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January 2, 2020

**Via Email to shareholderproposals@sec.gov**

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

**Re: CSX Corporation - Exclusion of Shareholder Proposal by March S. Gallagher**

Ladies and Gentlemen:

We are writing on behalf of our client, CSX Corporation (“**CSX**” or the “**Company**”), to inform you of the Company’s intention to exclude from its proxy statement and proxy to be filed and distributed in connection with its 2020 annual meeting of shareholders (the “**Proxy Materials**”) the enclosed shareholder proposal and supporting statement (collectively, the “**Proposal**”) submitted by March S. Gallagher (the “**Proponent**”).

The Company respectfully requests that the staff of the Division of Corporation Finance (the “**Staff**”) of the Securities and Exchange Commission (the “**Commission**”) concur in our opinion that the Company may, for the reasons set forth below, properly exclude the aforementioned Proposal from the Proxy Materials and advise the Company that it will not recommend any enforcement action to the Commission if the Company excludes the Proposal from its Proxy Materials pursuant to Rule 14a-8(i)(7) or Rule 14a-8(i)(5) of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”). The Company has advised us as to the factual matters set forth below.

Pursuant to Exchange Act Rule 14a-8(j) and Staff Legal Bulletin No. 14D (November 7, 2008) (“**SLB 14D**”), the Company is submitting electronically to the Commission this letter, and the Proposal and related correspondence (attached as Exhibit A to this letter), and is concurrently sending a copy to the Proponent, no later than eighty calendar days before the Company intends to file its definitive Proxy Materials with the Commission.

## The Proposal

On November 20, 2019, the Company received the Proposal from the Proponent, which states in relevant part as follows:

RESOLVED: The shareholders request that the CSX set aside sufficient funding to commission a study, beginning no later than the fourth quarter of 2020, to determine how the corporation can best atone for its participation in slavery. The commission, made up of recognized scholars with knowledge and experience in reparations, will: (1) study how other corporations have atoned for slavery; (2) formulate CSX's own atonement with an emphasis on apology and community-building reparations through an atonement trust fund; and (3) clarify the historical record regarding CSX's participation in slavery so that the corporation's shareholders and the public at large understand why atonement is being made.

A copy of the Proposal (and related correspondences with the Proponent) are attached hereto as Exhibit A.

## Bases for Exclusion and Analysis

The Proposal may properly be excluded from the Proxy Materials pursuant to (i) the provisions of Rule 14a-8(i)(7) because it impermissibly seeks to micromanage the Company and (ii) pursuant to Rule 14a-8(i)(5) of the Exchange Act, on the basis that the Proposal relates to operations that are not economically significant or otherwise related to the Company's business.

I. **The Proposal May Be Excluded Pursuant to Rule 14a-8(i)(7) Because it Relates to the Company's Ordinary Business Operations by Impermissibly Seeking to Micromanage the Company.**

**A. Background.**

Rule 14a-8(i)(7) permits a company to exclude a shareholder proposal from its proxy materials if the proposal "deals with a matter relating to the company's ordinary business operations." 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." SEC Release No. 34-40018 (May 21, 1998) (the "**1998 Release**"). As set out in the 1998 Release, there are two "central considerations" underlying the ordinary business exclusion. The first is that "certain 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 is that a proposal should not "seek 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."

In Staff Legal Bulletin No. 14J (October 23, 2018) ("**SLB 14J**"), the Staff clarified its approach to requests for exclusion pursuant to Rule 14a-8(i)(7)'s micromanagement prong.

As noted in SLB 14J, “The Commission has explained, a proposal may probe too deeply into matters of a complex nature if it ‘involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies.’”

More recently, in Staff Legal Bulletin No. 14K (October 16, 2019) (“**SLB 14K**”), the Staff noted that, in evaluating arguments under the micromanagement prong of Rule 14a-8(i)(7), it conducts an “assessment of the level of prescriptiveness of the proposal. When a proposal prescribes specific actions that the company’s management or the board must undertake without affording them sufficient flexibility or discretion in addressing the complex matter presented by the proposal, the proposal may micromanage the company to such a degree that exclusion of the proposal would be warranted.”

**B. The Proposal Seeks to Micromanage the Company by Imposing Specific Methods to Implement Complex Policy Issues.**

The Proposal seeks to “micromanage” the Company by asking the Company to commission a study regarding slavery and related reparations in such a way and pursuant to a particular timeframe as to deny flexibility from the Company as to how to conduct this study. The Proposal prescribes a particular means and specific timeframe to address the alleged participation in slavery. With respect to the prescribed means, the Proposal imposes specific methods, actions or outcomes on the Company by asking that the Company first “set aside sufficient funding” and then “commission a study” by a commission “made up of recognized scholars with knowledge and experience in reparations.” The Proposal then specifies that this commission “study how other corporations have atoned for slavery,” then “formulate [the Company’s] own atonement.” Without allowing the Company the flexibility to decide how to formulate such atonement, the Proposal asks that this atonement have “an emphasis on apology and community-building reparations through an atonement trust fund.” The Proposal then further prescribes that the commission will “clarify the historical record regarding [the Company’s] participation in slavery so that the [Company’s] shareholders and the public at large understand why atonement is being made.” These specified methods, actions or outcomes seek intricate detail relating to the topic of the Proposal. In addition to these specified methods, actions or outcomes, the proposal also imposes a specific timeline for addressing the underlying matter, where it asks the Company to begin the above-described study “no later than the fourth quarter of 2020.”

As explained below, the Proposal would “unduly limit the ability of management and the board to manage complex matters with a level of flexibility necessary to fulfill their fiduciary duties to shareholders,” as set out in SLB 14K. In fact, the actions requested in the Proposal involve the exact type of prescriptive approach to complex matters at the heart of the micromanagement prong of Rule 14a-8(i)(7). For example, SLB 14J provides that proposals “seek[ing] to impose specific time-frames” for implementation are excludable under Rule 14a-8(i)(7). The Proposal seeks to provide a specific time frame by demanding that the study begin no later than the fourth quarter of 2020. SLB 14J also provides that proposals “seek[ing] to impose specific . . . methods for implementing complex policies” are excludable under Rule 14a-8(i)(7). As set out in SLB 14J, the Proposal prescribes the composition of the commission, including the experience and background required of each member, the highly specific subtopic that is to be studied by the commission, the exact approach that the Company must take by mandating “an emphasis on apology and community-building reparations through an atonement trust fund,” and the Company’s communications with its shareholders and the public at large.

The Staff has reached similar conclusions, concurring in exclusion of proposals pursuant to Rule 14a-8(i)(7) on the basis that such proposals “micromanage” the company, where the proposals set forth specific targets, analogous to the target timeline, agenda and resolution included in the Proposal. See, e.g., *The Walt Disney Company* (October 21, 2019) (concurring in exclusion pursuant to Rule 14a-8(i)(7) of a proposal requesting that the board of directors “limit the total annual compensation of [the Company’s] Chairman and Chief Executive Officer to a ratio not to exceed the total annual compensation of Disney’s median employee by more than 500:1” and “increas[e] the annual total compensation of [the Company’s] lowest paid employees”); *Exxon Mobil Corporation* (April 2, 2019) and *Devon Energy Corporation* (March 4, 2019, *recon. denied* April 1, 2019) (concurring in exclusion pursuant to Rule 14a-8(i)(7) of a proposal requesting, in annual reporting beginning in 2020, a report of short-, medium- and long-term greenhouse gas targets aligned with reduction goals set in the Paris Climate Agreement to maintain global average temperatures substantially below two degrees Celsius and to pursue efforts to limit increases to 1.5 degrees Celsius, on the basis that “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”); *MGE Energy, Inc.* (March 13, 2019) (concurring in exclusion pursuant to Rule 14a-8(i)(7) of a proposal requesting a “a public report no later than October 1, 2020, describing how [the company] can provide a secure, low cost energy future for their customers and shareholders by eliminating coal and moving to 100% renewable energy by 2050 or sooner,” on the basis that “the Proposal seeks to 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”); and *Wells Fargo & Company* (March 5, 2019) (concurring in exclusion pursuant to Rule 14a-8(i)(7) of a proposal requesting a policy for reducing greenhouse gas emissions resulting from the company’s loan and investment portfolios to align with the Paris Agreement’s goal to maintain global temperatures substantially below two degrees Celsius, on the basis that “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”).

As described above, the Proposal would micromanage the Company by requesting specific changes to its approach towards identifying topics that need to be addressed, evaluating their merits and urgency in relation to other matters at hand in order to determine when they need to be addressed, selecting the best-suited individuals to address those topics, investigating and addressing those items, and communicating with its shareholders and the public at large. Decisions regarding the creation and composition of commissions, the timeline of studies and the appropriate resolution are inherently complex and involve a number of business, financial and legal considerations, all of which would be unduly constrained if the Company were required to follow the precise orders of the Proposal. All of these items would touch on matters that are integral to the Company’s day-to-day operations. These changes are requested on a specific time frame. Like the proposals at issue in the no-action letter precedents cited above, the actions mandated in the Proposal “prob[e] 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,” and would “unduly limit the ability of management and the board to manage complex matters with a level of flexibility necessary to fulfill their fiduciary duties to shareholders.”

Accordingly, consistent with the Staff's guidance and the no-action letter precedents cited above, the Proposal would impermissibly micromanage the Company and the Proposal, therefore, may be excluded from the Proxy Materials pursuant to Rule 14a-8(i)(7).

## **II. The Proposal May Be Excluded Pursuant to Rule 14a-8(i)(5).**

Rule 14a-8(i)(5) provides that a company may omit a shareholder proposal from its proxy materials “[i]f 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.” The purpose of this exclusion is to ensure that a company’s proxy materials do not include shareholder proposals that lack a significant relationship to the company. See Exchange Act Release No. 34-40018 (May 21, 1998) (the “**1998 Release**”) and Exchange Act Release No. 34-19135 (Oct. 14, 1982). Consistent with Rule 14a-8(i)(5) and its underlying purpose, the Staff has concurred on a number of occasions with the exclusion of proposals that relate to operations that account for less than 5% of a company’s total assets, net earnings and gross sales. See, e.g., *Arch Coal, Inc.* (Jan. 19, 2007); *Merck & Co., Inc.* (Jan. 27, 2004); *The Procter & Gamble Co.* (Aug. 11, 2003); *The Walt Disney Co.* (Nov. 29, 2002); *Eli Lilly & Co.* (Feb. 2, 2000).

Historically, the Staff generally did not grant no-action relief pursuant to Rule 14a-8(i)(5) to exclude a proposal addressing an issue of broad social or ethical significance even where the shareholder proposal arguably was not significantly related to the company’s business. In Staff Legal Bulletin No. 14I (Nov. 1, 2017) (“**SLB 14I**”), however, the Staff acknowledged that its “application of Rule 14a-8(i)(5) has unduly limited the exclusion’s availability because [the Staff] has not fully considered the second prong of the rule as amended in 1982—the question of whether the proposal ‘deals with a matter that is not significantly related to the issuer’s business’ and is therefore excludable.” The Staff further stated in SLB 14I that going forward, its “analysis will focus, as the rule directs, on a proposal’s significance to the company’s business when it otherwise relates to operations that account for less than 5% of total assets, net earnings and gross sales” and invited companies to provide a discussion reflecting the board’s analysis of the proposal’s significance to the company. Under this framework, proposals that raise issues of social or ethical significance may be excluded, notwithstanding their importance in the abstract, if the proposal does not significantly relate to the company’s business.

### **A. The Proposal Relates to Operations That Account for Less Than 5% of the Company’s Total Assets, Net Earnings and Gross Sales.**

The Proposal fails to provide any specific link between the need for a Company sponsored study on reparations other than the allegation that the Richmond, Fredericksburg & Potomac Railroad, now owned by CSX, benefited from slave labor. Richmond, Fredericksburg & Potomac Railroad (“RF&P”) is a subsidiary of the Company acquired after slavery was abolished. RF&P leases property to CSX Transportation, Inc., another subsidiary of the Company, for approximately \$27.5 million a year. RF&P accounts for less than 1.0% of the Company’s total assets as of November 2019, which is significantly less than the 5% total asset threshold set out in Rule 14a-8(i)(5). Due to the nature of the Company’s business, net earnings and gross sales are not recognized by line segment. That being said, estimated gross sales and net earnings attributed to the RF&P are significantly less than 5% of the Company’s gross sales and net earnings.

**B. The Proponent Has Not Demonstrated That the Proposal Is Otherwise Significantly Related to the Company's Business.**

In SLB 14I, the Staff explained that “[w]here 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.’ . . . The mere possibility of reputational or economic harm will not preclude no-action relief.” See Dunkin’ Brands Group, Inc. (Feb. 22, 2018) (permitting exclusion under Rule 14a-8(i)(5) of a proposal requesting that the company’s board issue a report assessing the environmental impact of using K-Cup Pods brand packaging where “the Proposal’s significance to the Company’s business [was] not apparent on its face, and that the Proponent ha[d] not demonstrated that it [was] otherwise significantly related to the Company’s business.”)

On its face, the Proposal does not demonstrate that it is significantly related to the Company’s business. As noted above the only specific link the Proposal makes to slave labor and the Company is the allegation that RF&P benefited from slave labor. And as noted above, RF&P, relative to other subsidiaries of the Company, accounts for an insignificant part of the Company’s assets.

The Proponent has provided no factual or other support in the Proposal to demonstrate the Proposal’s significance to the Company’s business and, therefore, the Proposal is excludable under Rule 14a-8(i)(5).

**Conclusion**

For the foregoing reasons, and consistent with the Staff’s prior no-action letters, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its Proxy Materials pursuant to Rule 14a-8(i)(7) of the Exchange Act on the basis that the Proposal micromanages the Company or relates to the Company’s ordinary business operations or, alternatively, pursuant to Rule 14a-8(i)(5) of the Exchange Act, on the basis that the Proposal relates to operations that are not economically significant or otherwise related to the Company’s business. We would be happy to provide you with additional information and answer any questions that you may have regarding this subject.

Respectfully yours,



Shane Tintle

Enclosures

cc: March S. Gallagher

Nathan D. Goldman, Executive Vice President, Chief Legal Officer and Corporate Secretary, CSX Corporation

Mark D. Austin, Assistant Corporate Secretary, CSX Corporation

**EXHIBIT A**

## 2020 CSX Shareholder Resolution

### To Undertake Reparations

Whereas, slavery was a legally permitted institution sanctioned by the United States Government.

The Thirteenth Amendment to the United States Constitution barred slavery in 1865.

Black Americans descended from slaves have a lower level of wealth.

Black Americans descended from slaves have lower levels of home ownership.

Black Americans descended from slaves have lower educational participation at all levels.

Black Americans descended from slaves have lower household income.

Building of wealth in this country was denied to enslaved people.

Enslaved people could not pass wealth to their future generations.

Reparations have been paid for other injustices such as payments by the United States government for internment by Japanese Americans and by the German government to Holocaust victims.

Today there are great racial disparities in wealth, health outcomes, and educational attainment in the United States.

Many companies benefitted from the use of slave labor during the time it was legally sanctioned.

The Richmond, Fredericksburg & Potomac Railroad, now owned by CSX, Company benefitted from slave labor.

CSX is still operating on infrastructure built with slave labor.

CSX capital was accumulated using infrastructure built with uncompensated slave labor.

CSX desires to be in business for the next several hundred years.

Resolved, the Shareholders request that the CSX set aside sufficient funding to commission a study, beginning no later than the fourth quarter of 2020, to determine how the corporation can best atone for its participation in slavery. The commission, made up of recognized scholars with knowledge and experience in reparations, will: (1) study how other corporations have atoned for slavery; (2) formulate CSX's own atonement with an emphasis on apology and community-building reparations through

an atonement trust fund; and (3) clarify the historical record regarding CSX's participation in slavery so that the corporation's shareholders and the public at large understand why atonement is being made.



March S. Gallagher, Esq.

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VIA OVERNIGHT DELIVERY

November 19, 2019

CSX Corporation  
Office of the Corporate Secretary  
500 Water Street, C160  
Jacksonville, FL  
32202

Re: Proposed Shareholder Resolution and supporting materials

Dear Directors:

Enclosed please find the following:

- 1) A proposed Shareholder Resolution for presentation in the 2020 Proxy Statement,  
and
- 2) A letter from my broker, Raymond James, regarding the holding of my CSX  
shares.

I am a registered holder of CSX securities, in excess of \$2,000 in market value for well over 1 year and I intend to hold these securities through the date of the Annual Meeting.

Thank you for your attention to this matter.

Yours truly,

A handwritten signature in blue ink that reads "March Gallagher".

March S. Gallagher  
MSG/sel

enclosures

201 Progress Parkway  
Maryland Heights, MO 63043-3042  
314-515-2000  
www.edwardjones.com

**Edward Jones**

November 19, 2019

CSX Corporation  
Office of the Corporate Secretary  
500 Water Street, C160  
Jacksonville, FL 32202

Re: Shareholder Proposal – March S. Gallagher

Our client has requested the following information be submitted to you on her behalf.

Edward D. Jones & Co. is a Depository Trust Company (DTC) participant (#0057).

As of November 19, 2019, March S. Gallagher held, and has held continuously for at least one year, 63 shares of CSX Corp common stock.

Sincerely,



Bonnie Busen  
Edward Jones  
Corporate Actions and Distributions