



DIVISION OF  
CORPORATION FINANCE

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

March 28, 2019

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

Re: Exxon Mobil Corporation  
Incoming letter dated January 21, 2019

Dear Mr. Goldberg:

This letter is in response to your correspondence dated January 21, 2019 and February 6, 2019 concerning the shareholder proposal (the "Proposal") submitted to Exxon Mobil Corporation (the "Company") by Steven J. Milloy (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence from the Proponent dated January 25, 2019 and February 7, 2019. Copies of all of the correspondence on which this response is based will be made available on our website at <http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml>. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

M. Hughes Bates  
Special Counsel

Enclosure

cc: Steven J. Milloy  
milloy@me.com

March 28, 2019

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

Re: Exxon Mobil Corporation  
Incoming letter dated January 21, 2019

The Proposal relates to a report.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(f). We note that the Proponent appears to have failed to supply, within 14 days of receipt of the Company's request, documentary support sufficiently evidencing that he satisfied the minimum ownership requirement for the one-year period as required by rule 14a-8(b). Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on rules 14a-8(b) and 14a-8(f). In reaching this position, we have not found it necessary to address the alternative bases for omission upon which the Company relies.

Sincerely,

Kasey L. Robinson  
Special Counsel

**DIVISION OF CORPORATION FINANCE**  
**INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS**

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

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

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

# Steven J. Milloy

BY E-MAIL

February 7, 2019

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

Re: Request by Exxon Mobil Corporation to Omit Shareholder Proposal of Steven J. Milloy

Dear Sir or Madam:

I am responding to the February 6, 2019 addendum to the request from Exxon Mobil Corporation ("Exxon") to omit my shareholder proposal (the "Proposal") from its 2019 proxy solicitation materials.

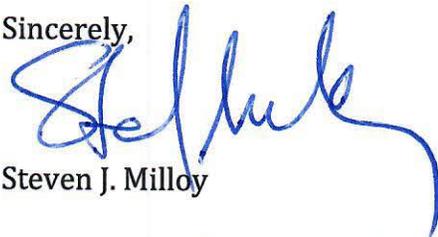
The proof of ownership submitted to ExxonMobil shares demonstrates adequate and continuous ownership for the reasons provided previously in my letter of January 25, 2019. Additionally, ExxonMobil and its counsel (Louis Goldberg) are making claims to the contrary in bad faith. They know that I have owned these shares continuously as required.

These same shares were relied on by me last year in filing a shareholder proposal with ExxonMobil. When ExxonMobil and Mr. Goldberg filed a no-action request last year, they did not attempt to raise a defense over continuous ownership. I have attached their 2018 no-action request.

ExxonMobil and Mr. Goldberg know my ownership has been continuous. The documentation I provided from the custodian of my shares shows continuous ownership. In its best light, accepting claim of ExxonMobil and Mr. Goldberg would be an extreme exaltation of form over substance.

If you have any questions, I may be contacted at 240-205-1243. A copy of this letter has been sent to Exxon and its counsel.

Sincerely,



Steven J. Milloy

Attachments: ExxonMobil/Goldberg 2018 no-action request

**12309 Briarbush Lane, Potomac, MD 20854**  
**Tel: 240-205-1243 Email: milloy@me.com**

New York  
Menlo Park  
Washington DC  
London  
Paris

Madrid  
Tokyo  
Beijing  
Hong Kong

# Davis Polk

**Louis L. Goldberg**

Davis Polk & Wardwell LLP 212 450 4539 tel  
450 Lexington Avenue 212 701 5539 fax  
New York, NY 10017 louis.goldberg@davispolk.com

January 23, 2018

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

Ladies and Gentlemen:

On behalf of Exxon Mobil Corporation, a New Jersey corporation (the "**Company**"), and in accordance with Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), we are filing this letter with respect to the shareholder proposal (the "**Proposal**") submitted by Steven J. Milloy (the "**Proponent**") for inclusion in the proxy materials the Company intends to distribute in connection with its 2018 Annual Meeting of Shareholders (the "**2018 Proxy Materials**"). The Proposal is attached hereto as Exhibit A.

We hereby request confirmation that the Staff of the Division of Corporation Finance (the "**Staff**") will not recommend any enforcement action if, in reliance on Rule 14a-8, the Company omits the Proposal from the 2018 Proxy Materials.

Pursuant to Staff Legal Bulletin No. 14D (CF), Shareholder Proposals (November 7, 2008), Question C, we have submitted this letter and any related correspondence via email to shareholderproposals@sec.gov. Also, in accordance with Rule 14a-8(j), a copy of this submission is being sent simultaneously to the Proponent as notification of the Company's intention to omit the Proposal from the 2018 Proxy Materials. This letter constitutes the Company's statement of the reasons it deems the omission of the Proposal to be proper.

## THE PROPOSAL

The Proposal states:

RESOLVED: Shareholders request that, beginning in 2019, ExxonMobil publish an annual report of the incurred costs and associated significant and actual benefits that have accrued to shareholders, the public health and the environment, including the global climate, from the company's environment-related activities that are voluntary and that exceed U.S. and foreign compliance and regulatory requirements. The report should be prepared at reasonable cost and omit proprietary information.

## REASONS FOR EXCLUSION OF THE PROPOSAL

The Company believes that the Proposal may be properly omitted from the 2018 Proxy Materials pursuant to:

- Rule 14a-8(i)(3), because the Proposal is so inherently vague and indefinite as to be materially misleading in violation of Rule 14a-9;
- Rule 14a-8(i)(7), because the Proposal relates to the Company's ordinary business operations; and
- Rule 14a-8(i)(10), because the Proposal has been substantially implemented.

**1. The Company may omit the Proposal pursuant to Rule 14a-8(i)(3) because the Proposal is so inherently vague and indefinite as to be materially misleading under Rule 14a-9.**

Under Rule 14a-8(i)(3), a proposal may be excluded if the resolution or supporting statement is contrary to any of the Commission's proxy rules or regulations. The Staff has consistently taken the view that shareholder proposals that are "so inherently vague or indefinite that neither the shareholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires" are materially false and misleading. Staff Legal Bulletin No. 14B (CF) (September 15, 2004). See also *Dyer v. SEC*, 287 F.2d 773, 781 (8th Cir. 1961) ("[I]t appears to us that the proposal, as drafted and submitted to the company, is so vague and indefinite as to make it impossible for either the board of directors or the shareholders at large to comprehend precisely what the proposal would entail.").

The Staff has consistently concurred in the exclusion of proposals that fail to define key terms or that rely on complex external guidelines. For example, in *ExxonMobil Corporation* (March 11, 2011), the Staff concurred with the exclusion of a proposal requesting a report based on the Global Reporting Initiative's ("GRI") sustainability guidelines. Not only did that proposal fail to describe what the GRI guidelines entailed, but the guidelines' sheer complexity meant that both the company and individual shareholders could hold conflicting interpretations of the proposal's ultimate meaning. See also *Cisco Systems, Inc.* (October 7, 2016) (permitting exclusion of a proposal where several key terms were left undefined and subject to numerous possible interpretations); *Alaska Air Group, Inc.* (March 10, 2016) (permitting exclusion of a proposal requiring the company to honor shareholder right "to disclosure identification and contact information" while failing to provide a standard by which to measure those rights); *General Electric Company* (January 15, 2015) (permitting exclusion of a proposal that encouraged the company to follow "SEC Staff Legal Bulletin No. 14C"); *Wendy's International Inc.* (February 24, 2006) (permitting exclusion of a proposal where the term "accelerating development" was found to be unclear); *Peoples Energy Corporation* (November 23, 2004) (permitting exclusion of a proposal where the term "reckless neglect" was found to be unclear); and *Exxon Corporation* (January 29, 1992) (permitting exclusion of a proposal regarding board member criteria because vague terms were subject to differing interpretations).

A proposal may also be vague, and thus materially misleading, when it fails to address essential aspects of its own implementation. For example, the Staff has allowed the exclusion of several executive compensation proposals where a crucial term relevant to implementing the proposal was not clear. See *The Boeing Company* (January 28, 2011, recon. granted March 2,

2011) (concurring with the exclusion of a proposal requesting, among other things, that senior executives relinquish certain "executive pay rights" because the proposal did not sufficiently explain the meaning of the phrase); *General Electric Company* (January 21, 2011) (proposal requesting that the compensation committee make specified changes was vague because, when applied to the company, neither the shareholders nor the company would be able to determine exactly what actions or measures the proposal required); and *General Electric Company* (January 23, 2003) (proposal seeking an individual cap on salaries and benefits of one million dollars failed to define the critical term "benefits" or otherwise provide guidance on how benefits should be measured for purposes of implementing the proposal).

The Proposal's request that the Company publish an annual report (the "Report") on the "associated significant and actual benefits" accruing to shareholders, the public health and the environment from the Company's "environment-related activities" is vague and misleading because it fails to define any of those terms or to provide any guidance or clarity on what should be covered or disclosed in terms of benefits, to seek to dispel the Proposal's vague assertions that the Company is merely engaged in "greenwashing." Accordingly, the Company is left unclear on how to implement the Proposal and shareholders uncertain in voting on the Proposal.

The Proposal fails to define "environment-related activities," which is the main focus of the Report. "Environment-related" may suggest that the activities are undertaken solely, or even primarily, for the purpose of impacting the environment. However, the examples used in the Proposal, such as supporting and funding research of new energy supplies that would reduce greenhouse gas emissions, deploying ways to use low-carbon technologies including algae biofuels, biodiesel from agricultural waste and carbonate fuel cells, are all efforts by the Company to invest in the future for business purposes. The Company, like its peers, makes these investments in new types of research to diversify and generate additional revenue streams in order to remain competitive. These investments by their nature inherently may have environmental ramifications but are being undertaken for the purpose of positioning the Company to achieve attractive future business results for its shareholders.

The Proposal confuses the meaning of "environment-related" further by stating that the Report is targeting activities that the Proposal asserts are "touted as green," "green posturing," "feel-good corporate endeavors" and "corporate green propaganda." Indeed, the Proposal and the supporting statement both refer to "greenwashing," which the Oxford English Dictionary defines as "disinformation disseminated by an organization so as to present an environmentally responsible public image." "Greenwashing," *Oxford English Dictionary* (3<sup>rd</sup> ed., 2002). While greenwashing is generally a disparaging term that refers to insincere or dishonest efforts to appear to be taking steps to protect the environment, even read generously it would imply public relations efforts related to a company's stance on environmental issues. The range of meanings of the term "greenwashing" renders the Proposal confusing. The Company cannot be certain whether the Report is designed to be focused on marketing or public image actions regarding the environment, or on business decisions that may happen to have environmental impacts.

Another vague term in the Proposal is the request to discuss the "associated significant and actual benefits" to shareholders as well as "the public health and the environment, including the global climate" from these Company activities. The Proposal does not define the scope of the "benefits" about which the Company is supposed to provide information. There are a multitude of ways to understand the potential benefits of "environment-related activities." Some of the benefits to shareholders may be more tangible and easier to measure, such as cost savings and efficiency gains or additional revenue or cash flow. Other benefits to shareholders that arise from these

activities, however, are more complex and may include the avoidance of liability, improvement to brand image that leads customers to select the Company for its products, employee satisfaction that reduces turnover and goodwill with regulators in assessing corporate compliance with laws.

The "significant and actual benefits" that the Report is supposed to describe include those that flow to "public health and the environment, including global climate." This is not defined in the Proposal and the possibilities are seemingly endless. They could encompass the impacts of Company programs to fight malaria, minimize spills in or to the environment, reduce greenhouse gas emissions, or any number of other potential impacts of Company actions. In addition, the Company is likely not able to isolate and measure in unambiguous terms, in light of the way these words are used in the Proposal, the effect of its actions within the context of incredibly complex and dynamic systems such as public health or with respect to large or global environmental conditions.

What further compounds the vagueness of the request is that the Proposal fails to identify any metric by which to measure the benefits as well as the relevant time periods to be measured, e.g., costs and benefits and "environment-related activities" analyzed against each other each year, over the course of the life of the activity or otherwise. A change in time period over which they should be measured would result in meaningful differences, as the benefit of some of the Company's actions that have an environmental impact may not be fully understood for many years, even decades. As the Proposal itself notes, research and development programs such as the Company's research into the use of algae biofuels may not result in commercialization for many years, yet depending on the outcome of this research and other technological developments in the future could generate significant shareholder value over the long term. It is inherent in the nature of any company's research and development programs, especially research involving potential breakthrough technologies, that returns on those investments are not realized in the near term but are intended to position the Company for competitive success in the future.

The absence in the Proposal of specific ways to measure the benefits, including the types of benefits, the lack of time period and the means of measurement, renders the Proposal vague such that the Company would not be able to implement it, and shareholders would not understand what they are voting on.

For all the reasons stated above, the Company believes the Proposal is properly excludable under Rule 14a-8(i)(3).

**2. The Proposal may be excluded under Rule 14a-8(i)(7) because the Proposal deals with matters related to the Company's ordinary business operations**

Rule 14a-8(i)(7) allows a company to omit a shareholder proposal from its proxy materials if such proposal deals with a matter relating to the company's ordinary business operations. The general policy underlying the "ordinary business" exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at annual shareholders meetings." Exchange Act Release No. 34-40018 (May 21, 1998) (the "1998 Release"). This general policy reflects two central considerations: (i) "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight" and (ii) the "degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." A proposal generally will not be excludable under Rule 14a-8(i)(7) where it raises a significant policy issue. Staff Legal Bulletin 14E

(October 27, 2009). However, the Staff has indicated that even proposals relating to social policy issues may be excludable in their entirety if they do not "transcend the day-to-day business matters" discussed in the proposals. 1998 Release.

In line with the 1998 Release, the Staff has consistently concurred that a proposal may be excluded in its entirety when it addresses ordinary business matters, even if it also addresses a significant social policy issue. For instance, in *Apache Corporation* (March 5, 2008), the Staff concurred that a company could exclude a proposal requesting that the company "implement equal employment opportunity policies based on principles specified in the proposal prohibiting discrimination based on sexual orientation and gender identity." Even though the proposal in *Apache Corporation* referenced discrimination issues based on sexual orientation and gender identity, the company argued that the proposal and the principles "did not transcend the core ordinary business matters" of the company. The Staff concurred in its exclusion under Rule 14a-8(i)(7), stating "that some of the principles [mentioned in the proposal] related to [the company's] ordinary business operations." See also *FedEx Corporation* (July 14, 2009); *The Walt Disney Company* (November 30, 2007).

A shareholder proposal that requests a report does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the issuer. See Exchange Act Release No. 20091 (August 16, 1983) (the "1983 Release"). See also *Johnson Controls, Inc.* (October 26, 1999) ("[Where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under [R]ule 14a-8(i)(7)."). According to Legal Bulletin No. 14E (October 27, 2009), a proposal's request for a review of certain risks also does not preclude exclusion if the underlying subject matter of the proposal to which the risk pertains or that gives rise to the risk is ordinary business.

#### A. *The Proposal Micro-Manages the Company's Choice of Technologies*

The Staff has noted that proposals related to a company's choice of technologies are generally excludable under Rule 14a-8(i)(7). See *Dominion Resources, Inc.* (February 14, 2014) (proposal requesting report on the risks faced by company in trying to develop solar power generation); *FirstEnergy Corporation* (March 8, 2013) (proposal requesting report on the diversification of the company's energy resources to include increased energy efficiency and renewable energy resources); *PG&E Corporation* (March 10, 2014) (proposal requesting the company revise its smart meter policy in specific ways); *AT&T Inc.* (February 13, 2012) (proposal requesting cable and Internet provider to publish a report disclosing actions it was taking to address the inefficient consumption of electricity by its set-top boxes, including the company's efforts to accelerate the development and deployment of new energy efficient set-top boxes); and *CSX Corporation* (January 24, 2011) (concurring in the exclusion of a proposal requesting the company develop a kit that would allow it to convert the majority of its locomotive fleet to a more efficient system).

The supporting statement questions the benefits from the Company's decision to invest in various kinds of low-carbon technologies and research, such as algae biofuels, biodiesel from agricultural waste and carbonate fuel cells. The Proposal also raises issues with the Company's decision to provide funds for researching new options for commercially viable technological systems that may be capable of substantially reducing greenhouse gas emissions.

As explained on the ExxonMobil website,<sup>1</sup> the innovative use and deployment of advances in technology is crucial to all aspects of the Company's business, ranging from carbon capture, deepwater drilling, exploration and production, energy efficiency, natural gas operations and the technologies used in advanced motor vehicles like electric cars. Management is continually seeking new opportunities to invest in leading edge, new technologies, which are key to positioning the Company for growth and success over the long-term. Given the complex nature of these varying technologies and of the Company's business, the choice of technology and business strategies based on implementing these choices are matters that are core to management's functions, and upon which shareholders are not well positioned to make informed judgments.

*B. The Proposal Micro-Manages How the Company Allocates Specific Resources and Markets its Products*

The Staff has permitted the exclusion of proposals under Rule (i)(7) that are directed at specific resource allocation choices by management. See *Comcast Corporation* (March 2, 2017) (proposal requesting report on the company's use of funds on politicized news media); *The Walt Disney Company* (November 20, 2014) (proposal requesting company continue acknowledging the Boy Scouts of America as a charitable organization); and *The Home Depot, Inc.* (March 18, 2011) (proposal requesting that the company list the recipients of corporate charitable contributions of \$5,000 or more on the company website).

Even a proposal that is ostensibly general in scope may be excludable where its supporting statement makes clear that the proponent is seeking to influence the company's financial choices with respect to specific projects. *Pfizer, Inc.* (February 12, 2007) (proposal requesting that the company publish all charitable contributions on its website, where the supporting statement specifically mentioned Planned Parenthood and other charitable groups involved in abortions and same-sex marriages). Relatedly, the Staff has also recognized that management's choices on marketing and public relations are core ordinary business activities and therefore excludable under Rule 14a-8(i)(7). See *Johnson & Johnson* (January 12, 2004) (proposal requesting report on how the company intended to respond to public pressure to reduce drug prices) and *FedEx Corporation* (July 14, 2009) (proposal requesting report addressing company's efforts to disassociate from products or symbols that disparage Native Americans).

The Proposal questions whether there are tangible benefits to be gained from the Company's efforts in investing in alternative energy technologies, or whether corporate assets are being deployed as a "greenwashing" attempt to bolster the Company's public image. Notwithstanding the Proposal's pejorative terminology, the technologies toward which management decides to allocate resources and the manner in which management chooses to communicate with investors and the public regarding issues such as actions the Company is taking to address matters relating to new energy or emission-reduction technologies, are both fundamental to the role of management. Shareholders are not in a position to micro-manage management's decisions and strategies in how best to make investment decisions or tailor its marketing and public relations efforts.

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

The principal concern of the Proposal is not about the risk of climate change, but instead on management's ordinary business decisions about investments in specific research and development

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<sup>1</sup> <http://corporate.exxonmobil.com/>

opportunities. The Proposal questions the benefits of these efforts and the resulting public relations impact on the Company. The Proposal implicates all of these fundamental business issues and it fails to transcend the Company's ordinary business operations.

**3. The Company may omit the Proposal pursuant to Rule 14a-8(i)(10) as it has been substantially implemented.**

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal if the company has already substantially implemented the proposal. The Commission has stated that "substantial" implementation under the rule does not require implementation in full or exactly as presented by the proponent. See *SEC Release No. 34-40018* (May 21, 1998, n.30). The Staff has provided no-action relief under Rule 14a-8(i)(10) when a company has substantially implemented and therefore satisfied the "essential objective" of a proposal, even if the company did not take the exact action requested by the proponent, did not implement the proposal in every detail, or exercised discretion in determining how to implement the proposal. See *Wal-Mart Stores, Inc.* (March 25, 2015) (permitting exclusion of a shareholder proposal requesting an employee engagement metric for executive compensation where a "diversity and inclusion metric related to employee engagement" was already included in the company's management incentive plan); *Entergy Corporation* (February 14, 2014) (permitting exclusion of a shareholder proposal requesting a report "on policies the company could adopt . . . to reduce its greenhouse gas emissions consistent with the national goal of 80% reduction in greenhouse gas emissions by 2050[]") where the requested information was already available in its sustainability and carbon disclosure reports); *Duke Energy Corporation* (February 21, 2012) (permitting exclusion of a shareholder proposal requesting that the company assess potential actions to reduce greenhouse gas and other emissions where the requested information was available in the Form 10-K and its annual sustainability report); *Exelon Corporation* (February 26, 2010) (concurring in the exclusion of a proposal that requested a report on different aspects of the company's political contributions when the company had already adopted its own set of corporate political contribution guidelines and issued a political contributions report that, together, provided "an up-to-date view of the [c]ompany's policies and procedures with regard to political contributions"). "[A] determination that the company has substantially implemented the proposal depends upon whether [the Company's] particular policies, practices, and procedures compare favorably with the guidelines of the proposal." *Texaco, Inc.* (March 28, 1991) (permitting exclusion on substantial implementation grounds of a proposal requesting that the company adopt the Valdez Principles where the company had already adopted policies, practices and procedures regarding the environment).

Notwithstanding the inherent vagueness and indefiniteness of the Proposal, the core objective of the Proposal appears to be that the Company should report "the incurred costs and associated significant and actual benefits . . . from the [c]ompany's environment-related activities." The Company reports and websites that are described below demonstrate that the Company has substantially implemented the Proposal by satisfying this essential objective, and thus the Proposal is excludable under Rule 14a-8(i)(10).

The Company's recent environmental and climate-related reports provide numerous examples of the Company describing the "costs" and "benefits" of its "environment-related activities." As described in the Company's Corporate Citizenship Report,<sup>2</sup> of the \$8 billion the Company has invested in research and assets to improve efficiency and reduce emissions, \$4 billion has been invested in the Company's upstream facilities around the world on emission reduction efforts,

<sup>2</sup> [http://cdn.exxonmobil.com/~media/global/files/corporate-citizenship-report/2016\\_ccr\\_full\\_report.pdf](http://cdn.exxonmobil.com/~media/global/files/corporate-citizenship-report/2016_ccr_full_report.pdf)

including energy efficiency and flare mitigation. In addition, \$2 billion has been spent at the Company's refining and chemical facilities to reduce emissions, and \$2 billion has been spent at the Company's upstream and downstream cogeneration facilities to more efficiently produce electricity and reduce emissions.

The Company's Corporate Citizenship report notes that the Company has "enhanced its waste disposal practices and achieved significant cost savings" totaling "more than \$2 million in cost savings due to increased recycling, improved waste classification and container optimization." Further, the "Innovating energy solutions: Research and development highlights" section of the Company's website<sup>3</sup> lists multiple benefits of the \$1 billion per year that the Company invests in research and development. These include "\$250 million on biofuels research in the last decade," including biofuels made from algae to provide "renewable, lower-emission fuel for transportation." This website also notes that the Company "has committed \$145 million to fund breakthrough energy research at" various universities to "develop new solutions to the world's energy challenges." The website explains the Company's research and development investments in other "environment-related" areas, such as natural gas technology, carbon capture and storage, fuel cell technology, and plastics process GHG emissions technology, among others. Along these lines, the "Driving innovation – developing new technologies to reduce greenhouse gas emissions" section of the Company's website<sup>4</sup> describes the Company's decades of research into solar power technology.

Substantial implementation does not require implementation in full or exactly as presented by the Proposal. The Staff has found proposals related to climate change excludable pursuant to 14a-8(i)(10) even if the Company's actions were not identical to the guidelines of the proposal. Both *Energy Corporation* and *Duke Energy Corporation* permitted exclusion of a shareholder proposal pursuant to 14a-8(i)(10), even though the requested disclosures were not made in precisely the manner contemplated by the proponent. Numerous other letters reinforce this approach. See *Merck & Company, Inc.* (March 14, 2012) (permitting exclusion of a shareholder proposal requesting a report on the safe and humane treatment of animals because the company had already provided information on its website and further information was publicly available through disclosures made to the United States Department of Agriculture); *ExxonMobil Corporation* (March 17, 2011) (permitting exclusion of a shareholder proposal requesting a report on the steps the company had taken to address ongoing safety concerns where the company's "public disclosures compare[d] favorably with the guidelines of the proposal"); and *ExxonMobil Corporation* (January 24, 2001) (permitting exclusion of a shareholder proposal requesting the review of a pipeline project, the development of criteria for involvement in the project and a report to shareholders because it was substantially implemented by prior analysis of the project and publication of such information on the company's website).

The essential objective of the Proposal is for the Company to report "the incurred costs and associated significant and actual benefits . . . from the [c]ompany's environment-related activities," and this has been substantially implemented by the Company as explained by the Company reports and websites summarized above. These materials compare favorably with the essence of the Proposal, and thus the Proposal is excludable under Rule 14a-8(i)(10).

<sup>3</sup> <http://corporate.exxonmobil.com/en/energy/research-and-development/innovating-energy-solutions/research-and-development-highlights#/section/5-chemicals-process-breakthrough>

<sup>4</sup> <http://corporate.exxonmobil.com/en/current-issues/climate-policy/climate-perspectives/energy-developing-new-technologies-to-reduce-ghg>

**CONCLUSION**

The Company requests confirmation that the Staff will not recommend any enforcement action if, in reliance on the foregoing, the Company omits the Proposal from its 2018 Proxy Materials. If you should have any questions or need additional information, please contact the undersigned at (212) 450-4539 or [louis.goldberg@davispolk.com](mailto:louis.goldberg@davispolk.com). If the Staff does not concur with the Company's position, we would appreciate an opportunity to confer with the Staff concerning these matters prior to the issuance of its response.

Respectfully yours,

  
Louis L. Goldberg

Attachment

cc w/ att: James E. Parsons, Exxon Mobil Corporation  
Steven J. Milloy

New York  
Northern California  
Washington DC  
São Paulo  
London

Paris  
Madrid  
Tokyo  
Beijing  
Hong Kong

# Davis Polk

Louis L. Goldberg

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February 6, 2019

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

Ladies and Gentlemen:

On behalf of Exxon Mobil Corporation, a New Jersey corporation (the "**Company**"), we are writing to respond to the letter dated January 25, 2019 from Steven J. Milloy (the "**Proponent**"). The letter from the Proponent was in response to the request from the Company, dated January 21, 2019 (the "**No-Action Letter**"), regarding the exclusion of a shareholder proposal submitted by the Proponent (the "**Proposal**") from the Company's proxy statement for its 2019 Annual Meeting of Shareholders. A copy of the Proposal is included with this letter as Exhibit A.

**1. The Company may omit the Proposal pursuant to Rule 14a-8(f)(1) because the Proponent failed to establish its eligibility to submit the Proposal.**

We disagree with the Proponent's assertion that the proof of ownership he provided was sufficient to demonstrate continuous ownership of Company securities for the one year period prior to the submission of the Proposal. The Proponent submitted two letters from Charles Schwab that merely provide confirmation of ownership of Company shares as of four dates: December 26, 2013, when 150 shares were transferred into the Proponent's account; January 28, 2015, when 100 shares were purchased; and November 5, 2018 and December 17, 2018, the dates of the Charles Schwab letters. The Charles Schwab letters in no way demonstrate that shares were owned continuously during the one-year period preceding and including the date that the proposal was submitted: December 4, 2018. The Proponent's response to the No-Action Letter tries to infer continuous ownership by stating that because the letters only list the transactions noted above, and do not list any sales or transfers out, these shares were owned continuously for the requisite period.

The proof of ownership provided by the Proponent fails to meet the standard set forth in Staff Legal Bulletin 14F (October 18, 2011) ("**SLB 14F**"), a copy of which was provided to the Proponent when the Company notified the Proponent of the deficiency. The Company specifically stated in its letter that the proof of ownership from the record holder must demonstrate that the Proponent has held the requisite number of shares "for the one-year period preceding and including December 4, 2018," in accordance with the format prescribed by SLB 14F.

Specifically, the Charles Schwab letters that serve as proof of ownership do not include "an affirmative written statement from the record holder of his or her securities that specifically verifies that the shareholder owned the securities *continuously* for a period of one year as of the time of submitting the proposal" (emphasis in original) as required by Staff Legal Bulletin No. 14G (October 16, 2012). The Charles Schwab letters are perfect examples of the type of ownership documentation that the Staff has said "fail[s] to confirm continuous ownership": "a letter that confirms the shareholder's beneficial ownership only as of a specified date but omits any reference to continuous ownership for a one-year period." (SLB 14F). As noted above and in the No-Action Letter, the Charles Schwab letters make no reference to continuous ownership for the requisite period, but simply confirm beneficial ownership held only as of four specified dates.

The Charles Schwab letters provided by the Proponent are similar to the proof of ownership that the Staff found insufficient in *Intel Corporation* (March 11, 2016). There, a proponent submitted as proof of ownership a letter from a record holder with two specified dates: a trade date and a settle date. The proof of ownership letter by the proponent in Intel's case also stated that "We confirm that as of 12/03/2015 Heartland Initiative, Inc. has beneficial ownership of at least \$2,000 in market value of the voting securities of Intel Corp and that such beneficial ownership has existed for one or more years" (emphasis added). The holding period listed for two dates, and even an additional general statement of one or more years of beneficial ownership, was viewed to be insufficient.

**2. The Company may omit the Proposal pursuant to Rule 14a-8(i)(7) and Rule 14a-8(i)(10) for the reasons stated in the No-Action Letter.**

Regarding the Company's other bases for exclusion (Rule 14a-8(i)(7) ordinary business operations and Rule 14a-8(i)(10) substantial implementation), we respectfully believe that the Company may exclude the Proposal on those bases as well, as laid out in our No-Action Letter, and we do not believe that the Proponent's letter contains any arguments or new information that are not addressed in our No-Action Letter.

Respectfully yours,



Louis L. Goldberg

cc: James E. Parsons, Exxon Mobil Corporation  
Steven J. Milloy

**Proposal**

**Greenwashing Audit**

**Resolved:**

Shareholders request that, beginning in 2020, ExxonMobil publish an annual report of the incurred costs and associated significant and actual benefits that have accrued to shareholders, the public health and the environment, including the global climate, from the company's environment-related activities that are voluntary and that exceed U.S. and foreign compliance and regulatory requirements. The report should be prepared at reasonable cost and omit proprietary information.

**Supporting Statement:**

The resolution is intended to help shareholders monitor and evaluate whether the company's voluntary activities and expenditures touted as protecting the public health and environment are producing actual and meaningful benefits to shareholders, the public health and the environment, including global climate.

Corporate managements sometimes engage in the practice of "greenwashing," which is defined as the expenditure of shareholder assets on ostensibly environment-related activities but possibly undertaken merely for the purpose of improving the company's or management's public image. Such insincere "green" posturing and associated touting of hypothetical or imaginary benefits to public health and the environment may harm shareholders by wasting corporate assets, and deceiving shareholders and the public by accomplishing nothing real and significant for the public health and environment

ExxonMobil has spent more than \$9 billion since 2000 on efforts to reduce emissions of greenhouse gases. But what are the actual benefits to shareholders, the public health and the environment of the money spent? What specific adverse climate change or weather events have been avoided or mitigated by these corporate expenditures?

In its most recent Sustainability Report, ExxonMobil claims to have avoided emitting 23.4 million tons of greenhouse gas emissions in 2017. But so what? The United Nations recently reported that manmade emissions of greenhouse gases amounted to 53.5 BILLION tons in 2017. ExxonMobil spent precious and significant shareholder assets to voluntarily reduce global greenhouse gas emissions by a whopping 0.044%.

Other than greenwashing, what are the real-world benefits of ExxonMobil's emissions reductions to anyone or anything? Any lives saved? Any weather catastrophes avoided or mitigated? Has the weather been improved somewhere? What? And what did it cost to accomplish whatever was accomplished?

The information requested by this proposal is not already contained in any ExxonMobil report available to shareholders.

ExxonMobil should identify and report to shareholders on the actual benefits being produced by its voluntary and highly touted environmental activities. Are they real and worthwhile? Or are they just greenwashing?

# Steven J. Milloy

BY E-MAIL and PRIORITY MAIL

January 25, 2019

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

Re: Request by Exxon Mobil Corporation to Omit Shareholder Proposal of Steven J. Milloy

Dear Sir or Madam:

I am responding to the January 21, 2019 request from Exxon Mobil Corporation ("Exxon") to omit my shareholder proposal (the "Proposal") from its 2019 proxy solicitation materials.

Exxon's request is false and misleading, and baseless. It should be denied.

## **I. Introduction**

The fundamental pillars of the federal securities laws and regulations are their (1) disclosure and (2) anti-fraud provisions.

Exxon has touted its environment-related activities in numerous and various public statements and documents.

The Proposal merely requests that Exxon report to shareholders on the actual benefits of its environment-related activities.

The goal of the Proposal is to ensure, via disclosure, that Exxon's touted benefits are bona fide. Exxon has not already implemented this request.

The Proposal is, therefore, entirely consistent with the fundamental pillars of federal securities laws, including the proxy solicitation rules, and the extensive Commission precedent refusing registrant efforts to dodge accountability to shareholders via disclosure/reporting.

I will now address Exxon's specific assertions in its January 21 letter.

**12309 Briarbush Lane, Potomac, MD 20854  
Tel: 240-205-1243 Email: milloy@me.com**

## II. Proof of continuous ownership of Exxon stock was provided to Exxon.

In timely response to Exxon's request of December 14, 2018, proof of continuous ownership of sufficient stock was provided on December 19, 2018. Attached to this letter is a copy of the proof of ownership supplied to Exxon. As below, the letter from owner-of-record Charles Schwab & Co. (Schwab letter) shows that Steven Milloy owns 250 shares of Exxon — 150 shares transferred into the account in 2013 and another 100 shares purchased in 2015, for a total of 250 shares held continuously since 2013. While Exxon complains that the Schwab letter doesn't contain the word "continuously", it is obvious from the letter (see image below) that ownership has been continuous — i.e., note under the heading "Transaction Details," only two transactions (a transfer in and a purchase) of Exxon stock are listed. There have been no sales transactions by Steven Milloy of Exxon stock and none are listed in the Schwab letter. So ownership has been continuous and is so represented.



December 17, 2018

Steven Milloy  
SEP IRA  
12309 Briarbush Ln  
Potomac, MD 20854

Account #: \*\*\*  
Questions: +1 (877) 594-2578  
x48404

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### Exxon Mobile share ownership requested.

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Dear Steven Milloy,

I'm writing in regards to your request for confirmation of ownership of Exxon Mobile (CUSIP 30231G102) in the above referenced account.

As of the writing of this letter you hold 250 shares of Exxon Mobile.

#### Transaction Details

01/28/2015 - Buy - 100 Shares  
12/26/2013 - Transfer In - 150 Shares

**No listed sales transaction means  
ownership is continuous.**

As this is the third consecutive year that I have submitted a shareholder proposal to Exxon with these same shares, Exxon has constructive knowledge that my ownership has been continuous. Regardless, documentation was timely submitted to Exxon evidencing sufficient continuous ownership. To exclude the Proposal because the word "continuously" doesn't appear in the Schwab letter is a bizarre and bad faith exaltation of form-over-substance inconsistent with securities laws and regulations.

### **III. The Proposal does not deal with Exxon's ordinary business operations.**

The Proposal merely requests that Exxon produce a report to shareholders, disclosure being a fundamental pillar of the securities laws. It does not in any way inappropriately relate to or affect Exxon's ordinary business operations. The Proposal does not attempt to prescribe or proscribe any business operations. The Proposal does not request disclosure of any proprietary or confidential information. Exxon has touted its environmental activities. The Proposal merely requests an assessment of the actual benefits of those activities.

#### **A. The Proposal does not relate to Exxon's choice of technologies.**

Exxon publicly touts its voluntary environmental activities – i.e., those not required by law or regulation. The Proposal merely requests a report to shareholders on the actual benefits of these activities. The Proposal does not attempt to influence or change Exxon's choice of technologies.

#### **B. The Proposal does not relate to Exxon's marketing of its Business and Products.**

The federal securities laws do not provide shelter for materially false and misleading statements by registrants. Exxon touts its voluntary environmental activities to shareholders and the public. The Proposal merely requests that Exxon produce for shareholders a report disclosing what the actual benefits are. The Proposal is entirely within an appropriate purview of shareholder oversight of management.

#### **C. The Proposal relates to a significant social policy issue.**

The Proposal relates to Exxon's environmental and climate activities – both of which are obviously significant public policy issues. The SEC has previously recognized both the environment and climate as significant social policy issues, suitable for inclusion in proxy statements. Exxon has touted its voluntary environment and climate activities. The Proposal requests a report on those what the benefits of those activities are.

### **IV. Exxon has not substantially implemented the Proposal.**

First, if Exxon had already substantially implemented this Proposal, it would not have been submitted to the company nor would we have had to go through the foregoing.

Next, doing things (like Exxon's voluntary activities related to the environment and climate) is not the same thing as assessing and reporting on whether the things done have produced any benefit to anyone, including shareholders.

None of the information requested by this proposal has been disclosed by Exxon. For example, the merely voluntary reduction of carbon dioxide emissions is not necessarily a benefit to anyone or anything. Exxon claimed to have voluntarily reduced its greenhouse gas emissions in 2017 by 23.4 MILLION tons, but what is the benefit of this to anyone in a world where human activities release on the order of 50+ BILLION? The Proposal asks Exxon to disclose these benefits, if any.

**A. Exxon did not disclose the costs and benefits of its environment-related activities in its Energy and Carbon Summary.**

Exxon's "2018 Energy & Carbon Summary" does not at all disclose or discuss the actual benefits to shareholders, the public, the environment or the climate of its voluntary environment and climate activities. That report is largely a speculative view of imaginary global greenhouse gas regulation that may or may not happen in the future. In stark contrast, the proposal requests a report on today's realities. Who, what, where and how is anyone or anything benefitting from Exxon's voluntary activities today. Exxon's Energy and Carbon Summary does not answer that question for climate, much less its other voluntary environment-related activities.

**B. Exxon does not report the benefits of its environment-related activities on its Form 10-K.**

Form 10-K is an annual financial summary. It does not present the specific costs and benefits, as requested in the proposal, of Exxon's voluntary environment and climate-related activities. For example, there is no mention in the Form 10-K of how anyone or anything is actually benefitting from Exxon's reduction in greenhouse gas emissions. Exxon's projections of future global growth in solar, wind and biofuels are not only speculative but fails to identify and actual benefits of Exxon's current activities. The Proposal is not interested in what might happen globally in 2040, but rather what Exxon is doing today.

**C. Exxon does not report on costs and benefits of its environment-related activities in its sustainability report.**

Exxon's Sustainability report does not contain the information requested by the Proposal. By Exxon's own statements in its request for permission to exclude the Proposal, the company evidences this reality. For example, Exxon states it has spent "\$9 billion since 2000 to develop commercially viable lower-emission sources." But what has been produced by this expenditure? Who, what, where and how has benefitted? Merely spending money is not necessarily an accomplishment or a benefit. How has the environment or climate benefitted? What is the metric? How can shareholders evaluate this claimed expenditure? Next, Exxon states "the Company has avoided 168 million metric tons of greenhouse gas emissions since 2008 and 23.4 million tons in 2017 alone through its actions"? But what did this cost? What are the benefits to anyone or anything? The Sustainability report does not disclose this information.

**D. Exxon does not report on the costs and benefits of its environment-related activities on its web site.**

Exxon's statements in its request for permission to exclude the Proposal admit the falsity of its claim. Merely asserting that money has been spent on research and development ("\$1 billion per year that the Company invests in research and development...") is a far cry from the report requested by the proposal. Exxon may be spending money to reduce emissions but it's not reporting on what is actually being accomplished by any emissions cuts achieved. Mere voluntary cutting of emissions is not an obvious benefit to anyone or anything. The Proposal requests that Exxon report to shareholders on the costs and actual benefits of its voluntary activities.

**V. Conclusion**

Exxon has not substantiated any of its reasons for requesting permission to exclude the Proposal. Accordingly, Exxon's request for permission to omit the Proposal from its 2019 proxy materials should be denied.

If you have any questions, I may be contacted at 240-205-1243. A copy of this letter has been sent to Exxon and its counsel.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steven J. Milloy', with a long horizontal flourish extending to the right.

Steven J. Milloy

Attachments: Milloy shareholder proposal, "Greenwashing Audit"  
Schwab brokerage letter re proof of ownership

## **Greenwashing Audit**

### **Resolved:**

Shareholders request that, beginning in 2020, ExxonMobil publish an annual report of the incurred costs and associated significant and actual benefits that have accrued to shareholders, the public health and the environment, including the global climate, from the company's environment-related activities that are voluntary and that exceed U.S. and foreign compliance and regulatory requirements. The report should be prepared at reasonable cost and omit proprietary information.

### **Supporting Statement:**

The resolution is intended to help shareholders monitor and evaluate whether the company's voluntary activities and expenditures touted as protecting the public health and environment are producing actual and meaningful benefits to shareholders, the public health and the environment, including global climate.

Corporate managements sometimes engage in the practice of "greenwashing," which is defined as the expenditure of shareholder assets on ostensibly environment-related activities but possibly undertaken merely for the purpose of improving the company's or management's public image. Such insincere "green" posturing and associated touting of hypothetical or imaginary benefits to public health and the environment may harm shareholders by wasting corporate assets, and deceiving shareholders and the public by accomplishing nothing real and significant for the public health and environment.

ExxonMobil has spent more than \$9 billion since 2000 on efforts to reduce emissions of greenhouse gases. But what are the actual benefits to shareholders, the public health and the environment of the money spent? What specific adverse climate change or weather events have been avoided or mitigated by these corporate expenditures?

In its most recent Sustainability Report, ExxonMobil claims to have avoided emitting 23.4 million tons of greenhouse gas emissions in 2017. But so what? The United Nations recently reported that manmade emissions of greenhouse gases amounted to 53.5 BILLION tons in 2017. ExxonMobil spent precious and significant shareholder assets to voluntarily reduce global greenhouse gas missions by a whopping 0.044%.

Other than greenwashing, what are the real-world benefits of ExxonMobil's emissions reductions to anyone or anything? Any lives saved? Any weather catastrophes avoided or mitigated? Has the weather been improved somewhere? What? And what did it cost to accomplish whatever was accomplished?

The information requested by this proposal is not already contained in any ExxonMobil report available to shareholders.

ExxonMobil should identify and report to shareholders on the actual benefits being produced by its voluntary and highly touted environmental activities. Are they real and worthwhile? Or are they just greenwashing?



December 17, 2018

Steven Milloy  
SEP IRA  
12309 Briarbush Ln  
Potomac, MD 20854

Account #: \*\*\*  
Questions: +1 (877) 594-2578  
x48404

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**Exxon Mobile share ownership requested.**

---

Dear Steven Milloy,

I'm writing in regards to your request for confirmation of ownership of Exxon Mobile (CUSIP 30231G102) in the above referenced account.

As of the writing of this letter you hold 250 shares of Exxon Mobile.

**Transaction Details**

01/28/2015 - Buy - 100 Shares  
12/26/2013 - Transfer In - 150 Shares

This letter is for informational purposes only and is not an official record of the account. Please refer to statements and trade confirmations as they are the official record of account transactions.

**Thank you for choosing Schwab.** We appreciate your business and look forward to serving you in the future. If you have any questions, please call me or any Client Service Specialist at +1 (877) 594-2578 x48404.

Sincerely,

*Nathan Smith*

Nathan Smith  
Specialist, Resolution Team  
9800 Schwab Way  
Lone Tree, CO 80124

New York  
Northern California  
Washington DC  
London  
Paris  
Madrid  
Tokyo  
Beijing  
Hong Kong



**Louis L. Goldberg**

Davis Polk & Wardwell LLP    212 450 4539 tel  
450 Lexington Avenue        212 701 5539 fax  
New York, NY 10017         louis.goldberg@davispolk.com

January 21, 2019

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

Ladies and Gentlemen:

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

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

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

**THE PROPOSAL**

The Proposal states:

RESOLVED: Shareholders request that, beginning in 2020, ExxonMobil publish an annual report of the incurred costs and associated significant and actual benefits that have accrued to shareholders, the public health and the environment, including the global climate, from the company's environment-related activities that are voluntary and that exceed U.S. and foreign compliance and regulatory requirements. The report should be prepared at reasonable cost and omit proprietary information.

## REASONS FOR EXCLUSION OF THE PROPOSAL

The Company believes that the Proposal may be properly omitted from the 2019 Proxy Materials pursuant to:

- Rule 14a-8(f)(1), because the Proponent failed to provide the required proof of continuous ownership in response to the Company's proper request for that information;
- Rule 14a-8(i)(7), because the Proposal relates to the Company's ordinary business operations; and
- Rule 14a-8(i)(10), because the Proposal has been substantially implemented.

### 1. The Company may omit the Proposal pursuant to Rule 14a-8(f)(1) because the Proponent failed to establish its eligibility to submit the Proposal.

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

Rule 14a-8(f)(1) provides that a company may exclude a shareholder proposal if a proponent fails to provide evidence of eligibility under Rule 14a-8, including the beneficial ownership requirements of Rule 14a-8(b)(1), provided that the company timely notifies the proponent of the deficiency and the proponent fails to correct the deficiency within the required time. Staff Legal Bulletin No. 14G (October 16, 2012) ("**SLB 14G**") provides guidance on the manner in which companies should notify proponents of a failure to provide proof of ownership for the one-year period required under Rule 14a-8(b)(1). Among other things, SLB 14G reiterates "that companies should provide adequate detail about what a proponent must do to remedy all eligibility or procedural defects," and states that a company must provide "a notice of defect that identifies the specific date on which the proposal was submitted and explains that the proponent must obtain a new proof of ownership letter verifying continuous ownership of the requisite amount of securities for the one-year period preceding and including such date to cure the defect."

SLB 14 further clarifies through the following question and answer that broker letters that simply indicate the date on which securities were purchased are insufficient to establish continuous ownership:

#### **(2) Do a shareholder's monthly, quarterly or other periodic investment statements demonstrate sufficiently continuous ownership of the securities?**

No. A shareholder must submit an affirmative written statement from the record holder of his or her securities that specifically verifies that the shareholder owned the securities *continuously* for a period of one year as of the time of submitting the proposal [emphasis in original].

In Staff Legal Bulletin 14F (October 18, 2011) (“**SLB 14F**”) (a copy of which was enclosed with the Company’s deficiency notice to the Proponent), the Staff reaffirmed this guidance, stating, “Second, many letters fail to confirm continuous ownership of the securities. This can occur when a broker or bank submits a letter that confirms the shareholder’s beneficial ownership only as of a specified date but omits any reference to continuous ownership for a one-year period.” Nor are shareholders without guidance on this topic. SLB 14F includes sample language for use in ownership verification letters regarding continuity of ownership: “As of [date the proposal is submitted], [name of shareholder] held, and has held continuously for at least one year, [number of securities] shares of [company name] [class of securities].”

Accordingly, the Staff has consistently granted no-action relief to registrants where proponents have failed, following timely and proper requests by registrants, to furnish evidence of continuous share ownership for the full one-year period preceding and including the submission date of the proposal. See *Intel Corporation* (March 11, 2016) (permitting exclusion where a broker letter sent in response to a deficiency notice did not clearly show one year of continuous ownership between November 30, 2014 and November 30, 2015, the date that the proposal was submitted); and *The Home Depot, Inc.* (February 5, 2007) (permitting exclusion where a broker letter sent in response to a deficiency notice only covered one-year period from November 7, 2005 to November 7, 2006 and not from October 19, 2005 to October 19, 2006, which was the date the proposal was submitted).

The Staff also has permitted the exclusion of shareholder proposals based on language in the relevant proof of ownership letter that did not sufficiently pinpoint the dates for which the proponent had ownership of its stock. In *Andrea Electronics Corp.* (June 13, 2013), the company, upon receiving a proposal that had been submitted on March 1, 2013, sent a deficiency notice to the shareholder regarding the proponent’s insufficient proof of ownership. In response, the proponent sent a letter from its broker stating that the proponent’s account held a position in the company “[o]n or about July 8, 2008” and that “[a]s of March 26, 2013 the [proponent’s] account holds a current position of 125,468 shares.” However, the Staff concurred in the exclusion of the proposal because the statements in the aforementioned broker letter did not prove continuous ownership for the one-year period preceding and including March 1, 2013, as the statements left open the possibility that the proponent exited and entered its position in the company’s securities at various times between July 8, 2008 and March 26, 2013. See also *Johnson & Johnson* (January 8, 2013) (letter from a broker stating that the shares had been continuously held since November of 2011 was insufficient to prove continuous ownership for one year as of November 13, 2012, the date the proposal was submitted); *International Business Machines Corp.* (December 26, 2002) (a letter from broker stating that the proponent “owns the following shares and has owned them for more than one year as of September 2002” left open the possibility that the proponent had sold her shares on a date prior to September 5, 2002, the date her proposal was submitted, and was thus insufficient to prove continuous ownership for one year as of the submission date); and *International Business Machines Corp.* (January 14, 2002) (letter from a bank stating that the shares had been held “since prior to November 30, 2000” was insufficient to prove continuous ownership for one year as of November 8, 2001, the date the proposal was submitted).

The Proposal was submitted to the Company by email on December 4, 2018. Enclosed with the Proposal was a broker letter dated November 5, 2018. On December 18, 2018, within 14 calendar days of the Company's receipt of the Proposal, the Company notified the Proponent by letter sent by overnight delivery service that the Proponent does not appear in the Company's records as a registered shareholder and therefore, in order to submit the Proposal, must provide sufficient proof that he has continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to vote at the meeting for the one-year period preceding and including December 4, 2018, the date the Proposal was submitted. The Company's letter specifically highlighted two deficiencies in the broker letter included with the Proponent's original submission:

- (1) that the broker letter only established the Proponent's ownership of shares as of the November 5, 2018 date of that letter, not as of the December 4, 2018 date that the Proposal was submitted; and
- (2) that by stating the Proponent's ownership of shares as of the date of the broker letter and noting the dates of two prior share transactions, the broker letter had failed to prove that the Proponent had continuously held at least the requisite number of shares for the one-year period preceding and including the December 4, 2018 date of submission.

The Company advised the Proponent that a response correcting the deficiencies in his proof of ownership must be postmarked or transmitted electronically to the Company within 14 calendar days of the Proponent's receipt of the Company's deficiency notice. Copies of Rule 14a-8 as well as Staff Legal Bulletin 14F were enclosed with the deficiency notice to provide the Proponent with additional information on the requirements for properly verifying eligible share ownership to submit the Proposal. All of the related documents and correspondence are attached as Exhibit B.

By email on December 19, 2018, the Proponent provided a second broker letter dated December 17, 2018 stating that the Proponent held 250 shares of ExxonMobil stock as of the date of that letter. Like the prior broker letter, the second broker letter also noted the dates of two prior share transactions. Taken together, the two broker letters submitted by the Proponent verify only that the Proponent owned ExxonMobil shares on four specific dates:

December 17, 2018:	250 shares
November 5, 2018:	250 shares
January 28, 2015:	100 shares
December 26, 2013:	150 shares

The broker letters do not state that the Proponent has continuously held the requisite number of shares of the Company for the one-year period preceding and including December 4, 2018, the date his Proposal was submitted, or over any other time period. Nor do the broker letters indicate that the two noted transactions from 2013 and 2015 are the only ExxonMobil stock transactions in the Proponent's account for nearly five years, from which it could possibly be assumed that the Proponent has continuously held the required amount of ExxonMobil shares for the applicable one-year period. The broker letters do not in any way preclude the possibility that the Proponent could have liquidated his ExxonMobil stock holdings on a date after January 28, 2015 and purchased the 250 shares he has been confirmed to hold on December 17, 2018, on a date that results in a holding period much shorter than the one-year period prior to and including the December 4, 2018 date of his Proposal.

The Staff has previously made clear that broker documentation verifying only that a Proponent owned company shares as of a particular date or dates is not sufficient to establish that the Proponent has continuously held the requisite number of shares for at least the one-year period prior to submitting a Proposal as required by Rule 14a-8(b). Notwithstanding the fact that the Company's deficiency notice specifically explained the issues requiring correction with respect to the Proponent's verification of ownership, the ownership documentation submitted by the Proponent fails to verify the requisite continuity of ownership and therefore the Proposal may be excluded from the proxy material for ExxonMobil's 2019 annual meeting of shareholders.

For all the reasons stated above, the Company believes the Proposal is properly excludable under Rule 14a-8(f)(1).

**2. The Proposal may be excluded under Rule 14a-8(i)(7) because the Proposal deals with matters related to the Company's ordinary business operations.**

Rule 14a-8(i)(7) allows a company to omit a shareholder proposal from its proxy materials if such proposal deals with a matter relating to the company's ordinary business operations. The general policy underlying the "ordinary business" exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at annual shareholders meetings." Exchange Act Release No. 34-40018 (May 21, 1998) (the "**1998 Release**"). This general policy reflects two central considerations: (i) "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight" and (ii) the "degree to which the proposal seeks to 'micromanage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." A proposal generally will not be excludable under Rule 14a-8(i)(7) where it raises a significant policy issue. Staff Legal Bulletin 14E (October 27, 2009). However, the Staff has indicated that even proposals relating to social policy issues may be excludable in their entirety if they do not "transcend the day-to-day business matters" discussed in the proposals. 1998 Release.

In line with the 1998 Release, the Staff has consistently concurred that a proposal may be excluded in its entirety when it addresses ordinary business matters, even if it also addresses a significant social policy issue. For instance, in *Apache Corporation* (March 5, 2008), the Staff concurred that a company could exclude a proposal requesting that the company "implement equal employment opportunity policies based on principles specified in the proposal prohibiting discrimination based on sexual orientation and gender identity." Even though the proposal in *Apache Corporation* referenced discrimination issues based on sexual orientation and gender identity, the company argued that the proposal and the principles "did not transcend the core ordinary business matters" of the company. The Staff concurred in its exclusion under Rule 14a-8(i)(7), stating "that some of the principles [mentioned in the proposal] related to [the company's] ordinary business operations." See also *FedEx Corporation* (July 14, 2009); *The Walt Disney Company* (November 30, 2007).

A shareholder proposal that requests a report does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the issuer. See Exchange Act Release No. 20091 (August 16, 1983) (the “**1983 Release**”). See also *Johnson Controls, Inc.* (October 26, 1999) (“[Where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under [R]ule 14a-8(i)(7).”). According to Legal Bulletin No. 14E (October 27, 2009), a proposal’s request for a review of certain risks also does not preclude exclusion if the underlying subject matter of the proposal to which the risk pertains or that gives rise to the risk is ordinary business.

#### *A. The Proposal Relates to the Company’s Choice of Technologies*

The Staff has noted that proposals related to a company’s choice of technologies are generally excludable under Rule 14a-8(i)(7). See *Dominion Resources, Inc.* (February 14, 2014) (proposal requesting report on the risks faced by company in trying to develop solar power generation); *FirstEnergy Corporation* (March 8, 2013) (proposal requesting report on the diversification of the company’s energy resources to include increased energy efficiency and renewable energy resources); *PG&E Corporation* (March 10, 2014) (proposal requesting the company revise its smart meter policy in specific ways); *AT&T Inc.* (February 13, 2012) (proposal requesting cable and Internet provider to publish a report disclosing actions it was taking to address the inefficient consumption of electricity by its set-top boxes, including the company’s efforts to accelerate the development and deployment of new energy-efficient set-top boxes); and *CSX Corporation* (January 24, 2011) (proposal requesting the company develop a kit that would allow it to convert the majority of its locomotive fleet to a more efficient system).

The supporting statement questions the benefits from the Company’s decision to invest in “efforts to reduce emissions of greenhouse gases.” Yet, as explained on the ExxonMobil website,<sup>1</sup> the innovative use and deployment of advances in technology is crucial to the commercial success of the Company’s business, including technologies such as carbon capture, deepwater drilling, exploration and production, energy efficiency, natural gas operations and the technologies used in advanced motor vehicles like electric cars. Management is continually seeking new opportunities to invest in leading-edge, new technologies, which are key to positioning the Company for growth and financial success over the long term as the Company anticipates future changes in the global demand for energy. Given the complex nature of these varying technologies and of the Company’s business, the choice of technology and business strategies that affect determining and implementing these choices are fundamental business matters that are core to management’s functions, and upon which shareholders are not well positioned to make informed judgments.

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<sup>1</sup> <http://corporate.exxonmobil.com/>.

### *B. The Proposal Relates to the Company's Marketing of Its Business and Products*

The Staff has permitted the exclusion of proposals under Rule (i)(7) that are directed at specific resource allocation choices by management. See *Walgreens Boots Alliance, Inc.* (November 20, 2018) (proposal requesting that any open market share repurchase or stock buybacks must be approved by shareholders); *Comcast Corporation* (March 2, 2017) (proposal requesting report on the company's use of funds on politicized news media); *The Walt Disney Company* (November 20, 2014) (proposal requesting company continue acknowledging the Boy Scouts of America as a charitable organization); and *The Home Depot, Inc.* (March 18, 2011) (proposal requesting that the company list the recipients of corporate charitable contributions of \$5,000 or more on the company website).

Even a proposal that is ostensibly general in scope may be excludable where its supporting statement makes clear that the proponent is seeking to influence the company's financial choices with respect to specific projects. See *Pfizer, Inc.* (February 12, 2007) (proposal requesting that the company publish all charitable contributions on its website, where the supporting statement specifically mentioned Planned Parenthood and other charitable groups involved in abortions and same-sex marriages). Relatedly, the Staff has also recognized that management's choices on marketing and public relations are core ordinary business activities and therefore excludable under Rule 14a-8(i)(7). See *Johnson & Johnson* (January 12, 2004) (proposal requesting report on how the company intended to respond to public pressure to reduce drug prices) and *FedEx Corporation* (July 14, 2009) (proposal requesting report addressing company's efforts to disassociate from products or symbols that disparage Native Americans).

As explained below, the Company has disclosed the costs and benefits related to its business decisions that respond to climate change in a number of ways, both in response to legal requirements and with supplemental information that the Company believes is important to its shareholders and other stakeholders. The manner in which management chooses to communicate with investors and the public regarding issues that affect the way the Company is perceived by the public, including its customers, such as actions the Company is taking to address matters relating to changes in global energy demand, emission-reduction technologies and addressing the risks of climate change, are fundamental to the role of management. Shareholders are not in a position to micromanage management's decisions and strategies in how best to make investment decisions or tailor its marketing and public relations efforts.

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

The principal concern of the Proposal is not about the risks of climate change, but instead focuses on management's ordinary business decisions about investments in research and development opportunities that are necessary for the Company to compete in its markets and pursue shareholder returns. The Proposal questions the benefits of these efforts and the resulting public relations impact on the Company. The Proposal implicates all of these fundamental business issues and it fails to transcend the Company's ordinary business operations.

Accordingly, the Company believes the Proposal is properly excludable under Rule 14a-8(f)(7).

### 3. The Company may omit the Proposal pursuant to Rule 14a-8(i)(10) as it has been substantially implemented.

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal if the company has already substantially implemented the proposal. The Commission has stated that “substantial” implementation under the rule does not require implementation in full or exactly as presented by the proponent. See *SEC Release No. 34-40018* (May 21, 1998, n.30). The Staff has provided no-action relief under Rule 14a-8(i)(10) when a company has substantially implemented and therefore satisfied the “essential objective” of a proposal, even if the company did not take the exact action requested by the proponent, did not implement the proposal in every detail, or exercised discretion in determining how to implement the proposal. See *Wal-Mart Stores, Inc.* (March 25, 2015) (proposal requesting an employee engagement metric for executive compensation where a “diversity and inclusion metric related to employee engagement” was already included in the company’s management incentive plan); *Entergy Corporation* (February 14, 2014) (proposal requesting a report “on policies the company could adopt . . . to reduce its greenhouse gas emissions consistent with the national goal of 80% reduction in greenhouse gas emissions by 2050” where the requested information was already available in its sustainability and carbon disclosure reports); *Duke Energy Corporation* (February 21, 2012) (shareholder proposal requesting that the company assess potential actions to reduce greenhouse gas and other emissions where the requested information was available in the Form 10-K and its annual sustainability report); and *Exelon Corporation* (February 26, 2010) (proposal that requested a report on different aspects of the company’s political contributions when the company had already adopted its own set of corporate political contribution guidelines and issued a political contributions report that, together, provided “an up-to-date view of the [c]ompany’s policies and procedures with regard to political contributions”). “[A] determination that the company has substantially implemented the proposal depends upon whether [the Company’s] particular policies, practices, and procedures compare favorably with the guidelines of the proposal.” *Texaco, Inc.* (March 28, 1991) (proposal requesting that the company adopt the Valdez Principles where the company had already adopted policies, practices and procedures regarding the environment).

The Proposal asks the Company to report on “the incurred costs and associated significant and actual benefits . . . from the [c]ompany’s environment-related activities,” that may have accrued to “shareholders, the public health and the environment, including the global climate.” The Company’s public reports and websites that are described below demonstrate that the Company has substantially implemented the Proposal by satisfying this essential objective, and thus the Proposal is excludable under Rule 14a-8(i)(10).

#### A. The Company Reports on the Costs and Benefits of Its Environment-related Activities in Its Energy and Carbon Summary.

On February 2, 2018 the Company published its “2018 Energy & Carbon Summary” (the “ECS”),<sup>2</sup> which describes in detail the benefits of various “environment-related activities” in which the Company is engaged. The ECS is based on the Company’s analysis in its Outlook for Energy (the “Outlook”), which considers the impacts of current and potential future public climate change policies.<sup>3</sup> The base case presented in the Outlook represents the Company’s view of energy demand and supply through 2040 and is used by the Company to help inform the Company’s long-term business strategies and investment plans. This base case analysis is conducted yearly and

<sup>2</sup> <https://cdn.exxonmobil.com/~media/global/files/energy-and-environment/2018-energy-and-carbon-summary.pdf>.

<sup>3</sup> <https://corporate.exxonmobil.com/en/energy/energy-outlook/a-view-to-2040>.

currently extends through 2040, based upon internal data and analyses as well as publicly available information from external sources such as the International Energy Agency. The Outlook incorporates recent developments in economic conditions, policy, and technology, using a data-driven, bottom-up approach to produce a most-likely view of future energy supply and demand, which “anticipates significant changes through 2040 across the world to boost living standards, reshape the use of energy, broaden access to abundant energy supplies, and accelerate decarbonization of the world’s energy system to address the risks of climate change.”<sup>4</sup>

It is imperative for the benefit of shareholders that the Company anticipates and responds to future trends that may impact the demands on its business. The Company, in the ECS and Outlook, discloses its analysis of the business case for its environment-related activities and their significance to shareholders and the public. For example:

- The Company’s base Outlook case already contemplates a future energy mix that shifts toward lower-carbon-intensive fuels. As a result, the Company is positioning its operations to meet these changes in demand in society’s energy requirements, such as expanding the supply of cleaner-burning natural gas.<sup>5</sup>
- The Company forecasts electrification and gradual decarbonization to be significant global trends, along with strong growth in renewables and nuclear energy.<sup>6</sup> Accordingly the Company has analyzed its existing resources and undertaken significant investments of over \$8 billion in what the Proposal deems “environment-related” activities.<sup>7</sup>

*B. The Company Reports on the Costs and Benefits of Its Environment-related Activities in Its Form 10-K.*<sup>8</sup>

The Company explains in the MD&A section of its Form 10-K (the “**Long-Term Business Outlook**”), and the risk factors sections, its expectations regarding the future global demand for its products, and how those demands are expected to change to include more energy-efficient technologies, natural gas, nuclear power, and renewables. For example, the Company anticipates that total renewable energy is likely to exceed 15 percent of global energy by 2040, and total energy supplied from wind, solar, and biofuels will grow nearly 250 percent from 2016 to 2040. The Company also anticipates that international accords and underlying regional and national regulations covering greenhouse gas emissions will also affect oil and gas supply and demand and other aspects of the Company’s business. With this backdrop, the Company explains how it is investing and developing solutions to the business challenges it faces in the future to enhance the Company’s own financial performance in the best interest of its shareholders that could also help address the risks of climate change.

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<sup>4</sup> Page 2 of the Outlook.

<sup>5</sup> Pages 3-4 of the ECS.

<sup>6</sup> Page 4 of the ECS.

<sup>7</sup> Page 16 of the ECS. Also, see footnote 9 below for an updated number of over \$9 billion as reported in our Sustainability Report.

<sup>8</sup> <https://www.sec.gov/Archives/edgar/data/34088/000003408818000015/xom10k2017.htm>.

*C. The Company Reports on Costs and Benefits of Its Environment-related Activities in Its Sustainability Report.*

As described in the Company's Sustainability Report, the Company has invested over \$9 billion since 2000 to develop commercially viable lower-emission energy solutions. This includes \$4 billion invested in the Company's upstream facilities around the world on energy efficiency and product preservation efforts, such as flare mitigation, that enhance our returns while reducing emissions; \$2 billion at the Company's refining and chemical facilities and enabling research to improve energy efficiency while reducing greenhouse gas emissions; and \$3 billion in support of Upstream, Downstream and Chemical cogeneration facilities since 2001 to produce electricity more efficiently and reduce greenhouse gas emissions.<sup>9</sup> The report notes that the Company has avoided 168 million metric tons of greenhouse gas emissions since 2008 and 23.4 million metric tons in 2017 alone through its actions.<sup>10</sup>

*D. The Company Reports on Costs and Benefits of Its Environment-related Activities on Its Website.*

The "Innovating energy solutions: Research and development highlights" section of the Company's website<sup>11</sup> lists multiple benefits of the \$1 billion per year that the Company invests in research and development. These include "\$250 million on biofuels research in the last decade," including biofuels made from algae to provide a commercial "renewable, lower-emission fuel for transportation." This website also notes that the Company "has committed \$145 million to fund breakthrough energy research at" various universities, which provides the Company with knowledge of significant innovations for commercial use and strategic planning, to "develop new solutions to the world's energy challenges." The website also explains the Company's research and development investments in other "environment-related" business areas, such as natural gas technology, carbon capture and storage, fuel cell technology, and plastics process greenhouse gas emissions technology, among others.

Substantial implementation does not require implementation in full or exactly as presented by the Proposal. The Staff has found proposals related to climate change excludable pursuant to 14a-8(i)(10) even if the Company's actions were not identical to the guidelines of the proposal. Both *Entergy Corporation* and *Duke Energy Corporation* permitted exclusion of a shareholder proposal pursuant to 14a-8(i)(10), even though the requested disclosures were not made in precisely the manner contemplated by the proponent. Numerous other letters reinforce this approach. See *Merck & Company, Inc.* (March 14, 2012) (proposal requesting a report on the safe and humane treatment of animals because the company had already provided information on its website and further information was publicly available through disclosures made to the United States Department of Agriculture); *ExxonMobil Corporation* (March 17, 2011) (proposal requesting a report on the steps the company had taken to address ongoing safety concerns where the company's "public disclosures compare[d] favorably with the guidelines of the proposal"); and *ExxonMobil Corporation* (January 24, 2001) (proposal requesting the review of a pipeline project, the development of criteria for involvement in the project and a report to shareholders because it was substantially implemented by prior analysis of the project and publication of such information on the company's website).

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<sup>9</sup> <https://cdn.exxonmobil.com/~media/global/files/sustainability-report/2017-sustainability-report.pdf>, p.18.

<sup>10</sup> <https://cdn.exxonmobil.com/~media/global/files/sustainability-report/2017-sustainability-report.pdf>, p. 17.

<sup>11</sup> <http://corporate.exxonmobil.com/en/energy/research-and-development/innovating-energy-solutions/research-and-development-highlights#/section/5-chemicals-process-breakthrough>.

The essential objective of the Proposal is for the Company to report “the incurred costs and associated significant and actual benefits . . . from the [c]ompany’s environment-related activities,” and this has been substantially implemented by the Company as explained by the Company reports and website summarized above. The existing Company materials compare favorably with the essence of the Proposal, and the Proposal is excludable under Rule 14a-8(i)(10).

## **CONCLUSION**

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

Respectfully yours,



Louis L. Goldberg

Attachment

cc w/ att: James E. Parsons, Exxon Mobil Corporation  
Steven J. Milloy

**Proposal**  
**Greenwashing Audit**

**Resolved:**

Shareholders request that, beginning in 2020, ExxonMobil publish an annual report of the incurred costs and associated significant and actual benefits that have accrued to shareholders, the public health and the environment, including the global climate, from the company's environment-related activities that are voluntary and that exceed U.S. and foreign compliance and regulatory requirements. The report should be prepared at reasonable cost and omit proprietary information.

**Supporting Statement:**

The resolution is intended to help shareholders monitor and evaluate whether the company's voluntary activities and expenditures touted as protecting the public health and environment are producing actual and meaningful benefits to shareholders, the public health and the environment, including global climate.

Corporate managements sometimes engage in the practice of "greenwashing," which is defined as the expenditure of shareholder assets on ostensibly environment-related activities but possibly undertaken merely for the purpose of improving the company's or management's public image. Such insincere "green" posturing and associated touting of hypothetical or imaginary benefits to public health and the environment may harm shareholders by wasting corporate assets, and deceiving shareholders and the public by accomplishing nothing real and significant for the public health and environment

ExxonMobil has spent more than \$9 billion since 2000 on efforts to reduce emissions of greenhouse gases. But what are the actual benefits to shareholders, the public health and the environment of the money spent? What specific adverse climate change or weather events have been avoided or mitigated by these corporate expenditures?

In its most recent Sustainability Report, ExxonMobil claims to have avoided emitting 23.4 million tons of greenhouse gas emissions in 2017. But so what? The United Nations recently reported that manmade emissions of greenhouse gases amounted to 53.5 BILLION tons in 2017. ExxonMobil spent precious and significant shareholder assets to voluntarily reduce global greenhouse gas emissions by a whopping 0.044%.

Other than greenwashing, what are the real-world benefits of ExxonMobil's emissions reductions to anyone or anything? Any lives saved? Any weather catastrophes avoided or mitigated? Has the weather been improved somewhere? What? And what did it cost to accomplish whatever was accomplished?

The information requested by this proposal is not already contained in any ExxonMobil report available to shareholders.

ExxonMobil should identify and report to shareholders on the actual benefits being produced

by its voluntary and highly touted environmental activities. Are they real and worthwhile? Or are they just greenwashing?

**Exhibit B**

**Shareholder Correspondence**

## Gilbert, Jeanine

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**From:** Hansen, Neil A  
**Sent:** Tuesday, December 4, 2018 6:12 PM  
**To:** Englande, Sherry M; Gilbert, Jeanine; Webb, Joel P; Luetttgen, Robert A  
**Subject:** FW: Shareholder proposal submission  
**Attachments:** Milloy ExxonMobil 12062018.pdf

Here is another proxy proposal.

Neil A. Hansen  
Vice President and Corporate Secretary,  
Investor Relations and Office of the Secretary  
Exxon Mobil Corporation  
Phone: 972-940-6716  
Fax: 972-444-1199

-----Original Message-----

**From:** Steve Milloy [mailto:milloy@me.com]  
**Sent:** Tuesday, December 4, 2018 6:07 PM  
**To:** Hansen, Neil A <neil.a.hansen@exxonmobil.com>  
**Cc:** Tinsley, Brian D <brian.d.tinsley@exxonmobil.com>  
**Subject:** Shareholder proposal submission

Dear Mr. Hansen,

I am submitting the attached shareholder proposal for the 2019 meeting.

A hard copy is coming by Priority Mail.

Please confirm receipt.

Sincerely,

Steve Milloy  
240-205-1243

**Steven J. Milloy**  
**12309 Briarbush Lane, Potomac, MD 20854**  
**Tel: 301.258.9320 Email: milloy@me.com**

BY FAX & OVERNIGHT MAIL

December 6, 2018

Mr. Neil Hansen  
Secretary  
Exxon Mobil Corporation  
5959 Las Colinas Blvd  
Irving, TX 75039-2298

RECEIVED

DEC 4 2018

S.M. ENGLANDE

Dear Mr. Hansen:

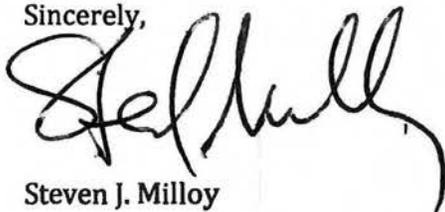
I hereby submit the enclosed shareholder proposal for inclusion in the ExxonMobil Corporation proxy statement to be circulated to shareholders in conjunction with the next annual meeting of shareholders. The proposal is submitted under Rule14(a)-8 of the U.S. Securities and Exchange Commission's proxy regulations.

I am the beneficial owner of 250 shares of Exxon Mobil common stock that have been held continuously for more than one year prior to this date of submission. I intend to hold the shares through the date of the next annual meeting of shareholders. Verification of my beneficial ownership is attached.

I or a designated representative will present the proposal at the annual meeting of shareholders.

If you have any questions or wish to discuss the proposal, please contact me at 301-258-9320. Copies of correspondence or a request for a "no action" letter should be forwarded to me at 12309 Briarbush Lane, Potomac, MD 20854.

Sincerely,



Steven J. Milloy

Attachments: Shareholder Proposal: Greenwashing Audit  
Proof of Beneficial Ownership of XOM common stock

## **Greenwashing Audit**

### **Resolved:**

Shareholders request that, beginning in 2020, ExxonMobil publish an annual report of the incurred costs and associated significant and actual benefits that have accrued to shareholders, the public health and the environment, including the global climate, from the company's environment-related activities that are voluntary and that exceed U.S. and foreign compliance and regulatory requirements. The report should be prepared at reasonable cost and omit proprietary information.

### **Supporting Statement:**

The resolution is intended to help shareholders monitor and evaluate whether the company's voluntary activities and expenditures touted as protecting the public health and environment are producing actual and meaningful benefits to shareholders, the public health and the environment, including global climate.

Corporate managements sometimes engage in the practice of "greenwashing," which is defined as the expenditure of shareholder assets on ostensibly environment-related activities but possibly undertaken merely for the purpose of improving the company's or management's public image. Such insincere "green" posturing and associated touting of hypothetical or imaginary benefits to public health and the environment may harm shareholders by wasting corporate assets, and deceiving shareholders and the public by accomplishing nothing real and significant for the public health and environment.

ExxonMobil has spent more than \$9 billion since 2000 on efforts to reduce emissions of greenhouse gases. But what are the actual benefits to shareholders, the public health and the environment of the money spent? What specific adverse climate change or weather events have been avoided or mitigated by these corporate expenditures?

In its most recent Sustainability Report, ExxonMobil claims to have avoided emitting 23.4 million tons of greenhouse gas emissions in 2017. But so what? The United Nations recently reported that manmade emissions of greenhouse gases amounted to 53.5 BILLION tons in 2017. ExxonMobil spent precious and significant shareholder assets to voluntarily reduce global greenhouse gas missions by a whopping 0.044%.

Other than greenwashing, what are the real-world benefits of ExxonMobil's emissions reductions to anyone or anything? Any lives saved? Any weather catastrophes avoided or mitigated? Has the weather been improved somewhere? What? And what did it cost to accomplish whatever was accomplished?

The information requested by this proposal is not already contained in any ExxonMobil report available to shareholders.

ExxonMobil should identify and report to shareholders on the actual benefits being produced by its voluntary and highly touted environmental activities. Are they real and worthwhile? Or are they just greenwashing?

charles  
SCHWAB

November 5, 2018

Steven Milloy  
Sep Ira  
12309 Briarbush Ln.  
Potomac, MD 20854-1032

Account #: \*\*\*\*-1 \*\*\*  
Questions: 877-561-1918 ext 35475



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**Exxon Mobile share ownership requested.**

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Dear Steven Milloy,

We're writing to confirm share ownership of Exxon Mobile (CUSIP 30231G102) in the above referenced account.

**Transaction Details**

01/28/2015 - Buy - 100 Shares  
12/26/2013 - Transfer In - 150 Shares

This letter is for informational purposes only and is not an official record of the account. Please refer to statements and trade confirmations as they are the official record of account transactions.

**Thank you for choosing Schwab.** We appreciate your business and look forward to serving you in the future. If you have any questions, please call me or any Client Service Specialist at 877-561-1918 ext 35475.

Sincerely,

*Donte Henton*

Donte Henton  
Manager, Resolution Team  
2423 E Lincoln Dr  
Phoenix, AZ 85016-1215



**VIA UPS – OVERNIGHT DELIVERY**

December 14, 2018

Mr. Steven J. Milloy  
12309 Briarbush Lane  
Potomac, MD 20854

Dear Mr. Milloy:

This will acknowledge receipt of the proposal concerning a Report on Environmental Expenditures (the "Proposal"), which you (the "Proponent") have submitted in connection with ExxonMobil's 2019 annual meeting of shareholders. However, several deficiencies exist with the November 5, 2018, letter from Charles Schwab and therefore, does not meet requirements. First, the Charles Schwab letter only verifies your ownership as of November 5, 2018 instead of the date of the proposal submission which is December 4, 2018. Second, while the Charles Schwab letter states that the referenced account holds ExxonMobil shares and notes the dates of two share transactions it does not indicate that you have continuously held at least the requisite number of shares for the one-year period preceding and including the December 4, 2018, date of your submission. Further information on each of these requirements is detailed below.

In order to be eligible to submit a shareholder proposal, Rule 14a-8 (copy enclosed) requires a proponent to submit sufficient proof that he or she has continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to vote on the proposal for at least one year through and including the date the shareholder proposal was submitted. For this Proposal, the date of submission is December 4, 2018, which is the date the Proposal was received electronically by email.

The Proponent does not appear in our records as a registered shareholder. Moreover, to date we have not received proof that the Proponent has satisfied these ownership requirements. We note the letter you furnished separately from Charles Schwab only establishes the Proponent's ownership of shares as of November 5, 2018, and therefore does not verify continuous ownership for the one-year period preceding and including the December 4, 2018 date of the Proposal. Therefore, new proof of ownership establishing that you have continuously held at least \$2,000 in market value of ExxonMobil stock for no less than a period of one year preceding and including December 4, 2018, will be required as described in more detail below and in the enclosed Staff Legal Bulletin No. 14F.

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

- a written statement from the "record" holder of the Proponent's shares (usually a broker or a bank) verifying that the Proponent continuously held the requisite number of ExxonMobil shares for the one-year period preceding and including December 4, 2018; or

- if the Proponent has filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting the Proponent's ownership of the requisite number of ExxonMobil shares as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that the Proponent continuously held the requisite number of ExxonMobil shares for the one-year period.

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

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

- If the Proponent's broker or bank is a DTC participant, then the Proponent needs to submit a written statement from its broker or bank verifying that the Proponent continuously held the requisite number of ExxonMobil shares for the one-year period preceding and including December 4, 2018.
- If the Proponent's broker or bank is not a DTC participant, then the Proponent needs to submit proof of ownership from the DTC participant through which the securities are held verifying that the Proponent continuously held the requisite number of ExxonMobil shares for the one-year period preceding and including December 4, 2018. The Proponent should be able to find out who this DTC participant is by asking the Proponent's broker or bank. If the Proponent's broker is an introducing broker, the Proponent may also be able to learn the identity and telephone number of the DTC participant through the Proponent's account statements because the clearing broker identified on the Proponent's account statements will generally be a DTC participant. If the DTC participant that holds the Proponent's shares knows the Proponent's broker's or bank's holdings, but does not know the Proponent's holdings, the Proponent needs to satisfy the proof of ownership requirement by obtaining and submitting two proof of ownership statements verifying that for the one-year period preceding and including December 4, 2018, the required amount of securities were continuously held – one from the Proponent's broker or bank, confirming the Proponent's ownership, and the other from the DTC participant, confirming the broker or bank's ownership.

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

- identify the shareholder-proponent and the person or entity selected as proxy;
- identify the company to which the proposal is directed;

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

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

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

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

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

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

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

Sincerely,



NAH/ljg

Enclosures

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

## Gilbert, Jeanine

---

**From:** UPS Quantum View <pkginfo@ups.com>  
**Sent:** Monday, December 17, 2018 8:03 AM  
**To:** Gilbert, Jeanine  
**Subject:** UPS Delivery Notification, Tracking Number \*\*\*

**Categories:** External Sender



**Delivery Date:** Monday, 12/17/2018  
**Delivery Time:** 08:57 AM



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

### Shipment Detail

<b>Tracking Number:</b>	***
<b>Ship To:</b>	Steven J. Milloy 12309 BRIARBUSH LN POTOMAC, MD 20854 US
<b>UPS Service:</b>	UPS NEXT DAY AIR SAVER
<b>Number of Packages:</b>	1
<b>Package Weight:</b>	0.0 LBS
<b>Delivery Location:</b>	PORCH

**Reference Number 1:** 6401

**Reference Number 2:** XOM ACK-LTR\_RPT ENVNM EXPNDT



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## Gilbert, Jeanine

---

**From:** Englande, Sherry M  
**Sent:** Wednesday, December 19, 2018 10:37 AM  
**To:** Gilbert, Jeanine  
**Subject:** FW: Shareholder proposal ownership verification  
**Attachments:** Exxon ownership 12172018.pdf

RECEIVED

DEC 19 2018

S.M. ENCLANDE

-----Original Message-----

From: Steve Milloy [mailto:milloy@me.com]  
Sent: Wednesday, December 19, 2018 10:32 AM  
To: Hansen, Neil A <neil.a.hansen@exxonmobil.com>  
Cc: Englande, Sherry M <sherry.m.englande@exxonmobil.com>  
Subject: Shareholder proposal ownership verification

Dear Mr. Hansen,

In response to your Dec. 14, 2018 letter requesting updated verification of ownership in XOM stock in support of my shareholder proposal, attached please find the requested verification dated December 17, 2018.

A copy is also coming by Priority Mail.

Let me know if you have further questions.

Thanks,

Steve Milloy  
240-205-1243



RECEIVED

DEC 19 2018

S.M. ENGLANDE

December 17, 2018

Steven Milloy  
SEP IRA  
12309 Briarbush Ln  
Potomac, MD 20854

Account #: \*\*\*\*.\*\*\*  
Questions: +1 (877) 594-2578  
x48404

---

**Exxon Mobile share ownership requested.**

---

Dear Steven Milloy,

I'm writing in regards to your request for confirmation of ownership of Exxon Mobile (CUSIP 30231G102) in the above referenced account.

As of the writing of this letter you hold 250 shares of Exxon Mobile.

**Transaction Details**

01/28/2015 - Buy - 100 Shares  
12/26/2013 - Transfer In - 150 Shares

This letter is for informational purposes only and is not an official record of the account. Please refer to statements and trade confirmations as they are the official record of account transactions.

**Thank you for choosing Schwab.** We appreciate your business and look forward to serving you in the future. If you have any questions, please call me or any Client Service Specialist at +1 (877) 594-2578 x48404.

Sincerely,

*Nathan Smith*

Nathan Smith  
Specialist, Resolution Team  
9800 Schwab Way  
Lone Tree, CO 80124

# Steven J. Milloy

BY PRIORITY MAIL

December 19, 2018

Mr. Neil A, Hansen  
Corporate Secretary  
Exxon Mobil Corporation  
5959 Las Colinas Boulevard  
Irving, TX 75039-2298

RECEIVED

JAN 21 2018

S.M. ENGLANDE

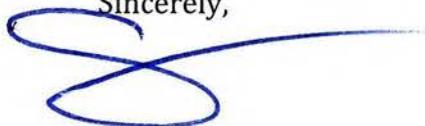
Dear Mr. Hansen:

I am responding to your letter of December 14, 2018 requesting updated proof of ownership of Exxon Mobil stock in support of my shareholder proposal.

Attached is the requested verification, dated December 17, 2018.

Let me know if you need more.

Sincerely,



Steven J. Milloy

Attachment: Proof of ownership



December 17, 2018

Steven Milloy  
SEP IRA  
12309 Briarbush Ln  
Potomac, MD 20854

Account #: \*\*\*\* \*  
Questions: +1 (877) 594-2578  
x48404

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Sincerely,

*Nathan Smith*

Nathan Smith  
Specialist, Resolution Team  
9800 Schwab Way  
Lone Tree, CO 80124

**PR**



DA



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PK

\* C

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<b>PRIORITY MAIL 2-DAY™</b>			
STEVEN J MILLOY STEVEN J MILLOY INC 12309 BRIARBUSH LN POTOMAC MD 20854-1032		Expected Delivery Date: 12/22/18	<b>0006</b>
		<b>C044</b>	
SHIP TO: NEIL A HANSEN EXXON MOBIL CORPORATION 5959 LAS COLINAS BLVD IRVING TX 75039-4202			
<b>USPS TRACKING #</b> ***			
Electronic Rate Approved #038555749			