January 28, 2020

VIA E-MAIL (shareholderproposals@sec.gov)

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

Re: JPMorgan Chase & Co.
Shareholder Proposal of Clean Yield Asset Management on behalf of The Lindsay C Bridges Revocable Trust

Dear Ladies and Gentlemen:

We submit this letter on behalf of our client JPMorgan Chase & Co., a Delaware corporation (the “Company”), to notify the staff (the “Staff”) of the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the “Commission”) that the Company hereby withdraws the no-action request submitted by the Company to the Staff on January 13, 2020 (the “No-Action Request”). The No-Action Request sought confirmation that the Staff would not recommend enforcement action to the Commission if, in reliance on Rule 14a-8 under the Securities Exchange Act of 1934, the Company excluded from its proxy materials for its 2020 Annual Meeting of Stockholders a stockholder proposal and supporting statement (the “Proposal”) submitted by Clean Yield Asset Management on behalf of The Lindsay C Bridges Revocable Trust U/A DTD 09/14/2011 (the “Proponent”). The Company is withdrawing the No-Action Request because the Proponent has withdrawn the Proposal via correspondence dated January 24, 2020. A copy of the correspondence from the Proponent indicating the withdrawal of the Proposal is attached hereto as Exhibit A.
If we can be of further assistance in this matter, please do not hesitate to contact me at (202) 778-1611.

Sincerely,

[Signature]

Martin P. Dunn
Morrison & Foerster LLP

Attachments

cc: Molly Betournay, Director of Social Research & Advocacy, Clean Yield Asset Management
Molly Carpenter, Corporate Secretary, JPMorgan Chase & Co.
EXHIBIT A
Linda,

Thank you for following up. I was in the process of responding to you when your email arrived!

Based on the steps JPMC has agreed to take in your January 22nd email Clean Yield agrees to withdraw our shareholder proposal regarding mandatory arbitration. We look forward to continued engagement with JPMC regarding workplace sexual harassment and discrimination.

We would like to set a timeline for continuing engagement. Should we plan to speak in April following the release of the report detailed in your email?

Best,

Molly

Molly Betournay
Director of Social Research & Advocacy
Clean Yield Asset Management
molly@cleanyield.com
(802) 526-2525 x103

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Re: JPMorgan Chase & Co.
Shareholder Proposal of Clean Yield Asset Management on behalf of The Lindsay C Bridges Revocable Trust

Dear Ladies and Gentlemen:

We submit this letter on behalf of our client JPMorgan Chase & Co., a Delaware corporation (the “Company”), requesting confirmation that the staff (the “Staff”) of the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the “Commission”) will not recommend enforcement action to the Commission if, in reliance on Rule 14a-8 under the Securities Exchange Act of 1934 (the “Exchange Act”), the Company omits the enclosed shareholder proposal (the “Proposal”) submitted by Clean Yield Asset Management on behalf of The Lindsay C Bridges Revocable Trust from the Company’s proxy materials for its 2020 Annual Meeting of Shareholders (the “2020 Proxy Materials”).

Pursuant to Rule 14a-8(j) under the Exchange Act, we have:

• filed this letter with the Commission no later than eighty (80) calendar days before the Company intends to file its definitive 2020 Proxy Materials with the Commission; and

• concurrently sent copies of this correspondence to the Proponent.
Copies of the Proposal, the Proponent’s cover letter submitting the Proposal, and other correspondence relating to the Proposal are attached hereto as Exhibit A.

Pursuant to the guidance provided in Section F of Staff Legal Bulletin No. 14F (Oct. 18, 2011), we ask that the Staff provide its response to this request to Martin Dunn, on behalf of the Company, via email at mdunn@mofo.com, and to Clean Asset Management via email at molly@cleanyield.com.

I. THE PROPOSAL

On December 9, 2019, the Company received from the Proponent the Proposal for inclusion in the Company’s 2020 Proxy Materials. The Proposal reads as follows:

RESOLVED: Shareholders of JPMorgan Chase & Co. (the “Company”) request that the Board of Directors prepare a report on the impact of mandatory arbitration policies on the Company’s employees. The report shall evaluate the risks that may result from the Company’s current mandatory arbitration policy on claims of workplace sexual harassment. The report shall be prepared at reasonable cost and omit proprietary and personal information, and shall be made available on the Company’s website.

SUPPORTING STATEMENT:

Workplace sexual harassment has become a significant social policy issue. A 2018 national survey found that 81 percent of women and 43 percent of men reported experiencing sexual harassment and/or assault in their lifetime. 38 percent of women and 13 percent of men said they experienced sexual harassment at the workplace (https://tinyurl.com/y5r2egc9).

We believe that the mandatory arbitration process is ill-suited to remedy sexual harassment claims by employees. The secrecy of proceedings and arbitrators’ decisions means potential witnesses may not learn of claims or get the opportunity to testify. The Equal Employment Opportunity Commission (EEOC) has found that forced arbitration “can prevent employees from learning about similar concerns shared by others in their workplace” (https://www.eeoc.gov/eeoc/systemic/review/). According to a February 2018 letter from 56 attorneys general of the States, District of Columbia, and territories, arbitration perpetuates the “culture of silence that protects perpetrators at the cost of

Tolerating harassment invites great legal; brand, financial, and human capital risk:

• Companies have incurred legal damages or paid settlements in the hundreds of millions of dollars and threat of lawsuits is increasing.

• Companies may experience reduced morale, lost productivity, absenteeism, turnover, and challenges recruiting and retaining talent.

• Sexual harassment claims have been shown to cause significant damage to company reputations. (https://tinyurl.com/yaqxqvp5)

• Companies that have lost leadership over harassment allegations include: CBS, Nike, Papa Johns, Texas instruments, Uber, Walt Disney, and Wynn Resorts. Leadership turnover puts shareholder value at risk.

Institutional investors are increasingly focusing sexual harassment as an investment risk, many of whom may be clients of the Company. The Financial Times has reported on ways institutional investors have “put asset managers under a microscope” on the issue of sexual harassment (https://www.ft.com/content/1a481b4c-5ff6-11e8-9334-2218e7146b04).


In our view, it is no longer socially acceptable to deny victims of workplace sexual harassment their day in court. Many large employers including Microsoft, Google, and Facebook have recently rescinded their mandatory arbitration policies for sexual
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harassment claims. We believe the Board of Directors should evaluate the risks of the Company’s current mandatory arbitration policy and report to shareholders.

For these reasons, we urge you to vote FOR this proposal.

II. EXCLUSION OF THE PROPOSAL

A. Bases for Excluding the Proposal

As discussed more fully below, the Company believes it may properly omit the Proposal from its 2020 Proxy Materials in reliance on the following bases:

- Rule 14a-8(e), as the Company did not receive the Proposal from the Proponent before the deadline for submitting shareholder proposals to the Company for inclusion in the 2020 Proxy Materials; and

- Rule 14a-8(i)(7), as the Proposal deals with matters related to the Company’s ordinary business operations.

B. The Proposal may be Omitted in Reliance on Rule 14a-8(e), as the Company did not Receive the Proposal from the Proponent Until After the Deadline for Submitting Shareholder Proposals to the Company for Inclusion in the 2020 Proxy Materials

Rule 14a-8(e)(2) provides, in part, that for a regularly scheduled annual meeting, “[t]he proposal must be received at the company’s principal executive offices not less than 120 calendar days before the date of the company’s proxy statement released to shareholders in connection with the previous year’s annual meeting.” The deadline for receiving shareholder proposals for inclusion in the 2020 Proxy Materials was December 7, 2019, as calculated by the Company in accordance with Staff guidance set forth in Section C.3.b of Staff Legal Bulletin No. 14 (July 13, 2001) (“SLB 14”). With regard to the deadline for shareholder proposals relating to the 2020 Annual Meeting of Shareholders, the Company disclosed this December 7, 2019 deadline in its proxy statement for the 2019 Annual Meeting of Shareholders, as required by Item 1(c) of Exchange Act Schedule 14A and Exchange Act Rule 14a-5(e). According to Staff guidance set forth in Section C.3.b of SLB 14, if a company’s Rule 14a-8(e)(2) deadline for shareholder proposals falls on a Saturday, Sunday or federal holiday, proposals received after business reopens are untimely. In this regard, the Staff provided the following guidance regarding the application of the Rule 14a-8(e)(2):

- “If the 120th calendar day before the release date disclosed in the previous year’s proxy statement is a Saturday, Sunday or federal holiday, does this change the deadline for

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receiving rule 14a-8 proposals? No. The deadline for receiving rule 14a-8 proposals is always the 120th calendar day before the release date disclosed in the previous year's proxy statement. Therefore, if the deadline falls on a Saturday, Sunday or federal holiday, the company must disclose this date in its proxy statement, and rule 14a-8 proposals received after business reopens would be untimely.”

• “How does a shareholder know where to send his or her proposal? The proposal must be received at the company’s principal executive offices. Shareholders can find this address in the company’s proxy statement. If a shareholder sends a proposal to any other location, even if it is to an agent of the company or to another company location, this would not satisfy the requirement.”

• “How does a shareholder know if his or her proposal has been received by the deadline? A shareholder should submit a proposal by a means that allows him or her to determine when the proposal was received at the company’s principal executive offices.”

Consequently, for the Proponent’s submission to be timely, the Company needed to receive the Proposal from the Proponent on or before December 7, 2019. As noted above and in Exhibit A, (i) the Proponent provided the Proposal to the U.S. Postal Service on December 6, 2019, with the package marked “2-day” shipping and for delivery to be made no later than December 9, 2019 at 12:00 pm, and (ii) the Proposal was delivered to the Company at 9:31 am on December 9, 2019. This December 9, 2019 receipt of the Proposal from the Proponent was, therefore, two days after the Rule 14a-8(e)(2) deadline. The Company did not provide the Proponent with a notice of deficiency per Rule 14a-8(f), which provides that a notice is not required “if the deficiency cannot be remedied, such as if [a proponent] fail[s] to submit a proposal by the company’s properly determined deadline.” Further, the Staff stated in SLB 14: “[A] company does not need to provide [a] shareholder with a notice of defect(s) if the defect(s) cannot be remedied [. . .] [which] would apply, for example, if [. . .] the shareholder failed to submit a proposal by the company’s properly determined deadline.”

The Staff made clear in SLB No. 14, as discussed above, and in subsequent no-action responses that it strictly construes the deadline for shareholder proposals under Rule 14a-8, permitting companies to exclude from proxy materials those proposals received at a company’s principal executive offices on any date after the deadline. See, e.g., Wal-Mart Stores, Inc. (Feb. 13, 2017) (proposal received six days after company’s deadline); Whole Foods Market, Inc. (Oct. 30, 2014) (proposal received two weeks after company’s deadline); BioMarin Pharmaceutical Inc. (Mar. 14, 2014) (proposal received five days after company’s deadline); PepsiCo, Inc. (Jan. 3, 2014) (proposal received three days after company’s deadline); Tootsie Roll Industries, Inc. (Jan. 14, 2008) (proposal received two days after company’s deadline). Consistent with the Staff’s concurrence in the above letters, the Company is of the view that it may exclude the
Proposal in reliance on Rule 14a-8(e), as the Company did not receive the Proposal from the Proponent until after the December 7, 2019 deadline for submitting shareholder proposals.

C. The Proposal May Be Excluded Pursuant To Rule 14a-8(i)(7) Because It Deals With Matters Related To The Company’s Ordinary Business Operations

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company’s “ordinary business operations.” According to the Commission, the underlying policy of the ordinary business exclusion is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.” Exchange Act Release No. 40018 (May 21, 1998) (the “1998 Release”). In the 1998 Release, the Commission described the two “central considerations” for the ordinary business exclusion. One consideration of the 1998 Release relates to “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.” The other is that certain tasks are “so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight” and, as such, may be excluded, unless the proposal raises policy issues that are sufficiently significant to transcend day-to-day business matters. (footnote omitted).

On October 23, 2018, the Staff released Staff Legal Bulletin No. 14J (“SLB 14J”) to provide guidance as to its evaluation of a company’s arguments for omission of a shareholder proposal under Rule 14a-8(i)(7) on the basis of micromanagement and to reiterate that its framework for the analysis focuses on whether a proposal “involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies” and thus micromanages a company’s business. SLB 14J states that the micromanagement framework “applies to proposals that call for a study or report ... [f]or example, a proposal that seeks an intricately detailed study or report may be excluded on micromanagement grounds.” In this regard, in SLB 14J, the Staff stated that, “consistent with Commission guidance, [we will] consider the underlying substance of the matters addressed by the study or report. Thus, for example, a proposal calling for a report may be excludable if the substance of the report relates to the imposition or assumption of specific timeframes or methods for implementing complex policies.” On October 16, 2019, in Staff Legal Bulletin No. 14K (“SLB 14K”), the Staff further clarified its views with respect to its assessment of arguments for exclusion under Rule 14a-8(i)(7) based on the micromanagement analysis, providing that the determining factor is not whether a proposal “present[s] issues that are too complex for shareholders to understand,” but, is, rather an “assessment of the level of prescriptiveness of the proposal.” As discussed further below, the Proposal seeks the elimination of a specific employment practice, the use of
mandatory arbitration agreements in specific instances, thereby micromanaging the Company’s business operations.

1. The Proposal May be Omitted Because it Seeks to Micromanage the Company

The Proposal requests that the Company’s Board of Directors (the “Board”) “prepare a report on the impact of mandatory arbitration policies on the Company’s employees” which “shall evaluate the risks that may result from the Company’s current mandatory arbitration policy on claims of workplace sexual harassment.” SLB 14K provides that “[w]hen a proposal prescribes specific actions that the company’s management or the board must undertake without affording them sufficient flexibility or discretion in addressing the complex matter presented by the proposal, the proposal may micromanage the company to such a degree that exclusion of the proposal would be warranted.” As discussed further below, the Proposal seeks the elimination of the use of mandatory arbitration provisions in employment agreements with regard to claims of workplace sexual harassment and provides no flexibility in the implementation of that directive. As determinations regarding management of a company’s employment practices necessarily involve detailed considerations and significant complexity, the Proposal seeks to micromanage decisions relating to a specific employment practice, without regard to circumstances specific to the Company.

The Company’s view that the Proposal seeks to micromanage the decision making of its management and Board is supported by the guidance in SLB 14K, which provides that where a proposal “seeks intricate detail or imposes a specific strategy, method, action, outcome or timeline for addressing an issue, thereby supplanting the judgment of management and the board it may be excluded under Rule14a-8(i)(7) on the basis of micromanagement.” As noted above, per SLB 14J, the Staff “[will] consider the underlying substance of the matters addressed by the study or report… [A] proposal calling for a report may be excludable if the substance of the report relates to the imposition … of specific … methods for implementing complex policies.” The substance of the report requested by the Proposal explicitly seeks to eliminate the employment practice of including mandatory arbitration in employment agreements on claims of sexual harassment, supplanting the judgment of management and the Board on a complex policy matter. The Proposal is precise in its prescriptions – the Supporting Statement states the Proponent’s views that “the mandatory arbitration process is ill-suited to remedy sexual harassment claims by employees” and “it is no longer socially acceptable to deny victims of workplace sexual harassment their day in court.” The Supporting Statement makes clear that the Proposal goes beyond merely seeking a report on mandatory arbitration policies and a related risk assessment; the Proposal seeks elimination of mandatory arbitration provisions for claims of sexual harassment. Accordingly, the Proposal seeks to micromanage the decisions of management and the Board in all instances involving the employment practice of mandatory arbitration on claims of workplace sexual harassment.
As emphasized in SLB 14K, the “micromanagement” analysis under the Rule 14a-8(i)(7) exception “rests on an evaluation of the manner in which a proposal seeks to address the subject matter raised, rather than the subject matter itself.” The Proposal seeks a specific outcome – an explicit policy change that is publicly reported – which necessitates the consideration of a broad range of complex factors, resulting in micromanagement of the Company for purposes of Rule 14a-8(i)(7). In SLB 14J, the Staff noted that, while historically it had not agreed with the exclusion of proposals addressing the subject matter of senior executive and/or director compensation on the basis of micromanagement, the Staff had concluded that, going forward, there is not “a basis for treating executive compensation proposals differently than other types of proposals” with respect to the micromanagement analysis. For example, in JPMorgan Chase & Co. (AFL-CIO Reserve Fund) (March 22, 2019), the proposal requested that the board adopt a policy prohibiting the vesting of equity-based awards for senior executives due to a voluntary resignation to enter government service. The Staff concurred with the Company’s view that the action requested by the proposal “necessitate[d] highly complex determinations that are dependent on management’s and the Board of Directors’ underlying knowledge and expertise.” Similar to JPMorgan Chase & Co. (AFL-CIO Reserve Fund), the Board and management are responsible for evaluating and implementing employment practices regarding the Company’s employees.

The Board and management are dedicated to a strong culture that is built on dignity, respect, diversity and inclusion. Whether explicit or veiled, sexual harassment – or any form of misconduct – is unacceptable. The Board invests time, energy, and effort in determining how the Company will approach nuanced employment matters such as establishing what it deems to be the appropriate employment arrangements for specific situations. The Company’s anti-harassment policy sets out the Company’s expectations on conduct and behavior that further the Company’s commitment to “maintaining a safe, productive, diverse, professional, collegial and secure work environment in which all individuals are treated with respect and dignity.” Employees are required to follow the Code of Conduct’s provisions on the Company’s “shared responsibility to each other” by treating others with dignity, promoting a safe workplace, and reporting any activity that can pose a threat to others. This is supplemented by channels through which employees can “speak up” if they have concerns, including through their manager, Human Resources, or, anonymously by contacting the Code of Conduct Hotline, which is staffed by trained interviewers who are not Company employees. The Company takes any complaints through these channels seriously. The Company’s inquiry process has significant resources for its dedicated investigative teams, who are specifically trained to handle Code of Conduct complaints and investigations. When allegations are substantiated, the investigation will recommend actions consistent with the Code of Conduct disciplinary framework. Arbitration of any remaining disputes is only one aspect of the Company’s approach. These decisions are the result of complex analyses requiring the Board’s and management’s specific background and expertise and necessarily involve factors such as existing legal frameworks in different
jurisdictions, anticipated costs and length of time associated with litigating as compared to alternative dispute resolution methods, and many more.

For these reasons, the Company’s decisions with respect to its employment practices involve specific determinations of members of the Board and of management that are dependent on the underlying expertise of each. The Company’s mandatory arbitration provisions, for example, apply only to a subset of its employees, based in certain jurisdictions, who meet various seniority, compensation and other criteria. While the arbitration hearings are private, nothing in the Company’s rules or agreements prevent employees from discussing or raising the concerns or facts underlying the arbitration. In fact, as discussed above, the Company encourage its employees to raise issues. Given the nature of the decisions relating to the utilization of mandatory arbitration as an employment practice, the Proposal’s attempt to supplant the judgment of the Board and of management by seeking to impose a specific, inflexible outcome in all cases – without exception – would unduly limit the decision-making of the Board and management with regard to this complex business matter. Accordingly, it is the Company’s view that the Proposal may be properly omitted in reliance on Rule 14a-8(i)(7) because the Proposal seeks to micromanage the Company.

2. The Company’s Determinations Regarding Policies Concerning Employees and the Management of its Workforce Are Ordinary Business Matters

The Commission has consistently 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 (Aug. 16, 1983). In applying the Commission’s statements regarding the application of Rule 14a-8(i)(7), the Staff has consistently recognized that proposals attempting to govern a company’s internal employment policies and practices, including the use of mandatory arbitration policies, may be excluded pursuant to Rule 14a-8(i)(7) because they improperly encroach on the ordinary business matters of the company. For example, in Yum! Brands (Mar. 6, 2019), the Staff considered a proposal urging the board to adopt a policy that the company would “not engage in any Inequitable Employment Practice,” defined in the proposal as “mandatory arbitration of employment-related claims; non-compete agreements with employees; and non-disclosure agreements (“NDAs”) entered into in connection with arbitration or settlement of claims that any [Yum! Brands] employee engaged in unlawful discrimination or harassment, unless such an NDA is requested by the employee.” The Staff concluded that the proposal was excludable under Rule 14a-8(i)(7), stating that the proposal was related to the company’s “ordinary business operations” in that it “relate[d] generally to the [c]ompany’s policies concerning its employees, and [did] not focus on an issue that transcends ordinary business matters.” See also Costco Wholesale Corp. (Nov. 14, 2014) (concurring in the exclusion under Rule 14a-8(i)(7) of a proposal relating to a company’s employment policies, including a revised Code of Conduct that
included an antidiscrimination policy) and see Deere & Co. (Nov. 14, 2014, recon. denied Jan. 5, 2015) (concurring in the exclusion under Rule 14a-8(i)(7) of a proposal which requested that the company adopt an employee code of conduct, including an anti-discrimination policy “that protects employees’ human right to engage in the political process, civic activities and public policy of his or her country without retaliation,” in which the Staff noted that the proposal related to the company’s “policies concerning its employees” and thus concerned matters of ordinary business).

Similarly, the Staff has consistently taken the view that proposals addressing a company’s management of its workforce are ordinary business matters and, thus, such proposals are excludable under Rule 14a-8(i)(7). For example, in its no-action response to Walmart, Inc. (April 8, 2019), the Staff concurred in the exclusion of a proposal in reliance on Rule 14a-8(i)(7) that requested the board of directors, as the Staff’s response summarized, “prepare a report to evaluate the risk of discrimination that may result from the [c]ompany’s policies and practices for hourly workers taking absences from work for personal or family illness.” In that response, the Staff agreed with the exclusion of the proposal, stating that the proposal “relates generally to the [c]ompany’s management of its workforce, and does not focus on an issue that transcends ordinary business matters.” Similarly, in The Walt Disney Co. (Nov. 24, 2014, recon. denied Jan. 5, 2015), the Staff concurred in the exclusion of a proposal requesting that the company “consider the possibility of adopting anti-discrimination principles that protect employees’ human right[s]” relating to engaging in political and civic expression. In its no-action request, the company expressed the view that the proposal could be excluded in reliance on Rule 14a-8(i)(7), as the adoption of anti-discrimination principles involved “decisions with respect to, and modifications of the way the company manages its workforce and employee relations” that were “multi-faceted, complex and based on a range of factors beyond the knowledge and expertise of the shareholders.”

The Proposal relates to the Company’s ordinary business operations, as it relates to the Company’s policies concerning its employees and its management of its workforce. Further, as discussed below, the Proposal does not focus on a significant policy issue. Therefore, the Proposal may be properly excluded from the 2020 Proxy Materials in reliance on Rule 14a-8(i)(7).

The Proposal concerns the Company’s policies concerning its employees and the overall management of its workforce by requesting that the Board prepare a report “on the impact of mandatory arbitration policies on the Company’s employees.” By requesting a report regarding the Company’s policies and practices concerning the terms of its employment of its workforce, specifically the inclusion of mandatory arbitration provisions in employment agreements, the Proposal “relates generally to the [c]ompany’s policies concerning its employees, and does not focus on an issue that transcends ordinary business matters” (Yum! Brands), “relates generally to
the Company’s management of its workforce, and does not focus on an issue that transcends ordinary business matters” (Walmart, Inc.) and directly relates to “decisions with respect to ... the way the company manages its workforce” (The Walt Disney Co.). The Company is a global financial services firm and is a leader in investment banking, financial services for consumers and small businesses, commercial banking, financial transaction processing and asset management. The Company has over 250,000 employees and operates in a highly competitive environment for executive and employee talent, and its policies with regard to its employees concern a core day-to-day business matter for the Company’s management. The Company’s policies and practices with respect to mandatory arbitration provisions in employment agreements involve workforce management considerations that are, like with the proposal in The Walt Disney Co., “multi-faceted, complex and based on a range of factors beyond the knowledge and expertise of the shareholders.”

Further, the Proposal’s request with respect to a risk analysis is squarely within the category of ordinary business for purposes of Rule 14a-8(i)(7). The Staff expressed its view in Staff Legal Bulletin No. 14E (Oct. 27, 2009) (“SLB 14E”) that a proposal’s request for a review of certain risks does not insulate it from exclusion if the underlying subject matter of the proposal is ordinary business, stating as follows:

Over the past decade, we have received numerous no-action requests from companies seeking to exclude proposals relating to environmental, financial or health risks under Rule 14a-8(i)(7). As we explained in [Staff Legal Bulletin SLB No. 14C (June 28, 2005)], in analyzing such requests, we have sought to determine whether the proposal and supporting statement as a whole relate to the company engaging in an evaluation of risk, which is a matter we have viewed as relating to a company’s ordinary business operations. To the extent that a proposal and supporting statement have focused on a company engaging in an internal assessment of the risks and liabilities that the company faces as a result of its operations, we have permitted companies to exclude these proposals under Rule 14a-8(i)(7) as relating to an evaluation of risk. To the extent that a proposal and supporting statement have focused on a company minimizing or eliminating operations that may adversely affect the environment or the public’s health, we have not permitted companies to exclude these proposals under Rule 14a-8(i)(7).

[. . .]

The fact that a proposal would require an evaluation of risk will not be dispositive of whether the proposal may be excluded under Rule 14a-8(i)(7). Instead, similar to the way in which we analyze proposals asking for the preparation of a report, the formation of a committee or the inclusion of disclosure in a Commission-prescribed document — where we look to the underlying subject matter of the report, committee or disclosure to
determine whether the proposal relates to ordinary business — we will consider whether
the underlying subject matter of the risk evaluation involves a matter of ordinary business
to the company. In those cases in which a proposal’s underlying subject matter
transcends the day-to-day business matters of the company and raises policy issues so
significant that it would be appropriate for a shareholder vote, the proposal generally will
not be excludable under Rule 14a-8(i)(7) as long as a sufficient nexus exists between the
nature of the proposal and the company. Conversely, in those cases in which a proposal’s
underlying subject matter involves an ordinary business matter to the company, the
proposal generally will be excludable under Rule 14a-8(i)(7).

Similar to Walmart, Inc., the Proposal requests a risk-assessment report on a matter that
is squarely within the purview of management. Consistent with SLB 14E, the relevant analysis
is to focus on the underlying subject matter of the Proposal, which is the method by which the
Company manages its workforce in connection with the resolution of certain employment
matters. In this regard, as discussed above, the Staff has recognized specifically that proposals
attempting to govern a company’s internal employment policies and practices, to include
mandatory arbitration policies, may be excluded pursuant to Rule 14a-8(i)(7) because they
improperly encroach on the business matters of the company. See Yum! Brands.

The Proposal’s request for a report on these ordinary business matters also does not
change the conclusion that the Proposal may be excluded pursuant to Rule 14a-8(i)(7). The
Commission stated in the 1983 Release 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. As the subject matter of the Proposal relates solely to the
Company’s policies and practices regarding the use of mandatory arbitration agreements in
employment agreements, the Proposal necessarily relates solely to the Company’s policies
concerning its employees and its management of its workforce. The Proposal therefore is
excludable under Rule 14a-8(i)(7) as an ordinary business matter.

3. The Proposal Does Not Focus Solely on a Significant Policy Issue; it
Focuses, at least in part, on Ordinary Business Matters

Even if the Proposal touches upon a policy issue that may be of such significance that the
matter transcends ordinary business and would be appropriate for a shareholder vote, if the
Proposal does not focus on such significant policy issue, the Staff has consistently concurred
with the exclusion of the proposal. For example, in Yum! Brands, the proposal related to
employment policies that included “mandatory arbitration of employment-related claims” and
the Staff did not concur with the proponent’s argument that “inequitable employment practices”
should be considered a significant policy issue such that the proposal should not be excluded. If
the Staff were to conclude that the Proposal, even in part, relates to a policy issue that transcends
ordinary business matters and would be appropriate for a shareholder vote, as in the Staff
precedent discussed above, the Proposal may nonetheless be excluded pursuant to Rule 14a-8(i)(7) because it is not focused on such policy issue and clearly addresses matters related to the Company’s ordinary business operations. The Company is of the view that the Proposal relates to the ordinary business matter of the management of its workforce and is not focused on a significant policy issue. The Company’s view is supported by the language of the supporting statement in which the Proponents specifically state their belief that “the mandatory arbitration process is ill-suited to remedy sexual harassment claims by employees.” As in Yum! Brands, this language demonstrates the Proponent’s attempt to impose upon the Company a specific prohibition that would impact the Company’s workforce decisions, which is a day-to-day operational determination of management and is fundamental to decisions the Company’s management makes with regard to its employees. Further, as in Walmart, Inc. and The Home Depot, the Proposal’s request for a risk report is focused on the Company’s policies concerning its employees, and does not broadly concern the Company “minimizing or eliminating operations that may adversely affect the environment or the public’s health,” as contemplated by SLB 14E.

The decisions related to the use of mandatory arbitration agreements in employment agreements concern day-to-day operational determinations of management. As the Proposal relates to the Company’s ordinary business operations (including policies concerning its employees and the management of its workforce), and is not focused on a significant policy issue, the Company is of the view that it may properly omit the Proposal pursuant to Rule 14a-8(i)(7).
III. CONCLUSION

For the reasons discussed above, the Company believes that it may properly omit the Proposal from its 2020 Proxy Materials in reliance on Rule 14a-8. As such, we respectfully request that the Staff concur with the Company’s view and not recommend enforcement action to the Commission if the Company omits the Proposal from its 2020 Proxy Materials. If we can be of further assistance in this matter, please do not hesitate to contact me at (202) 778-1611.

Sincerely,

Martin P. Dunn
Morrison & Foerster LLP

Attachments

cc: Clean Yield Asset Management
    Molly Carpenter, Corporate Secretary, JPMorgan Chase & Co.
EXHIBIT A
December 6, 2019

Molly Carpenter
Corporate Secretary
JPMorgan Chase & Co.
Office of the Secretary
4 New York Plaza
New York, NY 10004

RE: Shareholder proposal for 2020 Annual Meeting

Dear Ms. Carpenter

Clean Yield Asset Management (“Clean Yield”) is an investment firm based in Norwich, VT specializing in socially responsible asset management.

I am hereby authorized to notify you of our intention to file the enclosed shareholder resolution regarding mandatory arbitration with JPMorgan Chase & Co., on behalf of our client The Lindsay C Bridges Revocable Trust U/A DTD 09/14/2011 (“The Lindsay Bridges Trust”). Clean Yield submits this shareholder proposal for inclusion in the 2020 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934 (17 C.F.R. § 240.14a-8). Per Rule 14a-8, The Lindsay Bridges Trust holds more than $2,000 of JPMorgan Chase & Co. common stock, acquired more than one year prior to today’s date and held continuously for that time. The Lindsay Bridges Trust will remain invested in this position continuously through the date of the 2020 annual meeting. Verification from our client’s custodian, Charles Schwab, of the position, and a letter from Ms. Bridges authorizing Clean Yield to undertake this filing on behalf of The Lindsay Bridges Trust will be sent in a separate mailing. We will send a representative to the stockholders’ meeting to move the shareholder proposal as required by the SEC rules.

We would welcome discussion with the company about the contents of our proposal.

Please direct any written communications to me at the address below or to molly@cleanyield.com. Please also confirm receipt of this letter via email.

Sincerely,

Molly Betournay

Enclosures: Shareholder resolution.
RESOLVED: Shareholders of JPMorgan Chase & Co. (the “Company”) request that the Board of Directors prepare a report on the impact of mandatory arbitration policies on the Company’s employees. The report shall evaluate the risks that may result from the Company’s current mandatory arbitration policy on claims of workplace sexual harassment. The report shall be prepared at reasonable cost and omit proprietary and personal information, and shall be made available on the Company’s website.

SUPPORTING STATEMENT:

Workplace sexual harassment has become a significant social policy issue. A 2018 national survey found that 81 percent of women and 43 percent of men reported experiencing sexual harassment and/or assault in their lifetime. 38 percent of women and 13 percent of men said they experienced sexual harassment at the workplace (https://tinyurl.com/y5r2egc9).

We believe that the mandatory arbitration process is ill-suited to remedy sexual harassment claims by employees. The secrecy of proceedings and arbitrators’ decisions means potential witnesses may not learn of claims or get the opportunity to testify. The Equal Employment Opportunity Commission (EEOC) has found that forced arbitration “can prevent employees from learning about similar concerns shared by others in their workplace” (https://www.eeoc.gov/eeoc/systemic/review/). According to a February 2018 letter from 56 attorneys general of the States, District of Columbia, and territories, arbitration perpetuates the “culture of silence that protects perpetrators at the cost of their victims” (https://www.natlawreview.com/article/attorneys-general-support-ending-arbitration-workplace-sexual-harassment-claims).

Tolerating harassment invites great legal, brand, financial, and human capital risk:

- Companies have incurred legal damages or paid settlements in the hundreds of millions of dollars and threat of lawsuits is increasing.
- Companies may experience reduced morale, lost productivity, absenteeism, turnover, and challenges recruiting and retaining talent.
- Sexual harassment claims have been shown to cause significant damage to company reputations. (https://tinyurl.com/yagxqvp5)
- Companies that have lost leadership over harassment allegations include: CBS, Nike, Papa Johns, Texas Instruments, Uber, Walt Disney, and Wynn Resorts. Leadership turnover puts shareholder value at risk.

Institutional investors are increasingly focusing sexual harassment as an investment risk, many of whom may be clients of the Company. The Financial Times has reported on ways institutional
investors have “put asset managers under a microscope” on the issue of sexual harassment (https://www.ft.com/content/1a481b4c-5ff6-11e8-9334-2218e7146b04).


In our view, it is no longer socially acceptable to deny victims of workplace sexual harassment their day in court. Many large employers including Microsoft, Google, and Facebook have recently rescinded their mandatory arbitration policies for sexual harassment claims. We believe the Board of Directors should evaluate the risks of the Company’s current mandatory arbitration policy and report to shareholders.

For these reasons, we urge you to vote FOR this proposal.
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December 11, 2019

Molly Carpenter  
Corporate Secretary  
JPMorgan Chase & Co.  
4 New York Plaza  
New York, NY 10004

Dear Ms. Carpenter:

As indicated in our letter dated December 6, 2019, which included our materials to file a shareholder proposal regarding mandatory arbitration at JPMorgan Chase, I am sending across verification of our client, the Lindsay Bridges Trust, position in JPMorgan Chase and a letter from the client authorizing Clean Yield to file this proposal on behalf of the Lindsay Bridges Trust.

Please direct any written communications to me at the address below or to molly@cleanyield.com. Please also confirm receipt of this letter via email.

Yours very truly,

Molly Betournay

Enclosures: Ownership verification letter and client authorization letter
December 9, 2019

Molly Betournay
Director of Social Research & Advocacy
Clean Yield Asset Management
(802)-526-2525

Re: THE LINDSAY C BRIDGES REVOCABLE TRUST
Account #

This letter is to confirm that Charles Schwab & Co. holds as custodian for the above account 625 shares of J P Morgan Chase & Co common stock. These shares have been held in this account continuously for at least one year prior to December 6, 2019.

These shares are held at Depository Trust Company under the nominee name of Charles Schwab and Company.

This Letter serves as confirmation that the shares are held by Charles Schwab & Co, Inc.

Sincerely,

George Calamari
Relationship Specialist
Schwab Advisors Services
December 6, 2019

Molly Betournay
Director of Research & Advocacy
Clean Yield Asset Management
16 Beaver Meadow Road
P.O. Box 874
Norwich, VT 05055

Dear Ms. Betournay:

As sole trustee of The Lindsay C Bridges Revocable Trust U/A DTD 09/14/2011 ("The Lindsay Bridges Trust"), I hereby authorize Clean Yield Asset Management to file a shareholder resolution with stock from The Lindsay Bridges Trust regarding mandatory arbitration at the JPMorgan Chase & Co. 2020 annual meeting. Specifically, the proposal requests that the JPMorgan Chase & Co. Board of Directors prepare a report on the impact of mandatory arbitration policies on the Company's employees. The report shall evaluate the risks that may result from the Company's current mandatory arbitration policy on claims of workplace sexual harassment.

I confirm that The Lindsay Bridges Trust is the beneficial owner of more than $2,000 worth of common stock in JPMorgan Chase & Co. (JPM) and has held this position continuously for more than a year. The Lindsay Bridges Trust will retain this position through the date of the company's annual meeting in 2020.

I specifically give Clean Yield Asset Management full authority to deal with any and all aspects of the aforementioned shareholder resolution. I understand that The Lindsay Bridges Trust may be identified on the corporation's proxy statement as the filer of the aforementioned resolution.

Sincerely,

Lindsay C Bridges, Trustee
The Lindsay C Bridges Revocable Trust U/A DTD 09/14/2011