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

DIVISION OF
CORPORATION FINANCE

April 1, 2019

Sanford J. Lewis
sanfordlewis@strategiccounsel.net

Re: Devon Energy Corporation
Incoming letter dated March 13, 2019

Dear Mr. Lewis:

This letter is in response to your correspondence dated March 13, 2019 and March 21, 2019 concerning the shareholder proposal (the "Proposal") submitted to Devon Energy Corporation (the "Company") by the George Gund Foundation et al. We also have received correspondence from the Company dated March 18, 2019. On March 4, 2019, we issued a no-action response expressing our informal view that the Company could exclude the Proposal from its proxy materials for its upcoming annual meeting on the basis that the Proposal would micromanage the Company by seeking to impose specific methods for implementing complex policies. You have asked us to reconsider our position. After reviewing the information contained in your correspondence, we find no basis to reconsider our position.

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

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

Sincerely,

Michele M. Anderson
Associate Director

Enclosure

cc: Anthony Saldana
Skadden, Arps, Slate, Meagher & Flom LLP
anthony.saldana@skadden.com

# SANFORD J. LEWIS, ATTORNEY

Via electronic mail
March 21, 2019

William Hinman, Director
Division of Corporation Finance
Securities & Exchange Commission
100 F Street, NE
Washington, D.C. 20549

**Re: Shareholder Proposal Submitted to Devon Energy Inc.**
**Supplement to Request for Reconsideration of No Action Letter**

Dear Mr. Hinman:

I am writing on behalf of the proponent, the George Gund Foundation, to follow up on our March 13, 2019 reconsideration request regarding the Devon Energy no action letter. We raise one additional item for your consideration.

In addition to the issues and arguments raised in our reconsideration request, we want to emphasize that the *Devon Energy* decision and similar recent rulings appear incongruent with the Commission's articulation of the advisory shareholder proposal process. The Commission has clarified in the note and rulemaking record of Rule 14a-8(i)(1) that most proposals "*seeking specific actions"* are permissible (do not interfere with board discretion), if they are cast as advisory proposals.

We note in this regard that the Staff decision articulated in *Devon Energy* (March 4, 2019) found that the proposal would "**require**" the company to substitute "specific methods for implementing complex policies in place of the ongoing judgments of management as overseen by its board of directors." The decision stated:

> "In our view, the Proposal would **require** the Company to adopt targets aligned with the goals established by the Paris Climate Agreement. By **imposing this requirement**, the Proposal would micromanage the Company by seeking to impose specific methods for implementing complex policies in place of the ongoing judgments of management as overseen by its board of directors." [emphasis added]

In fact, in the specific language of the resolved clause, shareholders "request" that the company include disclosure of greenhouse gas targets. There is no requirement in the resolved clause and, as discussed below, the proposal itself is precatory in nature.

In the 1976 Release, the Commission made it clear that any proposal that ***required*** an outcome would be scrutinized closely for the potential to conflict with state law that reserves the discretion and operation of the company to the board and management. Therefore, the

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Commission established in the Note to Rule 14a-8(i)(1),[1] that:

> Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders**. <u>In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law.</u>** Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise. [emphasis added]

The underlying rationale of this limitation in the note, expressed in the 1976 Release was specifically, *preservation of the discretion of the Board of Directors to take action*. The Commission explained:

> … it is the Commission's understanding that the laws of most states do not, for the most part, explicitly indicate those matters which are proper for security holders to act upon but instead provide only that the business and affairs of every corporation organized under this law shall be managed by its board of directors, or words to that effect. Under such a statute, the board may be considered to have exclusive discretion in corporate matters, absent a specific provision to the contrary in the statute itself, or the corporations charter or bylaws. Accordingly, proposals by security holders that mandate or direct the board to take certain action may constitute an unlawful intrusion on the board's discretionary authority under the typical statute. On the other hand, however, **proposals that merely recommend or request that the board take certain action would not appear to be contrary to the typical state statute, since such proposals are merely advisory in nature and would not be binding on the board even if adopted by a majority of the security holders**.

In light of this 1976 determination to interpret proposals with requests for specified action as advisory proposals, the concept of micromanagement evolved to address an issue *other than* interference with board and management discretion – the undesirable potential for a shareholder proposal to address an issue that is either trivial for the company, or that seeks a shareholder vote on an excessively detailed set of guidelines ( the equivalent of regulations) that are outside of the shareholders' expertise. Congruent with the understanding that most proposals do not interfere with board and management discretion if they are stated as recommendations, micromanagement exclusions have focused on detailed prescriptive content or instances where a proposal or otherwise delved too deeply into the "weeds" of day-to-day operations.

As we cited in our reconsideration request, historic examples of micromanagement have included *Marriott International Inc.* (March 17, 2010) where the proposal addressed minutiae of operations – prescribing the flow limits on showerheads; *Duke Energy Corporation* (February 16, 2001) where the proposal attempted to set what were essentially regulatory limits on the company – an 80% reduction in nitrogen oxide emissions from the company's coal-fired plant

[1] The rule allows exclusion of proposals which are "Improper under state law: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company."

and a limit of 0.15 lbs of nitrogen oxide per million British Thermal Units of heat input for each boiler; *Ford Motor Company*, (March 2, 2004) a *highly detailed study* on global warming. These are important examples of proposals that sought "excess" detail.

In contrast, as we noted, innumerable proposals requesting targets on greenhouse gases or other significant policy issues have been held to be nonexcludable despite micromanagement claims by companies. Even requesting specific suggested targets has long been permissible under prior Staff rulings - congruent with the Commission's perspective that most proposals requesting specific action are acceptable if written in advisory form. Examples where Staff rejected claims of micromanagement include *Exxon Mobil Corp.* (March 23, 2007) asking the board to "adopt quantitative goals, based on current technologies, for reducing total GHG emissions from the Company's products and operations; and that the Company report to shareholders …. on its plans to achieve these goals", staff rejecting micromanagement claim; *Exxon Mobil Corporation* (March 12, 2007) requesting that the board adopt a policy of significantly increasing renewable energy sourcing globally, with recommended goals in the range of between 15%-25% of its energy sourcing by between 2015-2025; *ONEOK, Inc.* (February 25, 2008) requesting that the board of that oil and gas company prepare a report concerning the feasibility of adopting quantitative goals, based on current and emerging technologies, for reducing total GHG emissions from the company's operations; *Great Plains Energy Incorporated* (February 5, 2015) requesting that the electric utility adopt quantitative, time bound, carbon dioxide reduction goals to reduce corporate carbon emissions, and issue a report to shareholders on its plans to achieve the carbon reduction goals it sets; *Tyson Foods Inc. (reconsideration granted Dec. 15, 2009)* requesting that the board adopt a policy to phase out routine use of animal feeds containing antibiotics that belong to the same classes of drugs administered to humans, except for cases where a treatable bacterial illness has been identified in a herd or group of animals and report to shareowners on the timetable and measures for implementing this policy.

These rulings stand in contrast to the very recent rulings in *EOG Resources Inc.* and *Devon Energy* that appear to us to have strayed from this principled arrangement.

We urge the Staff to reconsider the decision in *Devon Energy*, and to bring the micromanagement doctrine back into congruency with the Commission's clarification that "most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law." The proposal process represents an essential opportunity for shareholders to raise important issues of concern and provide advice to the board and management on strategic management of significant policy issues. This important tool should not be denied to shareholders, especially on this critically important proposal seeking disclosure and action on the Company's impact on climate change.

Sincerely,

Sanford Lewis
cc: Anthony Saldana

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March 18, 2019

**By email to shareholderproposals@sec.gov**

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

RE: Devon Energy Corporation – Response to Request for Reconsideration and Commission Review of No-Action Letter Relating to Shareholder Proposal of the George Gund Foundation and As You Sow

Ladies and Gentlemen:

By letter dated March 4, 2019 (the "No-Action Letter"), the Staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") stated that it would not recommend enforcement action to the Commission if Devon Energy Corporation, a Delaware corporation ("Devon"), were to omit the shareholder proposal and supporting statement (collectively, the "Proposal") submitted by the George Gund Foundation and As You Sow (collectively, the "Proponents") from its 2019 annual meeting proxy materials in reliance on Rule 14a-8(i)(7). The Proposal requests that Devon's board, in annual reporting from 2020, include disclosure of short-, medium- and long-term greenhouse gas targets aligned with the greenhouse gas reduction goals established by the Paris Climate Agreement to keep the increase in global average temperature to well below 2 degrees Celsius and to pursue efforts to limit the increase to 1.5 degrees Celsius.

This letter is in response to the letter to the Staff, dated March 13, 2019, submitted by the Proponents (the "Proponents' Request"), requesting that the Staff reconsider its decision in the No-Action Letter or alternatively submit the No-Action Letter to the Commission for review. A copy of this letter is also being sent to the

Proponents. Devon currently intends to file its 2019 definitive proxy materials on or about April 24, 2019.

## I. The Proponents' Request Merely Reiterates the Proposal's Language and Related Precedent to Support Reconsideration

Although the Staff has not articulated the standard for reconsideration, we understand that in practice the Staff will not grant a reconsideration request where the proponent does nothing more than reiterate arguments made in previous submissions to the Staff in support of its proposal. *See, e.g.*, *EOG Resources, Inc.* (Feb. 26, 2018, *recon. and review denied* Mar. 12, 2018); *The Kroger Co.* (Apr. 7, 2016, *recon. and review denied* May 5, 2016); *Dominion Resources, Inc.* (Jan. 14, 2015, *recon. and review denied* Mar. 23, 2015); *Pfizer Inc.* (Jan. 11, 2013, *recon. and review denied* Mar. 1, 2013).

As explained in our letter of January 30, 2019 (the "No-Action Request"), the Proposal relates to Devon's ordinary business operations and attempts to micromanage Devon by probing too deeply into matters of a complex nature upon which shareholders, as a group, are not in a position to make an informed judgment. The Proposal would require Devon management to assess current operational strategies and business judgments regarding drilling and production levels, among other matters, given the Proposal's request for company-wide, time-bound greenhouse gas targets. This is the epitome of an attempt to micromanage Devon, a leading independent energy company engaged in the exploration, development and production of oil and natural gas.

In the No-Action Letter, the Staff similarly noted that "the Proposal would require the Company to adopt targets aligned with the goals established by the Paris Climate Agreement. By imposing this requirement, the Proposal would micromanage the Company by seeking to impose specific methods for implementing complex policies in place of the ongoing judgments of management as overseen by its board of directors." The Staff's position and reasoning for its decision could not be more clear.

In spite of the Staff's position, the Proponents' Request repeatedly contends that the Proposal does not micromanage Devon and cites precedent addressed by the No-Action Request. In fact, the Proponents' Request is not only based on arguments that merely reiterate language from the resolved clause and policy considerations from the supporting statement, but also was submitted 42 days after the No-Action Request and more than a week after the No-Action Letter. Such arguments were refuted by Devon in the No-Action Request and the Staff in the No-Action Letter when it stated that "the Proposal would micromanage the Company by seeking to

impose specific methods for implementing complex policies." Accordingly, the facts and circumstances involving the Proposal have not changed. Devon therefore believes there is no basis for reconsideration or reversal of the Staff's position in the No-Action Letter.

## II. The Proponents' Request Does Not Meet the Standard for Commission Review

The Proponents' Request does not meet the standard for Commission review. Under Part 202.1(d) of Section 17 of the Code of Federal Regulations, the Staff may present a request for Commission review of a Rule 14a-8 no-action response if the Staff concludes that the request involves "matters of substantial importance and where the issues are novel or highly complex." If a request does not meet this standard, the Staff is to deny the request for Commission review. The subject matter of the Proposal and the No-Action Letter relate to a report on the measures being taken to reduce Devon's greenhouse gas emissions and the resulting impact on Devon's operations and assets. These topics have been the subject of numerous no-action letters (cited in the No-Action Request) and do not raise any "novel" or "highly complex" issues. Accordingly, Devon believes that the No-Action Letter does not involve matters that warrant Commission review. *See, e.g.*, *EOG Resources, Inc.* (Feb. 26, 2018, *recon. and review denied* Mar. 12, 2018); *The Kroger Co.* (Apr. 7, 2016, *recon. and review denied* May 5, 2016); *Dominion Resources, Inc.* (Jan. 14, 2015, *recon. and review denied* Mar. 23, 2015); *Pfizer Inc.* (Jan. 11, 2013, *recon. and review denied* Mar. 1, 2013).

## III. Conclusion

For the reasons stated above and in the No-Action Letter, Devon respectfully requests that the Staff deny the Proponents' request for reconsideration and request for Commission review of the No-Action Letter. Should any additional information be desired in support of Devon's position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response. Please do not hesitate to contact me at the email address and telephone number appearing on the first page of this letter.

Very truly yours,

Anthony Saldana

cc: Chris Kirt
Vice President, Corporate Governance and Secretary
Associate General Counsel
Devon Energy Corporation

David T. Abbott
Executive Director
The George Gund Foundation

Robert B. Jaquay
Associate Director
The George Gund Foundation

Danielle Fugere
President
As You Sow

**SANFORD J. LEWIS, ATTORNEY**

Via electronic mail

March 13, 2019

William Hinman, Director
Division of Corporation Finance
Securities & Exchange Commission
100 F Street, NE
Washington, D.C. 20549

**Re: Shareholder Proposal Submitted to Devon Energy Inc. Request for Reconsideration of No Action Letter**

Dear Mr. Hinman:

I am writing to you on behalf of the George Fund Foundation and Anna Marie Lyles (the "Proponents"), who have jointly submitted a shareholder proposal ("Proposal") to Devon Energy Inc. (the "Company") for consideration at its 2019 meeting of shareholders. Subsequent to the submission of the Proposal to the Company, the Company submitted on January 30, 2019, a request to the Securities and Exchange Commission (SEC) for a no-action letter asserts that the Proposal was excludable under Rule 14a-8(i)(7) or Rule 14a-8(i)(10). ("Company Letter").

On March 4, 2019 the SEC Staff issued a letter granting no action relief.

We hereby request reconsideration of the Staff's grant of the no-action letter. Due to an apparently missed communication by SEC staff, the Proponents did not have the opportunity to provide a response prior to the Staff decision.[1] We believe this resulted in an erroneous ruling. If reconsideration is denied, we request that, pursuant to 17 CFR 202.1(d), the matter be presented to the Commission for its consideration.

We urge you to consider this a matter of highest gravity and consequence. As documented in our appeal, recent scientific findings of the Intergovernmental Panel on Climate Change have documented that if the world's temperature increase exceeds 1.5°C, consequences for global habitability and economies will be catastrophic. Yet, current public and private efforts have not reached the level of effort required for heading off a temperature increase of as much as 4°C. Investors, government and the private sector are tasked with the challenging problem of redirecting financial flows to head off catastrophe, and the decision on this proposal will either enable or hobble such efforts.

[1] We notified the Staff on February 12, 2019 via email that the Proponents intended to reply to the no action request. However, although we received a confirmatory auto-response email from the SEC server confirming receipt of our notice, the March 4 no action decision was issued before we submitted our reply.

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Moreover, this addresses a federal fiscal risk and a responsibility for the SEC as a federal agency. In March 2019, the Government Accountability Office issued a report which identified climate change risk as a significant exposure, posing billions of dollars of federal fiscal impacts. The GAO report makes clear the federal government has a strategic role in reducing federal fiscal exposure — including as a "leader of a strategic plan that coordinates federal efforts and informs state, local and *private-sector* action". It seems clear that the Securities and Exchange Commission should facilitate and not interfere with the ability of investors to engage and undertake private ordering to encourage portfolio companies to mitigate climate change.

## SUMMARY

The Proposal requests that the Devon Board of Directors, in annual reporting from 2020, include disclosure of short-, medium- and long-term greenhouse gas targets aligned with the greenhouse gas reduction goals established by the Paris Climate Agreement to keep the increase in global average temperature to well below 2°C and to pursue efforts to limit the increase to 1.5°C. This reporting should cover both the corporation's operations and products, omit proprietary information, and be prepared at reasonable cost.

The full text of the Proposal is appended to this letter.

The Staff decision issued March 4, 2019 states:

> There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(7), as relating to the Company's ordinary business operations. In our view, the Proposal would require the Company to adopt targets aligned with the goals established by the Paris Climate Agreement. By imposing this requirement, the Proposal would micromanage the Company by seeking to impose specific methods for implementing complex policies in place of the ongoing judgments of management as overseen by its board of directors.

We respectfully submit that this decision was made in error.

First, the decision is not consistent with the Commission's 1998 Release. In that Release, the Commission reversed an earlier decision in *Cracker Barrel* recognizing "the relative importance of certain social issues" and that the "depth of interest among shareholders in having an opportunity to express their views to company management" on such important social issues should be recognized.

*Climate change is such an issue.* Not only is it of deep concern to shareholders due to the outsize risks it creates for shareholder and company value, but because it is, at base, existential in its nature. Indeed, Staff guidance has recognized that climate change is an issue of such importance to shareholders that climate-related proposals may intrude on a company's ordinary business so long as the terms of the proposal do not probe too deeply into issues on which

shareholders would not be in a position to make an informed judgement, involve intricate details, or seek to impose overly specific time frames or methods for complying.

The Proposal comports with Staff's guidance. It asks the Company to set targets that will align with agreed upon global carbon reduction goals to avoid the worst economic and environmental impacts of a warming climate. Yet, it does not dictate what targets should be set or by when. Rather, the Proposal underscores shareholders' belief that the companies in which they invest must systematically reduce the full range of their greenhouse gas emissions at a rate and scope that aligns with global needs. This is an area in which shareholders have shown a depth of interest in being able to express their views to company management, and deep knowledge in understanding the implications of company failure to act. On this important issue, shareholders should not be limited to simply asking a company if or how they are taking action – and the Commission did not so relegate shareholders' role.

Second, the Staff decision did not have the benefit of a balanced presentation of the facts. Given the "case-by-case" consideration intended by the Staff, and the current factual context, it is clear that the Proposal does not merit exclusion. There has always been room in the shareholder proposal process for shareholders to advise a company through voting on a proposal *to reduce its impact on the environment.* The current Proposal involves just such a strategic framework directed toward encouraging management to monitor and set goals for the scale and pace of its response to climate change, and as such, the Proposal does not impermissibly substitute the judgment of shareholders for the judgment of the Company.

The question of whether the Company should set targets is a matter on which shareholders are well equipped to make an informed judgment. Such targets are a critical benchmark that will allow shareholders to understand whether a company is taking action at the necessary scale and pace and how that company's actions compare to other companies in the industry. The notion that it is impractical for companies to set and report on greenhouse gas reduction targets, or that doing so would impermissibly micromanage their business, is fundamentally inconsistent with market and climate realities. Over 500 countries have set or agreed to set science-based greenhouse gas reduction targets.[2] Moreover, this is an issue on which there is compelling investment market guidance, analysis, strategies and legal liabilities that drive shareholders' affirmative consideration of this issue in their investment decision making, especially institutions with a fiduciary duty to consider the interests of their long-term beneficiaries.

Given the impact of climate change on the economy, the environment, and human systems, and the short amount of time in which to address it, the Proponents believe that Devon has a clear responsibility to its investors to account for whether it plans to reduce its ongoing climate contributions at the rate and scope necessary to avoid the worst impacts of climate change. As such, the Proposal, which is not overly prescriptive in its terms, is appropriate and practical for investors to weigh in on. Therefore, the Proposal does not micromanage and is not excludable pursuant to Rule 14a-8(i)(7).

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[2] https://sciencebasedtargets.org/companies-taking-action/

Finally, the Company Letter also argued 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. Since the no action letter did not rule on that branch of the Company's argument, we are also including rebuttal on that point. In fact, the Company failed to make even a colorable claim that the Proposal has been substantially implemented.

The Company Letter describes the Company's reporting regarding GHG emissions, general plans to undertake some reductions of GHG's, and a risk analysis of resiliency of the company against two climate related scenarios. From these disclosures, we learn that absolute Company-wide emissions rose between 2016 and 2017. The Company's current emissions reduction actions are neither targeted at the full scope of Company's emissions, as requested in the Proposal, nor calibrated to occur with the speed necessary to align with global temperature containment goals.

Just as a limited set of emission reduction actions do not meet the objectives of the Proposal, Devon's climate-related disclosures do not demonstrate substantial implementation. Devon's existing climate related disclosures address the minimal actions the Company is taking to reduce emissions among other sustainability-related activities. The Company's carbon risk analysis assesses potential risk to the *Company* from climate change under certain scenarios; it does not address the risk the Company is creating to the *climate* by its current activities and planned trajectory. As such, the Company's existing emissions reduction efforts and disclosures do not equate to substantial implementation of a Proposal that seeks disclosure of short-, medium-, and long-term greenhouse gas targets aligned with the Paris Agreement's goal of maintaining global temperatures well below 2 degrees Celsius. Therefore, the Company has not substantially implemented the Proposal and it is not excludable pursuant to Rule 14a-8(i)(10).

## ANALYSIS

### I. The proposal is consistent with the Commission's 1998 Release.

We are unable to reconcile this Staff decision with the Commission's explanation of the meaning of micromanagement in the 1998 Release.

The Company based its argument for micromanagement exclusion on an inaccurate assertion that "Staff has consistently permitted exclusion of shareholder proposals under Rule 14a-8(i)(7) requesting an intricately detailed and complex report on emissions targets." As will be documented below, this is false. Instead, the Staff deviated from prior practice and Commission guidance in 2018 when it issued the decision in *EOG Resources, Inc.* (Feb. 26, 2018, *recon. denied* Mar. 12, 2018). Furthermore, regardless of the circumstances in *EOG Resources Inc.*, the current facts relating to the current Proposal necessitate a different outcome.

**Articulating and applying the micromanagement standard**

In the recent Staff Legal Bulletin 14J, Staff attempted to consolidate and clarify its explanation of micromanagement:[3]

> "As the Commission 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. The Division applies this framework when evaluating whether a proposal micromanages a company and is therefore excludable. For example, the Division agreed that a proposal to generate a plan to reach net-zero greenhouse gas emissions by the year 2030, which sought to impose specific timeframes or methods for implementing complex policies, was excludable on the basis of micromanagement [Citing *Apple Inc.* (Dec. 5, 2016)].
>
> This framework also applies to proposals that call for a study or report. For example, a proposal that seeks an intricately detailed study or report may be excluded on micromanagement grounds. [Citing *Ford Motor Company* (Mar. 2, 2004)]. In addition, the Staff would, consistent with Commission guidance, consider the underlying substance of the matters addressed by the study or report. Thus, for example, a proposal calling for a report may be excludable if the substance of the report relates to the imposition or assumption of specific timeframes or methods for implementing complex policies."

However, the Bulletin also noted that it was the Staff's intention to implement this new framework "consistent with the Commission's guidance:"[4]

In this instance, the Commission's guidance is particularly helpful, because the Commission has made it ***abundantly clear*** that it has not endorsed or proposed a prohibition against requests for timelines or specific methods. Quite to the contrary, the Commission in the preamble to the 1998 Release – the most recent and authoritative Commission-level statement regarding the application of micromanagement — made clear that requests regarding methods and timelines are not prohibited:

> ". . . in the Proposing Release we explained that one of the considerations in making the ordinary business determination was the degree to which the proposal seeks to micromanage the company. We cited examples such as where the proposal seeks intricate detail, or seeks to impose specific timeframes or to impose specific methods for implementing complex policies. **Some commenters thought that the examples cited seemed to imply that all proposals seeking detail, or seeking to promote timeframes or methods, necessarily amount to ordinary business. . . We did not intend such an implication. Timing**

[3] https://www.sec.gov/corpfin/staff-legal-bulletin-14j-shareholder-proposals
[4] *See* Release No. 34-40018 (May 21, 1998).

> **questions, for instance, could involve significant policy where large differences are at stake, and proposals may seek a reasonable level of detail without running afoul of these considerations."** (Emphasis added.)

Thus, the Commission has articulated a principle of reasonableness and practicality for determining whether a proposal micromanages. The question is not, "does the proposal suggest timelines or make specific recommendations," but rather what is the magnitude of a request weighed against mere meddling with minutiae of a company's business. This must be assessed on a case-by-case basis.

**Addressing impacts to society: core focus for proposals**

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

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

In deciding *Medical Committee,* the court noted that it would be appropriate for shareholders to use the mechanism of shareholder democracy to pose "to their co-owners, in accord with applicable state law, the question of whether they wish to have their assets used in a manner which they believe to be more socially responsible." The court further noted such a choice was not appropriately reserved to the board or management.

As stated in *Medical Committee*:

> [T]he clear import of the language, legislative history, and record of administration of section 14(a) is that its overriding purpose is to assure to corporate shareholders the ability to exercise their right — some would say their duty — to control the important decisions which affect them in their capacity as stockholders and owners of the corporation. (*SEC v. Transamerica Corp*., 163

> F.2d 511, 517 (3d Cir. 1947), cert. denied, 332 U.S. 847, 68 S. Ct. 351, 92 L. Ed. 418 (1948)).
>
> * * *
>
> What is of immediate concern…is the question of whether the corporate proxy rules can be employed as a shield to isolate such managerial decisions from shareholder control. After all, it must be remembered that "[t]he control of great corporations by a very few persons was the abuse at which Congress struck in enacting Section 14(a)." *SEC v. Transamerica Corp.*, supra, 163 F.2d at 518. We think that there is a clear and compelling distinction between management's legitimate need for freedom to apply its expertise in matters of day-to-day business judgment, and management's patently illegitimate claim of power to treat modern corporations with their vast resources as personal satrapies implementing personal political or moral predilections. It could scarcely be argued that management is more qualified or more entitled to make these kinds of decisions than the shareholders who are the true beneficial owners of the corporation; and it seems equally implausible that an application of the proxy rules which permitted such a result could be harmonized with the philosophy of corporate democracy which Congress embodied in section 14(a) of the Securities Exchange Act of 1934.

The same logic applies here. Asking a company to maintain its emissions within global requirements for avoiding catastrophic global warming is not a choice reserved exclusively to management or boards. Furthermore, the court in *Medical Committee* supported utilizing shareholder democracy in a case involving relatively limited geographical reach – namely within Vietnam – whereas the Proposal here has a highly time-sensitive impact that extends beyond a singular country, and is immeasurably greater when considering its massively global and sweeping nature.

In the decades that followed, numerous proposals on diverse subject matters have appropriately asked companies to change their business model in some way that reduced company impact associated with an important public policy issue, and were not excluded. The strategic choices regarding reducing large impacts of the company on society have been clearly established as appropriate within shareholder proposals.

**<u>Defining "Reasonable Details and Methods"</u>**

A long line of Staff decisions has held that proposals are excludable on the basis of micromanagement where they seek prescriptive actions on day-to-day levels of minutiae, and stand in contrast to the current Proposal. For instance, in *Marriott International Inc.* (March 17, 2010) the proposal addressed minutiae of operations — prescribing the flow limits on showerheads. In *Duke Energy Corporation* (February 16, 2001) the proposal attempted to set what were essentially regulatory limits on the company — an 80% reduction in nitrogen oxide emissions from the company's coal-fired plant and a limit of 0.15 lbs of nitrogen oxide per

million British Thermal Units of heat input for each boiler. This proposal was found excludable despite its objective of addressing significant environmental policy issues. Similarly, a *highly detailed study* was sought on global warming or cooling in *Ford Motor Company*, (March 2, 2004). These are important examples of proposals that sought "excess" detail, in contrast to the current Proposal.

Although the Company letter asserts that the Staff has "consistently" excluded proposals requesting targets, that is not the case. Proposals asking a company to set targets have long been an acceptable and appropriate method for achieving important public policy goals. For instance, in *Exxon Mobil Corp.* (March 23, 2007) a proposal asking the board to "adopt quantitative goals, based on current technologies, for reducing total GHG emissions from the Company's products and operations; and that the Company report to shareholders by September 30, 2007, on its plans to achieve these goals" was found not excludable under Rule 14a-8(i)(7), despite the Company's claim of micromanagement. In *Exxon Mobil Corporation* (March 12, 2007) the proposal requested that the board adopt a policy of significantly increasing renewable energy sourcing globally, with recommended goals in the range of between 15%-25% of its energy sourcing by between 2015-2025. Again, the Staff declined to treat this "method" as micromanagement under Rule 14a-8(i)(7).

Numerous other Staff decisions have similarly found that proposals asking energy companies to set targets and goals for reducing GHG emissions were not excludable as micromanagement. For instance, in *ONEOK, Inc.* (February 25, 2008) the proposal requested that the board of that oil and gas company prepare a report concerning the feasibility of adopting quantitative goals, based on current and emerging technologies, for reducing total GHG emissions from the company's operations. The company argued the proposal related to its ordinary business operations, adding that ordinary business problems should be confined to management and the board of directors, "since it is impracticable for shareholders to decide how to solve such problems at an annual shareholder meeting." The company's no-action request further argued that its GHG emissions are related to control of "line loss" of natural gas in its pipelines, which is a complex policy issue managed on a day-to-day basis and directly related to its profitability and therefore ordinary business and micromanagement. The proponent argued in response:

> …the mere fact that the subject matter of the Proposal is "complex" is not dispositive. In fact, the Staff repeatedly has rejected arguments that the alleged complexity of a proposal's subject matter renders it an attempt to micromanage… As the Proposal does not seek shareholder input on the analysis or resolution of complex issues — but, rather, asks nothing more than that the Board determine what is possible — the alleged complexity of its subject matter is beside the point.
>
> Finally, that the Company evaluates pipeline integrity and formulates policies relating to GHG emissions in the ordinary course of its business is of no moment. Again, the Proposal does not purport to tell the Company how to perform these — or any other — functions. It merely asks for an assessment of whether a given course of action (*i.e.*, the adoption of quantitative goals for the reduction of GHG

> emissions) is possible.

The Staff ultimately rejected the company's micromanagement argument and did not allow the company to omit the proposal.

The same result occurred at other companies, including some in other sectors. In *Great Plains Energy Incorporated* (February 5, 2015) the proposal requested that the electric utility adopt quantitative, time bound, carbon dioxide reduction goals to reduce corporate carbon emissions, and issue a report to shareholders on its plans to achieve the carbon reduction goals it sets. As with *ONEOK*, *Great Plains* asserted that the proposal was micromanaging by potentially affecting the company's mix of energy sources.

Similarly, many other proposals found not excludable on the basis of micromanagement have requested company goals or targets and periodic reporting to implement those goals. To cite one example, in *Tyson Foods Inc. (reconsideration granted Dec. 15, 2009)* the proposal was found not to interfere with ordinary business or micromanage in requesting that the board adopt a policy and practices for both Tyson's own hog production and (except when precluded by existing contracts) its contract suppliers of hogs. The proposal required the company to:

> (1) phase out routine use of animal feeds containing antibiotics that belong to the same classes of drugs administered to humans, except for cases where a treatable bacterial illness has been identified in a herd or group of animals; and
>
> (2) implement animal raising practices that do not require routine administration of antibiotics to prevent and control disease, and where this is not feasible, use only antibiotics unrelated to those used in human medicine; and
>
> (3) that the Board report to shareowners, at reasonable cost and omitting proprietary information, <u>on the timetable and measures for implementing this policy and annually publish data on types and quantities of antibiotics in the feed given to livestock owned by or purchased by Tyson</u>. (emphasis added)

This was a reasonable method for addressing the subject matter in Tyson Foods, just as the current Proposal addresses a reasonable method for the Company to align its operations and products with global temperature containment needs.

The Company Letter cites the prior decisions excluding proposals seeking net zero GHG emissions at *Apple*, *Deere & Company* and elsewhere. Many of these proposals excluded by the Staff as micromanaging were overly *detailed* and *prescriptive*, and therefore were excludable consistent with the Commission's 1998 Release. For instance, the proposal at *Apple* (Dec. 5, 2016) stated:

> **Resolved:** Shareholders request that the Board of Directors generate a feasible plan for the Company to reach a net-zero GHG emission status by

> the year 2030 for all aspects of the business which are directly owned by the Company and major suppliers, including but not limited to manufacturing and distribution, research facilities, corporate offices, and employee travel, and to report the plan to shareholders at reasonable expense, excluding confidential information, by one year from the 2017 annual meeting.
>
> **Supporting Statement:** For the purposes of this proposal, the proponent suggests that "net-zero greenhouse gas emissions status" be defined as reduction of GHG emissions attributed to company facilities and major suppliers to a target annual level, and offsetting the remaining GHG emissions by negative emissions strategies which result in a documented reduction equal to or greater than the company and supplier GHG emissions during the same year. As explained by the IPCC, "negative emissions solutions" can range from tree-planting to technological solutions that draw carbon from the air.
>
> We recommend consistency of negative emissions strategies with Apple's renewable energy sourcing principles:
> • Displacement - displace polluting forms of energy;
> • Additionality - select projects that wouldn't be built without Apple's involvement;
> • Accountability - rigor in measuring and tracking.
>
> For purposes of this proposal "company facilities" include company owned or operated manufacturing, distribution, research, design or support facilities, corporate offices, and also including GHG's from employee travel. "Major suppliers" include operations contracted to produce and/or ship microchips, circuit boards, storage, screens, cameras, power supplies, or finished consumer electronics products on behalf of the company. In calculating net zero, the GHG impacts of emissions and activities can be considered using GHG equivalencies. http://www.epa.gov/cleanenergy/energy-resources/calculator.html.[5]

Because the Apple proposal was a detailed proposal, some observers did not find the decision to be a significant deviation at the time. But the next step – extending the doctrine of micromanagement where it had never gone before – and we believe, beyond the intentions

[5] After exclusion and review of Staff decisions, the proposal was revised and resubmitted in 2017 with similar details, but eliminating the requirement for the company to achieve net zero by a specific date. Again, the proposal was excluded. The Staff decision, which was reached after Apple presented a detailed discourse on the complexities of greenhouse gas management at the company, allowed exclusion "under rule 14a-8(i)(7), as relating to the Company's ordinary business operations. In our view, the Proposal seeks to micromanage the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment."

stated by the Commission's 1998 Release – was reached on a proposal at *EOG Resources* (Feb. 26, 2018). The EOG proposal avoided intricate detail:

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

Unlike in Apple, in this instance the proposal avoided the Commission's stated criteria against micromanagement – involving intricate detail or imposing specific timeframes or methods of implementation – and yet the Staff allowed exclusion as "probing too deeply." As such, the decision appeared to disconnect from the clarity of the 1998 Release. The decision appeared to focus on the company's argument about the many complexities of implementation, rather than the reasonable details of the proposal. Given the nature of climate change, responsive action by companies will almost always be complicated and require addressing a range of factors and company actions; if Staff is to allow that complexity to be the ultimate measure of micromanagement, rather than looking to the actual terms of the proposal, almost every climate related proposal could be excluded.

We urge the Staff to consider the current Proposal, first and foremost, on its consistency with the 1998 Release. The current Proposal is a strategic, big picture request that is framed with minimal details and methods. The Proposal's request to describe medium- and long-term goals for GHG reduction is the leading strategy for allowing investors to assess whether a firm's scale and pace of activity in response to climate change is in alignment with their understanding of transition risks and global and public expectations.[6]

Thus, the present Proposal, presenting flexibility on timelines, goals, and actions, and represents the Proponent's best effort to work within Commission guidance as we understand it while remaining true to the needs for shareholders to ask the Company to develop clarity about the scale and pace of its response to climate change.

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[6] Legal and investment experts are increasingly calling attention to the notion that asset managers, pension funds, and other large institutional investors have a fiduciary duty to assess climate risk to protect long-term beneficiaries. Without some level of comparability across companies this responsibility is difficult to implement. *See* The Economist, "The Cost of Inaction: Recognising the value at risk from climate change. https://eiuperspectives.economist.com/sites/default/files/The%20cost%20of%20inaction_0.pdf

**Examining the framing of the current Proposal against the Commission's guidance**

- **The Proposal addresses a significant policy issue for the Company,**
- **The Proposal includes *reasonable details and methods,***
- **Therefore, the Proposal does not micromanage.**

**The Proposal is directed toward a significant policy issue for the Company**

The Proposal here addresses the significant policy issue of climate change and asks the Company to set short-, medium- and long-term targets for reducing GHG emissions. Since the Company has **no such disclosures in place for the totality of its business,** large differences — consistent with the Commission's 1998 Release — exist between current Company action and the Proposal's request.

The Proposal is intended to address the significant difference between the Company's current climate-related practices (not tracking its GHG emissions, not assessing its GHG emissions against global temperature increase goals, and not setting clear reduction goals) and the Proposal's aim to address those issues with a set of short-, medium- and long-term goals and a plan for implementation. Notably, the items described in the Company's current climate policies and reporting stop short of any GHG targets, let alone targets that are in alignment with the global 1.5° and well below 2° goals. The difference between actions currently adopted by the Company and what shareholders expect is quite large.

**The Proposal contains only reasonable details and methods**

The current Proposal contains a reasonable level of detail necessary for conveying the concept of strategic redirection in alignment with global temperature goals. Unlike in *Apple* and other of the "net zero GHG" proposals, in this instance the Proposal but gives limited guidance to the Company to provide some level of clarity on the requested action.

An array of possible approaches can be taken by the Company to reduce its GHG emissions in alignment with global temperature containment goals. The Proposal leaves flexibility for the board and management to sett targets accordingly. As the Goldman Sachs Group has noted in its October 2018 report, "Re-Imagining Big Oil",[7] there are various actions oil companies can take to achieve consistency with global temperature containment goals including revising long-term investment and product mix. The Proposal allows the Company to set targets that match its chosen course of action to reduce greenhouse gas emissions.

[7] https://www.goldmansachs.com/insights/pages/re-imagining-big-oils.html

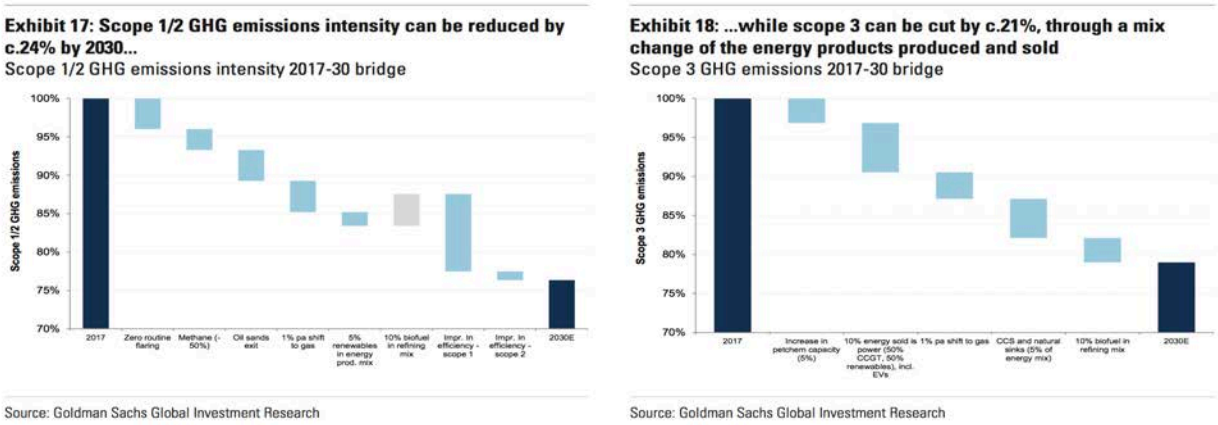


*Figure 1 Source: Re-Imagining Big Oil, Goldman Sachs Group, October 2018.*

**<u>Complexity of the Company's operations does not preclude this Proposal</u>**

The Company claims that the setting of targets "would replace the informed balancing of such factors that directs Devon management's daily decisions on how much of which product to extract or produce." This is claim is unfounded. The setting of targets is intended to help focus the Company's management on what strategic actions are required to systematically reduce its full range of emissions targets by the flexible time frames. While the Company must indeed grapple with decisions related to its product and business plans these are consistent with the strategic framing of the Proposal, the Proposal does not dictate outcomes or methods. For instance, the Proposal leaves it to the Company to determine whether it intends to develop tar sands or not, and if so, what amount of tar sands, if any, is compatible with the chosen targets; how much capital expenditure in new products will occur; what type and range of products should receive greater or lesser investments; will the Company diversify and, if so, into what areas; what range of carbon capture and storage is feasible and economic and over what time frames; whether the Company should invest in offsets and to what degree, to name a few.

These are considerations peer oil and gas companies such as Shell, BP, Equinor and Orsted have been incorporating as they move to align with the Paris Accord and make more informed strategic decisions about the future of their businesses in a low carbon economy. These issues indeed require these companies to "manage a variety of complex factors on a daily basis" and they indeed are doing so, while moving toward the goal of keeping global temperatures within the realm in which the economy, people, and the environment can continue to flourish.

The implicit and explicit claims in the Company Letter that exclusion is appropriate because existing processes are complex, decisions and strategies are well-considered, and Company priorities have been set *amounts to an assertion that the performance and goals that the Company has adopted* are not subject to advice and critique through a shareholder proposal. If this were the case, it would eliminate the vast majority of shareholder proposals directed toward

improving performance or reducing the negative impact of companies.

Staff's prior decisions do not support such a broad reading of micromanagement. Rather, Staff has consistently allowed proposals addressing a significant policy issue to go forward, even where those proposals might redirect company policy such as changing capital spending, or investment decisions made by the companies.

Reading the Company's detailed narrative regarding the complexities of considering GHG emissions reduction, we believe their essential argument is not that the language of the Proposal prescribes numerous detailed elements of GHG emissions management, but rather that being asked to undertake the task of addressing long-term GHG emissions reduction strategy would necessitate the mobilization of many parts of the company, and could even require rethinking some policies and ways of doing business.

As demonstrated in the legal discussion above, the fact that a proposal asks a company to assess and mitigate a significant impact the company has on society does not constitute micromanagement.

**The Proposal does not impose specific timelines.**

Contrary to assertions of the Company Letter, the Proposal does not impose specific deadlines in seeking "short-, medium- and long-term" targets. These are flexible benchmarks, and are intentionally framed to allow discretion of the board and management in determining appropriate time frames.[8]

The current Proposal is a strategic, big-picture request that is framed with the minimal details and methods needed to ask the Company to explain how it is aligning its long-term business strategy with the projected long-term constraints posed by climate change. The Proposal's request to describe short-, medium- and long-term goals for GHG reduction is the leading strategy for allowing investors to assess whether a firm's scale and pace of activity in response to climate change is in alignment with global climate goals and public expectations. Shareholders must make strategic decisions about their investments. Asking a company to broadly ground requested targets in short, medium, and long term buckets helps shareholders more effectively assess company plans and compare companies actions. For instance, knowing that one company is beginning to immediately and methodically reduce targets versus another company that plans to achieve the majority of reductions in the long term is important information to shareholders. The requested information is reasonable, serves an important purpose, and is not overly

[8] The TCFD has stated that its use of short-, medium- and long-term time frames for financial reporting does not imply a specific timeframe. "The Task Force is not specifying time frames for short, medium, and long term given that the timing of climate-related impacts on businesses will vary. Instead, the Task Force recommends preparers define time frames according to the life of their assets, the profile of the climate-related risks they face, and the sectors and geographies in which they operate." TCFD, *Implementing the Recommendations of the Task Force on Climate Related Financial Disclosures*, https://www.fsb-tcfd.org/wp-content/uploads/2017/06/FINAL-TCFD-Annex-062817.pdf, page 4.

prescriptive.

In addition, in the context of a discussion of micromanagement, it also must be recognized that the Proposal is an advisory proposal. It does not control the day-to-day actions of the Company, but provides recommendations of the Company's investors for the board and management to take under advisement.

Thus, the Proposal, presenting flexibility on timelines and goals, represents the Proponent's best effort to work within the framework of the 1998 Release while remaining true to the needs of shareholders to ask the Company to develop clarity about the scale and pace of its response to climate change.

Moreover, this Proposal is well within the grasp of investors. The relevance and importance of permitting a vote on the current Proposal is reflected in the groundswell of market activity seeking similar objectives in various segments of investor engagement and strategy.

The Proponent and many other investors believe that readiness for climate disruption requires shareholders to strategically appraise and consider realignment, taking into account the carbon footprint of their financing activities,[9] following the directive of the Paris Agreement in redirecting finance flows. This includes portfolio-wide engagement with companies to map GHG emissions and targets. Such investment strategies are resulting in demands from investors that investees measure their emissions and plan reductions in anticipation of the inevitable downward direction of carbon emissions that global policy will require as the world reckons with the climate change emergency. As such, the framing of the Proposal is not only practical for investor consideration — it is necessary.

The implied assertion that these issues are too complicated for shareholders' comprehension and participation ignores the reality of the investment marketplace and the strategic focus of the Proposal. It also ignores the reality that most of the investing marketplace seeks the guidance of highly educated, experienced investment managers who evaluate and incorporate material risks into stock selection and portfolio construction across a wide range of complex but fundamental financial, statistical, scientific, behavioral, economic, and technical factors, in addition to the environmental factors under consideration in the current Proposal.

As with other material factors that systematically impact a company's business and operations, the need to set GHG reduction targets is neither more complex, different, nor inappropriate for shareholder consideration as compared with many other material factors employed by investors in decision-making.

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[9] Along the same vein, the economy-wide impacts posed by climate disruption, and responses of systemically important institutions is also reflected in reports like the Brookings Institution's report: *Climate change and monetary policy: Dealing with disruption.* Warwick J. McKibbin, Adele Morris, Peter J. Wilcoxen, and Augustus J. Panton, Friday, December 1, 2017.
https://www.brookings.edu/research/climate-change-and-monetary-policy-dealing-with-disruption/

**2. <u>Current *circumstances* demonstrate the Proposal does not address ordinary business.</u>**

As stated under the 1998 Release and Staff Legal Bulletin 14 J, determinations as to whether a proposal may be excluded "will be made on a case-by-case basis, taking into account factors such as the nature of the proposal and the *circumstances* of the company to which it is directed."[10] (emphasis added) In the present circumstances, exclusion is not appropriate.

A review of recent history leading to this Proposal is in order. The quickly evolving actions of financial markets, oil and gas companies, and understanding of the impact of climate change -- demonstrates, in context, that the current Proposal represents a practical and necessary response to an urgent global issue facing the Company and its investors.

**<u>December 2015 — The Paris Agreement (COP21)</u>**

At the 21st Session of the Conference of the Parties (COP 21) in Paris, 195 global governments agreed to restrict GHG emissions to cap global temperature increase to well below 2 degrees Celsius from pre-industrial levels and submitted plans to begin achieving the necessary GHG emission reductions. In the Paris Agreement, signatories also acknowledged the need to strive to keep global warming to 1.5 degrees, recognizing current and projected harms to low lying islands from warming-related sea level rise. The parties put mechanisms in place for transparent reporting by countries via their Nationally Determined Contributions and a ratcheting mechanism every five years to create accountability for achieving these goals.

The Paris Agreement Clause 2.1c established the goal of "Making finance flows consistent with a pathway towards low GHG emissions and climate-resilient development." The Conference of the Parties decision document called on the private sector to assist in meeting the goals of the agreement.[11]

**<u>2016 - 2018 – Increased frequency of extreme weather events congruent with predictions of climate change science, harmful global economic impact</u>**

From 2016 to 2018, a series of extreme weather events occurred, causing astounding global financial losses. In 2017, Hurricanes Harvey, Irma and Maria left a trail of destruction across the Caribbean Islands, Puerto Rico, Texas and parts of western Florida; wildfires ravaged parts of California in particular, as well as regions outside of the US; and severe precipitation events highlighted the vulnerability of cities to flood events, such as in Houston, which suffered major

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

[11] *For example, paragraphs 133 and 14 of the Report of the Conference of the Parties (the Agreement-adopting document) provides that the Conference:*
*133. Welcomes the efforts of all non-Party stakeholders to address and respond to climate change, including those of civil society, the private sector, financial institutions, cities and other subnational authorities;*
*134. Invites the non-Party stakeholders referred to in paragraph 133 above to scale up their efforts and support actions to reduce emissions and/or to build resilience and decrease vulnerability to the adverse effects of climate change ….*

flooding on account of the severe precipitation that came with Hurricane Harvey. Similar events repeated in 2018, with Hurricanes Florence and Michael, and the deadliest and most destructive wildfire season on record for the State of California, with 1.9 million acres burned.[12] These billion-dollar disasters are consistent with the types of extreme and disruptive weather events that are anticipated to occur more frequently as a result of climate change. This has elevated concern among scientists and investors that climate change is occurring more rapidly than anticipated. The case of the wholly unexpected PG&E bankruptcy, which stemmed from losses associated with global warming related wildfires, is an example of the negative and unpredictable financial impact global warming can have on portfolios.

According to Swiss reinsurance firm Swiss Re, insured losses from natural and man-made disasters in 2017 were the highest ever recorded in a single year, totaling USD 144 billion. Globally, insured and uninsured losses combined totaled USD 337 billion, with USD 330 billion of these losses coming from hurricanes, severe storms, wildfires, floods and other weather events in North America, the Caribbean and Europe.[13] Reinsurance firm Munich Re reported in 2018 that the U.S. share of global losses in 2017 was even larger than usual due to these catastrophic weather-related events: 50% as compared to the long-term average of 32%. When considering North America as a whole, the share rises to 83%.[14] According to NOAA's National Centers for Environmental Information, there were 14 weather and climate disaster events in the United States with losses exceeding USD 1 billion in 2018. 2018 was the fourth most devastating year in history, after 2017, 2011 and 2016.[15]

**October 2018: Intergovernmental Panel on Climate Change identifies large differences between 2ºC and 1.5ºC warming**

A 2018 report of the Intergovernmental Panel on Climate Change provided an updated assessment based on recent understanding of the pace of climate change, regarding the difference between global success at containing the temperature increase below 2° versus containing the temperature increase below 1.5°. The differences are cataclysmic, and yet there is reason to believe that the world will overshoot even the 2° goal, and heat by as much as 4º C if rapid and significant action is not taken.

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[12] *Jeff Berardelli, "2018's top 3 most expensive climate-driven events took place in U.S., report says", CBS News (December 29, 2018), https://www.cbsnews.com/news/extreme-weather-events-2018-top-3-most-expensive-climate-driven-events-took-place-in-us/.*

[13] *Lucia Bevere, Marla Schwartz Pourrabbani and Rajeev Sharan, "sigma 1/2018: Natural catastrophes and man-made disasters in 2017: a year of record-breaking losses", Swiss Re (11 Apr 2018), https://www.swissre.com/institute/research/sigma-research/sigma-2018-01.html.*

[14] *Press Release, "Natural catastrophe review: Series of hurricanes makes 2017 year of highest insured losses ever,"*
*Munich Re (January 4, 2018),*
*https://www.munichre.com/site/corporate/get/params_E75174463_Dattachment/1627349/MunichRe-NatCat-2017-PR-2018-01-04.pdf.*

[15] *NOAA National Centers for Environmental Information (NCEI) U.S. Billion-Dollar Weather and Climate Disasters (2019), https://www.ncdc.noaa.gov/billions/.*

The report was geared toward identifying how much greater risk will be between maintaining global temperatures below 1.5º or 2º. For instance, "How much more would heavy rainfall events happen in a world of 1.5 degrees warming compared to today, and how much more severe would things get if warming increased to 2 degrees or beyond?" The Brookings Institution's article on the dense IPCC report noted:

> The report offers plenty of granular detail, for example, estimating how much additional habitat would be lost when moving from 1.5 to 2 degrees, or how many more ice-free summers the Arctic would have. Some of them are surprisingly sharp increases for half a degree—such as the estimate that coral reefs would degrade "only" an additional 70-90 percent under 1.5 degrees but 99 percent in a 2 degree world.[16]

The report also demonstrates that to contain global emissions on the 1.5° path, **global emissions of GHGs need to drop by 45 percent from 2010 levels by 2030.** This is at a time of recent ***increases*** in GHG emissions. The IPCC update only compounds shareholder concerns about the current pace of reduction in GHG emissions from all sources. Furthermore, a key concept developed by scientists participating in implementation of the Paris Agreement is whether "unburnable" fossil fuels are being generated by fossil fuel companies opening new reserves and supplies.[17]

In October 2018, commenting to the press on the IPCC's Special Report "Global Warming of 1.5 ºC", U.N. World Meteorological Organization (WMO) secretary-general Petteri Taalas told reporters in Geneva: "There is clearly need for a much higher ambition level to reach even a 2 degrees target, we are moving more toward 3 to 5 (degrees) at the moment."[18]

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[16] Nathan Hultman, "We're almost out of time: The alarming IPCC climate report and what to do next," Brookings Institution (October 16, 2018), https://www.brookings.edu/opinions/were-almost-out-of-time-the-alarming-ipcc-climate-report-and-what-to-do-next/.

[17] For instance, an influential 2015 article in the journal *Nature* noted: "It has been estimated that to have at least a 50 percent chance of keeping warming below 2°C throughout the twenty-first century, the cumulative carbon emissions between 2011 and 2050 need to be limited to around 1,100 gigatonnes of carbon dioxide (Gt CO2). However, the greenhouse gas emissions contained in present estimates of global fossil fuel reserves are around three times higher than this and so the unabated use of all current fossil fuel reserves is incompatible with a warming limit of 2 °C. Our results suggest that, globally, a third of oil reserves, half of gas reserves and over 80 percent of current coal reserves should remain unused from 2010 to 2050 in order to meet the target of 2°C. Development of resources in the Arctic and any increase in unconventional oil production are incommensurate with efforts to limit average global warming to 2°C. Our results show that policymakers' instincts to exploit rapidly and completely their territorial fossil fuels are, in aggregate, inconsistent with their commitments to this temperature limit. Implementation of this policy commitment would also render unnecessary continued substantial expenditure on fossil fuel exploration, because any new discoveries could not lead to increased aggregate production." *Christophe McGlade & Paul Ekins, "The geographical distribution of fossil fuels unused when limiting global warming to 2°C", Nature, January 8, 2015.*

[18] Nina Chestney, Jane Chung, "Rapid, unprecedented change needed to halt global warming - U.N," Reuters (October 7, 2018)

**March 2019: Climate change is designated a high fiscal risk and strategic responsibility for federal government**

In March 2019, the Government Accountability Office issued a report on "high risk" areas for the federal government on which greater progress is needed to prevent fiscal damage to the federal government. The report identified climate change risk as a significant exposure. In the chapter entitled "Limiting the Federal Government's Exposure by Better Managing Climate Change Risk", the GAO states that the cost of climate change mounts, while the federal government continues to lag behind on reducing its climate-related fiscal exposure. Federal obligations and appropriations for disaster assistance are already nearing half a trillion dollars since 2005[19]. And in the wake of 2017's devastating California wildfires and four near-sequential hurricanes — 3 of which ranked among the top five costliest hurricanes on record — the federal flood insurance program is projected to cost $8 billion annually from 2017 through 2026.[20] Meanwhile the federal crop insurance program owes $21 billon to the Treasury, a growing debt demonstrating an inability to pay for current climate-related costs.

The GAO report makes clear the federal government has a strategic role in reducing federal fiscal exposure — including as a "leader of a strategic plan that coordinates federal efforts and informs state, local and *private-sector* action". (Emphasis added) However, as climate change risks remain on the High-Risk List, it is not meeting those leadership obligations. Key to meeting the GAO's criteria for removal from the High-Risk List is the federal government identifying responsibilities of other entities, in addition to federal and state governments.

As a result of this report, it seems clear that the Securities and Exchange Commission should facilitate and not interfere with the ability of investors to engage and undertake private ordering to encourage portfolio companies to mitigate climate change. Even members of the corporate bar have recognized that, in the absence of effective regulatory responses by the federal government, private ordering mechanisms as reflected in the shareholder proposal process represent the best forum for resolving issues of material concern to investors.[21]

**In recent months, other oil and gas companies' response to shareholder initiatives demonstrate that the model of setting medium and long-term targets is practical**

Notably, Shell has recently announced that it will set an ambition to reduce its net carbon

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[19] *High-Risk Series: Substantial Efforts Needed to Achieve Greater Progress on High-Risk Areas, March 2019.* GAO-19-157SP, P. 118. https://www.gao.gov/assets/700/697245.pdf.

[20] *High-Risk Series: Substantial Efforts Needed to Achieve Greater Progress on High-Risk Areas, March 2019.* GAO-19-157SP, P. 110 - 111, 113. https://www.gao.gov/assets/700/697245.pdf.

[21] The Era of Private Ordering for Corporate Governance, Gary L. Tygesson, Dorsey & Whitney LLP, on Wednesday, August 23, 2017:
"The power of institutional investors to effect changes in the corporate governance framework in the absence of regulation has been demonstrated by the recent and dramatic rise of privately-ordered proxy access. …
"Regardless of, or perhaps in response to, any relief provided by Congress or the SEC, investors and groups of investors are likely to continue to push for greater shareholder engagement and enhanced disclosure and will use the their voting power to effect change, especially in ESG and other non-traditional performance areas where they see a strong tie to long-term value creation."
https://corpgov.law.harvard.edu/2017/08/23/the-era-of-private-ordering-for-corporate-governance/

footprint, including product-related emissions, by 50 percent by 2050, with interim targets.[22] Shell published a graphic that depicts the company's GHG plans succinctly:

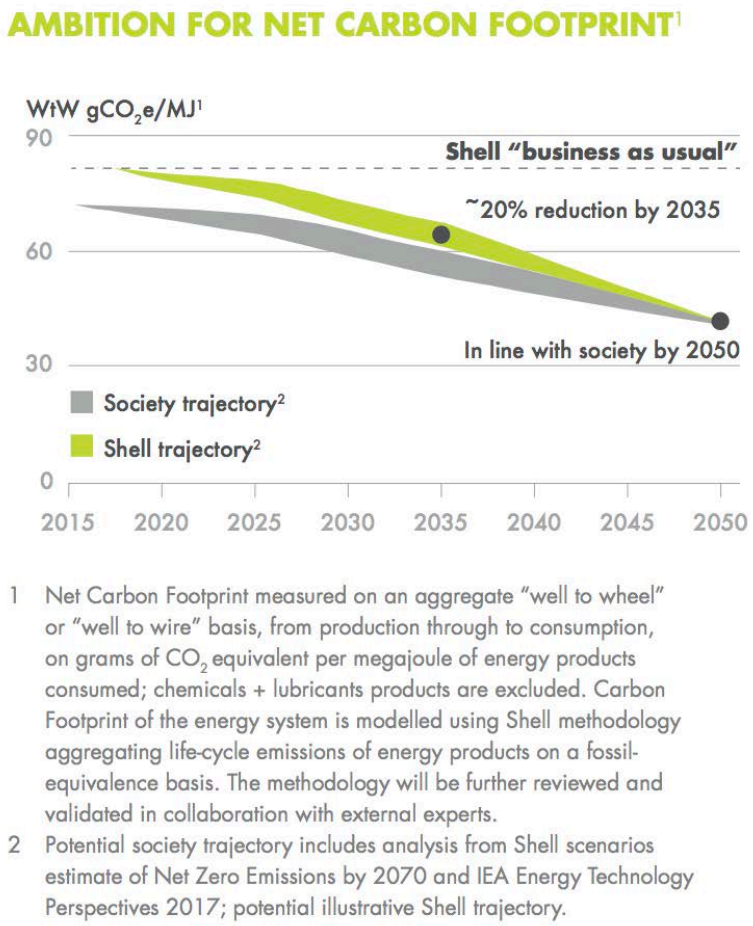


*Figure 1 Shell Oil's Published Medium and Long Term GHG goals aligned with the Paris Agreement*

Source: Shell Energy Transition Report[23]

In its 2018 Climate Disclosure Project Report, Shell explains:

"Shell announced its ambition in November 2017 to reduce

[22] CDP — Climate Change 2018 Information Request — Royal Dutch Shell plc. https://www.shell.com/sustainability/sustainability-reporting-and-performance-data/performance-data/greenhouse-gas-emissions/_jcr_content/par/tabbedcontent/tab/textimage.stream/1534322148157/faafbe2d44f8f9ade10d1202b31b8552a67d1430dc3ae7ddc192fc83e9f835c8/2018-cdp-climate-change-submission-180815.pdf, C4.1b

[23] https://www.shell.com/energy-and-innovation/the-energy-future/shell-energy-transition-report.html

> the net carbon footprint (NCF) of its energy products in step with society's progress to reduce GHG emissions. We aim to **cut our and our customers' GHG emissions from energy products that Shell sells** — expressed in grams of CO2 equivalent per megajoule consumed — **by around half by 2050**. **As an interim step by 2035,** and predicated on societal progress, we aim for a **reduction of around 20% compared with 2017 levels.…**
>
> We have applied our own unique Net Carbon Footprint methodology, using our Sky scenario analysis and the IEA's Energy Technology Perspectives 2017 as inputs. **This has identified the reduction in the Net Carbon Footprint of the energy system needed to achieve a reasonable chance of limiting global warming to well below two degrees Celsius (2°C)."**[24] [emphasis added]

BP announced support for a 2019 resolution requesting targets for reducing GHG emissions from its operations aligned with the Paris goals, and disclosure of estimates for future reductions in the carbon intensity of its products.[25]

Total, a major French energy company, has invested in solar energy[26] and is reducing the carbon intensity of its energy products as a means for it to achieve a goal for the company's mix of energy products to include 15 - 20% renewables by 2035.[27] The company's climate action plan, disclosed in its report *Integrating Climate Into Our Strategy*, includes a detailed description of its Carbon Intensity Indicator, and how it plans to gradually decrease the carbon intensity of its

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[24] Shell also notes: "Our approach to reducing the NCF covers emissions directly from Shell operations (including from the extraction, transportation and processing of raw materials, and transportation of products), those generated by third parties who supply energy to us for production, and our customers '92 emissions from their consumption of our energy products. Also included are emissions from elements of this life cycle not owned by Shell, such as oil and gas processed by Shell but not produced by Shell, or from oil products and electricity marketed by Shell that have not been processed or generated at a Shell facility. Excluded are our emissions or our customers emissions from our chemicals and lubricants products, which are not used to produce energy."

[25] "BP supports shareholder resolution on climate change disclosure. Says strategy consistent with Paris goals," *Offshore Energy Today* (February 1, 2019), https://www.offshoreenergytoday.com/bp-supports-shareholder-resolution-on-climate-change-disclosure-says-strategy-consistent-with-paris-goals/. Equinor, a major Norwegian energy company, has announced a goal to further reduce the carbon intensity of its upstream production to 8 kilograms of CO2 per barrel of oil equivalent by 2030, and is investing in wind energy development. The company plans to devote up to 25% of research funds to new energy solutions and energy efficiency by 2020. According to Equinor's website, "Our strategy focuses on three main areas. We are building a high value and low carbon oil and gas portfolio, we are building a material industrial position in renewable energy and low carbon solutions, and we embed climate risk and performance into our decision-making. **Our Climate Roadmap explains how we plan to achieve our goals and how we will develop our business, in support of the ambitions set out in the Paris climate agreement**" (emphasis added).https://www.equinor.com/en/how-and-why/climate-change.html, p. 30

[26] "Integrating Climate Into Our Strategy," *Total* (September 2018), https://www.total.com/sites/default/files/atoms/files/total_climat_2018_en.pdf, p. 35

[27] *Id*. at 6.

energy products in keeping with the Paris Agreement. This report also describes how Total includes avoided emissions and is considering its options to increase natural gas production as a near-term step.

**Recent investor engagement demonstrates practicality and appropriateness of Proposal**

Numerous organizations and initiatives have been created by investors representing tens of trillions of dollars of market capital to redirect financial flows consistent with the Paris Agreement's temperature containment goals. Most recently, in a letter sent to the Office of Chief Counsel on March 8, 2019, funds and institutions representing $9.5 trillion in assets under management wrote to the SEC with respect to the pending no action request at Exxon Mobil Corporation on a proposal with nearly identical language to the present one. As in the current proposal, Exxon Mobil argues that the proposal micromanages. The investors note that:

> The issues of climate change and GHG emissions have become increasingly urgent as their impact on our portfolios and on society becomes more tangible. Many investors are increasingly committing to work to ensure that our portfolio companies are in alignment with long-term demands of climate change mitigation.

They also note that "the Proposal includes reasonable and necessary details. It is neither vague nor overly prescriptive. For years shareholders have been voting on climate-change-related proposals at ExxonMobil and many other companies and companies have been engaging with shareholders on the topic."

A substantial portion of the investing marketplace clearly wants to be able to vote for proposals like the present one. They are actively engaging with numerous companies on the same objectives as presented in the Proposal. Moreover, during the 2018 proxy season, proposals asking companies to adopt GHG emissions reduction targets were filed at 17 companies. Five of these proposals were reportedly withdrawn with a commitment from the companies to take action. Seven of the proposals went to a vote, receiving an average of 35% support.[28] Support for the proposals is consistent with investor demand for climate disclosures in general, and science-based targets specifically, both of which have increased substantially as the risks have become more apparent.[29]

The capital markets have also begun to implement carbon footprinting and carbon asset risk assessment in portfolio analysis, and through engagements with portfolio companies requesting disclosure and improved performance in alignment with the Paris goals. For instance:

> Anne Simpson, Investment Director, Sustainability, at California Public Employees' Retirement System stated: "Mapping a company's carbon footprint, or the emissions it produces, and measuring its progress in this area is an important and growing part of our portfolio

[28] www.ceres.org/resolutions
[29] *"What Investors are Saying," Science Based Targets.* *http://sciencebasedtargets.org/what-investors-are-saying/*

> analysis. Over the long-term investors are saying to these companies that we want them to align their business strategy with the Paris Agreement."
>
> Jeanett Bergan, Head of Responsible Investment at KLP stated regarding the potential of better long term returns from setting SBTs: "If we as active owners improve the performance of CO2 intensive companies, that will help us secure better returns in the future."
>
> Andy Howard, Head of Sustainable Research at Schroders stated:
>
> "We want to know how exposed a particular business is to the changing context on climate and what it is practically doing to make the changes required; including its targets, timeframes and the extent of its ambition."

**Numerous large investor initiatives support the approach of the Proposal**

A number of large initiatives by investors demonstrate the practicality and necessity of the approach taken by the Proposal.

**Climate Action 100+ initiative** is currently backed by 324 investors with more than $33 trillion in assets under management, including 87 North American investors. Climate Action 100+, launched in December 2017, is an initiative led by investors to engage systemically important GHG emitters and other companies across the global economy that have significant opportunities to drive the clean energy transition and achieve the goals of the Paris Agreement. The aim of these engagements is to get companies to:

> Implement a strong governance framework which clearly articulates the board's accountability and oversight of climate change risks and opportunities;
>
> Take action to reduce greenhouse gas emissions across the value chain, consistent with the Paris Agreement's goal of limiting global average temperature increase to well below 2 degrees Celsius above pre-industrial level;
>
> Provide enhanced corporate disclosure in line with the final recommendations of the Task Force on Climate-related Financial Disclosures (TCFD) and, when applicable, sector-specific Global Investor Coalition on Climate Change Investor Expectations on Climate Change to enable investors to assess the robustness of companies' business plans against a range of climate scenarios, including well

> below 2-degrees Celsius, and improve investment decision-making.[30]

The United Nations-supported Principles of Responsible Investment (PRI) launched the Montréal Carbon Pledge at its annual conference in September 2014. The pledge commits those that sign it to measure and disclose the carbon footprint of part or all of their equities portfolio. Such a footprint helps investors better understand, quantify and manage climate change-related impacts, risk and opportunities. **The Pledge has attracted commitment from over 120 investors with over USD 10 trillion in assets under management, as of the United Nations Climate Change Conference (COP21) in December 2015 in Paris**. Support for the Montréal Carbon Pledge comes from investors across Europe, the U.S., Canada, Australia, Japan, Singapore and South Africa. Signatories include Establissement du Régime Additionnel de la Fonction Publique (ERAFP), PGGM Investments, Bâtirente, CalPERS, and University of California.[31]

Building on the Montréal Carbon Pledge, the global Portfolio Decarbonization Coalition currently has members representing $800 billion in assets under management that are taking decarbonization approaches to their portfolios to support the transition to a low-carbon economy. PDC's members implement decarbonization commitments including formal decarbonization related objectives and targets covering some or all of their investment portfolios, and measurement and periodic disclosure of their carbon exposure (or 'footprint') — the carbon intensity of their capital.[32]

The largest investing institutions are also being monitored by **the Asset Owners Disclosure Project (AODP)**, based in the UK, which rates and ranks the world's largest institutional investors and assesses their response to climate-related risks and opportunities.

**Task Force on Climate-Related Financial Disclosures (TCFD).** The Financial Stability Board (FSB) set up the Task Force on Climate-Related Financial Disclosures (TCFD) under the chairmanship of Michael Bloomberg. The report focuses on recommendations for disclosure of climate risk in annual financial reports. The goal of the TCFD is to develop recommendations for voluntary climate-related financial disclosures that are consistent, comparable, reliable, clear, and efficient, and provide decision-useful information to lenders, insurers, and investors. The TCFD released its final recommendations report in June 2017. Notably, in line with the Proposal, the TCFD recommendations include assessment **of short- medium- and long-term carbon risks and resilience**. For investors who are implementing the TCFD on their portfolios in light of the 2°C goals, disclosures by portfolio companies of GHG emissions and reduction ambitions on short- medium and long-term timelines are relevant to portfolio management strategies.

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[30] *https://www.ceres.org/initiatives/climate-action-100.*
[31] *See Montréal Pledge campaign website https://montrealpledge.org/.*
[32] https://unepfi.org/pdc/

**Principles of Responsible Investment (PRI) "Inevitable Policy Response" Investment Strategy for portfolio allocation,** anticipates the disruptive economic impacts of global regulatory responses as climate change worsens, and therefore provides strategies for diversification, engagement and risk transfer to protect the investors long-term portfolio value. The PRI, supported by investors with $80 trillion in assets under management, has begun a focus on the implications for investors of the "***inevitable policy response***" (IPR) when national and global policymakers come to realize that they must impose rapid, stringent carbon constraints to head off a worsening global climate change catastrophe.[33]

**The Transition Pathway Initiative (TPI)** is a global investor initiative that assesses companies' preparedness for the transition to a low-carbon economy by: evaluating companies' management of GHG emissions, management of climate-related risks and opportunities; evaluating how planned or expected future carbon performance compares to targets and pledges made as part of the Paris Agreement; and by publishing the analyses through a publicly-available tool hosted by its academic partner, the Grantham Research Institute on Climate Change and the Environment at the London School of Economics and Political Science.[34] The TPI was launched in January 2017 and is currently supported by investors with $13.3 trillion AUM (as of Feb 2019).

**Sustainable Energy Investment (SEI) Metrics tested $500 billion of equity for 2° C alignment** (SEI Metrics, 2018). SEI Metrics covers a limited number of sectors with public equity and corporate portfolios. The project was recently relaunched as Paris Agreement Capital Transition Assessment (PACTA), which aims to measure the current and future alignment of

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[33] PRI notes: In effect, an IPR is what would need to happen if the world was to move towards a target of 1.5-1.75°C with 50-66% probability. Indeed, if policy actions do not ratchet up from current levels, we would need urgent and forceful policy action today to achieve anything close to attaining a 1.5°C outcome. IPR can thus be considered a "backstop" scenario — and a call to action — to accelerate current efforts to align with the Paris Agreement. An IPR trajectory is not being actively considered by most corporations and investors, hence the PRI's support for assessing its effects and the preparatory actions that are needed. There are many permutations for an IPR in terms of when and what will occur. This outline contains assumptions about an announcement in 2025 for a 2030 implementation to address the overshoot, and specific policies that could be considered.
The PRI has prepared papers to assist investors concerned with this future market disruption, including a paper on projecting the timelines and severity of the inevitable policy response:
At its simplest level, an IPR would precipitate (in aggregate) substantial shifts in capital from high- to low-carbon activities that require preparatory actions for investors to take today. The technical papers build a framework for exploring the policy and technology pathways that would deliver a rapid economic transition. They also consider the investment risk and return implications at the sector and asset level to integrate an IPR into strategic asset allocation (SAA) and portfolio construction frameworks. Finally, the papers consider the actions that investors would need to take both prior to, during and in the aftermath of an IPR, in terms of reviewing governance arrangements, risk management processes and engagement activities, including the management of stranded assets. … It is evident that the longer the delay in reducing emissions, the higher will be the need for rapid transition and forceful policy action. … We believe this work bolsters the rationale for an escalation in actions now to refine and make decisions more efficiently, and to ultimately improve the resilience of investment portfolios and decision-making processes to what could soon be a more volatile environment."
"The Inevitable Policy Response: When, What and How; Policy pathways to below 2° and estimating the financial impacts," Vivideconomics (September 2018), *https://www.unpri.org/download?ac=5368*.

[34] *Grantham Research Institute on Climate Change and the Environment at the London School of Economics and Political Science Transition Pathway Initiative, http://www.lse.ac.uk/GranthamInstitute/tpi/about/.*

investment portfolios with a 2° C scenario analysis, allowing investors to measure climate performance and address the challenge of shifting capital towards clean energy investments. Since its launch, over 2,000 portfolios have been tested for 2° C alignment with over $3 trillion in assets under management. **Of the 25% of surveyed investors involved in the road-test, 88% said they were likely or very likely to use the assessment in portfolio management, engagement, and / or investment mandate design**.[35]

The **Science Based Targets initiative (SBTi)** is creating methods and implementation guidance to support financial institutions in setting targets for their investing and lending activities.[36] This carbon reduction initiative mobilizes companies to set science-based targets and boost their competitive advantage in the transition to the low-carbon economy. The initiative defines and promotes best practices in setting targets, offers resources and guidance to reduce barriers to adoption, and independently assesses and approves companies' targets. Science-based targets provide companies with a clearly defined pathway to future-proof growth by specifying how much and how quickly they need to reduce their GHG emissions. Targets adopted by companies to reduce GHG emissions are considered "science-based" if they are in line with the level of decarbonization required to keep global temperature increase below 2° C compared to pre-industrial temperatures, as described in the Fifth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC AR5).

**International Standards Organization in 2019 is developing a climate finance standard**: ISO 14097, which will track the impact of investment decisions on GHG emissions; measure the alignment of investment and financing decisions with low-carbon transition pathways and the Paris Agreement; and identify the risk from international climate targets or national climate policies to financial value for asset owners. The standard will help define benchmarks for decarbonization pathways and goals, and track progress of investment portfolios and financing activities against those benchmarks; identify methodologies for the definition of science-based targets for investment portfolios; and develop metrics for tracking progress.

For all of these reasons, we believe the Staff decision excluding the Proposal on the basis of micromanagement was in error, and we urge reconsideration.

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[35] *SEI Metrics Project, https://2degrees-investing.org/sei-metrics/. In 2017, the model was expanded to corporate bonds and credit, as well as a broader range of sectors.*
[36] *https://sciencebasedtargets.org/*

**3. Rule 14a-8(i)(10)**

Since the Company Letter also asserted that the Proposal was excludable as "substantially implemented" by the Company, and the Staff decision did not reach a conclusion regarding this alternative basis for exclusion, we reply here regarding the Rule 14a-8(i)(10) exclusion claim:

- **The Company has not disclosed medium- and long-term GHG targets**,

- **The Company has neither estimated nor set targets for reducing GHG emissions attributable to its products,**

- **The Company has neither calculated nor set targets aligned with limiting global temperature increase to 2º and pursuing 1.5° of warming,**

- **Therefore, the activities of the Company do not substantially implement the request of the Proposal.**

Devon asserts that the objective of the Proposal is "obtaining a report on measures being taken to reduce Devon's greenhouse gas emissions" and understanding "the resulting impact on Devon's operations and assets." This statement fundamentally misconstrues the objective of the Proposal. It is not enough to simply reduce a subset of Company emissions. What shareholders seek through this Proposal is disclosure of targets in line with the Paris Climate Agreement. Shareholders are asking the Company to disclose whether it is reducing all of its greenhouse gas emissions, not only its operational emissions, but the full range of direct and indirect emissions generated by the Company – at the scale and the pace necessary to meet global climate goals.

The Company states that it has measures in place to reduce its greenhouse gas emissions and thus to reduce operational and asset risks from climate change. While the Company might be making some reductions in greenhouse gas emissions and analyzing climate change risk to the Company, this is not the disclosure the Proposal seeks. The website sections and reports cited by the Company are devoid of information demonstrating that it has a strategy or goal to scale its decarbonization efforts in line with the Paris Climate Agreement by 2050.

Devon notes that it discloses sustainability measures and cites to the fact that "reducing emissions has been a long-standing focus at Devon." Shareholders recognize that Devon has adopted a broad suite of sustainability measures, from air quality to land use, that achieve a range of environmental goals. These sustainability measures, however, do not suggest that Devon has adopted a strategy for reducing its full scope of greenhouse emissions. It has not. It is currently only reducing a subset of its operational emissions. Devon's sustainability measures, and the limited disclosures on climate change emission reductions, do not address whether the Company has set a time frame of emission reductions in in alignment with the pace necessary to achieve Paris goals which have set a goal of maintaining global warming well below 2ºC with the added

goal of striving to achieve warming below 1.5ºC. As recently noted by the IPCC, to maintain levels of global warming below 1.5ºC, reductions must occur quickly and be on a path toward net zero emissions by 2050.[37] Limited greenhouse gas reduction actions, without an intense focus on end goals and timelines, will not meet these global needs.

The Company reports that it tracks greenhouse gas emission metrics and reports this information publicly through CDP. This is an important first step in reducing emissions. It is insufficient, however, to meet the Proposal's objective. The Company's argument that setting Scope 1 greenhouse emissions goals for a limited set of its operations -- Canadian tar sands -- as required by Canadian law, is equivalent to satisfying the Proposal, is facile.[38] These actions are not equivalent. The Company has set those targets only because they were required by law. All other projects in the U.S. and elsewhere are not governed by targets. The purpose of the Proposal is to move the Company to create targets applicable to its full range of emissions. It has not done so.

The Company also points to the variety of measures it takes to reduce its greenhouse gas emissions. Devon, however, provides no meaningful timeline or targets demonstrating that these measures are sufficient to meet the Proposal's goals. The measures referred to by Devon are limited to reducing operational or energy related emissions, which together comprise less than 25% of the Company's total emissions.[39] More importantly, while Devon cites to certain successes it has had in reducing greenhouse gas emissions, particularly from 2015 to 2016, its direct and indirect emissions increased from 2016 to 2017[40] as a result of its tar sand operations (from 5.84 to 5.94 million tonnes $CO_2$e), demonstrating current misalignment with the Paris Climate Agreement.

To reduce its full Scope 1 through 3 emissions, the Company will need to undertake additional measures. Such measures may include, for instance, bringing on cleaner energy products, reducing total or targeted capital expenditures on oil and gas projects, moving away from tar sands, increasing the percentage of gas sold, diversifying its business, implementing carbon capture and storage ("CCS"), buying offsets, etc. The Company does reference CCS related activities, but these appear to be primarily limited to funding research into new CCS technologies. CCS may indeed be a "game-changing" technological solution in the future, but the Company currently has no CCS projects operating or planned that would meaningfully reduce its greenhouse gas emissions in line with Paris goals.

Finally, the Company notes that it has prepared a scenario analysis report that assesses risk to the

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[37] https://www.ipcc.ch/2018/10/08/summary-for-policymakers-of-ipcc-special-report-on-global-warming-of-1-5c-approved-by-governments/

[38] CDP, C4.1, although from the CDP reporting it appears the goal is company-wide, the cited reference is to a Canadian regulation, https://www.cdp.net/en/formatted_responses/responses?campaign_id=62255737&discloser_id=1289&locale=en&organization_name=Devon+Energy+Corporation&organization_number=4678&program=Investor&project_year=2018&redirect=https%3A%2F%2Fcdp.credit360.com%2Fsurveys%2Fft9rgfbw%2F11782&survey_id=58150509

[39] This is an estimate as the Company does not report its Scope 3 emissions.

[40] http://www.devonenergy.com/documents/Sustainability/Pages/DVN_SR18_0_FULL-REPORT.pdf, p. 15. *See also id.* CDP, C7.9a,

Company of various climate scenarios. Assessing company-related risk is important for all oil and gas companies to undertake, but it does not serve as an equivalent to setting greenhouse gas emission reduction targets or actively reducing the Company's full scope of climate impacting greenhouse gas emissions.

## CONCLUSION

The Proposal requests that Devon disclose meaningful targets as a roadmap to guiding Paris-aligned decarbonization across the full range of Company emissions. In an evolving global and national economy where climate change is playing an increasingly pivotal role – both in creating risk to shareholders and companies and in creating opportunities -- this is a reasonable and important objective. While Devon cites to action on climate change, the Company's response and solutions do not address the "essential objective" of the Proposal – annual reporting from 2020 of short-, medium, and long-term greenhouse gas targets aligned with the greenhouse gas reduction goals established by the Paris Climate Agreement.

Shareholders believe that considering targets to successfully guide the Company's actions in an economy increasingly influenced by climate change – and to undertake the advanced planning necessary, with sufficient time to implement identified strategies and goals – will reduce risks not only to investor capital, but to the future of our climate.

We urge the Staff to reconsider its advice of March 4, 2019 to Devon Energy Inc. and to deny the Company's request for a no-action letter. In the event that reconsideration is denied, please request the Commission to review the Staff determination. In light of the significant public policy issues raised, the decision is appropriate for Commission review.

Sincerely,

Sanford Lewis

Cc: Anthony Saldana

**RESOLVED:** Shareholders request that the Devon Board of Directors, in annual reporting from 2020, include disclosure of short-, medium- and long-term greenhouse gas targets aligned with the greenhouse gas reduction goals established by the Paris Climate Agreement to keep the increase in global average temperature to well below 2°C and to pursue efforts to limit the increase to 1.5°C. This reporting should cover both the corporation's operations and products, omit proprietary information, and be prepared at reasonable cost.

**WHEREAS:** It is widely accepted that a transition to a low carbon economy - driven by advances in technology and government policy aligned with the Paris Agreement - is under way. As the use of zero- and low-carbon technology increases due to technical breakthroughs and decreasing costs, and as governments take steps to limit greenhouse gas emissions, fossil fuel companies face enhanced risk. These trends could limit returns to Devon's investors by increasing the company's operating costs or by reducing demand for its products.

The Grantham Research Institute on Climate Change and the Environment has identified at least 1,512 climate change laws. Growing recognition of the risks from climate change will result in increasing numbers of, stringency of, and support for these laws.

In addition, Devon's greenhouse gas emissions contribute to climate change impacts, presenting systemic portfolio risks to investors. A warming climate is associated with supply chain dislocations, reduced resource availability, lost production, commodity price volatility, infrastructure damage, crop loss, energy disruptions, political instability, and reduced worker efficiency, among others.

Disclosing targets is an important means of assuring investors of the management of risks associated with climate change and that the Company is decreasing the full range of company emissions in line with Paris goals. Devon states that "reducing GHG emissions intensity is one of the guiding principles" of its Environmental Health and Safety philosophy. It has adopted greenhouse gas reduction targets in certain of its Canadian operations, where required by law. The company has not adopted greenhouse gas emission reduction targets in its U.S. operations or taken actions beyond reducing its operational emissions. In fact, **its companywide GHG emissions intensity has increased from 2016 to 2017.**[1] In contrast, other oil & gas companies, including Total and Shell, have disclosed much longer term ambitions, including for emissions resulting from use of their products. Investors are seeking enhanced disclosure of targets and other measures demonstrating company alignment with the Paris Agreement.

To ensure that Devon is adequately prepared to be successful into the future for its shareholders and other stakeholders we believe it is essential for the company to identify and disclose targets that are aligned with the goals of the Paris Agreement.

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[1] https://www.devonenergy.com/sustainability/environment/greenhouse-gas-emissions