January 20, 2020

Via E-mail to shareholderproposals@sec.gov

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

Re: Navient Corporation – Exclusion of Shareholder Proposal by the Employees’ Retirement System of Rhode Island

Ladies and Gentlemen:

We are writing on behalf of our client, Navient Corporation (the “Company”), to inform you of the Company’s intention to exclude from its proxy statement and proxy to be filed and distributed in connection with its 2020 annual meeting of shareholders (the “Proxy Materials”) the enclosed shareholder proposal and supporting statement (collectively, the “Proposal”) submitted by the Employees’ Retirement System of Rhode Island (the “Proponent”) requesting that the board of directors of the Company (the “Board”) “adopt a policy that when a financial performance metric is adjusted to exclude legal or compliance costs when evaluating performance for purposes of determining the amount or vesting of any senior executive compensation award, it provide an explanation of why the precise exclusion is warranted and a breakdown of the litigation costs.”

The Company respectfully requests that the staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) advise the Company that it will not recommend any enforcement action to the Commission if the Company excludes the Proposal from its Proxy Materials pursuant to Rule 14a-8(i)(7) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), on the basis that the Proposal micromanages the Company.

Pursuant to Exchange Act Rule 14a-8(j) and Staff Legal Bulletin No. 14D (November 7, 2008) (“SLB 14D”), the Company is submitting electronically to the Commission this letter, and the

*** FISMA & OMB Memorandum M-07-16
Proposal and related correspondence (attached as Exhibit A to this letter), and is concurrently sending a copy to the Proponent.

Background

On December 30, 2019, the Company received the Proposal from the Proponent, which states as follows:

**RESOLVED**, that shareholders of Navient Corporation (“Navient” or “the Company”) urge the Board of Directors to adopt a policy that when a financial performance metric is adjusted to exclude legal or compliance costs when evaluating performance for purposes of determining the amount or vesting of any senior executive compensation award, it provide an explanation of why the precise exclusion is warranted and a breakdown of the litigation costs. “Legal or compliance costs” are expenses or charges associated with any investigation, litigation or enforcement action, including legal fees; amounts paid in fines; penalties or damages; and, amounts paid in connection with monitoring required by any settlement or judgment of claims of the kind described above. “Incentive Compensation” is compensation paid pursuant to short-term and long-term incentive compensation plans and programs. The policy should be implemented in a way that does not violate any existing contractual obligation of the Company or the terms of any compensation or benefit plan.

**SUPPORTING STATEMENT:** The Company adjusts financial metrics when calculating progress on goals for purposes of awarding incentive compensation. We believe disclosure and transparency on the adjustments would enable shareholders to determine if the exclusions are appropriate and whether senior executives are being insulated from legal risks and incentivized to disregard litigation costs and related reputational damage.

Clarity on litigation expenses is of particular concern given the potential reputational, legal and regulatory risks the Company faces over its role in the nation’s unsustainable and growing level of student loan debt.

As noted in Navient’s Form 10-K for the year ending December 31, 2018: “Since the CFPB filed its action against the Company in January of 2017, the Attorneys General of Illinois, Washington, Pennsylvania, Mississippi and California have filed separate actions alleging various violations of state and federal consumer protection laws”. Additionally, the company is facing a federal class action lawsuit as well as a consumer class action lawsuit.
Navient is unable to anticipate the timing of any resolution or the impact that these legal proceedings may have on the Company’s consolidated financial position, liquidity, results of operation or cash flows. As a result, it is not possible to estimate a range of potential exposure for amounts that may be payable in connection with these matters.

In Navient’s Notice of 2019 Annual Meeting of Shareholders and Proxy Statement the Company explains that the Company “…maintains an internal Incentive Compensation Plan Committee (the “ICP Committee”) that conducts an annual risk review and assessment of the various incentive compensation plans covering our employees—including plans that cover our named executive officers—to ensure that our employees are not incented to take inappropriate risks which could impact our financial position and controls, reputation and operations”.

We believe that investors would benefit from more transparency regarding the board’s decision to adjust performance metrics to exclude legal or compliance costs when evaluating performance for purposes of determining executive compensation.

Basis for Exclusion

The Proposal May Be Excluded Pursuant to Rule 14a-8(i)(7) Because It Micromanages the Company.

Rule 14a-8(i)(7) permits a company to exclude a shareholder proposal from its proxy materials if the proposal “deals with a matter relating to the company’s ordinary business operations.” The underlying policy of the ordinary business exclusion is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.” SEC Release No. 34-40018 (May 21, 1998) (the “1998 Release”). As set out in the 1998 Release, there are two “central considerations” underlying the ordinary business exclusion. The first is that “certain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.” The second is that a proposal should not “seek[] to ‘micro-manage’ the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” The Proposal implicates the latter of these considerations.

As discussed below, the Proposal seeks to “micromanage” the Company by imposing a detailed disclosure obligation upon the Company if it were to make certain adjustments in financial
performance metrics to evaluate performance when determining the amount or vesting of any senior executive compensation award. Specifically, “when a financial performance metric is adjusted to exclude legal or compliance costs,” the Proposal would require the Company to “provide an explanation of why the precise exclusion is warranted and a breakdown of the litigation costs.”

In Staff Legal Bulletin No. 14J (October 23, 2018) (“SLB 14J”), the Staff clarified its approach to requests for exclusion pursuant to Rule 14a-8(i)(7)’s micromanagement prong. As noted in SLB 14J, “the Commission has explained, a proposal may probe too deeply into matters of a complex nature if it ‘involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies.’” An example of such disclosure, as set forth in SLB 14J, includes “a proposal detailing the eligible expenses covered under a company’s relocation expense policy such as the type and duration of temporary living assistance, as well as the scope of eligible participants and amounts covered, [which] could well be excludable on the basis of micromanagement.” For purposes of concurring in exclusion of a proposal, the Staff looks to “the manner in which a proposal raises an issue, and not whether a proposal’s subject matter itself is proper for a shareholder proposal under Rule 14a-8.” SLB 14J. Specifically regarding proposals that involve senior executive and/or director compensation, like the Proposal, the Staff noted in SLB 14J:

We have further considered the Commission’s statements on micromanagement discussed above, however, and we do not believe there is a basis for treating executive compensation proposals differently than other types of proposals. Consistent with the Division’s treatment of shareholder proposals on other topics, therefore, the Division may agree that proposals addressing senior executive and/or director compensation that seek intricate detail, or seek to impose specific timeframes or methods for implementing complex policies can be excluded under Rule14a-8(i)(7) on the basis of micromanagement.

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

The Staff’s no-action letter precedent comports with its guidance in SLBs 14J and 14K. Recently with respect to a number of proposals involving senior executive compensation, the Staff concurred in exclusion pursuant to Rule 14a-8(i)(7), on the basis that such proposals sought
to micromanage the company. For instance, in Abbott Laboratories (February 28, 2019), the Staff concurred in exclusion pursuant to Rule 14a-8(i)(7) of a proposal requesting the adoption of a policy requiring compensation committee approval of certain sales of shares by senior executives, on the basis that the proposal “micromanages the Company because, among other things, the Proposal would require the compensation committee to approve each sale by a senior executive during a buyback and for the Company to include explanatory disclosure in the proxy statement describing how the committee concluded that approving the sale was in the Company’s long-term best interest.” Similarly, in AbbVie Inc. (February 15, 2019) and Johnson & Johnson (February 14, 2019), the Staff concurred in exclusion pursuant to Rule 14a-8(i)(7) of proposals requesting the adoption of a policy that legal or compliance costs not be excluded from financial performance metrics used to evaluate performance for determining the amount or vesting of senior executive incentive compensation awards. In concurring in exclusion, the Staff concluded that each proposal “micromanages the Company by seeking to impose specific methods for implementing complex policies. Specifically, the Proposal, if implemented, would prohibit any adjustment of the broad categories of expenses covered by the Proposal without regard to specific circumstances or the possibility of reasonable exceptions.” Other recent instances in which the Staff has concurred in exclusion of proposals involving senior executive compensation pursuant to Rule 14a-8(i)(7), on the basis that such proposals “micromanage” the company, include JPMorgan Chase & Co. (March 22, 2019) (proposal requesting adoption of a policy to prohibit vesting of senior executives’ equity-based awards upon resignation to enter government service) and General Electric Company (March 5, 2019) (proposal requesting board committee review of compensation paid to top 25 most highly compensated executives from 2014 through 2017 and directing a board committee to make individualized decisions with respect to the level and potential recoupment of the executives’ compensation, which disclosure was to be provided in the specified manner set forth in the proposal).

Consistent with the above no-action letter precedent, SLBs 14J and 14K, and the broader purpose of the micromanagement prong of Rule 14a-8(i)(7), the Proposal seeks intricate detail from the Company and directs how it implements complex policies by imposing detailed disclosure obligations upon the Company if it were to make certain adjustments in financial performance metrics to evaluate performance when determining the amount or vesting of any senior executive compensation award. Specifically, the Proposal seeks an “explanation of why the precise exclusion [of legal or compliance costs] is warranted and a breakdown of the litigation costs.” Similar to the disclosure requested in Abbott Laboratories (February 28, 2019), the disclosure sought by the Proposal impinges on a highly complex process undertaken by the Company’s Compensation and Personnel Committee (the “Compensation Committee”) and affords no “flexibility or discretion” to the Board or the Compensation Committee in determining whether it is appropriate to include a detailed explanation of the rationale for such adjustments and the breakdown of litigation costs. The Proposal simply involves the same type of prescriptive
approach to complex policies that is at the heart of the micromanagement prong of Rule 14a-8(i)(7).

Disclosures in the Company’s annual proxy statement clearly evidence the degree of complexity already associated with determinations of executive compensation and the related disclosures. For example, the Compensation Discussion and Analysis disclosure set forth in the Company’s proxy statement for each annual meeting of shareholders describes how the Company makes decisions regarding its executive officers’ compensation. These decisions involve rigorous discussion and analysis by the Compensation Committee, which receives input from numerous advisors regarding legal, tax, accounting and other matters pertinent to the determination of executive officer compensation, including the determination of performance metrics. The Company’s 2019 Proxy Statement1 (the “2019 Proxy”), for instance, summarized the Company’s complex objectives for executive compensation, noting that the Company’s “executive compensation program balances annual and long-term performance measures, including a mix of financial, operational and strategic goals that promote effective management of our FFELP loan portfolio, improvements in our private education loan portfolio and non-education fee revenues, and profitable growth in our business services segment. Individual performance goals—including cost containment goals in 2018—also are established for each of our NEOs.”2

The Company, indeed, consistently provides robust disclosure in its annual proxy statements to satisfy Commission disclosure requirements regarding the material aspects of executive compensation decisions, including the metrics used to determine an executive officer’s performance and the actual performance against such metrics. The Proposal, however, appears to take aim at one specific non-GAAP metric used by the Company – “Core Earnings” – which is one of several performance metrics selected as part of the Company’s Management Incentive Plan (“MIP”), which is only one element of the Company’s broader executive officer compensation structure.3 As described in the 2019 Proxy, “Core Earnings” is a non-GAAP measure that excludes “any regulatory and restructuring charges, as well as certain extraordinary items such as strategic corporate transactions or other unusual or unplanned events.”4 Given the Proposal’s focus on a specific non-GAAP adjustment for legal and compliance costs, to make an informed decision in regards to the Proposal, the Company’s shareholders would be required to have a thorough understanding of the applicable disclosure requirements under Regulation S-K Item 402 of the Exchange Act pertaining to executive compensation, Regulation S-K Item 10(e) and Regulation G of the Exchange Act pertaining to non-GAAP measures and under Accounting

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1 See Navient Corporation, Definitive Proxy Statement (Schedule 14A), at 54-72 (April 30, 2019).
2 Id. at 54.
3 Id. at 55-56.
4 Id. at 55 n.3.
Standards Codification 450-20, which might apply to legal or compliance costs. Such an understanding simply goes too deeply into matters of a complex nature.

As further evidence of the degree to which the Proposal delves too deeply into matters of a complex nature at the Company, the Proposal’s supporting statement asserts: “We believe disclosure and transparency on the adjustments would enable shareholders to determine if the exclusions are appropriate and whether senior executives are being insulated from legal risks and incentivized to disregard litigation costs and related reputational damage.” However, the Board established the Compensation Committee to make these exact determinations. The Compensation Committee’s Charter\(^5\) sets forth its purposes, including to assist the Company’s Board in “approving or recommending, as appropriate, compensation, benefits and employment arrangements for the Company’s Chief Executive Officer (the “CEO”), certain other executive officers who report to the CEO (including the CEO, “Executive Management”) and the independent members of the Board.” Among its myriad of responsibilities, the Compensation Committee is charged with responsibility to “[o]versee a review of the risks arising from the Company’s compensation policies and practices to determine whether such policies and practices are reasonably likely to have a material adverse effect on the Company.” A logical extension of the Proposal’s request is to prohibit the Compensation Committee from excluding any legal or compliance costs, no matter how immaterial, from financial performance metrics when designing compensation programs because the proposed policy would require disclosures that generally will not be known when the Compensation Committee selects performance metrics at the beginning of each performance period. Under the proposed policy, any time “a financial performance metric is adjusted to exclude legal or compliance costs” the Company must provide “why the precise exclusion is warranted and a breakdown of litigation costs.” The details necessary for such disclosure likely would not be known until the time performance is actually evaluated at the conclusion of each performance period. As a result, in its quest for transparency, the Proposal would in fact impermissibly dictate how the Compensation Committee discharges its oversight responsibilities, methods for implementing complex policies and, by exclusion, the exact definitions of the metrics used to measure performance against goals by the Company’s senior executives.

In light of the complexities associated with determining and providing disclosures regarding executive officer compensation, and notwithstanding the Proposal’s suggestion to the contrary, the Proposal simply “prob[es] too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment,” and would “unduly limit the ability of management and the board to manage complex matters with a level of flexibility necessary to fulfill their fiduciary duties to shareholders.” Accordingly, consistent

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

Conclusion

For the foregoing reasons, and consistent with the Staff’s prior no-action letters, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its Proxy Materials pursuant to Rule 14a-8(i)(7), on the basis that the Proposal micromanages the Company.

If the Staff has any questions with respect to the foregoing, or if for any reason the Staff does not agree that the Company may exclude the Proposal from its Proxy Materials, please do not hesitate to contact me at lillian.brown@wilmerhale.com or (202) 663-6743, or Mark Heleen, Executive Vice President, Chief Legal Officer & Secretary of Navient Corporation, at mark.heleen@navient.com. In addition, should the Proponent choose to submit any response or other correspondence to the Commission, we request that the Proponent concurrently submit that response or other correspondence to the Company, as required pursuant to Rule 14a-8(k) and SLB 14D, and copy the undersigned.

Best regards,

Lillian Brown

Enclosures

cc: Randy Rice, State of Rhode Island and Providence Plantations Office of the General Treasurer
    Ms. Laura S. Unger, Chair of the Nominations and Governance Committee of the Navient Corporation Board of Directors
    Mr. Mark L. Heleen, Navient Corporation
    Mr. Kurt T. Slawson, Navient Corporation
    Mr. Stephen P. Caso, Navient Corporation
EXHIBIT A
December 23, 2019

Mr. Mark Heleen, Executive Vice President, Chief Legal Officer, Secretary
Navient Corporation
123 Justison Street
Wilmington, DE 19801

Via FedEx: 7645704143

Dear Ms. Heleen:

As owners of 12,650 shares of common stock in Navient Corporation, we believe that investors would benefit from more transparency regarding the board’s decision to adjust performance metrics to exclude legal or compliance costs when evaluating performance for purposes of determining executive compensation.

I am writing to inform you that Employees’ Retirement System of Rhode Island is submitting the enclosed resolution for inclusion in the company’s proxy statement in accordance with Rule 14a-8 of the general rules and regulations of the Securities Exchange Act of 1934. A representative from Employees’ Retirement System of Rhode Island will attend the annual meeting to move the resolution as required by SEC rules.

Attached, please find a letter from BNY Mellon, which confirms Rhode Island Employees’ Retirement Systems Pooled Trust’s ownership of Navient Corporation shares. The Trust intends to continue to hold the requisite number of shares through the date of the Company’s annual meeting of stockholders.

We look forward to continuing the conversation with the Company on this issue. Please contact my colleague, Randy Rice, by phone at 401-487-3258 or by email at randall.rice@treasury.ri.gov, if you would like to discuss this matter further.

Sincerely,

Seth Magaziner

www.treasury.ri.gov
(401) 222-2397 / Fax (401) 222-6140
RESOLVED, that shareholders of Navient Corporation ("Navient" or "the Company") urge the Board of Directors to adopt a policy that when a financial performance metric is adjusted to exclude legal or compliance costs when evaluating performance for purposes of determining the amount or vesting of any senior executive compensation award, it provide an explanation of why the precise exclusion is warranted and a breakdown of the litigation costs. “Legal or compliance costs” are expenses or charges associated with any investigation, litigation or enforcement action, including legal fees; amounts paid in fines; penalties or damages; and, amounts paid in connection with monitoring required by any settlement or judgment of claims of the kind described above. “Incentive Compensation” is compensation paid pursuant to short-term and long-term incentive compensation plans and programs. The policy should be implemented in a way that does not violate any existing contractual obligation of the Company or the terms of any compensation or benefit plan.

SUPPORTING STATEMENT: The Company adjusts financial metrics when calculating progress on goals for purposes of awarding incentive compensation. We believe disclosure and transparency on the adjustments would enable shareholders to determine if the exclusions are appropriate and whether senior executives are being insulated from legal risks and incentivized to disregard litigation costs and related reputational damage.

Clarity on litigation expenses is of particular concern given the potential reputational, legal and regulatory risks the Company faces over its role in the nation's unsustainable and growing level of student loan debt.

As noted in Navient’s Form 10-K for the year ending December 31, 2018: “Since the CFPB filed its action against the Company in January of 2017, the Attorneys General of Illinois, Washington, Pennsylvania, Mississippi and California have filed separate actions alleging various violations of state and federal consumer protection laws”. Additionally, the company is facing a federal class action lawsuit as well as a consumer class action lawsuit.

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We believe that investors would benefit from more transparency regarding the board's decision to adjust performance metrics to exclude legal or compliance costs when evaluating performance for purposes of determining executive compensation.
December 23, 2019

Re: Rhode Island Employees’ Retirement Systems Pooled Trust Accounts

This letter is to confirm that The Bank of New York Mellon currently holds as custodian for the above mentioned client 12,650 shares of common stock in Navient Corp – Ticker NAVI. The above-mentioned client has also held over $2,000 worth of the above-mentioned stock for over a twelve-month period as of December 23, 2019.

These shares are currently being held in the Bank of New York Mellon’s omnibus account at Depository Trust Company account number 901. This letter serves as confirmation that The Bank of New York Mellon holds the shares on behalf of the above-mentioned client.

Sincerely,

James F. Mahoney, Jr.
Vice President
Mr. Rice:

I have received the Employees’ Retirement System of Rhode Island’s proposed resolution dated December 23, 2019.

Thank you and Happy New Year.

Respectfully

Mark L. Heleen