sincerely,



Manny Galayag  
Vice President - Assistant Complex Manager

## **Gilbert, Jeanine**

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**From:** Kwan Hong Teoh <Kwan@asyousow.org>  
**Sent:** Friday, December 28, 2018 10:59 PM  
**To:** Shareholder Relations /SM  
**Cc:** Lila Holzman; Danielle Fugere  
**Subject:** XOM - Shareholder Resolution - re Def Notice 12/14/18  
**Attachments:** 19.XOM.1 Andy PO.pdf

Dear Mr. Hansen,

We are in receipt of your letter issued December 14, 2018 alleging notice of a deficiency in our December 12, 2018 letter transmitting a proposal for inclusion on the Company's 2019 proxy. In response to the cited deficiency, we enclose a proof of ownership letter establishing the proponent's ownership of the Company's common stock in the requisite amount and in the time frame 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 you identify any deficiencies in the enclosed documentation.

Please confirm receipt of this correspondence.

Sincerely,  
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](mailto:kwan@asyousow.org) | [www.asyousow.org](http://www.asyousow.org)

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