



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

DIVISION OF
CORPORATION FINANCE

February 5, 2019

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

Re: The Goldman Sachs Group, Inc.

Dear Ms. O'Toole:

This letter is in regard to your correspondence dated February 4, 2019 concerning the shareholder proposal (the "Proposal") submitted to The Goldman Sachs Group, Inc. (the "Company") by Harrington Investments, Inc. (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the Proponent has withdrawn the Proposal and that the Company therefore withdraws its December 27, 2018 request for a no-action letter from the Division. Because the matter is now moot, we will have no further comment.

Copies of all of the correspondence related to this matter 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,

Jacqueline Kaufman
Attorney-Adviser

cc: John C. Harrington
Harrington Investments, Inc.
john@harringtoninvestments.com

Beverly L. O'Toole
Managing Director
Associate General Counsel

**Goldman
Sachs**

February 4, 2019

VIA E-MAIL

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

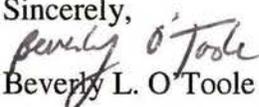
Re: *The Goldman Sachs Group, Inc.*
Shareholder Proposal of
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

In a letter dated December 27, 2018, we requested that the staff of the Division of Corporation Finance (the “Staff”) concur that The Goldman Sachs Group, Inc. (the “Company”), could exclude from its proxy statement and form of proxy for its 2019 Annual Meeting of Shareholders a shareholder proposal (the “Proposal”) and statements in support thereof submitted by Harrington Investments, Inc. (the “Proponent”).

Enclosed as Exhibit A, and as set forth in the email sent by the Proponent to the Staff on February 1, 2019, is a letter from the Proponent verifying that the Proponent has withdrawn the Proposal. In reliance on this communication, we hereby withdraw the December 27, 2018 no-action request.

Please do not hesitate to call me at (212) 357-1584 or Jamie Greenberg at (212) 902-0254 if you have any questions.

Sincerely,

Beverly L. O'Toole

Enclosures

cc: John C. Harrington, Harrington Investments, Inc.

Exhibit A

From: John Harrington:
Sent: Friday, February 1, 2019 5:42:38 PM
To: shareholderproposals@sec.gov
Cc: Sanford Lewis; Brianna Harrington; O'Toole, Beverly L [Legal]; Mangone, Kara (Succoso) [EO]
Subject: Withdraw Letter to SEC RE: Goldman Sachs
To the SEC Division of Corporate Finance:

Based upon an agreement with Goldman Sachs to continue our dialogue with management on the Company's policies on Human and Indigenous Peoples' Rights, and withdraw their No-Action request to you, we are withdrawing our shareholder proposal on Human and Indigenous Peoples' Rights.

Sincerely,

John C. Harrington

John Harrington
Harrington Investments, Inc.
1001 2nd Street, Suite 325
Napa, CA 94559
Telephone: 707-252-6166
Toll Free: 1-800-788-0154
Fax: 707-257-7923

www.harringtoninvestments.com

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This email message is for the sole use of my intended recipient(s) and may contain confidential, privileged information. If you are not my intended recipient, please inform me promptly and destroy this email and all copies. Any unauthorized review, use, disclosure or distribution, including forwarding, of this email by other than my intended recipient is prohibited.

From: Mangone, Kara
Sent: Friday, February 1, 2019 11:27 AM
To: John Harrington:

HARRINGTON
INVESTMENTS, INC.

January 31, 2019

Via email: Beverly.otoole@gs.com

Beverly O'Toole
Managing Director
Associate General Counsel
Goldman, Sachs & Co.
200 West Street
New York, NY 10282

Dear Ms. O'Toole,

As a condition for withdrawing our shareholder proposal, we would like to continue to dialogue throughout 2019 about the board of directors' fiduciary duty to protect and uphold Human and Indigenous Peoples' Rights, including related board and management responsibilities and liabilities in implementation. While we still have a concern about our company's commitment to such principles and a reluctance of the board to revise governance documents, we do feel it important to continue a useful process of dialogue to explore various concepts and upgrades to existing policies.

Please let me know if you would like to engage in serious dialogue on these issues as a condition for withdrawing our proposal.

Sincerely,



John C. Harrington

CC: Sanford Lewis (via email) sanfordlewis@strategiccounsel.net

Brianna Harrington (via email) brianna@harringtoninvestments.com

HARRINGTON
INVESTMENTS, INC.

January 31, 2019

Via email: Beverly.otoole@gs.com

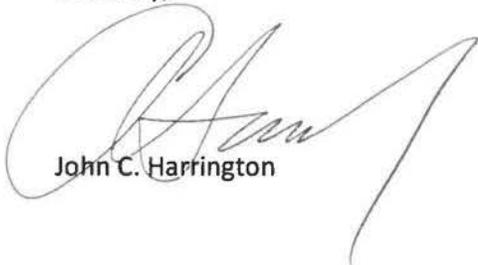
Beverly O'Toole
Managing Director
Associate General Counsel
Goldman, Sachs & Co.
200 West Street
New York, NY 10282

Dear Ms. O'Toole,

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Please let me know if you would like to engage in serious dialogue on these issues as a condition for withdrawing our proposal.

Sincerely,



John C. Harrington

CC: Sanford Lewis (via email) sanfordlewis@strategiccounsel.net

Brianna Harrington (via email) brianna@harringtoninvestments.com

Beverly L. O'Toole
Managing Director
Associate General Counsel



December 27, 2018

VIA E-MAIL

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

Re: *The Goldman Sachs Group, Inc.*
Shareholder Proposal of Harrington Investments, Inc.
Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that The Goldman Sachs Group, Inc., a Delaware corporation (the "Company"), intends to omit from its proxy statement and form of proxy for its 2019 Annual Meeting of Shareholders (collectively, the "2019 Proxy Materials") a shareholder proposal and statements in support thereof (the "Proposal") received from Harrington Investments, Inc. (the "Proponent").

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

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the Company intends to file its definitive 2019 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

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

Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to this Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

THE PROPOSAL

The Proposal states:

Therefore, Be It Resolved, to amend the bylaws by adding a new section 2.11:

Oversight by the Board of Directors as fiduciaries shall include policies or activities of our company affecting issues of human and indigenous peoples' rights.

Thus, the Proposal is a binding proposal that, if it receives the required votes, would automatically amend the Company's By-Laws.¹ A copy of the Proposal, as well as related correspondence with the Proponent, is attached to this letter as Exhibit A.

BASES FOR EXCLUSION

We believe that the Proposal may properly be excluded from the 2019 Proxy Materials pursuant to:

- Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal;
- Rule 14a-8(i)(2) because implementing the Proposal in the manner required by the Proposal would cause the Company to violate Delaware law;
- Rule 14a-8(i)(6) because the Company lacks the power or authority to implement the Proposal in the manner required by the Proposal; and
- Rule 14a-8(i)(3) because the Proposal is materially false and misleading.

BACKGROUND

The Company is strongly committed to fundamental human rights, and the Company's Board of Directors (the "Board"), working with and through its Committees, oversees Company policies and practices that demonstrate the Company's commitment to consider and promote human rights, including the rights of indigenous peoples. In addition, the Board and its Committees have oversight of the broad range of risks to which the Company is subject, including reputational risks.

¹ The Company's Amended and Restated By-Laws (the "By-Laws") are publicly available at <https://www.goldmansachs.com/investor-relations/corporate-governance/corporate-governance-documents/by-laws.pdf>.

The Company also is committed to fair, ethical and responsible business practices, including those that help protect, preserve and promote human rights. Examples of such rights are articulated in the United Nations Universal Declaration of Human Rights. These commitments are embodied in various policies and practices, including the Company's Environmental Policy Framework (the "GS Environmental Policy"),² which is integrated with the Company's Business Principles, Code of Business Conduct and Ethics, Statement on Human Rights, Statement on Modern Slavery and Human Trafficking and Vendor Code of Conduct. In developing the GS Environmental Policy, the Company carefully considered its policies and practices with respect to the environmental and social issues most relevant to the Company and its business.

Moreover, the Company's Statement on Human Rights³ and the GS Environmental Policy describe how the Company manages and governs issues related to human rights and indigenous peoples' rights in relation to the Company's activities. Specifically, the Statement on Human Rights states, "[the Company's] respect for human rights is fundamental to and informs our business; it guides us in how we treat and train our employees, and how we work with our clients and our vendors." The GS Environmental Policy expands further on Company environmental and social risk management policies and practices with respect to human rights and indigenous peoples' rights, providing:

Human Rights: Goldman Sachs recognizes that environmental and social issues are often linked. We have a responsibility to help protect, preserve and promote human rights around the world. Examples of such rights are articulated in the United Nations Universal Declaration of Human Rights. While national governments bear the primary responsibility for ensuring human rights, we believe that the private sector can and should play a role in championing these fundamental rights. Our respect for human rights is fundamental to and informs our business; it guides us in how we treat and train our people, and how we work with our clients and our vendors. Our Business Principles and our Code of Business Conduct and Ethics also play an important role in determining our responsibilities as corporate citizens, and help to inform our business selection process and guide our business decisions and judgments.

² The GS Environmental Policy is attached hereto as Exhibit B and is publicly available at <https://www.goldmansachs.com/s/environmental-policy-framework/>.

³ The Statement on Human Rights is attached hereto as Exhibit C and is publicly available at <https://www.goldmansachs.com/investor-relations/corporate-governance/corporate-governance-documents/human-rights-statement.pdf>.

Indigenous People: Goldman Sachs recognizes that the identities and cultures of indigenous peoples are inextricably linked to the lands on which they live and the natural resources on which they depend. We recognize the rights of these communities regarding issues affecting their lands and territories, traditionally owned or otherwise occupied and used. For transactions where the use of proceeds may have the potential to directly impact indigenous peoples, we expect our clients to demonstrate alignment with the objectives and requirements of IFC [International Finance Corporation] Performance Standard 7 on Indigenous Peoples, including free, prior and informed consent.⁴

The Public Responsibilities Committee of the Board (the “PRC”), which regularly reports to the Board, exercises ongoing oversight over, and has approved, the GS Environmental Policy. In addition, the PRC charter⁵ provides that the PRC is responsible for “review[ing] Environmental, Social and Governance (“ESG”) issues affecting the Company, including through the periodic review of the Company’s ESG report.”⁶ The Company’s ESG report further articulates the Company’s policies and practices relating to human rights, stating that the Company’s “respect for human rights is fundamental to our business; it guides us in how we educate our people, our business selection decisions, and how we work with our clients and vendors.”⁷ As set forth in its charter, the PRC also has oversight of the

⁴ GS Environmental Policy at page 13. The GS Environmental Policy also provides a number of sector guidelines in addition to the Company-wide review process to provide teams working in certain sensitive sectors with “due diligence guidelines and training to evaluate new business opportunities more effectively.” For example, the hydraulic fracturing guidelines state that the Company applies enhanced due diligence, including “engagement with and mitigation of impacts on the local community.” The Company’s guidelines on oil and gas provide enhanced due diligence to consider “any local community impacts, including those relating to Canada’s First Nations people.” And, the Company’s guidelines on palm oil projects note that the Company “require[s] clients to have a commitment to . . . no human rights violations.” That guideline further provides that, where this is not in place, the Company “will introduce or refer clients to credible experts who can help establish such a commitment,” and that its “[c]lients should have a plan in place to demonstrate compliance with this commitment.” The sector guidelines which underpin the GS Environmental Policy “are reviewed periodically and updated based on emerging best practices, regulatory changes and engagement with stakeholders.” GS Environmental Policy at page 10-12.

⁵ The PRC charter is available at <https://www.goldmansachs.com/investor-relations/corporate-governance/corporate-governance-documents/public-responsibilities-committee-charter.pdf>.

⁶ The Company’s most recent ESG report is available at <https://www.goldmansachs.com/citizenship/esg-reporting/esg-content/esg-report-2017.pdf?reportdownload=top>.

⁷ ESG report at page 13.

Company's Firmwide Client and Business Standards Committee and the Firmwide Reputational Risk Committee, through which it receives reports on client and business standards considerations as well as reports regarding certain transactions that may present heightened reputational risk.⁸

The Company's commitment to human rights and indigenous peoples' rights extends beyond the GS Environmental Policy and Statement on Human Rights. For example, the Company's Business Principles⁹ state both that the firm is "dedicated to complying fully with the letter and spirit of the laws, rules and ethical principles that govern us," and that the firm expects its "people to maintain high ethical standards in everything they do, both in their work for the firm and in their personal lives." This is echoed in the Company's Code of Business Conduct and Ethics¹⁰ adopted by the Board of Directors (which, among other things, describes the Company's Business Integrity Program and also states that "concern for the personal dignity of each individual is an indispensable element of the standards we set for ourselves at Goldman Sachs"). The Company also issues its Statement on Modern Slavery and Human Trafficking (approved by the Board of Directors),¹¹ which provides that the Company will not "knowingly finance any potential transactions where there is credible evidence of child labor, forced labor or human trafficking."

The Company's policies also provide for Board-level oversight of issues affecting the Company's reputation, including human rights-related issues. As set forth in the Board's Corporate Governance Guidelines¹² and in each Committee charter,¹³ each of the Board and its Committees considers the potential effect of any matter on the Company's reputation. In fact, consideration of reputation is so core to the Board's oversight that it created the PRC with specific oversight for reputational risk and

⁸ PRC charter at page 1-2.

⁹ Available at <http://www.goldmansachs.com/who-we-are/business-standards/business-principles/index.html>.

¹⁰ Available at <http://www.goldmansachs.com/investor-relations/corporate-governance/corporate-governance-documents/revise-code-of-conduct.pdf>.

¹¹ Available at <http://www.goldmansachs.com/investor-relations/corporate-governance/corporate-governance-documents/statement-on-modern-slavery-and-human-trafficking.pdf>.

¹² The Company's Corporate Governance Guidelines are available at <https://www.goldmansachs.com/investor-relations/corporate-governance/corporate-governance-documents/corp-gov-guidelines.pdf>.

¹³ Each available at www.gs.com/charters.

ESG matters as documented in the PRC's charter. Additionally, for example, as part of its responsibilities under its charter, the Risk Committee regularly discusses risk assessment and risk management matters, and policies related thereto, with management, including reputational risks.¹⁴

ANALYSIS

I. The Proposal May Be Excluded Under Rule 14a-8(i)(10) Because It Has Been Substantially Implemented.

As discussed further below and in the legal opinion provided by Richards, Layton & Finger, P.A. attached hereto as Exhibit D (the "Delaware Law Opinion"), under Delaware law, the Company's directors owe fiduciary duties of care and loyalty to only the Company and its shareholders. The directors' fiduciary responsibilities are immutable, and cannot be changed through an amendment of the Company's By-Laws. As a result, the fiduciary duties of the Board to oversee the Company's policies or activities affecting human rights and indigenous peoples' rights already extend as far as permitted under Delaware law. Therefore, by operation of Delaware law, the essential objective of the Proposal has already been achieved, and accordingly, as discussed below, the Proposal is excludable under Rule 14a-8(i)(10) because it has been substantially implemented.

A. Background.

Rule 14a-8(i)(10) permits the exclusion of a shareholder proposal "[i]f the company has already substantially implemented the proposal." The Commission stated in 1976 that the predecessor to Rule 14a-8(i)(10) was "designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management." Exchange Act Release No. 12598 (July 7, 1976). Originally, the Staff narrowly interpreted this predecessor rule and granted no-action relief only when proposals were "'fully' effected" by the company. *See* Exchange Act Release No. 19135 (Oct. 14, 1982). By 1983, the Commission recognized that the "previous formalistic application of [the Rule] defeated its purpose" because proponents were successfully convincing the Staff to deny no-action relief by submitting proposals that differed from existing company policy by only a few words. Exchange Act Release No. 20091 at §II.E.6 (Aug. 16, 1983). Therefore, in 1983, the Commission adopted a revised interpretation of the rule to permit the omission of proposals that had been "substantially implemented." *Id.* The 1998 amendments to Rule 14a-8 codified this position.

¹⁴ The Risk Committee charter is available at <https://www.goldmansachs.com/investor-relations/corporate-governance/corporate-governance-documents/risk-committee-charter.pdf>.

See Exchange Act Release No. 40018 (May 21, 1998) (the “1998 Release”), at n.30 and accompanying text.

Under this standard, when a company can demonstrate that it already has taken actions to address the underlying concerns and essential objectives of a shareholder proposal, the Staff has concurred that the proposal has been “substantially implemented” and may be excluded as moot. The Staff has noted that “a determination that the company has substantially implemented the proposal depends upon whether [the company’s] particular policies, practices and procedures compare favorably with the guidelines of the proposal.” *Texaco, Inc.* (avail. Mar. 28, 1991).

A company need not implement a proposal in exactly the same manner as set forth by the proponent. See 1998 Release at n.30 and accompanying text. The Staff has not required that a company implement the action requested in a proposal exactly in all details but has been willing to issue no-action letters under the predecessor of Rule 14a-8(i)(10) in situations where the “essential objective” of the proposal had been satisfied. See *General Motors Corp.* (avail. Mar. 4, 1996) (concurring in the exclusion of a proposal where the company argued, “If the mootness requirement of paragraph (c)(10) were applied too strictly, the intention of [the rule]—permitting exclusion of ‘substantially implemented’ proposals—could be evaded merely by including some element in the proposal that differs from the registrant’s policy or practice.”). The Staff recently applied this standard to a similar proposal that the Proponent submitted to the Company. In *Goldman Sachs Group, Inc.* (avail. Mar. 12, 2018), the Staff concurred with exclusion under Rule 14a-8(i)(10) of a similar proposal from the Proponent requesting that the Company “modify its committee charters or other directives to ensure board committee oversight of issues of Human and Indigenous Peoples’ Rights.” The Staff concurred that, notwithstanding that the Company had not modified its Board committee charters as requested in the proposal, “the Company’s policies, practices and procedures compare[d] favorably with the guidelines of the Proposal” because the PRC had ongoing oversight over existing policies that related to human and indigenous peoples’ rights. Similarly, in *PNM Resources, Inc.* (avail. Mar. 20, 2018), the Staff concurred with the exclusion under Rule 14a-8(i)(10) of a proposal requesting that the company “take steps necessary to establish more effective board oversight of our company’s policies and programs addressing climate change” and report to shareholders. The Staff concurred that the company had substantially implemented the proposal where the company’s board oversaw climate change related programs as part of its normal oversight responsibilities and the company described specific board oversight over climate change related programs in its climate change report. See also *The Boeing Co.* (avail. Feb. 17, 2011) (concurring with the exclusion under Rule 14a-8(i)(10) of a proposal requesting that the company review its policies related to human rights and report its findings, where the company had already adopted human rights policies and provided an annual report on corporate citizenship).

Further, the Staff consistently has concurred in the exclusion of proposals under Rule 14a-8(i)(10) where companies' compliance with legal or regulatory requirements, rather than specific management or board action, addressed the concerns underlying the proposals. For example, in *Honeywell International Inc.* (avail. Feb. 21, 2007), the Staff concurred with Honeywell's determination that it had substantially implemented a proposal requesting that Honeywell's board of directors adopt a policy requiring disclosure of the material terms of all relationships between (i) each director nominee deemed to be independent under New York Stock Exchange ("NYSE") listing standards and (ii) Honeywell or any of its executive officers that were considered by Honeywell's board of directors in determining whether the nominee was independent. Honeywell argued that the essential objective of the proposal was satisfied because it was required to comply with the Commission's then-newly adopted amendments to Item 404 and new Item 407 of Regulation S-K and NYSE Section 303A.02, which collectively required substantially similar disclosure to that requested in the proposal. In *Intel Corp.* (Feb. 14, 2005), the Staff concurred that Intel could exclude under Rule 14a-8(i)(10) a proposal requesting that Intel establish a policy of expensing all future stock options granted by the company on the basis that the proposal had been substantially implemented through the Financial Accounting Standards Board's adoption of Statement No. 123 (revised 2004), *Share-Based Payment* ("FAS 123(R)"), which required that public companies recognize share-based payments as an expense in their financial statements. Although the proponent asserted in correspondence with the Staff that adoption of an accounting standard was different than management's adoption of a policy as requested under the proposal, the Staff concurred that the proposal had been substantially implemented because its essential objective had been satisfied. See also *Johnson & Johnson* (avail. Feb. 17, 2006) (concurring in the exclusion of a proposal that required the company to verify employment eligibility of current and future employees and to terminate any employee not authorized to work in the United States on the basis that the company already was required to take such actions under federal law); *AMR Corp.* (avail. Apr. 17, 2000) (concurring in the exclusion of a proposal recommending that the company's audit, nominating and compensation committees consist entirely of independent directors on the basis that the company was subject to the independence standards set forth in the NYSE listing standards, Section 162(m) of the Internal Revenue Code and Exchange Act Rule 16b-3 for directors serving on such committees); and *Eastman Kodak Co.* (avail. Feb. 1, 1991) (concurring in the exclusion of a proposal recommending that the company's board of directors adopt a policy of publishing in the company's annual report the costs of all fines paid by the company for violations of environmental laws based on a representation by the company that it complied with Item 103 of Regulation S-K, which requires similar (albeit not identical) disclosure).

B. The Board's Existing Oversight Over Company Activities And Policies Already Substantially Implements The Proposal.

The Proposal seeks to amend the By-Laws to state that “[o]versight by the Board of Directors as fiduciaries shall include policies or activities of our company affecting issues of human and indigenous peoples’ rights.” As discussed further below and in the Delaware Law Opinion, under Delaware law, the business and affairs of a Delaware corporation such as the Company “shall be managed by or under the direction of a board of directors,” except as may be otherwise provided in the Delaware General Corporation Law (the “DGCL”) or in a company’s certificate of incorporation.¹⁵ As stated by the Delaware Supreme Court, “[i]n discharging this function, the directors owe fiduciary duties of care and loyalty to the corporation and its shareholders The fiduciary nature of a corporate office is immutable.”¹⁶ As a result, the Board already has oversight responsibility over all Company business activities and policies. The fiduciary duties of the Board to oversee the Company’s activities and policies affecting human rights and indigenous peoples’ rights therefore already extend as far as permitted under Delaware law.

The scope of the Board’s duties (including with respect to oversight) are already affirmatively addressed in the Company’s By-Laws, which track Section 141(a) of the DGCL by stating that “[t]he business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors, except as may be otherwise required by law or provided in the certificate of incorporation.”¹⁷ The fact that the Board’s fiduciary duties already encompass oversight of the Company’s policies affecting human rights and indigenous peoples’ rights is further reflected in the GS Environmental Policy (which is subject to the ongoing oversight of, and is approved by, the PRC), and in the PRC charter (which provides that the PRC is responsible for reviewing ESG issues affecting the Company, including through the periodic review of the Company’s ESG report). Similarly, the existing Board-level oversight of reputational issues, including human rights-related issues, is reflected in the Board’s Corporate Governance Guidelines and all Board committee charters as described above.

We view the essential objective of the Proposal as seeking to confirm that the Board’s fiduciary duties extend to oversight of the Company’s human rights and indigenous peoples’ rights policies to the fullest extent permitted by Delaware law. By operation of Section 141(a) of the DGCL, which is

¹⁵ See DGCL §141(a) (“The business and affairs of every corporation organized under this chapter shall be managed by or under the direction of a board of directors, except as may be otherwise provided in this chapter or in its certificate of incorporation.”).

¹⁶ *Mills Acquisition Co. v. Macmillan, Inc.*, 559 A.2d 1261, 1280 (Del. 1989).

¹⁷ See Article II, Section 1 of the By-Laws. The Company’s Certificate of Incorporation does not contain any provision purporting to limit or modify the Board’s fiduciary responsibilities.

already expressly set forth in the By-Laws, this essential objective of the Proposal has already been accomplished. Thus, consistent with *Honeywell International Inc.*, *Intel Corp.* and the other precedents cited above, the fact that the Proposal has been implemented through the operation of Delaware law, and not the By-Law amendment set forth in the Proposal, does not matter; the essential objective has been satisfied and accordingly the Proposal properly is excludable under Rule 14a-8(i)(10).

The conclusion that the Proposal has been substantially implemented through the operation of Delaware law is not altered by the Proposal's attempt to amend the By-Laws to explicitly state that "[o]versight by the Board of Directors as fiduciaries" includes Company policies and activities "affecting issues of human and indigenous peoples' rights." For example, in *The Cato Corp.* (avail. Mar. 29, 2018), the proposal requested that Cato Corp. amend its written equal employment opportunity policy to "explicitly" prohibit discrimination based on sexual orientation and gender identity or expression. The company argued that under existing EEOC interpretations, the reference in the company's policy prohibiting discrimination on the basis of sex encompassed the prohibition requested in the proposal. Over the proponent's objection that the company's policy did not "explicitly" include language requested in the proposal, the Staff concurred that the essential objective of the Proposal had been addressed and that the proposal could be excluded under Rule 14a-8(i)(10).

Just as the absence of an "explicit" statement in the operative document in *The Cato Corp.* did not alter the conclusion under Rule 14a-8(i)(10), here the fact that the By-Laws do not explicitly provide for the Board's oversight of activities or policies affecting human rights and indigenous peoples' rights does not prevent the Proposal from being substantially implemented. The Board's fiduciary duties to oversee those policies already exist to the maximum extent provided under Delaware law. The Proponent previously has acknowledged that directors' fiduciary responsibilities exist without express language in a company's bylaws. Specifically, in a letter to the Staff dated January 29, 2018, included in the correspondence for the Company's no-action letter discussed above, the Proponent did not claim that including language in a Board committee charter is necessary to create or modify the Board's fiduciary duties, but instead acknowledged that any such language operates only to "clarify the fiduciary duties of boards of directors to address environment and human rights."¹⁸ No one would maintain that the board of directors of a company incorporated in Delaware does not have fiduciary duties unless those duties are explicitly addressed in the company's bylaws. Likewise, it would be

¹⁸ Letter to the Office of Chief Counsel, Division of Corporation Finance, from Harrington Investments, Inc. dated January 29, 2018, at pages 3 and 4, included in *Goldman Sachs Group, Inc.* (avail. Mar. 12, 2018). Notably, the Staff concurred with the Company that the language changes sought by the proposal were not necessary in order to substantially implement the proposal.

impossible – and, because those duties are established in the DGCL and have been interpreted over decades of legal precedent, serve no purpose – to attempt to expressly describe the full extent of a board’s fiduciary duties in a company’s bylaws.

Finally, and as discussed further below, Delaware case law establishes that the power of shareholders to amend a company’s bylaws cannot be used as a means to alter a board’s fiduciary duties to manage the business and affairs of a company under DGCL Section 141(a).¹⁹ Accordingly, the Proposal’s attempt to expressly address the Board’s fiduciary duties to oversee the Company’s human rights and indigenous peoples’ rights policies would not and could not change the nature or scope of the Board’s existing fiduciary duties. Requiring the By-Laws to be amended in order to address the Proposal would result in a “formalistic application” of Rule 14a-8 that would place form over substance, contrary to the intent behind the “substantially implemented” standard.²⁰ Because the essential objective of the Proposal already is accomplished without express language in the Company’s By-

¹⁹ As explained in a leading treatise on Delaware Law:

In *CA, Inc. v. AFSCME Employees Pension Plan*, [953 A.2d 227 (Del. 2008)], the Delaware Supreme Court addressed the interplay between [DGCL] section 109 (vesting in shareholders the power to adopt, amend or repeal bylaws) and [DGCL] section 141(a) (vesting in directors the power to manage the business and affairs of the corporation). The Court examined a shareholder proposed amendment to CA’s bylaws requiring reimbursement for proxy expenses. The Court explained that “the shareholders’ statutory power to adopt, amend or repeal bylaws is not coextensive with the board’s concurrent power and is limited by the board’s management prerogatives under Section 141(a).” Thus, while the Court determined that the proposed amendment was a proper subject for shareholder action, it concluded that the amendment was invalid under Delaware law because it had the potential to prevent the board of directors from exercising their full managerial power in circumstances where their fiduciary duties would otherwise require them to deny reimbursement to a dissident slate.

Similarly, in *Gorman v. Salamone*, [C.A. No. 10183-VCN, slip op. at 14-15 (Del. Ch. July 31, 2015)], the Court of Chancery invalidated a bylaw that permitted shareholders to remove and replace officers without cause because it “unduly constrain[ed] the board’s ability to manage the Company.” The court held that the amended bylaw “does more than simply dictate how officers are appointed and removed” and found that it “permits stockholders to remove and replace officers without cause, which would allow them to make substantive business decisions for the Company” which impermissibly interfered with the board’s management powers in violation of section 141(a).

Welch, Saunders, Land, and Voss, *Folk on the Delaware General Corporation Law*, §109.05[A] (2018) (citations omitted).

²⁰ Exchange Act Release No. 20091 at § II.E.6 (Aug. 16, 1983).

Laws, consistent with the precedents cited above, the Company has already implemented the Proposal and the Proposal therefore may be excluded from the 2019 Proxy Materials pursuant to Rule 14a-8(i)(10).

II. The Proposal May be Excluded Under Rule 14a-8(i)(2) Because Implementing The Proposal In The Manner Dictated By The Proposal Would Cause The Company To Violate Delaware Law.

Rule 14a-8(i)(2) allows the exclusion of a proposal if implementation of the proposal would “cause the company to violate any state, federal, or foreign law to which it is subject.” *See Kimberly-Clark Corp.* (avail. Dec. 18, 2009); *Bank of America Corp.* (avail. Feb. 11, 2009). As discussed in the Delaware Law Opinion, the substantive responsibilities of the Board in the management of the Company’s business and affairs cannot be prescribed by the By-Laws, and the fiduciary duties of the Board cannot be expanded or extended through an amendment of the By-Laws.

On numerous occasions, the Staff has concurred with the exclusion of shareholder proposals where the proposal, if implemented, would violate state law. For example, in *Bank of America Corp.* (avail. Jan. 6, 2012), the Staff concurred with the company’s exclusion of a proposal under Rule 14a-8(i)(2) that requested that the company take action, including amending the bylaws, to “minimize” the indemnification of directors because it would violate the indemnification provisions of the DGCL. *See also Citigroup Inc.* (avail. Feb. 22, 2012) (same). Similarly, in *Bank of America Corp.* (avail. Feb. 11, 2009), the Staff concurred with the exclusion of a proposal to amend the company’s bylaws to establish a board committee and authorize the board chairman to appoint members of the committee. The proposal was excluded under Rule 14a-8(i)(2) as Delaware law provides that only the board can appoint members of the board committees; shareholders cannot specify how committee members are to be appointed. *See* 8 Del. C. § 141(c)(2); § 141(a). In *CA, Inc.* (avail. Jul. 17, 2008), the Staff concurred with exclusion under Rule 14a-8(i)(2) of the proposal discussed in note 19 of this letter because the bylaw amendment requested by the proposal had the potential to prevent the board of directors from exercising their full managerial power in accordance with their fiduciary duties, and therefore was invalid under Delaware law. *See also IDACORP, Inc.* (avail. Mar. 13, 2012) (concurring in exclusion of a proposal requesting that the company amend its bylaws to implement majority voting for director elections where state law provided for plurality voting unless a company’s certificate of incorporation provided otherwise).

The Proposal seeks to amend the Company’s By-Laws to add a new section providing that “[o]versight by the Board of Directors as fiduciaries shall include policies or activities of our company affecting issues of human and indigenous peoples’ rights.” The Company is a Delaware corporation subject to Delaware law. Under Delaware law, directors have fiduciary duties to the Company and its shareholders that require “that the directors act prudently, loyally, and in good faith to maximize the

value of the corporation over the long-term” for the benefit of the company’s shareholders.²¹ As discussed in greater detail in the Delaware Law Opinion, the existence and parameters of these fiduciary duties are determined by Delaware common law and, except as provided under the DGCL,²² cannot be modified or expanded, including through a bylaw amendment. Under Delaware law, “[t]he fiduciary nature of a corporate office is immutable.”²³ Thus, as the Delaware Law Opinion concludes, “the Proposal, if implemented as requested, would violate Delaware law in that it would mandate the adoption of a bylaw which would purport to extend the Board’s fiduciary duties whereas such duties are only established via the Delaware common law, and thus would violate Section 109(b) of the General Corporation Law, which prohibits bylaws that contravene Delaware law.”

Finally, Section 141(a) of the DGCL provides that the Board’s oversight of the business and affairs of the Company may only be altered to the extent permitted and provided for under the DGCL and the Company’s Certificate of Incorporation. Thus, as explained in the Delaware Law Opinion, by seeking to define the scope of the Board’s oversight responsibilities through the By-Laws, the Proposal, if implemented, would impermissibly direct the Board in managing the business and affairs of the Company in contravention of Section 141(a) of the General Corporation Law, and thus would violate Delaware law. In this respect, the Bylaw language set forth in the Proposal has the same flaw as the bylaw amendment that was considered by the Delaware Supreme Court in *CA, Inc. v. AFSCME Employees Pension Plan*, *supra* note 13, and by the Staff in *CA, Inc.*, *supra*. Just as in *CA, Inc.*, because the Proposal has the potential to prevent the board of directors from exercising their full managerial power in accordance with their fiduciary duties, the Proposal would violate Delaware law, and therefore may properly be excluded under Rule 14a-8(i)(2)..

In each of the foregoing respects, the Proposal seeks to amend the By-Laws to add a provision that would be void under Delaware law. Accordingly, just as in the *Bank of America, CA, Inc.* and other precedent cited above, the Proposal may properly be excluded under Rule 14a-8(i)(2) because, as cited

²¹ *Frederick Hsu Living Trust v. ODN Hldg. Corp.*, 2017 WL 1437308, at *18 (Del. Ch. Apr. 14, 2017); *accord TW Servs., Inc. v. SWT Acq. Corp.*, 1989 WL 20290, at *7 (Del. Ch. Mar. 2, 1989) (“[B]roadly, directors may be said to owe a duty to shareholders as a class to manage the corporation within the law, with due care and in a way intended to maximize the long run interests of shareholders.”).

²² The DGCL in turn allows for modification of directors’ fiduciary duties in only one respect which is not implicated by the Proposal. Specifically, DGCL §102(b)(7) allows a company’s certificate of incorporation to include a provision eliminating or limiting the personal liability of a director to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, subject to certain exceptions.

²³ *Mills Acquisition Co. v. Macmillan, Inc.*, *supra*, note 10.

in the Delaware Law Opinion, implementing the Proposal in the manner that the Proposal seeks would cause the Company to violate Delaware law.

III. The Proposal May Be Excluded Under Rule 14a-8(i)(6) Because The Company Lacks The Power Or Authority To Implement The Proposal In The Manner That The Proposal Seeks.

Rule 14a-8(i)(6) permits a company to exclude a shareholder proposal “[i]f the company would lack the power or authority to implement the proposal.” The Company believes that this exclusion applies to the Proposal because the Company lacks the power and authority to implement a proposal that would violate Delaware law. The Staff has concurred on numerous occasions that a company may exclude a proposal under both Rule 14a-8(i)(2) and Rule 14a-8(i)(6) if the proposal’s adoption would cause the company to violate state law. *See, e.g., RTI Biologics, Inc.* (avail. Feb. 6, 2012); *NiSource Inc.* (avail. Mar. 22, 2010). As discussed more fully in Section II above and in the Delaware Law Opinion, adding a Bylaw in the manner sought would violate Delaware law because the Proposal seeks to create or expand directors’ fiduciary duties in the Company’s By-Laws, which would violate the DGCL. Therefore, because the Company lacks the power and authority under Delaware law to implement the Proposal in the manner that the Proposal seeks, the Proposal is excludable under Rule 14a-8(i)(6).

IV. The Proposal May Be Excluded Under Rule 14a-8(i)(3) Because It Is Materially False And Misleading.

Rule 14a-8(i)(3) permits the exclusion of a shareholder proposal if the proposal or supporting statement is contrary to any of the Commission’s proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials. The Proposal is materially false and misleading because, as discussed above, it implies that the Board’s oversight responsibilities are somehow limited, despite express language in the By-Laws, or that the Company can extend the fiduciary duties of directors through a Bylaw amendment, which, as noted, violates Delaware law.

The Staff consistently has concurred that where a proposal contains false and misleading assertions regarding the effect of implementation of the proposal under state law, the proposal as a whole is excludable under Rule 14a-8(i)(3). For example, in *Ferro Corp.* (avail. Mar. 17, 2015), the Staff concurred in the exclusion of a proposal requesting that the company reincorporate in Delaware because the proposal was materially false and misleading when it improperly suggested that shareholders would have increased rights if Delaware law governed the company instead of Ohio law. Here, the Proposal seeks to add a new section to the By-Laws either confirming or extending “[o]versight by the Board of Directors as fiduciaries” to “policies or activities of our company

affecting issues of human and indigenous peoples' rights," which is similarly materially false and misleading. Implicit in these core statements in the Proposal is that Board does not currently have oversight of policies and activities affecting human and indigenous peoples' rights, which is not the case as explained in the Background section above. The Proposal's requested Bylaw amendment also is intended to expand Board fiduciary oversight to cover these issues. As explained in the Delaware Law Opinion, fiduciary duties are created by Delaware common law and cannot be modified or expanded in a company's bylaws. These false and misleading statements are central to the Proposal's entire premise of expanding the Board's oversight powers and renders the Proposal as a whole false and misleading.

Similarly, when a proposal is premised on a false or inaccurate concept or predicate, the Staff has permitted exclusion of the entire proposal under Rule 14a-8(i)(3). *See, e.g., Microsoft Corp.* (avail. Oct. 7, 2016) (concurring in the exclusion of a proposal requesting that the "board shall not take any action whose primary purpose is to prevent the effectiveness of shareholder vote without a compelling justification for such action" because neither the company nor its shareholders could determine which situations the proposal applied to or what types of conduct it was intended to address); *General Electric Co.* (avail. Jan. 6, 2009) (concurring in the exclusion of a proposal under which any director who received more than 25% in "withheld" votes would not be permitted to serve on any key board committee for two years because the company did not typically allow shareholders to withhold votes in director elections); *Johnson & Johnson* (avail. Jan. 31, 2007) (concurring in the exclusion of a proposal to provide shareholders a "vote on an advisory management resolution . . . to approve the Compensation Committee [R]eport" because the proposal would create the false implication that shareholders would receive a vote on executive compensation); *State Street Corp.* (avail. Mar. 1, 2005) (concurring in the exclusion of a proposal requesting shareholder action pursuant to a section of state law that had been recodified and was thus no longer applicable); *General Magic, Inc.* (avail. May 1, 2000) (concurring in the exclusion of a proposal requesting that the company make "no more false statements" to its shareholders because the proposal created the false impression that the company tolerated dishonest behavior by its employees when in fact the company had corporate policies to the contrary). "[W]hen a proposal and supporting statement will require detailed and extensive editing in order to bring them into compliance with the proxy rules, [the Staff] may find it appropriate for companies to exclude the entire proposal, supporting statement, or both, as materially false or misleading." Staff Legal Bulletin No. 14 (July 13, 2001) ("SLB 14").

As discussed above, the Proposal falsely suggests, and is predicated on the inaccurate assumption, that that the Board's oversight responsibilities are somehow limited, despite express language in the By-Laws, or that directors' fiduciary duties can be extended through a Bylaw amendment. Just as *Ferro Corp.*, *Microsoft*, *General Electric*, *Johnson & Johnson*, *State Street* and *General Magic* created false impressions that would impermissibly mislead shareholders considering the proposals, the Proposal's

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Division of Corporation Finance
December 27, 2018
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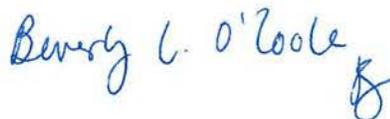
materially false and misleading statements make the Proposal so fundamentally misleading that it would “require detailed and extensive editing in order to bring [the Proposal] into compliance with the proxy rules.” SLB 14.

CONCLUSION

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

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

Sincerely,

A handwritten signature in blue ink that reads "Beverly L. O'Toole" followed by a stylized flourish.

Beverly L. O'Toole

Enclosures

cc: John C. Harrington, Harrington Investments, Inc.

Exhibit A



October 17, 2018

Corporate Secretary
The Goldman Sachs Group, Inc.
200 West Street
New York, NY 10282

RE: Shareholder Proposal

Dear Corporate Secretary,

As a shareholder in The Goldman Sachs Group, Inc. (GS), I am filing the enclosed shareholder resolution pursuant to Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934 for inclusion in the Citigroup, Inc. Proxy Statement for the 2019 annual meeting of shareholders.

I am the beneficial owner of at least \$2,000 worth of The Goldman Sachs Group, Inc. stock. I have held the requisite number of shares for over one year, and plan to hold sufficient shares in The Goldman Sachs Group, Inc. through the date of the annual shareholders' meeting. In accordance with Rule 14a-8 of the Securities Exchange Act of 1934, verification of ownership is included. I or a representative will attend the stockholders' meeting to move the resolution as required by SEC rules.

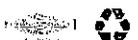
If you have any questions, I can be contacted at (707) 252-6166.

Sincerely,

A handwritten signature in black ink, appearing to read "John C. Harrington". The signature is fluid and cursive, with a large initial "J" and "H".

John C. Harrington

President and C.E.O.
Harrington Investments, Inc.



GOLDMAN-SACHS

Whereas, our Company has been identified as one of the banks financially supporting companies engaged in the development or construction of the Dakota Access Pipeline (DAPL.) (Bakken Pipeline),¹ a controversial project which received extensive media coverage and public condemnation because of its environmental destruction, pollution and encroachment upon sacred Sioux Nation land;

Whereas, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples, Article 11, asserts "the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites..." yet the Dakota Access Pipeline construction has already desecrated various ancestral sites, disregarding previous treaties in blatant violation of Indigenous Peoples' Human Rights;

Whereas, Article 29 of the Declaration states "Indigenous Peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources";

Whereas, the United Nations in 1948 adopted the Universal Declaration of Human Rights and the United Nations Human Rights Council in 2011 adopted the United Nations Guiding Principles on Business and Human Rights;

Whereas, shareholders believe that it is a fiduciary duty of the board to oversee management decisions where there is the potential for significant negative impacts or consequences of our Company's involvement which may damage our Company's reputation, create negative publicity and loss of customer business resulting in long-term negative consequences for our Company; and

Whereas, our Company's Corporate Governance Guidelines state that our Board of Directors' primary responsibility is to exercise their business judgment in the best interest of the Company, and board approval of a particular transaction may be appropriate because of the materiality of the transaction to the Company's financial performance, risk profile or business; and

Whereas, guidelines related to Human and Indigenous Peoples' Rights do not appear in our Company's bylaws or Articles of Incorporation;

Therefore, Be It Resolved, to amend the bylaws by adding a new section 2.11:

Oversight by the Board of Directors as fiduciaries shall include policies or activities of our company affecting issues of human and indigenous peoples' rights.

¹ <http://miningawarenesswordpress.com/2017/02/27/credit-suisse-is-the-main-financial-backer-of-the-dakota-access-pipeline-but-deutsche-bank-goldman-sachs-and-others-are-involved-too/>



October 17, 2018

Corporate Secretary
The Goldman Sachs Group, Inc.
200 West Street
New York, NY 10282

Account #: ****-* ***
Reference #: AM-1991918
Questions: Please call Schwab
Alliance at 1-800-515-2157.

RE: Account XXXX-X* John C. Harrington TTEE Harrington Investments, Inc. 401k Plan John Harrington – FBO**

Dear Corporate Secretary,

This letter is to confirm that Charles Schwab is the record holder for the beneficial owner of the John C. Harrington TTEE Harrington Investments, Inc. 401k Plan account and which holds in the account 100 shares of common stock in The Goldman Sachs Group, Inc. (GS). These shares have been held continuously for at least one year prior to and including October 17, 2018.

The shares are held at Depository Trust Company under the Participant Account Name of Charles Schwab & Co., Inc., number 0164.

This letter serves as confirmation that the account holder listed above is the beneficial owner of the above referenced stock.

Should additional information be needed, please feel free to contact me directly at 877-393-1951 between the hours of 11:30am and 8:00pm EST.

Sincerely,
Michael Woolums
Advisor Services
2423 E Lincoln Dr
Phoenix, AZ 85016-1215

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

Schwab Advisor Services™ serves independent investment advisors, and includes the custody, trading, and support services of Schwab.

Exhibit B

Goldman Sachs Environmental Policy Framework

The Goldman Sachs logo, consisting of the words "Goldman" and "Sachs" stacked vertically in a white serif font, set against a solid blue square background.

Goldman
Sachs



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Overview

In November 2005, Goldman Sachs established our Environmental Policy Framework, which articulated our belief in the importance of a healthy environment and our commitment to addressing critical environmental issues. At that time, we were one of the first financial institutions to acknowledge the scale and urgency of challenges posed by climate change. In the decade since, we have continued to build upon our commitment to the environment across each of our businesses. See our [10-Year Milestones](#) for highlights of our progress.

Our ten-year juncture offers an opportunity to review progress both within Goldman Sachs and broadly across the market, and identify opportunities for us to do more. Our commitment to helping address critical environmental challenges and promoting sustainable economic growth remains unchanged, while our initiatives and progress will continue to advance. This updated document serves as a roadmap for us in that journey and a foundation on which we will continue to build as we look to the future.

Key Tenets: We believe that a healthy environment is necessary for the well-being of society, our people and our business, and is the foundation for a sustainable and strong economy. We recognize that diverse, healthy natural resources – fresh water, oceans, air, forests, grasslands and agro-systems – are a critical component of our society and economy.

We believe that technological and market innovation, driven in large part by the private sector working in concert with the public sector, is central to positive economic growth and environmental progress. Innovation will continue to play a critical role in solving societal challenges, including those relating to the environment. From advancements in clean technology to resource efficiency and the shared, connected economy, innovation can accelerate the transition to a low-carbon economy and sustainable future while creating new jobs and greater economic prosperity.

We take seriously our responsibility for environmental stewardship and believe that as a leading global financial institution we must play a constructive role in helping to address environmental challenges. To that end, we will work to ensure that our people, capital and ideas are used to help find innovative and effective market-based solutions to address climate change, ecosystem degradation and other critical environmental issues, and we will seek to create new business opportunities that benefit the environment. In pursuing these objectives, we will not stray from our central business objective of creating long-term value for our shareholders and serving the long-term interests of our clients.

Climate Change: Goldman Sachs acknowledges the scientific consensus, led by the Intergovernmental Panel on Climate Change, that climate change is a reality and that human activities are responsible for increasing concentrations of greenhouse gases in the earth's atmosphere. We believe that climate change is one of the most significant environmental challenges of the 21st century and is linked to other important issues, including economic growth and development, poverty alleviation, access to clean water, food security and adequate energy supplies.

Delaying action on climate change will be costly for our natural environment, to humans and to the economy, and we believe that urgent action by government, business, consumers and civil society is necessary to curb greenhouse gas emissions. How governments and societies choose to address climate change will fundamentally affect the way present and future generations live their lives.

Markets are particularly efficient at allocating capital and determining appropriate prices for goods and services. Governments can help the markets in this regard by establishing a clear policy framework that, among other things, provides transparency around the costs of greenhouse gas (GHG) emissions and creates long-term value for GHG emissions reductions and investments in new technologies that lead to a less carbon-intensive economy. In addition to mitigation, which is a critical component of any strategy, governments and societies need to improve adaptability and strengthen resiliency as part of a comprehensive solution.

We recognize that we have an impact on the environment through our operations, our investments, and the production and services we finance on behalf of our clients. As an institution that brings providers and users of capital together, we believe that capital markets can and should play an important role in addressing environmental challenges including climate change.

To that end, we are committed to catalyzing innovative financial solutions and market opportunities to help address climate change. The Environmental Policy Framework articulates our initiatives across each of our business areas. The following are key highlights:

- **Climate Mitigation:** We will expand our clean energy target to \$150 billion in financings and investments by 2025 to facilitate the transition to a low-carbon economy.ⁱ To increase access to climate solutions, we will launch a Clean Energy Access Initiative that will target the deployment of clean energy solutions, such as distributed solar and clean cookstoves, to underserved markets. We will look to facilitate the efficient development of carbon markets and other climate-related market mechanisms as opportunities emerge.
- **Climate Adaptation:** We will help our clients more effectively manage exposure to climate impacts through capital market mechanisms, including weather-related catastrophe bonds, and identify opportunities to facilitate investment in infrastructure resiliency. We will also seek opportunities to promote financings and investments to address growing water and wastewater infrastructure needs. Where feasible, we will look to harness green infrastructure solutions such as forests as a complement to traditional infrastructure.
- **Climate Risk Management:** We will conduct a carbon footprint analysis across our Fundamental Equity business in Goldman Sachs Asset Management and work with our clients to analyze and understand the impacts of their portfolios. Across relevant advisory, financing and investing transactions, we will continue to apply a high standard of care in our Environmental and Social Risk Management, which includes guidelines and enhanced review of carbon intensive sectors (e.g., coal power generation, coal mining, oil & gas, forestry and palm oil) as well as climate change-related risk factors.
- **Climate Approach in Our Operations:** We will minimize our operational impact on climate change, strengthen our operational resiliency, and seek smart, sustainable solutions. We will achieve carbon neutrality across our own operations from 2015 onwards and target 100 percent renewable power to meet our global electricity needs by 2020. We will also target \$2 billion in green operational investments by 2020.

Our Business

Each of our business areas has an important role to play in implementing our policy and helping our clients navigate and better manage evolving environmental risks and opportunities. By doing so, we can contribute to sustainable economic development and environmental progress. The following highlights key initiatives that we are undertaking and will continue to build on across our businesses.

I. Environmental Market Opportunities

A. Advisory, Financing, Investing and Market Making

Clean Energy: One of the critical roles we play in the transition to a low-carbon future is to help deploy capital to scale up clean energy technologies. We have established a Clean Technology and Renewables team in our Investment Banking Division to focus on this mission and have become the leading financier for clean energy companies. Through our investing teams, we are also one of the largest investors in alternative energy.

As an example of our ongoing commitment, in 2012 when there was significant volatility in the clean energy markets, we established a target to finance and invest \$40 billion in capital for clean energy globally over the following decade. Less than four years into this effort, we are close to achieving our target with \$37 billion already mobilized.ⁱⁱ As we consider the global energy and sustainability requirements of the future, our role in bringing greater capital access and efficiency to the clean energy market remains critical. As such, we are expanding our target to \$150 billion in capital deployment for the clean energy sector by 2025.ⁱ

In working to meet this target, we will play a catalytic role and facilitate financial innovations in clean energy:

- We will seek to devise investment structures that bring greater investor capital to underserved markets in order to facilitate more equitable and affordable access to clean energy. To that end, we will launch a Clean Energy Access Initiative that will target the deployment of clean energy solutions, such as distributed solar and clean cookstoves, in underserved markets.
- We will look for opportunities to expand the investor base and bring greater capital efficiency to clean energy projects, such as through securitization mechanisms and yield-oriented vehicles. For example, we are targeting \$1 billion in solar and other renewable energy project securitizations in Japan to facilitate clean energy financing through the capital markets.
- We will look for opportunities to finance and co-invest in innovative technologies that provide grid resiliency and facilitate increasing levels of reliable clean energy deployment, as well as platforms that promote smarter, more efficient energy management and consumption. For example, we are targeting \$500 million in financing and co-investments in advanced technologies to modernize the grid.

Water: Water scarcity and lack of access to clean water pose significant challenges around the world. These challenges are exacerbated by climate change, urbanization and population growth. In many markets, aging or inadequate water and wastewater infrastructure are potential risks to sustainable growth efforts, but

there is a compelling opportunity to harness markets to address these challenges. We serve clients in this area through our Public Sector and Infrastructure team within the Investment Banking Division, and also co-invest alongside clients through our investing teams. For example, we have worked with municipal water utilities to devise innovative financial structures to fund projects to address water pollution and combined sewer overflow challenges, including with DC Water on the world's first century green bond.

Through our financial advisory, financing and investments, we will continue to facilitate capital to meet water and wastewater infrastructure needs and look for financial solutions to address access to clean water:

- We will seek to facilitate private capital for much-needed water infrastructure investments, including through well-designed Public-Private-Partnerships (P3s). When appropriately structured, these partnerships bring the benefits of operational efficiency and economies of scale, facilitating rate stability and high-quality, long-term public water access.
- We will look for opportunities to finance and co-invest in technologies that improve the efficiency of delivering and consuming water, as well as technologies that enhance wastewater management and enable water reuse and recycling.
- We will look for opportunities to devise investment structures that can harness green infrastructure solutions as a complement to traditional infrastructure in meeting our water needs. For example, restoring forests, installing green roofs and increasing green space can help alleviate stormwater runoff while improving the health and resiliency of cities.

Green Bonds and Impact Investing: Green bonds are a fixed income instrument where the capital raised is used for environmentally beneficial purposes. Goldman Sachs was part of the initial group of banks to provide input to and support the Green Bond Principles, which are a voluntary set of guidelines. In addition to acting as an underwriter for green bonds, we are committed to developing innovative applications for green bonds. For example, we will seek to leverage green bonds to catalyze greater investments that help address climate change in emerging economies and underserved markets. A key goal is to facilitate the growth of this market by enabling an expanded investor base to allocate capital to additional environmentally beneficial projects, while ensuring transparency, integrity and environmental impact.

Goldman Sachs has also been a pioneer in the deployment of “social impact bonds,” an innovative and emerging financial instrument that leverages private investment to support high-impact social programs, where repayment is tied to specific performance outcomes. There is potential to harness some of the same principles to address green opportunities, where the private and public sectors can partner to bring much-needed capital to high-impact, underserved environmental opportunities.

More broadly, we will continue to look for ways to integrate environmental co-benefits across our impact investing initiatives. For example, Goldman Sachs has had a long-standing commitment to investing in underserved communities with more than \$4 billion deployed in the U.S. since 2001. Given energy expenditures account for a significant portion of low-moderate income families' budgets, integrating energy efficiency, renewables and other green measures as well as access to healthy foods and public transit are an important component of revitalizing communities.

Climate and Weather Risk Solutions: Effective management of catastrophic risk relating to weather extremes has become increasingly important for our clients. We have been a leader in structuring and underwriting catastrophe bonds, which help diversify and transfer catastrophic risks – including from weather-related events such as hurricanes – through the capital markets. We have structured over \$14 billion

of weather-related catastrophe bonds since 2006. Our breadth of financial and market making capacity enables us to be innovative in helping our clients more effectively manage their risk.

Given the increasing focus on resiliency measures by policymakers and the need for greater investment in this field, we will also establish partnerships to develop new models for catastrophe bonds that can better evaluate the benefits of increased investments. For example, enhanced physical resiliency, including flood barriers and stormwater detention structures, can improve the ability to withstand extreme weather events, which in turn could potentially be factored into the pricing and financial return models for catastrophe bonds. To that end, we are partnering with financial institutions, foundations, reinsurers and other stakeholders to explore innovative risk management structures related to infrastructure resiliency.

Market Making in Environmental Commodities: As market mechanisms emerge to help address carbon and other climate-related commodities, we will look for ways to play a constructive role in facilitating the efficient development of these markets. For example, we have been a market maker in carbon credits, including the EU Emissions Trading Scheme from its inception, as well as certain weather derivatives, renewable energy credits and other climate-related commodities.

We will also continue to evaluate opportunities and, where appropriate, inform the development of and participate in markets for water, biodiversity and other ecosystem services. For example, we are a member of the Advisory Board of the Natural Capital Project, a non-governmental organization that uses a science-based approach and software tools to quantify and value services provided by natural systems for key decision makers.

B. Goldman Sachs Asset Management

Goldman Sachs Asset Management (GSAM), which provides institutional and individual investors with investment and advisory solutions, is committed to partnering with our clients to help them navigate today's dynamic markets while seeking to deliver strong long-term and sustainable investment performance to help them achieve their investment objectives.

Building on our long history of incorporating environmental, social and governance (ESG) risk factors as a part of the traditional investment approach, we have made a significant commitment to further expand our ESG and impact investing capabilities.

The foundation of our approach to ESG and impact investing is built on our core philosophy of serving our clients' investment goals and adhering to our fiduciary responsibility as an asset manager. We partner with our clients to provide a broad spectrum of customized solutions, ranging from engineered portfolios that optimize for specific impact factors to custom portfolios of private impact investments. Given the breadth and diversity of both our clients' objectives and our investment capabilities across our global platform, implementation by GSAM teams varies across asset classes and investment styles.

See [GSAM ESG and Impact Investing](#) for further information on our commitment. The following provides examples of key initiatives:

ESG Integration: We have integrated the analysis of ESG factors into our investment and company engagement processes across our Fixed Income and Fundamental Equity strategies, as well as within the

external manager due diligence process of Alternative Investments and Manager Selection (AIMS). We will utilize this analysis to engage with companies on ESG topics, and, as appropriate, integrate environmental considerations into GSAM's proxy voting policies. We will seek to communicate on our progress and contribute to the development of best practices within the investment community.

Portfolio Diagnostics: In addition to traditional screening capabilities, we can work with clients to analyze and understand the impacts of their portfolios. Certain GSAM investment products conduct a carbon footprint analysis – at the portfolio and individual holdings level – to quantify the absolute and intensity of greenhouse gas emissions embedded in the portfolio. We will expand this analysis across our Fundamental Equity business and product offerings to help inform our investment decisions more broadly.

Proprietary In-House Solutions: We will continue to innovate in developing products and solutions to help our institutional and high net worth clients better implement ESG integration and optimize portfolios to better align with values. For example, we are working with clients to develop methodologies by which the carbon intensity of their equity portfolios can be reduced by over 70 percent while applying market-leading risk management techniques. The Fundamental Equity group has actively managed strategies which apply an in-house ESG methodology and the Quantitative Investment Strategy (QIS) group offers equity strategies that exclude fossil fuel heavy sub-industries and emphasize investments that score highly on a range of environmental and social metrics while seeking to minimize tracking error.

Open-Architecture Solutions: AIMS provides a variety of ESG and impact investing strategies on its open-architecture platform. Additionally, GSAM has acquired the business of Imprint Capital Advisors, an asset management firm that advises clients on investing based on their ESG and impact investing views. With the integration of Imprint's team, AIMS will continue to work with clients to develop and manage ESG and impact investment programs and portfolios across investment areas and asset classes, including a focus on custom portfolios of private impact investments.

AIMS also applies its ESG and impact lens to specific asset classes. For example, within our AIMS Real Estate Investment team, we have a heightened awareness of the impact that the built environment has on greenhouse gas emissions and are actively seeking ways to reduce the footprint of the properties in the portfolio. To that end, we have launched a strategic energy efficiency initiative across our current portfolio of real estate holdings, which comprise approximately 5.5 million square feet, to maximize operating efficiencies and minimize environmental impact. For buildings that we acquire in the future, we will look to implement similar energy efficiency measures where appropriate. We will commit to report on the environmental impacts of the initiative through our annual [Environmental, Social and Governance Impact Report](#) and other channels.

C. Global Investment Research

Goldman Sachs is increasing our commitment to systematically incorporate ESG criteria into the fundamental analysis of companies across the Global Investment Research platform. We believe that companies' management of environmental and related social risks and opportunities may affect long-term corporate performance. We further believe that the effects of climate change and other environmental risks are increasingly significant issues for capital market participants globally. Credible investment research can



influence decisions made by investors, policymakers and regulators, which in turn may help to increase management teams' focus on the importance of environmental and social issues.

ESG Integration: We provide training on our approach to incorporating ESG factors as part of a long-term investment strategy for all new equity analysts. We offer access to ESG data to all research analysts in order to incorporate material ESG analysis across our sector investment research.

GS SUSTAIN: Launched in 2007 at the UN Global Compact Leaders Summit, GS SUSTAIN is a global, long-term investment research strategy designed to generate sustainable alpha by integrating analysis of global themes, company fundamentals, and governance and stakeholder factors, including environmental and social considerations. Through GS SUSTAIN, we have been at the forefront of integrating ESG criteria into the fundamental analysis of companies, and bringing greater investor attention to the importance of ESG factors in identifying companies that are best placed to manage 21st century business risks.

We are committed to expanding the scope of GS SUSTAIN coverage and now review more than 3,300 companies for governance factors and 2,200 for stakeholder factors. GS SUSTAIN also maintains a Global Focus List of high-quality companies that are well positioned to sustain industry-leading total shareholder returns. The GS SUSTAIN Global Focus List has outperformed its global benchmark by nearly 40 percent from inception in June 2007 through year end 2014.

Thematic Research: Through our Global Markets Institute and our equity research teams, we have produced thematic research on the risks and opportunities arising from climate change and water accessibility, as well as how environmental issues in countries such as China impact industry leaders and provide market opportunities. Our Global Clean Energy Research and other industry coverage teams follow clean energy companies and innovative technologies around the world, including solar, wind, biofuels/biochemicals, energy efficiency, storage and electric vehicles. We will continue to leverage our market insights and investment research to better inform investors on how climate change and other critical environmental issues impact capital flows and investment opportunities.

Convening: Based on our research, we will continue to actively meet with clients and investors, participate in and convene events, and provide technical input on strategic ESG initiatives, including on disclosure around ESG data and performance where appropriate.

D. Center for Environmental Markets

We recognize that many critical environmental issues cannot be solved through voluntary action alone and that establishing partnerships and ecosystems that bring together key stakeholders across public and private sectors is important. To that end, in 2006, we launched the Goldman Sachs Center for Environmental Markets to undertake partnerships with corporations, academic institutions and non-governmental organizations. Since then, we have established numerous partnerships that have facilitated independent research, the development of new environmental tools, and high-level convenings that have informed climate policy, valuation of forest ecosystems, energy and resource efficiency, renewables in underserved markets, and water risk.

As we look forward, the Center will continue to advance partnerships that synergistically bring together the core competencies of the public and private sectors to help catalyze much-needed capital flows towards



environmentally beneficial solutions. To that end, the Center will invest \$10 million of grant funding in pilot projects that can demonstrate the viability of financial mechanisms that could unlock larger-scale capital for environmental solutions.

Through these partnerships, we will also facilitate case studies and independent research that inform public policy options. We will share our findings through publications, research papers and convenings, as well as through targeted outreach.

See [Center for Environmental Markets](#) for more information on partnerships.

II. Environmental and Social Risk Management

Our [Business Principles and Standards](#) guide our overall approach to environmental and social risk management – we apply a high standard of care to serving our clients, consider reputational sensitivity and excellence in everything we do, and have a deep commitment to individual and collective accountability. We approach the management of environmental and social risks with the same care and discipline as any other business risk, and undertake a robust review process to take the environmental and social impacts and practices of our clients and potential clients into consideration in our business selection decisions.

We recognize that risk management and business selection decisions are complex and often have to balance potential trade-offs. When we identify potentially significant environmental and social issues, we prefer to address the issue by working with the client on appropriate safeguards and more sustainable practices. By facilitating the adoption of more sustainable practices, we are able to better serve the long-term interests of our clients, the communities and the environment in which they operate, while ensuring prudent risk management for the firm. Where such engagement is not feasible and the transaction involves potentially material environmental impact, significant social issues or unacceptable risks that directly conflict with the firm's policy, we will forgo the assignment.

We also believe that it is in the interest of our issuer clients to make appropriate disclosure with respect to the material environmental and social impacts of their businesses, including greenhouse gas emissions, and the potential consequences to their businesses from changes in relevant regulation and policy. To that end, we will encourage and work with our clients to further develop appropriate disclosure.

We actively monitor emerging issues, regulatory developments, concerns of key stakeholders, as well as best practices relating to environmental and social risk management. As part of this undertaking, we frequently engage with non-governmental organizations and periodically review and update our guidelines for emerging issues and evolving environmental and social concerns. We also apply general guidelines and best practices from external sources for relevant transactions we undertake on behalf of our clients.

A. Process and Scope

Advisory, financing and direct investing teams integrate environmental and social due diligence as part of their normal course due diligence requirement where relevant. Transactions which may have significant environmental or social risks, including reputational risks, are elevated for enhanced review and business selection discussion. Our Environmental Markets Group (EMG) assists business teams by providing guidance on environmental-related matters, doing independent reviews and identifying mitigants and positive engagement opportunities with the client to reduce material risk. The Business Intelligence Group (BIG), which is part of our Legal Division, takes a broad view of risk that includes legal, regulatory, governance and social elements, and works closely with EMG on the transaction review process. In certain cases, Corporate Environmental Management, which is an in-house team of environmental consultants with strong technical expertise, will also conduct in-depth due diligence on environmental, health, safety (EHS) and social issues to identify and mitigate transactional risk for business teams.

We have various committees that oversee our business selection decisions and risk management. Our committees coordinate and apply consistent business standards, practices, policies and procedures across the firm, and are integral to the management of environmental, social and reputational risks. For example, our

Physical Commodities Review Committee, which is a cross-divisional firmwide governance committee, ensures that we have a consistent approach to evaluating and managing EHS risks associated with engaging in, investing in, or the financing of physical commodity-related activities. See the [Report of the Business Standards Committee](#) for further details on committee governance structure.

Transactions that have significant environmental and social issues are elevated for discussion and a final business selection decision involving key committees, business leaders and/or the Chairman's office.

B. Sector Guidelines

In addition to the firmwide review process, we equip teams in sensitive sectors with due diligence guidelines and training to evaluate new business opportunities more effectively. This includes background on current environmental and social issues and sensitivities in the sector, as well as potential due diligence questions to discuss with a company. The guidelines are reviewed periodically and updated based on emerging best practices, regulatory changes and engagement with stakeholders. We have fourteen guidelines across key sectors. Below is the list of sectors and summaries are available on our [website](#).

Biofuels	Chemicals	Coal Power Generation	Forestry	Gas Power Generation	Hydro. Power Generation	Metals & Mining
Nuclear Generation	Oil & Gas	Oil Sands	Palm Oil	Transportation	Unconventional Oil & Gas	Water

The following highlights our guidelines in sectors of particular environmental sensitivity:

Power Generation – Coal: Coal fired power generation is one of the largest sources of air pollutants, including greenhouse gas (GHG) emissions, and has other significant environmental, health and safety impacts on local communities. However, coal fired power is currently a major source of electricity generation and a contributor to reliable and diverse energy supply globally, particularly in developing economies as a source of affordable energy.

- We will decline any financing transaction that directly supports the development of new coal fired power generation in the U.S. and other developed economiesⁱⁱⁱ unless it has carbon capture and storage or equivalent carbon emissions reduction technology.
- In many developing economies, access to affordable energy is necessary for economic growth and poverty alleviation, and coal remains a significant source of affordable energy. For financings directly supporting the development of new coal fired power generation in these economies, we will be selective in the transactions we undertake and where the sensitivities are too high, we will forgo the opportunity. We apply enhanced due diligence for these financings and among the factors we consider are: the energy needs and affordability in the region; fair assessment of low carbon alternatives; type of technology and emissions controls, with a preference for supercritical or better power generation technology; regulatory drivers; and the company's efforts to measure, report and reduce GHG emissions and other pollutants.

Metals & Mining – Coal Mining & Mountaintop Removal: Coal mining involves a number of extraction methods, at both the surface and underground level. Mountaintop removal (MTR), a form of surface mining

used in the Appalachian region of the United States, has particularly significant impacts on ecosystems, water quality and local communities.

- For transactions involving coal mining globally, we apply enhanced due diligence, including consideration of the following factors: companies' EHS track records; siting and ecological impacts; regulatory compliance and ability to meet international practices where local regulation is lagging; litigation, violations and citations; remediation methods; impact on water quality; and local community and human rights issues. For financings directly supporting new coal mine development, we will be selective in the transactions we undertake and where the sensitivities are too high, we will forgo the opportunity.
- For financings where the specified use of proceeds would be directed towards mountaintop removal mining, we will decline participation. For other financings involving U.S. coal companies that have production from MTR mining, we will decline participation unless the company has demonstrated that there will be an absolute and permanent reduction in its MTR coal production over a reasonable timeframe.

We have leveraged our *10,000 Small Businesses* program to help entrepreneurs in the Appalachian region create jobs and economic opportunity, especially given that coal mining has been declining and jobs are being lost in the region. Goldman Sachs *10,000 Small Businesses* has deployed over \$9 million through the Kentucky Highlands Investment Corporation and Virginia Community Capital, two local Community Development Financial Institutions (CDFIs), for small business loans. We have also worked with the region through our national business education program. See [10,000 Small Businesses](#) for more information.

Oil & Gas – Hydraulic Fracturing: The rapid expansion of hydraulic fracturing has contributed to the expansion of energy resources, particularly in the U.S., along with greater affordability of energy for consumers and industry, job creation and economic growth. But it has also come with increasing concerns related to water consumption, impact on water quality, wastewater disposal methods, potential seismic impacts, air emissions (including methane) and local community impacts.

- For transactions involving new unconventional oil & gas and hydraulic fracturing, we apply enhanced due diligence. Key issues to be addressed include but are not limited to: companies' care taken on location and site selection; well construction method, including integrity of casing and cementing; management of ongoing operations, including well flow and pressure monitoring; integrated water management, including groundwater testing, water withdrawal, wastewater management; fracking fluid usage and disclosure; air emissions management, including fugitive methane emissions and use of flaring and venting; and engagement with and mitigation of impacts on the local community.

Oil & Gas – Oil Sands: Oil sands, also known as tar sands or bituminous sands, are sandstone or carbonate formations containing a naturally occurring viscous form of petroleum (bitumen) with large deposits found in Canada's Province of Alberta. In many cases, significant amounts of energy and water are necessary to extract and upgrade bitumen, and there is a potential for impacts on boreal forests and local communities.

- For transactions relating to oil sands, we apply enhanced due diligence. Among other factors, we consider: energy use and greenhouse gas emissions; environmental impacts related to integrated water and waste management; forest and biodiversity preservation; and any local community impacts, including those relating to Canada's First Nations people.

Forestry: Forests are critical for the environment and biodiversity and provide livelihoods for many. Deforestation and degradation of forests remains a significant challenge in many regions, and is a major contributor to greenhouse gas emissions.

- For forestry transactions (including logging and primary processing of forest products), we will not knowingly finance companies or projects that collude with or are engaged in illegal logging or utilize illegal or uncontrolled fire.
- As part of our enhanced due diligence, we examine whether clients that process, purchase or trade wood products from particularly high-risk countries have certifiable systems in place to ensure that the wood they process, purchase or trade comes from legal sources. This includes understanding clients' supply chain monitoring systems and chain of custody certification.
- We require clients to obtain or be working towards Forest Stewardship Council or a comparable certification when we finance forestry projects that impact high conservation value forests in order to ensure that crucial forest ecosystems are preserved appropriately. For operations that are not already certified, we will introduce or refer our clients to credible experts who can help establish a rigorous, time-bound, step-wise commitment to achieve certification within three years.

Palm Oil: Palm oil has become the largest source of edible oil globally and is the base for a vast number of household products. At the same time, growing demand for palm oil has placed pressure on crucial ecosystems.

- We apply enhanced due diligence to transactions relating to palm oil companies.
- We will not knowingly finance companies or projects that collude with or are engaged in illegal logging or utilize illegal or uncontrolled fire.
- We require clients' compliance with all legal requirements, including in the case of Indonesia the Indonesian Sustainable Palm Oil (ISPO) system.
- We also require clients to obtain Roundtable on Sustainable Palm Oil (RSPO) or a comparable certification. For operations that are not already certified, we will introduce or refer our clients to credible experts who can help establish a rigorous, time-bound, step-wise commitment to achieve certification within three years.
- Furthermore, we require clients to have a commitment to no net deforestation, no peatland development and no human rights violations. Where this is not in place, we will introduce or refer clients to credible experts who can help establish such a commitment. Clients should have a plan in place to demonstrate compliance with this commitment.

C. Cross-Sector Guidelines

Protected Areas and World Heritage Sites: Goldman Sachs recognizes the importance of critical natural habitats, which have high biodiversity value and include legally protected areas both existing and officially proposed by governments.

- We will not finance any projects or initiate loans where the specified use of proceeds would significantly convert or degrade a critical natural habitat.

- We also recognize the significance of cultural and natural heritage and will not knowingly finance extractive projects, commercial logging or other environmentally sensitive projects in prescribed UNESCO World Heritage sites.
- Furthermore, we will not finance projects that contravene any relevant international environmental agreement which has been enacted into the law of, or otherwise has the force of law in, the country in which the project is located.

Human Rights: Goldman Sachs recognizes that environmental and social issues are often linked. We have a responsibility to help protect, preserve and promote human rights around the world. Examples of such rights are articulated in the United Nations Universal Declaration of Human Rights. While national governments bear the primary responsibility for ensuring human rights, we believe that the private sector can and should play a role in championing these fundamental rights. Our respect for human rights is fundamental to and informs our business; it guides us in how we treat and train our people, and how we work with our clients and our vendors. Our [Business Principles](#) and our [Code of Business Conduct and Ethics](#) also play an important role in determining our responsibilities as corporate citizens, and help to inform our business selection process and guide our business decisions and judgments. See the [Goldman Sachs Statement on Human Rights](#).

- **Indigenous People:** Goldman Sachs recognizes that the identities and cultures of indigenous peoples are inextricably linked to the lands on which they live and the natural resources on which they depend. We recognize the rights of these communities regarding issues affecting their lands and territories, traditionally owned or otherwise occupied and used. For transactions where the use of proceeds may have the potential to directly impact indigenous peoples, we expect our clients to demonstrate alignment with the objectives and requirements of IFC Performance Standard 7 on Indigenous Peoples, including free, prior and informed consent.
- **Stakeholder engagement and resettlement:** For certain transactions where there could be material effects on local communities, we expect our clients to demonstrate an appropriate stakeholder engagement process. In cases where there is large-scale resettlement, we will closely evaluate the stakeholder engagement process and, if appropriate, work with the company to improve aspects such as compensation measures and/or community engagement.
- **Child Labor, Forced Labor and Human Trafficking:** We will not knowingly finance any potential transactions where there is credible evidence of child labor, forced labor or human trafficking.

D. Climate Change Guidelines

As a global financial institution, we serve clients in all industries, including those in carbon intensive sectors of the global economy. For the foreseeable future, carbon-intensive energy sources will continue to be part of the global energy mix but will face increasing policy and regulatory constraints. Our enhanced due diligence guidelines for carbon intensive sectors incorporate climate change-related questions, including the disclosure and management of greenhouse gas emissions. More broadly, even in less carbon-exposed sectors, as part of our due diligence where material and relevant, we will consider how clients manage climate change-related risk factors such as those relating to supply chain risk from weather extremes. Such enhanced due diligence



enables us to better manage the associated long-term risks and more responsibly serve the needs of our clients.

In financings, we primarily act as an underwriter in the capital markets, matching investors with the capital needs of issuers. Lending to carbon intensive sectors is a relatively small part of our overall activities. Even though it is a small share, as part of our prudent risk management, we monitor how carbon-related regulation among other material macro-factors may impact the creditworthiness of these loans to carbon intensive sectors. Our [public reporting](#) includes disclosure of our credit exposure to the Natural Resources and Utilities sector.

For energy investments in our Merchant Banking Division, in addition to enhanced EHS due diligence, we undertake an assessment of pending policy and regulation relating to climate change as well as the economics of various technologies. When relevant, we also conduct assessments of different carbon pricing and energy demand scenarios to inform our investment decisions. Based on such analysis, our energy investment portfolio has made a number of renewable energy investments globally.

More broadly, we monitor policy and regulatory developments relating to climate change and where appropriate, engage in discussions regarding financing for climate mitigation and adaptation. We also engage in efforts to understand and inform the measurement and reporting of greenhouse gas emissions, as well as initiatives that seek to develop pragmatic and meaningful ways of understanding carbon risk exposure in financing and investment activities.

E. Training

We train our people and provide necessary resources to ensure that environmental, social and governance objectives are met and policies, procedures and standards are appropriately implemented. Training on ESG issues is provided globally to relevant employees, while additional specialized training is tailored by region and industry to select employees as appropriate.

In addition, the Environmental Markets Group convenes thought leaders to speak to our people globally on topical environmental and sustainability-related issues.



Our Operations and Our People

I. Our Operations

Minimizing our operational impact is a prerequisite of sound environmental policy and a necessary complement to our core business activities. In all that we do, we strive to find smart, sustainable solutions that make business sense and are environmentally responsible. In addition, through our operational resiliency management we assess and plan for climate-related risks. Our Corporate Services and Real Estate (CSRE) and Technology teams work in close collaboration with the Environmental Markets Group on our key operational priorities.

A. Corporate Services and Real Estate

As part of our commitment to advancing the environmental stewardship of corporate operations, we will use our operational facilities and partnerships to pilot and help scale up innovative clean energy and energy efficiency solutions. For example, at our headquarters in New York we have deployed an innovative HVAC system that shifts electrical loads to off-peak hours.

As part of our carbon reduction framework, we factor an internal price on carbon into energy efficiency, renewable energy and other emission reduction activities through the use of a return on investment model. This return on investment prioritizes internal reduction measures across both our offices and data centers. We also have a dedicated green operational investment budget, which brings greater focus to initiatives that reduce our environmental impacts and enables us to invest in green buildings and innovative green technologies. We are targeting \$2 billion in green operational investments by 2020.

In support of our commitment to transparency regarding our environmental performance, Goldman Sachs has been a signatory to the CDP climate change survey since 2006. We make public our Carbon Accounting Methodology, and ensure the accuracy of our environmental metrics and data collection process through robust internal inventory management planning and a commitment to third party verification of our most important performance metrics including our Scope 1, 2 and 3 (business travel) emissions as well as our water use.

We are committed to minimizing the impact of our operations on the environment with our key goals as follows:

Carbon Neutrality: We will accelerate our previous carbon neutrality commitment by five years to be carbon neutral by 2015. We will also expand the scope from global Scope 1 and 2 emissions to include our Scope 3 business travel as part of our commitment.

Renewable Energy: We will aim to use 100 percent renewable power to meet our global electricity needs by 2020. As part of our commitment to increasing awareness and in support of global best practices, we have joined the RE100 initiative.

Energy Efficiency: We will aim to reduce our absolute energy use across our operationally controlled facilities by 10 percent from 2013 to 2020.

Universal Green Building Standards: We are committed to achieving LEED Gold or equivalent for new buildings or major renovation projects. We will target green building certification across 70 percent of our portfolio by 2020.

Responsible Resource Consumption: We are committed to responsible resource consumption and waste reduction. We have established a goal to achieve 100 percent business waste diversion from landfill by 2020 and a 20 percent reduction of paper per-capita from 2013 to 2020. We are also targeting a 5 percent reduction in water use in operationally controlled facilities from 2013 to 2020.

Responsible Supply Chain Management: We continue to advance our commitments to sustainable supply chain management through the development and deployment of a sustainable procurement framework that is integrated across our whole procurement lifecycle, prioritizing our material risks and promoting innovative collaboration with our vendors.

Operational Resiliency Management: We are committed to assessing and planning for climate-related risks across our operations through infrastructure, business continuity and resiliency reviews of our office space and data centers. Our assessment monitors the hazards posed by climate-related risks, including temperature changes, rising sea levels and severe weather conditions, and we utilize predictive weather modeling to inform our short-term preparedness and long-term resiliency planning.

Certified Management Systems: We have developed an Environmental Management System (EMS) that complies with the ISO 14001 standard and are committed to having the ISO 14001 EMS certified by a third party verification company. We will seek to expand our implementation of the ISO 14001 EMS to all operationally controlled facilities by 2020. In addition, we are committed to aligning our on-site corporate events to the ISO 20121 standard for sustainable events through a sustainable events management system. Through active implementation and continual review and improvement of our management systems, we commit to the following:

- We will comply with applicable legal and regulatory requirements and adhere to other objectives as defined in the Environmental Policy Framework that relate to environmental, social and economic aspects resulting from our operations.
- In association with the Environmental Policy Framework, the management systems will provide a basis for setting and reviewing environmental, social and economic objectives and targets for our operations on a continuous basis.
- We commit to continual improvement in environmental, social and economic performance and pollution prevention for our operations through ongoing review and modification of the management systems in response to emerging environmental, social and economic issues and changing regulations and business activities, as appropriate.

See [Our Operational Impact](#) for further details of our operational commitments.

B. Technology

Sustaining the growth of our business, while minimizing the environmental impact of our technology, is a constant balancing act. As a financial services firm, computing represents the largest portion of the



environmental impact from our technology. Through a combination of market-based and in-house developed products, our engineers seek the best technology solutions with the lowest power consumption to meet the requirements of our business, working alongside the CSRE team to achieve the firm's operational goals. Key initiatives are as follows:

Efficiency: Given our strategic focus on computing efficiency, we will continue to pursue integrated solutions that minimize environmental impact across the technology lifecycle, from the initial purchase of a product to its disposal. We will also continuously optimize for efficiency across our hardware fleet by closely monitoring and striving for higher efficiency per unit of computing capacity.

Shared Solutions: We will seek additional efficiency in our computing solutions through shared computing and virtualization. For example, while we utilize private cloud solutions that right-size our computing resources for applications, we will also leverage public cloud technology as secure solutions become available, including using on-demand computing capacity as needed to reduce our permanent computing footprint.

Innovation and Collaboration: We will look to adopt innovative solutions across our technology platforms and share best practices across the industry. For example, we are adopting modular data centers and collaborating through the Open Compute Project (OCP), which promotes the development of higher-efficiency server hardware.

II. Our People

Environmental stewardship is not only about how we operate our business, but also about how we engage our people. Through programs sponsored across our global businesses, environmental issues are discussed and environmental initiatives are acted upon. We will continue to look for opportunities to further engage our people on environmental opportunities.

Examples of our employee engagement programs, which we will seek to build on, are as follows:

Thought Leadership: Throughout the year, we offer a speaker series that brings thought leaders to the firm to share innovative ideas and thinking on a variety of themes, including environmental topics ranging from renewable energy and conservation to water issues. We also publish timely and topic-specific content on both our internal and external communications portals, including videos, infographics and podcasts, to educate both our people and our clients on the evolving environmental landscape. Additionally, we host conferences on environment and energy issues, with a focus on the intersection of markets and how innovative financial mechanisms can be leveraged. We convene policymakers, NGOs and academic institutions alongside our clients, investors and employees to advance dialogue and collaboration that can facilitate capital flows that benefit the environment.

Communications: We regularly communicate with our people through multiple channels. We publish environmental newsletters offering updates on notable transactions related to the environment and the firm's progress on minimizing our environmental footprint, among other topics. We also publish articles on our intranet to focus on environmental issues and communicate our environmental progress.

Environmental Networks: Employee-led environmental networks in cities around the world raise awareness and engage local employees on initiatives ranging from recycling and composting to reduction of disposable cups and bottles.

Community Team Works: Each year, our *Community Team Works* program allows for employees to participate in volunteer projects in their local communities that have a direct impact on the environment. These projects range from aiding in park clean-ups to installing solar panels on housing for low-income residents.

Goldman Sachs Gives: Through *Goldman Sachs Gives*, the firm's donor-advised fund, current and retired senior employees can recommend grants to qualifying nonprofit organizations globally. Since 2010, *Goldman Sachs Gives* has provided more than \$36 million of grants across 10 countries towards critical societal, conservation and environmental-related programs.



Implementation and Governance

Our environmental policy, which applies to The Goldman Sachs Group, Inc. and its majority-owned subsidiaries, is coordinated by the Environmental Markets Group (EMG), reporting directly to the Office of the Chairman. EMG provides guidance to our various businesses, develops training and engages with a variety of stakeholders to help Goldman Sachs better manage and understand evolving environmental issues. Implementation of the policies and initiatives is the direct responsibility of each of our applicable businesses. We report on our progress annually through our [Environmental, Social and Governance Impact Report](#) and the [Environmental Stewardship](#) section of our website.

The policy and its implementation are reviewed with the Board of Directors' [Public Responsibilities Committee](#), which has oversight of the implementation of the Environmental Policy Framework and any environmental, social and governance issues affecting the firm.

We have consulted many stakeholders and experts in updating this policy framework. We will continue to build upon these relationships and regularly consult our stakeholders to help us stay abreast of evolving environmental risks and opportunities and help us continue our progress towards environmental stewardship.

ⁱ This target extends our existing goal of \$40 billion and includes an additional \$110 billion in capital deployment by 2025. Our target is focused on the clean technology and renewable energy sector, and on commercial transactions. It includes financing and co-investments for solar, wind, sustainable hydro, biomass, geothermal, advanced biofuels, energy efficiency and advanced materials, energy storage, LED lighting, electric vehicles, and renewable energy transmission, among other clean technologies. It does not include financial advisory, market making activities, or grant-related funding for the sector.

ⁱⁱ Progress towards target as of Q3 2015.

ⁱⁱⁱ We define developed economies based on the FTSE Country Classification as of September 2015.

Exhibit C

Goldman Sachs Statement on Human Rights

As a global financial institution, Goldman Sachs recognizes and takes seriously its responsibility to help protect, preserve and promote human rights around the world. Examples of such rights are articulated in the [United Nations Universal Declaration of Human Rights](#). While national governments bear the primary responsibility for ensuring human rights, we believe that the private sector can and should play a role in championing these fundamental rights.

Our respect for human rights is fundamental to and informs our business; it guides us in how we treat and train our employees, and how we work with our clients and our vendors. Our Business Principles and our Code of Conduct and Business Ethics also play an important role in determining our responsibilities as corporate citizens. They help to inform our business selection process and to guide our business decisions and judgments.

Our People

Goldman Sachs is dedicated to creating a workplace that respects each employee's human rights, and ensures that the interactions of our people with clients, vendors and other business partners comply with the spirit, as well as the letter, of regulations and laws in the jurisdictions in which we operate.

The Firm is committed to providing equal employment opportunity to all qualified persons. Although particular legal provisions and formulations may differ in the various locations in which we do business, our principles are the same worldwide. Goldman Sachs considers conduct that does not conform to these standards to be a serious violation of its policies and will take appropriate disciplinary action, which may include termination, against those who engage in such conduct. Managers are evaluated in part on the basis of their success in carrying out our equal employment opportunity policies.

Concern for personal dignity and individual worth of every person is an indispensable element in the standard of conduct that we have set for ourselves. Our comprehensive Compendium of Firmwide Compliance Policies contains guidelines regarding equal employment opportunity, privacy, fair dealing, anti-money laundering and anti-bribery expectations. At Goldman Sachs, our people are reminded and encouraged to identify potential violations in these areas, and to report behavior that does not comply with internal policies and external regulations and laws.

Our people receive training on a variety of human rights related issues, including but not limited to, equal employment opportunity, diversity, money laundering, bribery and corruption.

Our Clients

We place a high priority on the identification of potential human rights issues in the due diligence that precedes our business transactions. The Firm analyzes new and existing clients for a wide array of possible human rights-related issues, including labor practices, impacts on indigenous peoples, and proximity to conflict regions. This process informs our business decisions.

We also engage with our clients in certain cases, encouraging them to consider adopting more sustainable practices and to take human rights issues into consideration in conducting their business.

In the context of our Environmental Policy Framework, we evaluate business decisions with respect to environmental and social issues under the Framework's Business Selection and Risk Management guidelines and will not accept business opportunities that directly conflict with these guidelines.

Vendors

While the vendors with whom we interact bear the responsibility to define their own policies with regard to human rights, we strive to make them aware of our standards. We aspire for business to business purchasing activities to be transacted with due regard to the challenges of all parties including owners and employees of suppliers. At a minimum, the Firm expects suppliers and their supply chain to comply fully with all applicable laws and regulations in the conduct of their business. In addition, Goldman Sachs believes its suppliers should meet appropriate standards related to labor practices, wages and workplace safety. Where practical, we also work with our vendors to encourage the utilization of responsibly and sustainably produced goods and services.

Our Continuing Commitment

Through the process of drafting this Statement, we engaged external stakeholders, including shareholders and expert consultants. We recognize that our external stakeholders value information about our efforts in this area, and we are committed to ongoing engagement on these issues.

Exhibit D

December 27, 2018

The Goldman Sachs Group, Inc.
200 West Street
New York, New York 10282

Re: Stockholder Proposal Submitted by Harrington Investments, Inc.

Ladies and Gentlemen:

We have acted as special Delaware counsel to The Goldman Sachs Group, Inc., a Delaware corporation (the “Company”), in connection with a stockholder proposal (the “Proposal”), dated October 17, 2018, that has been submitted to the Company by Harrington Investments, Inc. (the “Proponent”) for the 2019 annual meeting of stockholders of the Company (the “Annual Meeting”). In this connection, you have requested our opinion as to certain matters under the laws of the State of Delaware. For the purpose of rendering our opinion as expressed herein, we have been furnished with and have reviewed the following documents: (i) the Restated Certificate of Incorporation of the Company, as filed with the Secretary of State of the State of Delaware on January 24, 2018; (ii) the Amended and Restated Bylaws of the Company, as amended and restated on February 18, 2016 (the “Bylaws”); and (iii) the Proposal.

With respect to the foregoing documents, we have assumed: (i) the authenticity of all documents submitted to us as originals; (ii) the conformity to authentic originals of all documents submitted to us as copies; (iii) the genuineness of all signatures and the legal capacity of natural persons; and (iv) that the foregoing documents, in the forms thereof submitted to us for our review, have not been and will not be altered or amended in any respect material to our opinion as expressed herein. We have not reviewed any document other than the documents listed above for purposes of rendering this opinion, and we assume that there exists no provision of any such other document that bears upon or is inconsistent with our opinion as expressed herein. In addition, we have conducted no independent factual investigation of our own but rather have relied solely on the foregoing documents, the statements and information set forth therein and the additional factual matters recited or assumed herein, all of which we assume to be true, complete and accurate in all material respects.



THE PROPOSAL

The Proposal states the following:

Whereas, our Company has been identified as one of the banks financially supporting companies engaged in the development or construction of the Dakota Access Pipeline (DAPL) (Bakken Pipeline), a controversial project which received extensive media coverage and public condemnation because of its environmental destruction, pollution and encroachment upon sacred Sioux Nation land;

Whereas, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples, Article 11, asserts "the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites..." yet the Dakota Access Pipeline construction has already desecrated various ancestral sites, disregarding previous treaties in blatant violation of Indigenous Peoples' Human Rights;

Whereas, Article 29 of the Declaration states "Indigenous Peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources";

Whereas, the United Nations in 1948 adopted the Universal Declaration of Human Rights and the United Nations Human Rights Council in 2011 adopted the United Nations Guiding Principles on Business and Human Rights;

Whereas, shareholders believe that it is a fiduciary duty of the board to oversee management decisions where there is the potential for significant negative impacts or consequences of our Company's involvement which may damage our Company's reputation, create negative publicity and loss of customer business resulting in long-term negative consequences for our Company; and

Whereas, our Company's Corporate Governance Guidelines state that our Board of Directors' primary responsibility is to exercise their business judgment in the best interest of the Company, and board approval of a particular transaction may be appropriate because of the materiality of the transaction to the Company's financial performance, risk profile or business; and

Whereas, guidelines related to Human and Indigenous Peoples' Rights do not appear in our Company's bylaws or Articles of Incorporation;

Therefore, Be it Resolved, to amend the bylaws by adding a new section 2.11:

Oversight by the Board of Directors as fiduciaries shall include policies or activities of our company affecting issues of human and indigenous peoples' rights.

We have been advised that the Company is considering excluding the Proposal from the Company's proxy statement for the Annual Meeting under, among other reasons, Rules 14a-8(i)(2) and 14a-8(i)(6) promulgated under the Securities Exchange Act of 1934, as amended. Rule 14a-8(i)(2) provides that a registrant may omit a proposal from its proxy statement when "the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject." Rule 14a-8(i)(6) allows a proposal to be omitted if "the company would lack the power or authority to implement the proposal." In this connection, you have requested our opinion as to whether, under Delaware law (i) the Proposal, if implemented, would violate Delaware law and (ii) the Company has the power and authority to implement the Proposal.

For the reasons set forth below, the Proposal, which mandates the adoption of a bylaw purporting to extend the fiduciary duties of the Board of Directors of the Company (the "Board"), if implemented would violate the prohibition on modifying the fiduciary duties of directors under Delaware law. Moreover, because the Proposal contemplates the adoption of a bylaw directing the Board to oversee the Company's human and indigenous peoples' rights policy, for the reasons set forth below, the Proposal, if implemented, would violate Delaware law in that it would mandate the adoption of a bylaw that would impermissibly attempt to direct the manner in which the Board would be required to exercise its fiduciary duties and contravene the management structure of Section 141(a) of the General Corporation Law of the State of Delaware (the "General Corporation Law"). In addition, because the Proposal, if implemented, would violate Delaware law, the Company lacks the power and authority to implement the Proposal.

DISCUSSION

I. The Proposal, if Implemented, Would Violate Delaware Law

A. The Proposal, if Implemented, Would Violate Delaware Law by Purporting to Extend the Fiduciary Duties of the Board

A corporation's bylaws are subject to the provisions of the General Corporation Law. The limitations imposed by the General Corporation Law on a corporation's bylaws are set forth in Section 109(b), which provides:

The bylaws may contain any provision, *not inconsistent with law or with the certificate of incorporation*, relating to the business of the corporation, the conduct of its affairs, and its rights or powers or the rights or powers of its stockholders, directors, officers or employees.¹

The phrase “not inconsistent with the law” or similar variants of that phrase used in the provisions of the General Corporation Law have been interpreted to mean that the provision must “not transgress a statutory enactment or a public policy settled by the common law or implicit in the General Corporation Law itself.”² Thus, “[a] bylaw that is inconsistent with any statute or rule of common law . . . is void.”³

The Proposal, if implemented, would adopt a bylaw purporting to define the Board's oversight duties to “include policies or activities” of the Company “affecting issues of human and indigenous peoples' rights.” Implicit in the Proposal is that “[o]versight by the Board of Directors as fiduciaries,” would not otherwise include the matters which are the subject of the proposed bylaw, otherwise the Proposal would be unnecessary. Rather, implicit in the Proposal is that this bylaw would purport to extend or change the status quo with respect to the Board's common law duty of oversight to include oversight of the impact of the Company's business on human and indigenous peoples' rights.

The fiduciary duties of directors of Delaware corporations, however, are determined by Delaware common law. Those common law duties require “that the directors act prudently, loyally, and in good faith to maximize the value of the corporation over the long-term” for the benefit of its stockholders.⁴ Outside of the public benefit corporation context

¹ 8 Del. C. § 109(b) (emphasis added).

² See *Sterling v. Mayflower Hotel Corp.*, 93 A.2d 107, 118 (Del. Ch. 1952); *Jones Apparel Group, Inc. v. Maxwell Shoe Co.*, 883 A.2d 837, 846 (Del. Ch. 2004) (finding that a provision will be invalidated if it “vitiates or contravenes a mandatory rule of our corporate code or common law”).

³ *Frantz Mfg. Co. v. EAC Indus.*, 501 A.2d 401, 407 (Del. 1985).

⁴ *Frederick Hsu Living Trust v. ODN Hldg. Corp.*, 2017 WL 1437308, at *18 (Del. Ch. Apr. 14, 2017); *accord TW Servs., Inc. v. SWT Acq. Corp.*, 1989 WL 20290, at *7 (Del. Ch. Mar. 2, 1989) (“[B]roadly, directors

(which does not apply to the Company), it is well-established that the fiduciary duties of directors of Delaware corporations cannot be modified or extended.⁵ While “[i]t is, of course, accepted that a corporation may take steps, such as giving charitable contributions or paying higher wages, that do not maximize profits currently[,] [t]hey may do so. . . because such activities are rationalized as producing greater profits over the long-term for stockholders.”⁶ Thus, “Delaware case law is clear that the board of directors of a for-profit corporation . . . must, within the limits of its legal discretion, treat stockholder welfare as the only end, considering other interests only to the extent that doing so is rationally related to stockholder welfare.”⁷

Directors’ fiduciary duties to maximize long-term stockholder welfare under Delaware law arise as a matter of public policy.⁸ The same public policy dictates that “[t]he fiduciary nature of a corporate office is immutable” and “inveterate and uncompromising in its rigidity.”⁹ Accordingly, the fiduciary duties of the Board already extend as far as permitted

may be said to owe a duty to shareholders as a class to manage the corporation within the law, with due care and in a way intended to maximize the long run interests of shareholders.”)

⁵ *Auriga Capital Corp. v. Gatz Props.*, 40 A.3d 839, 849 (Del. Ch. 2012) (noting that the Delaware Limited Liability Company Act “lets contracting parties modify or even eliminate any equitable fiduciary duties, a more expansive constriction than is allowed in the case of corporations”), *aff’d*, 59 A.3d 1206 (Del. 2012); *In re Inergy L.P. Unitholder Litig.*, 2010 WL 4273197, at *12 (Del. Ch. Oct. 29, 2010) (“While the DGCL generally forbids a corporate board of directors from contractually modifying or restricting their fiduciary duties (except the duty of care), § 1101(d) [of the Delaware Revised Uniform Limited Partnership Act] allows MLPs to eliminate completely a general partner’s fiduciary duties to common unitholders, subject only to the limited protections of the covenant of good faith and fair dealing.”); *Dieckman v. Regency GP LP*, 2016 WL 1223348, at *8 (Del. Ch. Mar. 29, 2016) (noting that in “corporate context . . . fiduciary duties cannot be waived”), *rev’d on other grounds*, 155 A.3d 358 (Del. 2017).

⁶ *ODN*, 2017 WL 1437308, at *17 (quoting Leo E. Strine, Jr., *Our Continuing Struggle with the Idea that For-Profit Corporations Seek Profit*, 47 WAKE FOREST L. REV. 135, 147 n.34 (2012)); *In re Trados Inc. S’holder Litig.*, 73 A.3d 17, 36 (Del. Ch. 2013).

⁷ *ODN*, 2017 WL 1437308, at *17 (quoting Leo E. Strine, Jr., *A Job is Not a Hobby: The Judicial Revival of Corporate Paternalism and its Problematic Implications*, 41 J. CORP. L. 71, 107 (2015)); *accord Trados*, 73 A.3d at 37 (“[S]tockholders’ best interest must always, within legal limits, be the end. Other constituencies may be considered only instrumentally to advance that end.”) (quoting Strine, *Our Continuing Struggle*, 47 WAKE FOREST L. REV. at 147 n.34); *Revlon, Inc. v. MacAndrews & Forbes Hldgs., Inc.*, 506 A.2d 173, 182 (Del. 1986) (“A board may have regard for various constituencies in discharging its responsibilities, provided there are rationally related benefits accruing to the stockholders.”); *TW Servs.*, 1989 WL 20290, at *7 (“[D]irectors, in managing the business and affairs of the corporation, may find it prudent (and are authorized) to make decisions that are expected to promote corporate (and shareholder) long run interests, even if short run share value can be expected to be negatively affected, and thus directors in pursuit of long run corporate (and shareholder) value may be sensitive to the claims of other “corporate constituencies.”); *see also eBay Domestic Hldgs., Inc. v. Newmark*, 16 A.3d 1, 32–33 (Del. Ch. 2010) (holding that “craigslist’s values, culture and business model, including [its] public-service mission,” did not “sufficiently promote[] stockholder value to support the indefinite implementation of a poison pill”).

⁸ *Guth v. Loft, Inc.*, 5 A.2d 504 503, 510 (Del. 1939).

⁹ *Mills Acq. Co. v. Macmillan, Inc.*, 559 A.2d 1261, 1280 (Del. 1989) (quoting *Guth*, 5 A.2d at 510); *accord Omnicare, Inc. v. NCS Healthcare, Inc.*, 818 A.2d 914, 938 (Del. 2003) (“The stockholders of a Delaware corporation are entitled to rely upon the board to discharge its fiduciary duties at all times. The fiduciary duties of a

under Delaware law. As a result, the Proposal, if implemented as requested, would violate Delaware law in that it would mandate the adoption of a bylaw which would purport to extend the Board's fiduciary duties whereas such duties are only established via the Delaware common law, and thus would violate Section 109(b) of the General Corporation Law, which prohibits bylaws that contravene Delaware law.

Moreover, to the extent that the Whereas clauses in the Proposal suggest that implementation of the Proposal would require the Company's fiduciaries to place the interests of others ahead of the interests of the Company's stockholders, the Proposal also would violate Delaware law. While the Delaware Revised Uniform Limited Partnership Act and Delaware Limited Liability Company Act expressly allow a Delaware limited partnership or limited liability company to expand, restrict or eliminate common law fiduciary duties,¹⁰ the General Corporation Law contains no such authorization. The sole provisions of the General Corporation Law contemplating the extension of common law fiduciary duties to communities other than stockholders apply only to public benefit corporations.¹¹ Thus, outside of the public benefit corporation context, the fiduciary duties of directors cannot be modified or extended.¹² This is supported not only by public policy, but the entirety of the General Corporation Law, which weighs against the extension of fiduciary duties to any other constituents.¹³

director are unremitting."); *Malone v. Brincat*, 722 A.2d 5, 10 (Del. 1998) ("[T]he fiduciary duty of a Delaware director is unremitting."); *Cede & Co. v. Technicolor, Inc.*, 634 A.2d 345, 360 (Del. 1993) ("[D]irectors are charged with an unyielding fiduciary duty to protect the interests of the corporation and to act in the best interests of its shareholders."); *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985) ("In carrying out their managerial roles, directors are charged with an unyielding fiduciary duty to the corporation and its shareholders.").

¹⁰ 6 Del. C. §§ 17-1101(d), 18-1101(c).

¹¹ See 8 Del. C. §§ 361-68; Strine, *A Job is Not a Hobby*, 41 J. CORP. L. at 73 ("Benefit Corporations were created by statute precisely to enable corporations to consider other constituencies without running afoul of the law.").

¹² See, e.g., *Auriga Capital Corp.*, 40 A.3d at 849 (noting that the Delaware Limited Liability Company Act "lets contracting parties modify or even eliminate any equitable fiduciary duties, a more expansive construction than is allowed in the case of corporations"), *aff'd*, 59 A.3d 1206 (Del. 2012); *In re Inergy L.P. Unitholder Litig.*, 2010 WL 4273197, at *12.

¹³ See Leo E. Jr. Strine, *The Dangers of Denial: The Need for a Clear-Eyed Understanding of the Power and Accountability Structure Established by the Delaware General Corporation Law*, 50 WAKE FOREST L. REV. 761, 765-66 (2015) ("Even if § 101(b) of the Delaware General Corporation Law ("DGCL"), which allows a corporation to pursue any lawful purpose, represented an expression of Delaware's commitment to a constituency-based approach, the provision does not exist in a vacuum. The contention that it proves directors are free to promote interests other than those of stockholders ignores the many ways in which the DGCL focuses corporate managers on stockholder welfare by allocating power only to a single constituency, the stockholders. Under the DGCL, only stockholders have the right to vote for directors; approve certificate amendments; amend the bylaws; approve certain other transactions, such as mergers, and certain asset sales and leases; and enforce the DGCL's terms and hold directors accountable for honoring their fiduciary duties. In the corporate republic, no constituency other than stockholders is given any power.").

B. The Proposal, if Implemented, Would Violate Delaware Law in Impermissibly Directing the Board's Exercise of its Fiduciary Duties and Management Authority

Because the bylaw contemplated by the Proposal purports to direct the Board's oversight responsibilities to include the Company's human and indigenous peoples' rights policy, the bylaw would impermissibly direct the Board in the exercise of its fiduciary duties by requiring the Board to oversee the policy and include it in its decision-making process even in circumstances where a proper application of fiduciary principles would preclude doing so. Under the Proposal, there is no "fiduciary out" that would allow the Board to eliminate or cease its oversight of the human and indigenous peoples' rights policy if the Board determined that that was in the best interests of the Company and its stockholders.

Under Delaware law, stockholders cannot "commit the board of directors to a course of action that would preclude them from fully discharging their fiduciary duties to the corporation and its shareholders."¹⁴ The Delaware courts have consistently applied this principle which is derived from Section 141(a), to prevent attempts to dictate future conduct or decisions by directors, whether by contract, bylaw, stockholder resolution or otherwise.¹⁵ Indeed, in *CA, Inc. v. AFSCME Emps. Pension Plan*, the Delaware Supreme Court held that neither the board nor stockholders could adopt a bylaw amendment requiring future boards to reimburse the reasonable expenses of stockholders incurred in connection with a proxy contest since it would impermissibly "prevent the directors from exercising their full managerial power in circumstances where their fiduciary duties would otherwise require them to deny reimbursement to a dissident slate." Likewise, in *Abercrombie v. Davis*, the Delaware Court of Chancery applied this principle to invalidate an agreement vesting stockholders with the power to initiate, maintain or discontinue corporate policies because "it tend[ed] to limit in a substantial way the freedom of director decisions on matters of management policy [and] violate[d] the duty of each director to exercise his own best judgment on matters coming before the board."¹⁶

As such, the bylaw, if implemented, would impermissibly direct the Board in managing the business and affairs of the Company in contravention of Section 141(a) of the General Corporation Law. As noted above, Section 141(a) provides that the management of the business and affairs of a corporation shall be managed by or under the direction of its board of directors except as otherwise provide by the General Corporation Law or its certificate of incorporation. Because any variation from Section 141(a)'s mandate must be "otherwise

¹⁴ 953 A.2d 227, 238 (Del. 2008).

¹⁵ See, e.g., *Quickturn Design Sys., Inc. v. Shapiro*, 721 A.2d 1281, 1291 (Del. 1998) (invalidating a provision of a stockholder rights plan preventing any newly elected board from redeeming the rights plan for six months because the provision would "impermissibly deprive any newly elected board of both its statutory authority to manage the corporation [under the General Corporation Law] and its concomitant fiduciary duty pursuant to that statutory mandate").

¹⁶ 123 A.2d at 899–900.

provided in [the General Corporation Law] or in its certificate of incorporation,”¹⁷ and the Certificate of Incorporation does not provide for management of the Company by persons other than the Board, the Board possesses the full power and authority to manage the business and affairs of the Company.¹⁸

The Board’s power and authority to manage the business and affairs of the Company includes the establishment and maintenance of corporate policies and initiatives.¹⁹ In this connection, the Delaware Court of Chancery has stated that:

Absent specific restriction in the certificate of incorporation, the board of directors certainly has very broad discretion in fashioning a managerial structure appropriate, in its judgment, to moving the corporation towards the achievement of corporate goals and purposes. In designing and implementing such a structure, the board of course may delegate such powers to the officers of the company as in the board’s good faith, informed judgment are appropriate.²⁰

In addition, Delaware case law is clear that directors have “the duty to establish or approve the long-term strategic, financial and organizational goals of the corporation; to approve formal or informal plans for the achievement of these goals; to monitor corporate performance; and to act, when in the good faith, informed judgment of the board it is appropriate to act.”²¹ Thus decisions directing the Board to implement and oversee a policy, such as a human and

¹⁷ See, e.g., *Lehrman v. Cohen*, 222 A.2d 800, 808 (Del. 1966).

¹⁸ *Aronson v. Lewis*, 473 A.2d 805, 811 (Del. 1984); see also *In re CNX Gas Corp. S’holders Litig.*, 2010 WL 2705147, at *10 (Del. Ch. July 5, 2010) (noting that “the premise of board-centrism animates the General Corporation Law”); *Quickturn Design Sys., Inc.*, 721 A.2d at 1291 (“One of the most basic tenets of Delaware corporate law is that the board of directors has the ultimate responsibility for managing the business and affairs of a corporation.”).

¹⁹ *Grimes v. Donald*, 1995 WL 54441, at *1 (Del. Ch. Jan. 11, 1995) (noting that the board’s responsibility under Section 141(a) ordinarily “entails the duty to establish or approve the long-term strategic, financial and organizational goals of the corporation; to approve formal or informal plans for the achievement of these goals; to monitor corporate performance; and to act, when in the good faith, informed judgment of the board it is appropriate to act”), *aff’d*, 673 A.2d 1207 (Del. 1996); *Abercrombie*, 123 A.2d at 898 (holding that, under Section 141(a), “there can be no doubt that in certain areas the directors rather than the stockholders or others are granted the power by the state to deal with questions of management policy”); *Cahall v. Lofland*, 114 A. 224, 229 (Del. Ch. 1921) (“The duties of directors are administrative, and relate to supervision, direction and control.”), *aff’d* 118 A.1 (Del. 1922).

²⁰ *Grimes*, 1995 WL 54441, at *9; see also 8 *Del. C.* § 141(a) (providing that a corporation’s business and affairs is “managed by or under the direction of a board of directors”) (emphasis added); *Rosenblatt v. Getty Oil Co.*, 493 A.2d 929, 943 (Del. 1985) (observing that Section 141(a)’s reference to the corporation being managed “under the direction” of the board reflects that “[t]he realities of modern corporate life are such that directors cannot be expected to manage the day-to-day activities of a company”); *Canal Capital Corp. v. French*, 1992 WL 159008, at *3 (Del. Ch. July 2, 1992) (“[T]he details of the business may be delegated to inferior officers, agents and employees.”) (quoting *Cahall*, 114 A. at 229).

²¹ See *Grimes*, 1995 WL 54441, at *1.

indigenous peoples' rights policy, are reserved by statute to the discretion of the Board, not the stockholders.²²

Thus, the Proposal, if implemented, would violate Delaware law in that it would mandate the adoption of a bylaw that would contravene Delaware common law (related to directors' fiduciary duties) and Section 141(a) of the General Corporation Law (related to the directors' authority to manage the business and affairs of the Company) and would therefore violate Section 109(b) of the General Corporation Law.

II. The Proposal is Beyond the Power and Authority of the Company to Implement

As set forth in Section I above, the Proposal, if implemented, would violate Delaware law. Therefore, in our opinion, the Company lacks the power and authority to implement the Proposal.

CONCLUSION

Based upon and subject to the foregoing and subject to the limitations stated herein, it is our opinion that the Proposal, if implemented, would violate Delaware law and that the Company lacks the power and authority to implement the Proposal.

The foregoing opinion is limited to the laws of the State of Delaware. We have not considered and express no opinion on the laws of any other state or jurisdiction, including federal laws regulating securities or any other federal laws, or the rules and regulations of stock exchanges or of any other regulatory body.

The foregoing opinion is rendered solely for your benefit in connection with the matters addressed herein. We understand that you may furnish a copy of this opinion letter to the Securities and Exchange Commission and to the Proponent in connection with the matters addressed herein, and we consent to your doing so. Except as stated in this paragraph, this opinion letter may not be furnished or quoted to, nor may the foregoing opinion be relied upon by, any other person or entity for any purpose without our prior written consent.

Very truly yours,

Richard S. Zytow; Zytow, P.A.

CSB/RBG

²² *Abercrombie*, 123 A.2d at 898.