



DIVISION OF  
CORPORATION FINANCE

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

March 6, 2020

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

Re: Exxon Mobil Corporation  
Incoming letter dated January 17, 2020

Dear Mr. Goldberg:

This letter is in response to your correspondence dated January 17, 2020 and February 24, 2020 concerning the shareholder proposal (the "Proposal") submitted to Exxon Mobil Corporation (the "Company") by Adam Seitchik (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence on the Proponent's behalf dated February 18, 2020 and February 26, 2020. 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>.

Sincerely,

M. Hughes Bates  
Special Counsel

Enclosure

cc: Natasha Lamb  
Arjuna Capital  
natasha@arjuna-capital.com

March 6, 2020

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

Re: Exxon Mobil Corporation  
Incoming letter dated January 17, 2020

The Proposal requests that the board charter a new board committee on climate risk to evaluate the board and management's climate strategy and to better inform board decision making on climate risks and opportunities.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(7). In our view, the Proposal micromanages the Company by dictating that the board charter a new board committee on climate risk. As a result, the Proposal unduly limits the board's flexibility and discretion in determining how the board should oversee climate risk. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on rule 14a-8(i)(7).

Sincerely,

Michael Killoy  
Attorney-Adviser

# **SANFORD J. LEWIS, ATTORNEY**

Via electronic mail

February 26, 2020  
Office of Chief Counsel  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Re: Supplemental Response to Supplemental No Action Request of Exxon Mobil Corporation Regarding Shareholder Proposal Requesting Committee on Climate Change by Adam Seitchik

Ladies and Gentlemen:

Adam Seitchik (the “Proponent”) is beneficial owner of common stock of Exxon Mobil Corporation (the “Company”) and has submitted a shareholder proposal (the “Proposal”) to the Company. We previously responded to the Company’s January 17 no action request on February 18. I have been asked by the Proponent to respond to the supplemental letter dated February 24, 2020 (“Company’s Supplemental Letter”) sent to the Securities and Exchange Commission by Louis L. Goldberg of Davis Polk. A copy of this letter is being emailed concurrently to Louis L. Goldberg.

## **SUMMARY**

The Company’s supplemental letter reiterates its assertions that the proposal micromanages decision-making of the Exxon Mobil Board of Directors. As we stated in our prior response, the proposal does not micromanage: it is not overly prescriptive, and is appropriately prescriptive for a governance proposal directed toward matters of board structure and participation.

The Staff’s recent decisions in *Abb Vie Inc.* (January 29, 2020) and *Johnson & Johnson* (January 29, 2020), denying no action relief, are grounded in an understanding that shareholder proposals directed toward the board structure and participation are *governance* proposals that do not micromanage in setting forth reasonable details.

In those decisions, the proposals involved a detailed set of contingencies which amounted to a request that, whenever possible, the board chair should be an independent member of the board. These proposals were significantly more prescriptive than the current proposal — they would result in specific outcomes regarding the role of the current CEO on the board. In contrast, the current proposal leaves substantial flexibility as to participants on committees, scope of work, etc.

The Company Supplemental Letter also asserts that the Board of Directors is charged under the corporate bylaws with chartering board committees. As we stated in our prior letter, the addition or focus of Board committees is not an issue solely reserved to the board, since shareholders are

able to amend the bylaws, and therefore have legal capacity to alter that arrangement. Therefore, the issues related to the committee structure are not legally reserved to the Board of Directors.

For these reasons, as well as those stated in our prior correspondence, the proposal does not micromanage and is not excludable pursuant to Rule 14a-8(i)(7).

## ANALYSIS

### **Proposals relating to board structure and leadership must contain details to be effective. As such, they do not micromanage.**

The Staff's recent decisions in *Abb Vie Inc.* (January 29, 2020) and *Johnson & Johnson* (January 29, 2020), denying no action relief against company micromanagement claims are grounded in an understanding that shareholder proposals directed toward board structure and participation are *governance* proposals that do not micromanage in setting forth reasonable details.

In those decisions, the proposals involved a detailed set of contingencies in requesting that, whenever possible, the board chair should be an independent member of the board. These proposals were significantly more prescriptive than the current proposal — they would drive specific outcomes regarding the role of the current CEO on the board. In contrast, the current proposal leaves substantial flexibility as to participants on committees, scope of work, etc.

The proposal at issue in *Abb Vie Inc.* requested the Board of Directors adopt as policy (the "Policy"), and amend the bylaws as necessary, to require henceforth that the Chair of the board be an independent member of the board. The Policy should apply prospectively so as not to violate any contractual obligations. It also prescribes specific procedures and contingencies to address scenarios in which a chair loses their independence (presumably, becomes part of management of the company) or if no independent board member is available. The company's no action request asserted that the proposal would constitute micromanagement by reducing flexibility of the board to determine its membership. The company letter stated that the proposal interfered with "the Board's ability to retain flexibility in organizing itself is a necessary element for its optimal operation." The proponent, represented by Randall P. Rice, the State of Rhode Island Office of the General Treasurer made the compelling argument in response to the no action request that:

Underlying the micromanagement doctrine is the Commission's belief that "matters of a complex nature upon which shareholders, as a group, [are] not in. . . a position to make an informed judgment" should not be the subject of shareholder oversight.<sup>15</sup> Appropriate board leadership structure is not such a matter.

In a second no action request on a similar proposal at *Johnson & Johnson* (January 29, 2020) the company made a similar argument that the proposal seeking an independent board chair would restrain the board's discretion. On behalf of Trillium Asset Management, Jonas Kron wrote:

Governance proposals related to board and committee composition and board leadership

much more detailed and specific than the Proposal have survived challenges making arguments like those J&J now advances. For example, in Marriott International Inc.,<sup>10</sup> the company urged that it was entitled to rely on the ordinary business exclusion to omit proposals asking the board to set a goal of having two-thirds of directors be independent and to transition to a fully independent nominating and governance committee, in each case using a seven-prong independence definition set forth in the proposal. The Staff did not concur with Marriott's argument that the proposals would micromanage Marriott because the independence definition was "an operational issue that affects the ability of a board to function."

In short, because the current proposal seeks to define board leadership issues with only a reasonable level of prescriptiveness, and with a focus on a significant policy issue, it is an appropriate governance proposal that does not micromanage.

### **The proposal is not as prescriptive as the Company's interpretation**

The Company's Supplemental Letter reiterates its attempt to read the language of the proposal as more prescriptive than it is. Notably, the proposal does not prescribe language of a committee charter beyond the language of the resolved clause. That language is not overly directive given the right of investors to weigh in through the shareholder proposal process on matters of corporate governance, as demonstrated by recent staff decisions. The supporting statement is not a binding set of conditions, but rather general guidance to shareholders and the board as to the kinds of issues that the committee can address. Even if that language in the supporting statement *were* construed prescriptively, there is a reasonable argument that this level of request in a precatory proposal directed toward board structure and leadership still does not constitute micromanagement, since it would be permissible as a bylaw amendment.

We note further that the Company's Supplemental Letter may be attempting to cast doubt on that notion when it states:

Under New Jersey law, the Board has full responsibility and authority for overseeing and managing the risks of the Company, including climate related risks, and for determining to what extent and with what scope different committees should have responsibility for overseeing and assessing all or part of any area of these risks. As the Proponent Response Letter indicates, it is the Board's responsibility to charter a committee and decide its duties.

As we noted in a footnote in our prior response, N.J.S.A.14A:2-9 provides that the bylaws of a New Jersey corporation may contain (a) "any provision, not inconsistent with law or the certificate of incorporation, relating to the business of the corporation, the conduct of its affairs, and its rights or power or the rights or power of its shareholders, directors, officers, or employees." Since the corporate bylaws contain requirements related to committees, shareholders would be well within their rights filing a bylaw amendment to create the committee, and even to mandate the enumerated responsibilities of the committee. The addition or focus of Board committees is not an issue solely reserved to the board, since shareholders are able to amend the bylaws, and therefore have legal capacity to alter that arrangement. Therefore, the issues related to the committee structure are not legally reserved to the Board of Directors.

Office of Chief Counsel

February 26, 2020

Page 4 of 4

In these and all other regards, we continue to stand by our prior correspondence. We respectfully request that the Staff inform the Company that it is denying the no action letter request. If you have any questions, please contact me at 413-549-7333 or [sanfordlewis@strategiccounsel.net](mailto:sanfordlewis@strategiccounsel.net).

Sincerely,

A handwritten signature in black ink, appearing to read "Sanford Lewis". The signature is written in a cursive style with a large, stylized initial "S".

Sanford Lewis

Cc: Louis L. Goldberg

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

February 24, 2020

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**”), we are writing to respond to the letter from Adam Seitchik (the “**Proponent**”) dated February 18, 2020 (the “**Proponent Response Letter**”) with respect to the request from the Company, dated January 17, 2020 (the “**No-Action Letter**”), regarding the exclusion of a shareholder proposal (the “**Proposal**”) submitted by the Proponent from the Company’s proxy statement for its 2020 Annual Meeting of Shareholders (the “**2020 Proxy Materials**”). Capitalized terms not defined herein are used as defined in the No-Action Letter. A copy of both the No-Action Letter and the Proponent Response Letter (each without the attachments) are included with this letter as Exhibit A. The Company has advised us as to the factual matters set forth below.

**The Proposal Micromanages by Dictating Specific Actions**

The Proposal requests that the Board of Directors form a new committee on climate risks with explicit instructions for how that committee should undertake its fiduciary responsibilities to oversee climate risks at the Company. The Proposal clearly dictates that the charter of the committee “should explicitly require” the committee to report to the full board on “corporate strategy” in terms of climate risk. This includes, as specified in the resolution, responsibilities for assessing the impact on corporate strategy from the Company’s climate related actions as it pertains to the Company’s “business, strategy, financial planning, and [the] operating environment,” as well as the Company’s responses to climate related risks and opportunities.

The Company has disclosed publicly in its Energy and Carbon Summary (the “**2020 ECS**”) <sup>1</sup> that meeting the expected growth in energy demand must be coupled with managing the environmental impacts of that demand, including the risks of climate change. As described in the 2020 ECS, climate related risks and opportunities permeate the Company’s global business. With the Proposal’s exacting mandate that it must be this particular committee, the Climate Change Committee, that handles those oversight responsibilities, and that this Committee must cover every

---

<sup>1</sup> <https://corporate.exxonmobil.com/-/media/Global/Files/energy-and-carbon-summary/Energy-and-carbon-summary.pdf>

aspect of what the Company does – its business, strategy, financial planning and operations – the Proposal micromanages the Company in the manner outlined in SLB 14K through intricate detail and specified methods and actions.

Under New Jersey law, the Board has full responsibility and authority for overseeing and managing the risks of the Company, including climate related risks, and for determining to what extent and with what scope different committees should have responsibility for overseeing and assessing all or part of any area of these risks. As the Proponent Response Letter indicates, it is the Board's responsibility to charter a committee and decide its duties.

As discussed in the Company's 2020 ECS,<sup>2</sup> the Board provides oversight of the Company risks, including climate change risks. The Board's Audit Committee assesses the Company's overall risk management approach and structure to confirm that enterprise-level risks are being appropriately considered by the Board. To date, the Board has determined that the Company's existing Public Issues and Contributions Committee ("**PICC**") should regularly review the Company's safety, health and environmental performance, including actions taken to identify and manage climate change risks and opportunities. The Board itself also provides oversight of the Company's strategy to research, develop, and implement technology to address greenhouse gas emissions by reviewing the Company's technology portfolio, including the Company's low-emissions technologies and long-range research and development programs.

The Proposal, by assigning a specific set of responsibilities for how a new Board committee should assess and manage climate related risks, micromanages the Company's board processes and workings by removing flexibility for the Board to carry out its practice in overseeing, assessing and managing those risks. As disclosed in the Company's 2019 proxy statement,<sup>3</sup> the Board is responsible for risk oversight, reviews "developments in climate science and policy" as well as the actions outlined in the Company's 2020 ECS. The Board has determined that a particular committee, the PICC, should in practice play a role in helping assess and manage climate related risks and opportunities. The PICC's charter<sup>4</sup> already requires that committee to review the Company's practices and their effect on "health and the environment," and the PICC assists the Board in overseeing operational risks, including actions taken to address climate related risks.

As the Proponent Response Letter recognizes, the charter of a board committee imposes fiduciary duties on that committee under state law, and the mandates in the charter must be followed precisely as delineated in the charter. The Proposal does not give the Company or its Board sufficient flexibility or discretion in addressing the complex matter presented by the Proposal, in accordance with SLB 14K. We disagree with the Proponent Response Letter that the Proposal does not dictate outcomes but instead "only asks the board to charter a new Board committee on climate change" or that the Proposal defines the "proposed scope" of such a committee. The scope of the committee is not "proposed," as the Proposal goes much further in defining precisely what the committee must do by "explicitly requir[ing]" in the resolution a set of responsibilities for the committee charter that encompasses the Company's global business, strategy, finances and operations, and limits the Board's flexibility and discretion in determining the workings of the Board and its committees in overseeing and assessing the range of risks facing the Company, including climate related risks. In direct opposition to the assertion in the Proponent Response Letter, the

---

<sup>2</sup> *Id.* at pages 3-5.

<sup>3</sup> <https://corporate.exxonmobil.com/-/media/Global/Files/investor-relations/annual-meeting-materials/proxy-materials/2019-proxy-statement.pdf>

<sup>4</sup> <https://corporate.exxonmobil.com/Company/Who-we-are/Corporate-governance/ExxonMobil-board-of-directors/Public-issues-and-contributions-committee-charter>

resolution does not “suggest roles” the committee could fulfill, but rather entirely eliminates the flexibility of the Board to determine what actions it wishes this committee (or other committees) to undertake.

Our micromanagement analysis examines the actions requested by the text of the Proposal and how they are framed. The “clear delineation of a committee’s responsibilities” from the resolution that is acknowledged in the Summary portion of the Proponent Response Letter contravenes Rule 14a-8(i)(7). The Proponent Response Letter also focuses on the detailed set of instructions in the supporting statement, but contrary to what the Proponent Response Letter claims, it is not “a list of suggestions regarding what the committee ‘can’ do.” The word “can” in the supporting statement is used in the sense of what a board committee is able to do or what creating a board committee can facilitate, and not in the sense of saying that the committee charter responsibilities, once in place, indicate actions that “can” be done as being permissive or optional. Once the new committee is in place, the committee “can” facilitate the role of conducting a more focused review, which is what board committees do. But once the committee charter is in place, those particular charter actions defined in the resolution and supporting statement must (not “can”) be done; they are not optional. Interpreting the supporting statement literally as written, which frames the Proposal’s request, we disagree with the Proponent Response Letter that the supporting statement “address[es] issues that such a committee *can* address.” The supporting statement instead requires a clear set of specific actions that would follow the mandate to “better inform and strengthen board decision making” only if followed precisely as outlined and therefore micromanages the Company.

For these reasons as well as those stated in the No-Action Letter, we believe that the Company may exclude the Proposal.

Respectfully yours,



Louis L. Goldberg

Attachment

cc w/ att: James E. Parsons, Exxon Mobil Corporation  
Natasha Lamb, Arjuna Capital

**Exhibit A**

**No-Action Letter**

New York  
Northern California  
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 17, 2020

## VIA Email

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**” or “**Exxon Mobil**”), 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 Natasha Lamb, a managing partner and co-founder of Arjuna Capital (the “**Proponent**”) for inclusion in the proxy materials the Company intends to distribute in connection with its 2020 Annual Meeting of Shareholders (the “**2020 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 2020 Proxy Materials. In accordance with Rule 14a-8(j), this letter is being filed with the Securities and Exchange Commission (the “**Commission**”) not less than 80 days before the Company plans to file its definitive proxy statement. The Company has advised us as to the factual matters set forth below.

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 2020 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 the Board of Directors charter a new Board Committee on Climate Risk to evaluate the board and management’s climate strategy and to better inform board decision making on climate risks and opportunities. The charter should explicitly require the committee to report to the full board on corporate strategy, above and beyond matters of legal compliance, assessing the company’s responses to climate related risks and opportunities, including the potential impacts of climate change on business, strategy, financial planning, and our company’s operating environment.”

## REASONS FOR EXCLUSION OF THE PROPOSAL

The Company believes that the Proposal may be properly omitted from the 2020 Proxy Materials pursuant to Rule 14a-8(i)(7), because it relates to the Company’s ordinary business operations by impermissibly seeking to micromanage the Company by imposing specific methods to implement complex policy issues.

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). 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.”

Although the Staff has stated that 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)), even if a proposal involves a significant policy issue, the proposal may nevertheless be excluded under Rule 14a-8(i)(7) if it seeks to micromanage the company by specifying in detail the manner in which the company should address the policy issue. See *Royal Caribbean Cruises Ltd.* (March 14, 2019) (proposal requesting that any stock buybacks adopted by the Board after approval of the proposal not become effective until approved by shareholders); *Abbott Laboratories* (February 28, 2019) (proposal requesting the company adopt a policy, according to which the compensation committee must approve proposed sales of compensation shares by senior executives during a buyback); *Walgreens Boots Alliance, Inc.* (November 20, 2018) (proposal requesting that stock buybacks adopted by the board not become effective until approved by shareholders); *JPMorgan Chase & Co.* (March 30, 2018) (proposal requesting the company establish a “Human and Indigenous Peoples’ Rights Committee”); and *Amazon.com, Inc.* (January 18, 2018) (proposal requesting that Amazon list certain efficient showerheads before others on its website and describe the benefits of these showerheads).

In Staff Legal Bulletin No. 14K (October 16, 2019) (“SLB 14K”) the Staff furthermore noted 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:

“Notwithstanding the precatory nature of a proposal, if the method or strategy for implementing the action requested by the proposal is overly prescriptive, thereby potentially limiting the judgment and discretion of the board and management, the proposal may be viewed as micromanaging the company...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 evaluation of the manner in which the Proposal seeks to address the subject matter raised, rather than the subject matter itself, is critical to the analysis of whether the Proposal micromanages the Company.

The Proposal directs the Company to charter a new board-level “climate risk” committee (the “Committee”). Rather than asking the Company to consider, or discuss the feasibility of, or evaluate the potential for forming the Committee, and leaving the nature and responsibilities of the Committee at the Company’s discretion, the Proposal instead seeks, consistent with SLB 14K, intricate detail and imposes specific methods, actions and outcomes for implementation:

- The Proposal specifies the exact purpose of the Committee – to evaluate the board and management’s climate strategy and to inform board decision making on climate risk and opportunities.
- The Proposal specifies the contents of the Committee’s charter in detail and imposes specific methods and dictates particular actions the Committee must take – “the charter should explicitly require” the Committee to “report to the full board on corporate strategy, above and beyond matters of legal compliance, assessing the Company’s response to climate related risks and opportunities, including the potential impacts of climate change on business strategy, financial planning, and the Company’s operating environment.”
- The supporting statement states that the charter language is in place to “define the scope of fiduciary duties” of the Committee, matters clearly best left to the board and any such Committee’s judgment.
- The Proposal specifies actions that the Committee is required to undertake, further supplanting the board and any such Committee’s decisions on how best to meet their fiduciary responsibilities. Under the Proposal, the Committee must:
  - Prepare reports to the board with “depth and attention to existential climate risks”;
  - Make recommendations to the board regarding corporate planning time frames, carbon reduction goals, and capital allocation strategies to “redirect” the Company’s business model and financial flows consistent with the Paris Agreement; and
  - “Delineat[e] responsibility” and “evaluat[e] the efficacy” of management and board’s responses to climate risks and opportunities.

The level of prescriptiveness in the Proposal clearly micromanages the Company by imposing actions, methods and outcomes on how the Committee should carry out its roles, responsibilities and objectives. The Proposal prescribes specific actions, and the methods for those actions, that the Committee must undertake that includes (a) evaluations about climate risks and opportunities affecting the company's business strategy, financial planning and operating environment and (b) detailed analysis of "existential climate risks" which may be different and in addition to the "climate related risks" otherwise noted elsewhere in the Proposal. The Proposal also prescribes the outcome for the Committee's actions by imposing a requirement that the Committee must recommend to the board ways to "redirect" (essentially completely change) the Company's business model and financial flows with respect to (a) corporate planning time frames, (b) carbon reduction goals and (c) capital allocation, all of which must result in being "consistent with the Paris Agreement."

In addition, the Proposal also interferes with the internal workings of the board generally beyond the subject matter of the impact of climate risk. The Proposal requires that the Committee act as "leader[s]" in the board's climate deliberations, and coordinate with the Company's audit and compensation committees. The Proposal thus fails to afford either the board or the Committee sufficient flexibility or discretion in addressing the complex matters presented by the Proposal, namely the fiduciary duties of directors in their oversight of climate risks on the Company.

Accordingly, consistent with the Staff's previous interpretations of Rule 14a-8(i)(7), the Company believes that the Proposal may be excluded as relating to the Company's ordinary business operations.

## 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 2020 Proxy Materials. If you should have any questions or need additional information, please contact the undersigned at (972) 940-7228. In my absence, please contact James E. Parsons at 972-940-6211. 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

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

Natasha Lamb, Arjuna Capital

# **SANFORD J. LEWIS, ATTORNEY**

Via electronic mail

February 18, 2020  
Office of Chief Counsel  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Re: Shareholder Proposal to Exxon Mobil Corporation Regarding  
Committee on Climate Change by Adam Seitchik

Ladies and Gentlemen:

Adam Seitchik (the “Proponent”) is beneficial owner of common stock of Exxon Mobil Corporation (the “Company”) and has submitted a shareholder proposal (the “Proposal”) to the Company. I have been asked by the Proponent to respond to the letter dated January 17, 2020 (“Company Letter”) sent to the Securities and Exchange Commission by Louis L. Goldberg of Davis Polk. In that letter, the Company contends that the Proposal may be excluded from the Company’s 2020 proxy statement. A copy of this letter is being emailed concurrently to Louis L. Goldberg of Davis Polk.

## **SUMMARY**

The Proposal requests that the Board of Directors of Exxon Mobil charter a new Board Committee on Climate Change to evaluate Exxon Mobil's strategic vision and responses to climate change, and better inform Board decision-making on climate issues. The supporting statement lists potential duties that the Board could authorize the committee to undertake.

The Company Letter asserts that the Proposal is excludable on the basis of micromanagement. However, the Proposal is not inappropriately prescriptive. It does not dictate outcomes of company policy beyond the proposed committee’s focus -- that the “charter should explicitly require the committee to report to the full board on corporate strategy, above and beyond matters of legal compliance, assessing the company's responses to climate related risks and opportunities, including the potential impacts of climate change on business, strategy, financial planning, and our company's operating environment.” This is not micromanagement; it is clear delineation of a committee’s responsibilities.

The potential duties and activities that the Board could assign or authorize the committee are listed following an *authorizing* statement that “a board committee *can* conduct a more focused review than the full board, and therefore better inform and strengthen board decision making by” issuing reports, engaging with other committees, providing critical analysis and leadership. These are suggestions not prescriptions, and it remains for the Board to determine what a committee charter would say and authorize. Furthermore, as a governance proposal, the level of detail contained in the Proposal is consistent with Staff precedents and corporate law.

In addition, as a proposal that does not impermissibly reach beyond the significant policy issue of climate change to delve into matters of ordinary business, the proposal is not excludable on any of the asserted grounds under Rule 14a-8(i)(7).

## THE PROPOSAL

**Resolved:** Shareholders request the Board of Directors charter a new Board Committee on Climate Risk to evaluate the board and management's climate strategy and to better inform board decision making on climate risks and opportunities. The charter should explicitly require the committee to report to the full board on corporate strategy, above and beyond matters of legal compliance, assessing the company's responses to climate related risks and opportunities, including the potential impacts of climate change on business, strategy, financial planning, and our company's operating environment.

**Supporting Statement:** While the ultimate responsibility for climate strategy should fall on the full board, a board committee can conduct a more focused review than the full board, and therefore better inform and strengthen board decision making by:

- Preparing reports to the board with depth and attention to existential climate risks;
- Making recommendations to the board regarding corporate planning time frames, carbon reduction goals, and capital allocation strategies to redirect its business model and financial flows consistent with the Paris Agreement;
- Providing leadership for the full board's climate deliberations;
- Coordinating with audit and compensation committees to ensure integrated attention to climate risk;
- Delineating responsibility and evaluating the efficacy of management and board responses to climate risks and opportunities.

A formal board committee charter clarifies a fiduciary duty of care on climate change matters. The board should consider the need for staffing to adequately resource the committee.<sup>1</sup>

**Whereas:** Board oversight of climate change strategy and planning is essential to address the existential threat of climate change to the fossil fuel industry and our Company. Climate risk merits the creation of a board committee to help lead the necessary transition.

Major oil companies face unprecedented disruption to their business driven by global imperatives to limit global warming and competition from non-carbon-emitting technologies. The Intergovernmental Panel on Climate Change projects dramatic drops in industry emissions of 50 to 90 percent by 2050 are necessary to limit global warming to 1.5 and 2 degrees Celsius.

---

<sup>1</sup> <https://ethicalboardroom.com/closing-the-information-gap/>

As fiduciaries, our board is responsible for stewardship of business performance and long-term strategic planning, in light of risk factors like climate science and policy. Committee charter language can help to define the scope of fiduciary duties of committee members and ensure that effective systems are in place.

A failure to adequately plan for a low carbon transition, including climate change policy, competition from renewables, peak oil demand, and unburnable fossil fuel reserves, may place investor capital at substantial risk. Implementing the Proposal would represent a prudent path forward by formalizing board level oversight of climate change strategy so the company may remain successful in an increasingly decarbonizing economy.

## **BACKGROUND**

### **The current Proposal follows ongoing investor efforts to improve Exxon Mobil's board oversight of climate change and to reduce Company vulnerability to these issues**

In 2015 and 2016, shareholders filed resolutions asking the Company to appoint a climate change expert to the Board of Directors. Finally, in 2017, the Company added an environmental expert, Susan Avery, to the Board. While her appointment as a director was met with accolades, the degree to which adding one person to the Board would represent a turning point for the Company was questioned by some shareholders, NGO's and media. As one article described the challenge, it was going to be difficult to redirect a company "which spent more than a decade funding a Big Tobacco-style disinformation campaign to undermine the growing scientific consensus on global warming."

Journalists reported that the move to add Avery to the board was intended to "help appease some dissident shareholders, including institutional investors..."<sup>2</sup> However, others noted that the composition of the rest of the Board was problematic, including Board member, Michael J. Boskin, who is known for his role in promoting exaggerated climate science uncertainties and impeding climate responsive public policies. So, at best, Avery was expected to have an "uphill battle" in turning the Company's policy approach to climate change, and there was significant concern that she might be marginalized on the board.<sup>3</sup>

The Proponent believes that current board governance processes bring inadequate focus to issues of climate change, a perspective shared by many fellow investors. The proposal recommends that the Board correct that inadequacy by assigning a special committee.

### **The Opportunity for Delineating Fiduciary Focus Through Committees**

---

<sup>2</sup> [https://www.huffingtonpost.com/entry/exxon-mobil-susan-avery\\_us\\_588a409be4b061cf898d6e35](https://www.huffingtonpost.com/entry/exxon-mobil-susan-avery_us_588a409be4b061cf898d6e35)

<sup>3</sup> <https://www.whistleblower.org/politicization-of-climate-science/global-warming-denial-machine/will-changes-at-exxonmobil-lead-to-more-social-responsibility-on-climate-change-or-not/> Avery sits with 3 other board members on the Public Issues and Contributions committee, none of whom appear to have climate change expertise.

The Proposal pursues the approach of establishing a focused board committee. Shareholders at other companies have begun to insist on better delineated fiduciary responsibilities in board committee charters. As a result of an initiative by one investor, in 2010, Intel, Inc. agreed to amend its Charter of the Corporate Governance and Nominating Committee to include “corporate responsibility and sustainability performance” in the committee’s overall policy responsibility. Intel also provided the proponent with an outside legal opinion by their attorneys at Gibson Dunn stating that under Delaware Law, committee members have a clear fiduciary duty to address corporate responsibility and sustainability performance when these issues are written into the committee charter.

Similarly, Monsanto revised its committee charter to include *sustainability*, and its counsel clarified for investors that the members of the Committee, as fiduciaries of the Company and its shareowners, have undertaken a duty to review and monitor the performance of the Company as it affects matters relating to sustainability and to report thereon periodically to the full Board of Directors of the Company.

The Board of Directors of Target Corporation received an outside counsel opinion that Target, as a *Minnesota* Corporation, has a duty pursuant to Section 302A.241 of the Minnesota Business Corporation Act to take actions that are set forth in any charter adopted by the Board of Directors setting forth the authority and responsibilities of such committee.

The creation of a board committee on climate change has been flagged as an important opportunity by corporate law experts<sup>4</sup> who stated in a recent article:

Others have suggested separate board committees focused on climate change and other environmental and sustainability issues. This may be appropriate for carbon intensive industries as the risks and opportunities associated with climate change and other environmental and sustainability issues can have a material impact on those companies.

Moreover, the problem facing shareholders that merits the current approach is dramatized by a recent survey of corporate directors by KPMG Board Leadership Center which surveyed corporate directors on the top issues they would rather spend less time on:

Sustainability and climate change was one of those issues that ranks low on the board agenda. What that shows is a deep disconnect between what the board thinks are its priorities and what shareholders think are the board’s priorities.

— Stephen L. Brown, Senior Advisor, KPMG Board Leadership

In such a context, where Exxon Mobil’s failure to present a strategy on climate change’s existential risk to the Company continues to raise investor concerns, the Proposal seeks to establish a board committee with stronger focus and clearer lines of fiduciary responsibility on

---

<sup>4</sup>Charles M. Elson and Nicholas J. Goossen, *Climate Change and the Corporate Board: Too hot not to handle?* Directors and Boards 1stQ 2017.

[https://www.weinberg.udel.edu/news/Documents/DB1Q17\\_Elson\\_Climate%20Competent.pdf](https://www.weinberg.udel.edu/news/Documents/DB1Q17_Elson_Climate%20Competent.pdf)

climate change as one means of boosting the priority given to this issue.

## ANALYSIS

### **I. The Proposal does not micromanage.**

The Company Letter claims that the Proposal micromanages and therefore is excludable under Rule 14a-8(i)(7). The Staff in recent years has clarified its interpretation of micromanagement. Notably, Staff Legal Bulletin 14I (November 1, 2017) made it clear that a proposal with a proper subject matter – (a topic that transcends ordinary business) – may or may not micromanage, depending on the manner in which it addresses the topic:

[M]icromanagement addresses 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.

Proponents were guided in drafting the Proposal by Staff Legal Bulletin 14 K which went further to explain how micromanagement should be interpreted by issuers and proponents:

“... based on our 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.**” [emphasis added]

Contrary to the Company’s interpretation, the “manner of addressing” the subject matter in the Proposal is without any inappropriate impact on “outcome” at the Company. We believe that we have heeded Staff guidance and filed a proposal that complies and is not excludable.

Moreover, Staff Legal Bulletin 14 K also notes:

When analyzing a proposal to determine the underlying concern or central purpose of any proposal, we look not only to the resolved clause but to the proposal in its entirety. Thus, if a supporting statement modifies or re-focuses the intent of the resolved clause, or effectively requires some action in order to achieve the proposal’s central purpose as set forth in the resolved clause, we take that into account in determining whether the proposal seeks to micromanage the company.

The Company Letter cites various precedents of proposals that micromanaged. Only one of these proposals was a reasonably close analogue. In *J.P. Morgan Chase & Co.* (March 30, 2018) the proposal requested the creation of a committee but was found by the Staff to micromanage. The proposal called for the establishment of a “Human and Indigenous Peoples’ Rights Committee.” In the supporting statement it stated that the committee “should at minimum adopt policies and

procedures to:

- Require our Company and its fiduciaries in all relevant instances of corporate level, project or consortium financing, ensure consideration of finance recipients' policies and practices for potential impacts on Human and Indigenous Peoples' Rights,
- Ensure respect for the Free, Prior and Informed Consent of Indigenous communities affected by all JP Morgan Chase financing.”

This specific mandate, prescribing particular policy positions in the J.P. Morgan Chase & Co. proposal appears to cross the line of the Staff's new micromanagement policy. In contrast, the current Proposal's request does not dictate outcomes of company policy but only asks the board to charter a new Board committee on climate change.

In the present instance, the supporting statement and whereas clauses of the Proposal reinforce the logic of the Proponent that it is ultimately the Board's responsibility to charter a committee, as well as to consider the need for staffing of the committee to fulfill its duties. Just as the Proposal does not inappropriately commit organizational resources to the committee, it does not prescribe a specific committee charter.

Contrary to the Company Letter, it is not necessary, in order to avoid micromanagement, for a proposal to only ask the company to “consider, or discuss the feasibility of, or evaluate the potential for forming the Committee.” Shareholders are within their rights to request that the board charter a new board-level "climate risk" committee (the "Committee"). In the current proposal, the resolve clause defines the proposed scope of such a committee, while the supporting statement, with its list of suggestions regarding what the committee “can” do, constitutes *authorizing* rather than *mandating* language. The proposal clearly encourages the board to consider authorizing the board committee to undertake various activities, in saying that “**a** board committee **can** conduct a more focused review than the full board, and therefore better inform and strengthen board decision-making.” It does not eliminate the flexibility of the board in determining what actions it wishes the committee to undertake.

The Company's interpretation of micromanagement would seem inconsistent with state law. Governance proposals, including amendments to corporate bylaws, are permissible under state laws. The text of the current proposal could easily be subsumed in a binding bylaw amendment.<sup>5</sup> Since the original purpose of the proxy rules is to ensure that shareholders have information on matters that will come before the shareholders at the meeting, the fact that such a bylaw

---

<sup>5</sup> If the proposal were framed as a bylaw amendment amending the board committee provisions to establish the climate committee, the Company would be on weak legal grounds asserting that such an amendment to the bylaws would be impermissible. Exxon Mobil, as a New Jersey corporation, is subject to N.J.S.A.14A:2-9 which provides that the bylaws of a New Jersey corporation may contain (a) “any provision, not inconsistent with law or the certificate of incorporation, relating to the business of the corporation, the conduct of its affairs, and its rights or power or the rights or power of its shareholders, directors, officers, or employees.” Since the corporate bylaws contain requirements related to committees, we believe that shareholders would be well within their rights filing a bylaw amendment to create the committee, and even to mandate the enumerated responsibilities of the committee.

amendment could be offered would necessitate including such a proposal and the proxy under Rule 14a-8. The fact that the current Proposal is not framed as a binding bylaw amendment, but instead as a precatory proposal that is less directive than a binding bylaw amendment in calling on the board to form the committee does not eliminate the need and propriety of the proposal appearing on the proxy.

The Proposal does not impermissibly impose details, methods, actions or outcomes. It simply suggests roles the committee could fulfill. We note that the Company Letter contorts and exaggerates the meaning of the proposal when it asserts that the Proposal binds the board and committee prescriptively. The resolved clause of the proposal contains appropriate levels of detail regarding the scope of climate concerns that the committee should be attentive to, and the supporting statement to address issues that such a committee can address. The Company Letter contorts the permissive suggestions of the supporting statement into a prescriptive mandate:

The Proposal also prescribes the outcome for the Committee's actions by imposing a requirement that the Committee **must recommend to the board** ways to **"redirect" (essentially completely change)** the Company's business model and financial flows with respect to (a) corporate planning time frames, (b) carbon reduction goals and (c) capital allocation, **all of which must result in being "consistent with the Paris Agreement."** [emphasis added]

The supporting statement describes what the Committee can be authorized to do. It does not prescribe a mandate.

We note, to put this into further perspective, that governance proposals often contain far more prescriptive detail than the present proposal. Where governance proposals address measures intended to change a company's governance structure, detail is needed — and permissible — without amounting to micromanagement. For example, in *McDonald's Corporation* (March 16, 2017), shareholders requested that the board take steps to adopt a plan to give certain owners/operators of the company's restaurants the power to elect one new member of the board. The shareholders specified that the company should do this by issuing a new series of preferred stock, whose holders would be entitled to elect the new director.<sup>6</sup> The company argued that the

---

<sup>6</sup> The proposal included language requiring

The proposal included specific language that would be included in amended governing documents:

Shareholders request that the Company's amended governing documents provide that:

- (i) one share of the Franchisee Preferred should be issued to each Franchisee, for each franchised restaurant;
- (ii) consideration for the Franchisee Preferred should be a minimal amount;
- (iii) the Franchisee Preferred should be redeemable by the Company at nominal cost when a Franchisee ceases to own a franchised restaurant;
- (iv) the Franchisee Preferred should entitle the holder to no amount upon liquidation, termination or dissolution of the Company;

proposal was so prescriptive that it amounted to micro-management, because the proposal asked that the implementing amendments to the Company's governing documents "provide that" the Franchisee Preferred Stock include six detailed features. The proponents explained, however, that the proposal's primary objective of adding Franchisee board representation gave the proposal a governance-related objective, that would effect a change in governance structure. Like the present Proposal, this level of specific detail was needed because this governance proposal aimed to amend the company's governance structure in a specific manner. The Staff was unable to concur with the company's view that it could exclude the proposal under Rule 14a-8(i)(7).

Similarly, in *Comerica Incorporated* (March 9, 2009), shareholders of a company participating in a Troubled Asset Relief Program requested that the board implement specific governance reforms to limit executive compensation.<sup>7</sup> The company sought to argue that, although the proposal touched upon the significant policy issue of director compensation, it had "moved from important policy statement appropriate to shareholder vote to micromanagement of the board and the Governance, Compensation and Nominating Committee's compensation philosophy, process, needs and powers", by containing too much detail as to what actions the company should take. The Staff denied exclusion on the basis of Rule 14a-8(i)(7).

Notably, Staff Legal Bulletin 14 K placed the burden on the issuer to demonstrate how the board

---

(v) the Franchisee Preferred should not be transferable to anyone other than McDonald's and should not entitle its holder to vote on any matter other than the election of the new Franchisee Director; and

(vi) the Franchisee Preferred holders have the authority to nominate and elect the Franchisee Director, who may be required to satisfy director qualifications applicable generally to independent directors.

<sup>7</sup> The proposal made the following specific requests for board action:

[S]hareholders urge the Board of Directors and its compensation committee to implement the following set of executive compensation reforms that impose important limitations on senior executive compensation:

- A limit on senior executive target annual incentive compensation (bonus) to an amount no greater than one times the executive's annual salary;
- A requirement that a majority of long-term compensation be awarded in the form of performance-vested equity instruments, such as performance shares or performance-vested restricted shares;
- A freeze on new stock option awards to senior executives, unless the options are indexed to peer group performance so that relative, not absolute, future stock price improvements are rewarded;
- A strong equity retention requirement mandating that senior executives hold for the full term of their employment at least 75% of the shares of stock obtained through equity awards;
- A prohibition on accelerated vesting for all unvested equity awards held by senior executives;
- A limit on all senior executive severance payments to an amount no greater than one times the executive's annual salary; and
- A freeze on senior executives' accrual of retirement benefits under any supplemental executive retirement plan (SERP) maintained by the Company for the benefit of senior executives.

and management would be constrained by the proposal:

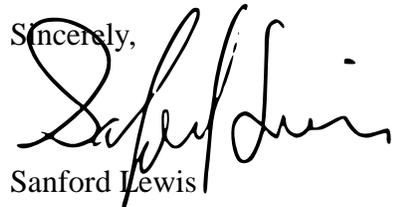
When a company asserts the micromanagement prong as a reason to exclude a proposal, we would expect it to include in its analysis how the proposal may unduly limit the ability of management and the board to manage complex matters with a level of flexibility necessary to fulfill their fiduciary duties to shareholders.

The Company has in this instance failed to meet its burden of proving that the Proposal would hinder the ability of management and board to manage complex matters with the flexibility needed. Instead, it would provide an opportunity for the board to bring focused attention to critical climate change considerations that continue to warrant investor concern in current oversight.

### CONCLUSION

Based on the foregoing, we believe it is clear that the Company has provided no basis for the conclusion that the Proposal is excludable from the 2020 proxy statement. As such, we respectfully request that the Staff inform the Company that it is denying the no action letter request. If you have any questions, please contact me at 413 549-7333 or [sanfordlewis@strategiccounsel.net](mailto:sanfordlewis@strategiccounsel.net).

Sincerely,



Sanford Lewis

Cc: Louis L. Goldberg

# **SANFORD J. LEWIS, ATTORNEY**

Via electronic mail

February 18, 2020  
Office of Chief Counsel  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Re: Shareholder Proposal to Exxon Mobil Corporation Regarding  
Committee on Climate Change by Adam Seitchik

Ladies and Gentlemen:

Adam Seitchik (the “Proponent”) is beneficial owner of common stock of Exxon Mobil Corporation (the “Company”) and has submitted a shareholder proposal (the “Proposal”) to the Company. I have been asked by the Proponent to respond to the letter dated January 17, 2020 (“Company Letter”) sent to the Securities and Exchange Commission by Louis L. Goldberg of Davis Polk. In that letter, the Company contends that the Proposal may be excluded from the Company’s 2020 proxy statement. A copy of this letter is being emailed concurrently to Louis L. Goldberg of Davis Polk.

## **SUMMARY**

The Proposal requests that the Board of Directors of Exxon Mobil charter a new Board Committee on Climate Change to evaluate Exxon Mobil's strategic vision and responses to climate change, and better inform Board decision-making on climate issues. The supporting statement lists potential duties that the Board could authorize the committee to undertake.

The Company Letter asserts that the Proposal is excludable on the basis of micromanagement. However, the Proposal is not inappropriately prescriptive. It does not dictate outcomes of company policy beyond the proposed committee’s focus -- that the “charter should explicitly require the committee to report to the full board on corporate strategy, above and beyond matters of legal compliance, assessing the company's responses to climate related risks and opportunities, including the potential impacts of climate change on business, strategy, financial planning, and our company's operating environment.” This is not micromanagement; it is clear delineation of a committee’s responsibilities.

The potential duties and activities that the Board could assign or authorize the committee are listed following an *authorizing* statement that “a board committee *can* conduct a more focused review than the full board, and therefore better inform and strengthen board decision making by” issuing reports, engaging with other committees, providing critical analysis and leadership. These are suggestions not prescriptions, and it remains for the Board to determine what a committee charter would say and authorize. Furthermore, as a governance proposal, the level of detail contained in the Proposal is consistent with Staff precedents and corporate law.

In addition, as a proposal that does not impermissibly reach beyond the significant policy issue of climate change to delve into matters of ordinary business, the proposal is not excludable on any of the asserted grounds under Rule 14a-8(i)(7).

## THE PROPOSAL

**Resolved:** Shareholders request the Board of Directors charter a new Board Committee on Climate Risk to evaluate the board and management's climate strategy and to better inform board decision making on climate risks and opportunities. The charter should explicitly require the committee to report to the full board on corporate strategy, above and beyond matters of legal compliance, assessing the company's responses to climate related risks and opportunities, including the potential impacts of climate change on business, strategy, financial planning, and our company's operating environment.

**Supporting Statement:** While the ultimate responsibility for climate strategy should fall on the full board, a board committee can conduct a more focused review than the full board, and therefore better inform and strengthen board decision making by:

- Preparing reports to the board with depth and attention to existential climate risks;
- Making recommendations to the board regarding corporate planning time frames, carbon reduction goals, and capital allocation strategies to redirect its business model and financial flows consistent with the Paris Agreement;
- Providing leadership for the full board's climate deliberations;
- Coordinating with audit and compensation committees to ensure integrated attention to climate risk;
- Delineating responsibility and evaluating the efficacy of management and board responses to climate risks and opportunities.

A formal board committee charter clarifies a fiduciary duty of care on climate change matters. The board should consider the need for staffing to adequately resource the committee.<sup>1</sup>

**Whereas:** Board oversight of climate change strategy and planning is essential to address the existential threat of climate change to the fossil fuel industry and our Company. Climate risk merits the creation of a board committee to help lead the necessary transition.

Major oil companies face unprecedented disruption to their business driven by global imperatives to limit global warming and competition from non-carbon-emitting technologies. The Intergovernmental Panel on Climate Change projects dramatic drops in industry emissions of 50 to 90 percent by 2050 are necessary to limit global warming to 1.5 and 2 degrees Celsius.

---

<sup>1</sup> <https://ethicalboardroom.com/closing-the-information-gap/>

As fiduciaries, our board is responsible for stewardship of business performance and long-term strategic planning, in light of risk factors like climate science and policy. Committee charter language can help to define the scope of fiduciary duties of committee members and ensure that effective systems are in place.

A failure to adequately plan for a low carbon transition, including climate change policy, competition from renewables, peak oil demand, and unburnable fossil fuel reserves, may place investor capital at substantial risk. Implementing the Proposal would represent a prudent path forward by formalizing board level oversight of climate change strategy so the company may remain successful in an increasingly decarbonizing economy.

## **BACKGROUND**

### **The current Proposal follows ongoing investor efforts to improve Exxon Mobil's board oversight of climate change and to reduce Company vulnerability to these issues**

In 2015 and 2016, shareholders filed resolutions asking the Company to appoint a climate change expert to the Board of Directors. Finally, in 2017, the Company added an environmental expert, Susan Avery, to the Board. While her appointment as a director was met with accolades, the degree to which adding one person to the Board would represent a turning point for the Company was questioned by some shareholders, NGO's and media. As one article described the challenge, it was going to be difficult to redirect a company "which spent more than a decade funding a Big Tobacco-style disinformation campaign to undermine the growing scientific consensus on global warming."

Journalists reported that the move to add Avery to the board was intended to "help appease some dissident shareholders, including institutional investors..."<sup>2</sup> However, others noted that the composition of the rest of the Board was problematic, including Board member, Michael J. Boskin, who is known for his role in promoting exaggerated climate science uncertainties and impeding climate responsive public policies. So, at best, Avery was expected to have an "uphill battle" in turning the Company's policy approach to climate change, and there was significant concern that she might be marginalized on the board.<sup>3</sup>

The Proponent believes that current board governance processes bring inadequate focus to issues of climate change, a perspective shared by many fellow investors. The proposal recommends that the Board correct that inadequacy by assigning a special committee.

### **The Opportunity for Delineating Fiduciary Focus Through Committees**

---

<sup>2</sup> [https://www.huffingtonpost.com/entry/exxon-mobil-susan-avery\\_us\\_588a409be4b061cf898d6e35](https://www.huffingtonpost.com/entry/exxon-mobil-susan-avery_us_588a409be4b061cf898d6e35)

<sup>3</sup> <https://www.whistleblower.org/politicization-of-climate-science/global-warming-denial-machine/will-changes-at-exxonmobil-lead-to-more-social-responsibility-on-climate-change-or-not/> Avery sits with 3 other board members on the Public Issues and Contributions committee, none of whom appear to have climate change expertise.

The Proposal pursues the approach of establishing a focused board committee. Shareholders at other companies have begun to insist on better delineated fiduciary responsibilities in board committee charters. As a result of an initiative by one investor, in 2010, Intel, Inc. agreed to amend its Charter of the Corporate Governance and Nominating Committee to include “corporate responsibility and sustainability performance” in the committee’s overall policy responsibility. Intel also provided the proponent with an outside legal opinion by their attorneys at Gibson Dunn stating that under Delaware Law, committee members have a clear fiduciary duty to address corporate responsibility and sustainability performance when these issues are written into the committee charter.

Similarly, Monsanto revised its committee charter to include *sustainability*, and its counsel clarified for investors that the members of the Committee, as fiduciaries of the Company and its shareowners, have undertaken a duty to review and monitor the performance of the Company as it affects matters relating to sustainability and to report thereon periodically to the full Board of Directors of the Company.

The Board of Directors of Target Corporation received an outside counsel opinion that Target, as a *Minnesota* Corporation, has a duty pursuant to Section 302A.241 of the Minnesota Business Corporation Act to take actions that are set forth in any charter adopted by the Board of Directors setting forth the authority and responsibilities of such committee.

The creation of a board committee on climate change has been flagged as an important opportunity by corporate law experts<sup>4</sup> who stated in a recent article:

Others have suggested separate board committees focused on climate change and other environmental and sustainability issues. This may be appropriate for carbon intensive industries as the risks and opportunities associated with climate change and other environmental and sustainability issues can have a material impact on those companies.

Moreover, the problem facing shareholders that merits the current approach is dramatized by a recent survey of corporate directors by KPMG Board Leadership Center which surveyed corporate directors on the top issues they would rather spend less time on:

Sustainability and climate change was one of those issues that ranks low on the board agenda. What that shows is a deep disconnect between what the board thinks are its priorities and what shareholders think are the board’s priorities.

— Stephen L. Brown, Senior Advisor, KPMG Board Leadership

In such a context, where Exxon Mobil’s failure to present a strategy on climate change’s existential risk to the Company continues to raise investor concerns, the Proposal seeks to establish a board committee with stronger focus and clearer lines of fiduciary responsibility on

---

<sup>4</sup>Charles M. Elson and Nicholas J. Goossen, *Climate Change and the Corporate Board: Too hot not to handle?* Directors and Boards 1stQ 2017.

[https://www.weinberg.udel.edu/news/Documents/DB1Q17\\_Elson\\_Climate%20Competent.pdf](https://www.weinberg.udel.edu/news/Documents/DB1Q17_Elson_Climate%20Competent.pdf)

climate change as one means of boosting the priority given to this issue.

## ANALYSIS

### **I. The Proposal does not micromanage.**

The Company Letter claims that the Proposal micromanages and therefore is excludable under Rule 14a-8(i)(7). The Staff in recent years has clarified its interpretation of micromanagement. Notably, Staff Legal Bulletin 14I (November 1, 2017) made it clear that a proposal with a proper subject matter – (a topic that transcends ordinary business) – may or may not micromanage, depending on the manner in which it addresses the topic:

[M]icromanagement addresses 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.

Proponents were guided in drafting the Proposal by Staff Legal Bulletin 14 K which went further to explain how micromanagement should be interpreted by issuers and proponents:

“... based on our 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.**” [emphasis added]

Contrary to the Company’s interpretation, the “manner of addressing” the subject matter in the Proposal is without any inappropriate impact on “outcome” at the Company. We believe that we have heeded Staff guidance and filed a proposal that complies and is not excludable.

Moreover, Staff Legal Bulletin 14 K also notes:

When analyzing a proposal to determine the underlying concern or central purpose of any proposal, we look not only to the resolved clause but to the proposal in its entirety. Thus, if a supporting statement modifies or re-focuses the intent of the resolved clause, or effectively requires some action in order to achieve the proposal’s central purpose as set forth in the resolved clause, we take that into account in determining whether the proposal seeks to micromanage the company.

The Company Letter cites various precedents of proposals that micromanaged. Only one of these proposals was a reasonably close analogue. In *J.P. Morgan Chase & Co.* (March 30, 2018) the proposal requested the creation of a committee but was found by the Staff to micromanage. The proposal called for the establishment of a “Human and Indigenous Peoples’ Rights Committee.” In the supporting statement it stated that the committee “should at minimum adopt policies and

procedures to:

- Require our Company and its fiduciaries in all relevant instances of corporate level, project or consortium financing, ensure consideration of finance recipients' policies and practices for potential impacts on Human and Indigenous Peoples' Rights,
- Ensure respect for the Free, Prior and Informed Consent of Indigenous communities affected by all JP Morgan Chase financing.”

This specific mandate, prescribing particular policy positions in the J.P. Morgan Chase & Co. proposal appears to cross the line of the Staff's new micromanagement policy. In contrast, the current Proposal's request does not dictate outcomes of company policy but only asks the board to charter a new Board committee on climate change.

In the present instance, the supporting statement and whereas clauses of the Proposal reinforce the logic of the Proponent that it is ultimately the Board's responsibility to charter a committee, as well as to consider the need for staffing of the committee to fulfill its duties. Just as the Proposal does not inappropriately commit organizational resources to the committee, it does not prescribe a specific committee charter.

Contrary to the Company Letter, it is not necessary, in order to avoid micromanagement, for a proposal to only ask the company to “consider, or discuss the feasibility of, or evaluate the potential for forming the Committee.” Shareholders are within their rights to request that the board charter a new board-level "climate risk" committee (the "Committee"). In the current proposal, the resolve clause defines the proposed scope of such a committee, while the supporting statement, with its list of suggestions regarding what the committee “can” do, constitutes *authorizing* rather than *mandating* language. The proposal clearly encourages the board to consider authorizing the board committee to undertake various activities, in saying that “**a** board committee **can** conduct a more focused review than the full board, and therefore better inform and strengthen board decision-making.” It does not eliminate the flexibility of the board in determining what actions it wishes the committee to undertake.

The Company's interpretation of micromanagement would seem inconsistent with state law. Governance proposals, including amendments to corporate bylaws, are permissible under state laws. The text of the current proposal could easily be subsumed in a binding bylaw amendment.<sup>5</sup> Since the original purpose of the proxy rules is to ensure that shareholders have information on matters that will come before the shareholders at the meeting, the fact that such a bylaw

---

<sup>5</sup> If the proposal were framed as a bylaw amendment amending the board committee provisions to establish the climate committee, the Company would be on weak legal grounds asserting that such an amendment to the bylaws would be impermissible. Exxon Mobil, as a New Jersey corporation, is subject to N.J.S.A.14A:2-9 which provides that the bylaws of a New Jersey corporation may contain (a) “any provision, not inconsistent with law or the certificate of incorporation, relating to the business of the corporation, the conduct of its affairs, and its rights or power or the rights or power of its shareholders, directors, officers, or employees.” Since the corporate bylaws contain requirements related to committees, we believe that shareholders would be well within their rights filing a bylaw amendment to create the committee, and even to mandate the enumerated responsibilities of the committee.

amendment could be offered would necessitate including such a proposal and the proxy under Rule 14a-8. The fact that the current Proposal is not framed as a binding bylaw amendment, but instead as a precatory proposal that is less directive than a binding bylaw amendment in calling on the board to form the committee does not eliminate the need and propriety of the proposal appearing on the proxy.

The Proposal does not impermissibly impose details, methods, actions or outcomes. It simply suggests roles the committee could fulfill. We note that the Company Letter contorts and exaggerates the meaning of the proposal when it asserts that the Proposal binds the board and committee prescriptively. The resolved clause of the proposal contains appropriate levels of detail regarding the scope of climate concerns that the committee should be attentive to, and the supporting statement to address issues that such a committee can address. The Company Letter contorts the permissive suggestions of the supporting statement into a prescriptive mandate:

The Proposal also prescribes the outcome for the Committee's actions by imposing a requirement that the Committee **must recommend to the board** ways to **"redirect" (essentially completely change)** the Company's business model and financial flows with respect to (a) corporate planning time frames, (b) carbon reduction goals and (c) capital allocation, **all of which must result in being "consistent with the Paris Agreement."** [emphasis added]

The supporting statement describes what the Committee can be authorized to do. It does not prescribe a mandate.

We note, to put this into further perspective, that governance proposals often contain far more prescriptive detail than the present proposal. Where governance proposals address measures intended to change a company's governance structure, detail is needed — and permissible — without amounting to micromanagement. For example, in *McDonald's Corporation* (March 16, 2017), shareholders requested that the board take steps to adopt a plan to give certain owners/operators of the company's restaurants the power to elect one new member of the board. The shareholders specified that the company should do this by issuing a new series of preferred stock, whose holders would be entitled to elect the new director.<sup>6</sup> The company argued that the

---

<sup>6</sup> The proposal included language requiring  
The proposal included specific language that would be included in amended governing documents:

Shareholders request that the Company's amended governing documents provide that:

- (i) one share of the Franchisee Preferred should be issued to each Franchisee, for each franchised restaurant;
- (ii) consideration for the Franchisee Preferred should be a minimal amount;
- (iii) the Franchisee Preferred should be redeemable by the Company at nominal cost when a Franchisee ceases to own a franchised restaurant;
- (iv) the Franchisee Preferred should entitle the holder to no amount upon liquidation, termination or dissolution of the Company;

proposal was so prescriptive that it amounted to micro-management, because the proposal asked that the implementing amendments to the Company's governing documents "provide that" the Franchisee Preferred Stock include six detailed features. The proponents explained, however, that the proposal's primary objective of adding Franchisee board representation gave the proposal a governance-related objective, that would effect a change in governance structure. Like the present Proposal, this level of specific detail was needed because this governance proposal aimed to amend the company's governance structure in a specific manner. The Staff was unable to concur with the company's view that it could exclude the proposal under Rule 14a-8(i)(7).

Similarly, in *Comerica Incorporated* (March 9, 2009), shareholders of a company participating in a Troubled Asset Relief Program requested that the board implement specific governance reforms to limit executive compensation.<sup>7</sup> The company sought to argue that, although the proposal touched upon the significant policy issue of director compensation, it had "moved from important policy statement appropriate to shareholder vote to micromanagement of the board and the Governance, Compensation and Nominating Committee's compensation philosophy, process, needs and powers", by containing too much detail as to what actions the company should take. The Staff denied exclusion on the basis of Rule 14a-8(i)(7).

Notably, Staff Legal Bulletin 14 K placed the burden on the issuer to demonstrate how the board

---

(v) the Franchisee Preferred should not be transferable to anyone other than McDonald's and should not entitle its holder to vote on any matter other than the election of the new Franchisee Director; and

(vi) the Franchisee Preferred holders have the authority to nominate and elect the Franchisee Director, who may be required to satisfy director qualifications applicable generally to independent directors.

<sup>7</sup> The proposal made the following specific requests for board action:

[S]hareholders urge the Board of Directors and its compensation committee to implement the following set of executive compensation reforms that impose important limitations on senior executive compensation:

- A limit on senior executive target annual incentive compensation (bonus) to an amount no greater than one times the executive's annual salary;
- A requirement that a majority of long-term compensation be awarded in the form of performance-vested equity instruments, such as performance shares or performance-vested restricted shares;
- A freeze on new stock option awards to senior executives, unless the options are indexed to peer group performance so that relative, not absolute, future stock price improvements are rewarded;
- A strong equity retention requirement mandating that senior executives hold for the full term of their employment at least 75% of the shares of stock obtained through equity awards;
- A prohibition on accelerated vesting for all unvested equity awards held by senior executives;
- A limit on all senior executive severance payments to an amount no greater than one times the executive's annual salary; and
- A freeze on senior executives' accrual of retirement benefits under any supplemental executive retirement plan (SERP) maintained by the Company for the benefit of senior executives.

and management would be constrained by the proposal:

When a company asserts the micromanagement prong as a reason to exclude a proposal, we would expect it to include in its analysis how the proposal may 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.

The Company has in this instance failed to meet its burden of proving that the Proposal would hinder the ability of management and board to manage complex matters with the flexibility needed. Instead, it would provide an opportunity for the board to bring focused attention to critical climate change considerations that continue to warrant investor concern in current oversight.

### CONCLUSION

Based on the foregoing, we believe it is clear that the Company has provided no basis for the conclusion that the Proposal is excludable from the 2020 proxy statement. As such, we respectfully request that the Staff inform the Company that it is denying the no action letter request. If you have any questions, please contact me at 413 549-7333 or [sanfordlewis@strategiccounsel.net](mailto:sanfordlewis@strategiccounsel.net).

Sincerely,  
  
Sanford Lewis

Cc: Louis L. Goldberg

New York  
Northern California  
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 17, 2020

## VIA Email

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**” or “**Exxon Mobil**”), 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 Natasha Lamb, a managing partner and co-founder of Arjuna Capital (the “**Proponent**”) for inclusion in the proxy materials the Company intends to distribute in connection with its 2020 Annual Meeting of Shareholders (the “**2020 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 2020 Proxy Materials. In accordance with Rule 14a-8(j), this letter is being filed with the Securities and Exchange Commission (the “**Commission**”) not less than 80 days before the Company plans to file its definitive proxy statement. The Company has advised us as to the factual matters set forth below.

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 2020 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 the Board of Directors charter a new Board Committee on Climate Risk to evaluate the board and management’s climate strategy and to better inform board decision making on climate risks and opportunities. The charter should explicitly require the committee to report to the full board on corporate strategy, above and beyond matters of legal compliance, assessing the company’s responses to climate related risks and opportunities, including the potential impacts of climate change on business, strategy, financial planning, and our company’s operating environment.”

## REASONS FOR EXCLUSION OF THE PROPOSAL

The Company believes that the Proposal may be properly omitted from the 2020 Proxy Materials pursuant to Rule 14a-8(i)(7), because it relates to the Company’s ordinary business operations by impermissibly seeking to micromanage the Company by imposing specific methods to implement complex policy issues.

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). 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.”

Although the Staff has stated that 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)), even if a proposal involves a significant policy issue, the proposal may nevertheless be excluded under Rule 14a-8(i)(7) if it seeks to micromanage the company by specifying in detail the manner in which the company should address the policy issue. See *Royal Caribbean Cruises Ltd.* (March 14, 2019) (proposal requesting that any stock buybacks adopted by the Board after approval of the proposal not become effective until approved by shareholders); *Abbott Laboratories* (February 28, 2019) (proposal requesting the company adopt a policy, according to which the compensation committee must approve proposed sales of compensation shares by senior executives during a buyback); *Walgreens Boots Alliance, Inc.* (November 20, 2018) (proposal requesting that stock buybacks adopted by the board not become effective until approved by shareholders); *JPMorgan Chase & Co.* (March 30, 2018) (proposal requesting the company establish a “Human and Indigenous Peoples’ Rights Committee”); and *Amazon.com, Inc.* (January 18, 2018) (proposal requesting that Amazon list certain efficient showerheads before others on its website and describe the benefits of these showerheads).

In Staff Legal Bulletin No. 14K (October 16, 2019) (“SLB 14K”) the Staff furthermore noted 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:

“Notwithstanding the precatory nature of a proposal, if the method or strategy for implementing the action requested by the proposal is overly prescriptive, thereby potentially limiting the judgment and discretion of the board and management, the proposal may be viewed as micromanaging the company...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 evaluation of the manner in which the Proposal seeks to address the subject matter raised, rather than the subject matter itself, is critical to the analysis of whether the Proposal micromanages the Company.

The Proposal directs the Company to charter a new board-level “climate risk” committee (the “Committee”). Rather than asking the Company to consider, or discuss the feasibility of, or evaluate the potential for forming the Committee, and leaving the nature and responsibilities of the Committee at the Company’s discretion, the Proposal instead seeks, consistent with SLB 14K, intricate detail and imposes specific methods, actions and outcomes for implementation:

- The Proposal specifies the exact purpose of the Committee – to evaluate the board and management’s climate strategy and to inform board decision making on climate risk and opportunities.
- The Proposal specifies the contents of the Committee’s charter in detail and imposes specific methods and dictates particular actions the Committee must take – “the charter should explicitly require” the Committee to “report to the full board on corporate strategy, above and beyond matters of legal compliance, assessing the Company’s response to climate related risks and opportunities, including the potential impacts of climate change on business strategy, financial planning, and the Company’s operating environment.”
- The supporting statement states that the charter language is in place to “define the scope of fiduciary duties” of the Committee, matters clearly best left to the board and any such Committee’s judgment.
- The Proposal specifies actions that the Committee is required to undertake, further supplanting the board and any such Committee’s decisions on how best to meet their fiduciary responsibilities. Under the Proposal, the Committee must:
  - Prepare reports to the board with “depth and attention to existential climate risks”;
  - Make recommendations to the board regarding corporate planning time frames, carbon reduction goals, and capital allocation strategies to “redirect” the Company’s business model and financial flows consistent with the Paris Agreement; and
  - “Delineat[e] responsibility” and “evaluat[e] the efficacy” of management and board’s responses to climate risks and opportunities.

The level of prescriptiveness in the Proposal clearly micromanages the Company by imposing actions, methods and outcomes on how the Committee should carry out its roles, responsibilities and objectives. The Proposal prescribes specific actions, and the methods for those actions, that the Committee must undertake that includes (a) evaluations about climate risks and opportunities affecting the company's business strategy, financial planning and operating environment and (b) detailed analysis of "existential climate risks" which may be different and in addition to the "climate related risks" otherwise noted elsewhere in the Proposal. The Proposal also prescribes the outcome for the Committee's actions by imposing a requirement that the Committee must recommend to the board ways to "redirect" (essentially completely change) the Company's business model and financial flows with respect to (a) corporate planning time frames, (b) carbon reduction goals and (c) capital allocation, all of which must result in being "consistent with the Paris Agreement."

In addition, the Proposal also interferes with the internal workings of the board generally beyond the subject matter of the impact of climate risk. The Proposal requires that the Committee act as "leader[s]" in the board's climate deliberations, and coordinate with the Company's audit and compensation committees. The Proposal thus fails to afford either the board or the Committee sufficient flexibility or discretion in addressing the complex matters presented by the Proposal, namely the fiduciary duties of directors in their oversight of climate risks on the Company.

Accordingly, consistent with the Staff's previous interpretations of Rule 14a-8(i)(7), the Company believes that the Proposal may be excluded as relating to the Company's ordinary business operations.

## 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 2020 Proxy Materials. If you should have any questions or need additional information, please contact the undersigned at (972) 940-7228. In my absence, please contact James E. Parsons at 972-940-6211. 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

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

Natasha Lamb, Arjuna Capital

### Climate Risk Board Committee

**Resolved:** Shareholders request the Board of Directors charter a new Board Committee on Climate Risk to evaluate the board and management's climate strategy and to better inform board decision making on climate risks and opportunities. The charter should explicitly require the committee to report to the full board on corporate strategy, above and beyond matters of legal compliance, assessing the company's responses to climate related risks and opportunities, including the potential impacts of climate change on business, strategy, financial planning, and our company's operating environment.

**Supporting Statement:** While the ultimate responsibility for climate strategy should fall on the full board, a board committee can conduct a more focused review than the full board, and therefore better inform and strengthen board decision making by:

- Preparing reports to the board with depth and attention to existential climate risks;
- Making recommendations to the board regarding corporate planning time frames, carbon reduction goals, and capital allocation strategies to redirect its business model and financial flows consistent with the Paris Agreement;
- Providing leadership for the full board's climate deliberations;
- Coordinating with audit and compensation committees to ensure integrated attention to climate risk;
- Delineating responsibility and evaluating the efficacy of management and board responses to climate risks and opportunities.

A formal board committee charter clarifies a fiduciary duty of care on climate change matters. The board should consider the need for staffing to adequately resource the committee.<sup>1</sup>

**Whereas:** Board oversight of climate change strategy and planning is essential to address the existential threat of climate change to the fossil fuel industry and our Company. Climate risk merits the creation of a board committee to help lead the necessary transition.

Major oil companies face unprecedented disruption to their business driven by global imperatives to limit global warming and competition from non-carbon-emitting technologies. The Intergovernmental Panel on Climate Change projects dramatic drops in industry emissions of 50 to 90 percent by 2050 are necessary to limit global warming to 1.5 and 2 degrees Celsius.

As fiduciaries, our board is responsible for stewardship of business performance and long-term strategic planning, in light of risk factors like climate science and policy. Committee charter language can help to define the scope of fiduciary duties of committee members and ensure that effective systems are in place.

---

<sup>1</sup> <https://ethicalboardroom.com/closing-the-information-gap/>

A failure to adequately plan for a low carbon transition, including climate change policy, competition from renewables, peak oil demand, and unburnable fossil fuel reserves, may place investor capital at substantial risk. Implementing the Proposal would represent a prudent path forward by formalizing board level oversight of climate change strategy so the company may remain successful in an increasingly decarbonizing economy.

**Shareholder Correspondence**

ARJUNA  CAPITAL  
ENLIGHTENED INVESTING

Received

DEC 12 2019

N.A. HANSEN

December 11, 2019

VIA FEDEX OVERNIGHT

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

To Whom It May Concern:

Arjuna Capital is an investment firm focused on sustainable and impact investing.

I am hereby authorized to notify you of our intention to lead file the enclosed shareholder resolution with Exxon Mobil Corporation on behalf of our client Adam Seitchik. Arjuna Capital 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, Adam Seitchik holds more than \$2,000 of XOM common stock, acquired more than one year prior to today's date and held continuously for that time. Our client will remain invested in this position continuously through the date of the 2020 annual meeting.

Enclosed please find verification of this position and letter from Adam Seitchik authorizing Arjuna Capital to undertake this filing on his behalf. 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 ExxonMobil Corporation about the contents of our proposal. Please direct any written communications to me at the address below or to [natasha@arjuna-capital.com](mailto:natasha@arjuna-capital.com). Please also confirm receipt of this letter via email.

Sincerely,



Natasha Lamb  
Managing Partner  
c/o Arjuna Capital  
1 Elm Street  
Manchester, MA 01944

Enclosures

## Climate Risk Board Committee

**Resolved:** Shareholders request the Board of Directors charter a new Board Committee on Climate Risk to evaluate the board and management's climate strategy and to better inform board decision making on climate risks and opportunities. The charter should explicitly require the committee to report to the full board on corporate strategy, above and beyond matters of legal compliance, assessing the company's responses to climate related risks and opportunities, including the potential impacts of climate change on business, strategy, financial planning, and our company's operating environment.

**Supporting Statement:** While the ultimate responsibility for climate strategy should fall on the full board, a board committee can conduct a more focused review than the full board, and therefore better inform and strengthen board decision making by:

- Preparing reports to the board with depth and attention to existential climate risks;
- Making recommendations to the board regarding corporate planning time frames, carbon reduction goals, and capital allocation strategies to redirect its business model and financial flows consistent with the Paris Agreement;
- Providing leadership for the full board's climate deliberations;
- Coordinating with audit and compensation committees to ensure integrated attention to climate risk;
- Delineating responsibility and evaluating the efficacy of management and board responses to climate risks and opportunities.

A formal board committee charter clarifies a fiduciary duty of care on climate change matters. The board should consider the need for staffing to adequately resource the committee.<sup>1</sup>

**Whereas:** Board oversight of climate change strategy and planning is essential to address the existential threat of climate change to the fossil fuel industry and our Company. Climate risk merits the creation of a board committee to help lead the necessary transition.

Major oil companies face unprecedented disruption to their business driven by global imperatives to limit global warming and competition from non-carbon-emitting technologies. The Intergovernmental Panel on Climate Change projects dramatic drops in industry emissions of 50 to 90 percent by 2050 are necessary to limit global warming to 1.5 and 2 degrees Celsius.

As fiduciaries, our board is responsible for stewardship of business performance and long-term strategic planning, in light of risk factors like climate science and policy. Committee charter language can help to define the scope of fiduciary duties of committee members and ensure that effective systems are in place.

A failure to adequately plan for a low carbon transition, including climate change policy, competition from renewables, peak oil demand, and unburnable fossil fuel reserves, may place investor capital at substantial risk. Implementing the Proposal would represent a prudent path forward by formalizing board level oversight of climate change strategy so the company may remain successful in an increasingly decarbonizing economy.

---

<sup>1</sup> <https://ethicalboardroom.com/closing-the-information-gap/>

November 19, 2019

Natasha Lamb  
Managing Partner  
Arjuna Capital  
1 Elm Street  
Manchester, MA 01944

Dear Ms. Lamb,

I hereby authorize Arjuna Capital to file a shareholder proposal on my behalf at ExxonMobil (XOM) regarding a Climate Risk Board Committee for the company's annual meeting in 2020.

I am the beneficial owner of more than \$2,000 worth of common stock in ExxonMobil (XOM) that I have held continuously for more than one year. I intend to hold the aforementioned shares of stock through the date of the company's annual meeting in 2020.

I specifically give Arjuna Capital full authority to deal, on my behalf, with any and all aspects of the aforementioned shareholder proposal. I understand that my name may appear on the corporation's proxy statement as the filer of the aforementioned proposal.

Sincerely,



Adam Seitchik

c/o Arjuna Capital  
1 Elm Street  
Manchester, MA 01944

---

*charles*SCHWAB

December 11, 2019

To WHOM IT MAY CONCERN:

Re: Adam D. Seitchik / ;\*\*\*

This letter is to confirm that Charles Schwab & Co. is the record holder for the beneficial owner of the account above (# [REDACTED]\*\*\* ), which Arjuna Capital manages and which holds 42 shares of common stock in ExxonMobil Corporation (XOM).

As of December 11, 2019, Adam D. Seitchik held, and has held continuously for at least one year, 42 shares of XOM stock.

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

Sincerely,



John Gast  
Relationship Specialist/Advisor Services

Case ID # AM-5685854

Independent investment advisors are not owned by, affiliated with, or supervised by Charles Schwab & Co., Inc. ("Schwab"). ©2016 Charles Schwab & Co., Inc. All rights reserved.

Member SIPC. CRS 00038 (0609-9534) 09/16 SGC48613-00

# FedEx Express

ST 16  
12.42  
F  
2 16.00  
H1 429 6Z

ORIGIN ID: MXGA (978) 704-0112  
NATASHA LAMB  
ARJUNA CAPITAL  
1 ELM STREET

SHIP DATE: 10DEC19  
ACTWGT: 0.50 LB  
CAD: 104660149/NET4160

MANCHESTER-BY-THE SE, MA 01944  
UNITED STATES US

BILL SENDER

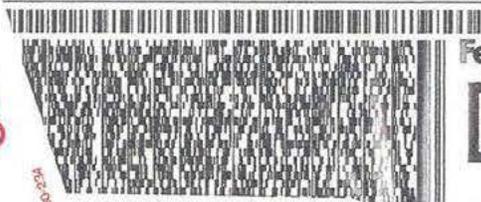
TO NEIL A. HANSEN, CORP SECRETARY  
EXXONMOBIL CORP  
5959 LAS COLINAS BOULEVARD

IRVING TX 75039

1721 940-6715

REF

DEPT



FedEx Express



THU - 12 DEC AA  
STANDARD OVERNIGHT

ED - 11 DEC 3:00P  
ARD OVERNIGHT

75039  
TX-US  
DFW

75039  
TX-US  
DFW

XH DALA



FID 085691 110EC19 GMA 56AC2/1800/85A2



This Package Has Been X-Rayed By Central Mail

Fe  
TRK#  
0201

12/10/2019



**VIA UPS – OVERNIGHT DELIVERY**

December 17, 2019

Ms. Natasha Lamb  
Managing Partner  
Arjuna Capital  
1 Elm Street  
Manchester, MA 01944

Dear Ms. Lamb:

This will acknowledge receipt of the proposal concerning Climate Change Board Committee (the "Proposal"), which you have submitted on behalf of Adam Seitchik (the "Proponent") in connection with ExxonMobil's 2020 annual meeting of shareholders. However, date deficiencies exist between the proof letter and the submission date and therefore, do not meet requirements, as shown below.

In order to be eligible to submit a shareholder proposal, Rule 14a-8 (copy enclosed) requires a proponent to submit sufficient proof that it 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 10, 2019, which is the date the Proposal was received by the overnight delivery service.

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 continuous ownership of shares as of December 11, 2019, and therefore does not verify continuous ownership for the one-year period preceding and including the December 10, 2019 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 10, 2019, 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 10, 2019; 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 10, 2019.
- 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 10, 2019. 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 10, 2019, 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.

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/sme

Enclosures



**Division of Corporation Finance  
Securities and Exchange Commission**

**Shareholder Proposals**

**Staff Legal Bulletin No. 14F (CF)**

**Action:** Publication of CF Staff Legal Bulletin

**Date:** October 18, 2011

**Summary:** This staff legal bulletin provides information for companies and shareholders regarding Rule 14a-8 under the Securities Exchange Act of 1934.

**Supplementary Information:** The statements in this bulletin represent the views of the Division of Corporation Finance (the "Division"). This bulletin is not a rule, regulation or statement of the Securities and Exchange Commission (the "Commission"). Further, the Commission has neither approved nor disapproved its content.

**Contacts:** For further information, please contact the Division's Office of Chief Counsel by calling (202) 551-3500 or by submitting a web-based request form at [https://www.sec.gov/forms/corp\\_fin\\_interpretive](https://www.sec.gov/forms/corp_fin_interpretive).

**A. The purpose of this bulletin**

This bulletin is part of a continuing effort by the Division to provide guidance on important issues arising under Exchange Act Rule 14a-8. Specifically, this bulletin contains information regarding:

- Brokers and banks that constitute "record" holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8;
- Common errors shareholders can avoid when submitting proof of ownership to companies;
- The submission of revised proposals;
- Procedures for withdrawing no-action requests regarding proposals submitted by multiple proponents; and
- The Division's new process for transmitting Rule 14a-8 no-action responses by email.

You can find additional guidance regarding Rule 14a-8 in the following bulletins that are available on the Commission's website: [SLB No. 14](#), [SLB No. 14A](#), [SLB No. 14B](#), [SLB No. 14C](#), [SLB No. 14D](#) and [SLB No. 14E](#).

**B. The types of brokers and banks that constitute "record" holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8**

**1. Eligibility to submit a proposal under Rule 14a-8**

To be eligible to submit a shareholder 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 shareholder meeting for at least one year as of the date the shareholder submits the proposal. The shareholder must also continue to hold the required amount of securities through the date of the meeting and must provide the company with a written statement of intent to do so.<sup>1</sup>

The steps that a shareholder must take to verify his or her eligibility to submit a proposal depend on how the shareholder owns the securities. There are two types of security holders in the U.S.: registered owners and beneficial owners.<sup>2</sup> Registered owners have a direct relationship with the issuer because their ownership of shares is listed on the records maintained by the issuer or its transfer agent. If a shareholder is a registered owner, the company can independently confirm that the shareholder's holdings satisfy Rule 14a-8(b)'s eligibility requirement.

The vast majority of investors in shares issued by U.S. companies, however, are beneficial owners, which means that they hold their securities in book-entry form through a securities intermediary, such as a broker or a bank. Beneficial owners are sometimes referred to as "street name" holders. Rule 14a-8(b)(2)(i) provides that a beneficial owner can provide proof of ownership to support his or her eligibility to submit a proposal by submitting a written statement "from the 'record' holder of [the] securities (usually a broker or bank)," verifying that, at the time the proposal was submitted, the shareholder held the required amount of securities continuously for at least one year.<sup>3</sup>

## **2. The role of the Depository Trust Company**

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 acting as a securities depository. Such brokers and banks are often referred to as "participants" in DTC.<sup>4</sup> The names of these DTC participants, however, do not appear as the registered owners of the securities deposited with DTC on the list of shareholders maintained by the company or, more typically, by its transfer agent. Rather, DTC's nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants. A company can request from DTC a "securities position listing" as of a specified date, which identifies the DTC participants having a position in the company's securities and the number of securities held by each DTC participant on that date.<sup>5</sup>

## **3. Brokers and banks that constitute "record" holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8**

In *The Hain Celestial Group, Inc.* (Oct. 1, 2008), we took the position that an introducing broker could be considered a "record" holder for purposes of Rule 14a-8(b)(2)(i). An introducing broker is a broker that engages in sales and other activities involving customer contact, such as opening customer accounts and accepting customer orders, but is not permitted to maintain custody of customer funds and securities.<sup>6</sup> Instead, an introducing broker engages another broker, known as a "clearing broker," to hold custody of client funds and securities, to clear and execute customer trades, and to handle other functions such as issuing confirmations of customer trades and customer account statements. Clearing brokers generally are DTC participants; introducing brokers generally are not. As introducing brokers generally are not DTC participants, and therefore typically do not appear on DTC's securities position listing, *Hain Celestial* has required companies to

accept proof of ownership letters from brokers in cases where, unlike the positions of registered owners and brokers and banks that are DTC participants, the company is unable to verify the positions against its own or its transfer agent's records or against DTC's securities position listing.

In light of questions we have received following two recent court cases relating to proof of ownership under Rule 14a-8<sup>7</sup> and in light of the Commission's discussion of registered and beneficial owners in the Proxy Mechanics Concept Release, we have reconsidered our views as to what types of brokers and banks should be considered "record" holders under Rule 14a-8(b)(2)(i). Because of the transparency of DTC participants' positions in a company's securities, we will take the view going forward that, for Rule 14a-8(b)(2)(i) purposes, only DTC participants should be viewed as "record" holders of securities that are deposited at DTC. As a result, we will no longer follow *Hain Celestial*.

We believe that taking this approach as to who constitutes a "record" holder for purposes of Rule 14a-8(b)(2)(i) will provide greater certainty to beneficial owners and companies. We also note that this approach is consistent with Exchange Act Rule 12g5-1 and a 1988 staff no-action letter addressing that rule,<sup>8</sup> under which brokers and banks that are DTC participants are considered to be the record holders of securities on deposit with DTC when calculating the number of record holders for purposes of Sections 12(g) and 15(d) of the Exchange Act.

Companies have occasionally expressed the view that, because DTC's nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants, only DTC or Cede & Co. should be viewed as the "record" holder of the securities held on deposit at DTC for purposes of Rule 14a-8(b)(2)(i). We have never interpreted the rule to require a shareholder to obtain a proof of ownership letter from DTC or Cede & Co., and nothing in this guidance should be construed as changing that view.

*How can a shareholder determine whether his or her broker or bank is a DTC participant?*

Shareholders and companies can confirm whether a particular broker or bank is a DTC participant by checking DTC's participant list, which is currently available on the Internet at <http://www.dtcc.com/~media/Files/Downloads/client-center/DTC/alpha.ashx>.

*What if a shareholder's broker or bank is not on DTC's participant list?*

The shareholder will need to obtain proof of ownership from the DTC participant through which the securities are held. The shareholder should be able to find out who this DTC participant is by asking the shareholder's broker or bank.<sup>9</sup>

If the DTC participant knows the shareholder's broker or bank's holdings, but does not know the shareholder's holdings, a shareholder could satisfy Rule 14a-8(b)(2)(i) by obtaining and submitting two proof of ownership statements verifying that, at the time the proposal was submitted, the required amount of securities were continuously held for at least one year – one from the shareholder's broker or bank confirming the shareholder's ownership, and the other from the DTC participant confirming the broker or bank's ownership.

*How will the staff process no-action requests that argue for exclusion on the basis that the shareholder's proof of ownership is not from a DTC*

*participant?*

The staff will grant no-action relief to a company on the basis that the shareholder's proof of ownership is not from a DTC participant only if the company's notice of defect describes the required proof of ownership in a manner that is consistent with the guidance contained in this bulletin. Under Rule 14a-8(f)(1), the shareholder will have an opportunity to obtain the requisite proof of ownership after receiving the notice of defect.

### **C. Common errors shareholders can avoid when submitting proof of ownership to companies**

In this section, we describe two common errors shareholders make when submitting proof of ownership for purposes of Rule 14a-8(b)(2), and we provide guidance on how to avoid these errors.

First, Rule 14a-8(b) requires a shareholder to provide proof of ownership that he or she has "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 you submit the proposal" (emphasis added).<sup>10</sup> We note that many proof of ownership letters do not satisfy this requirement because they do not verify the shareholder's beneficial ownership for the entire one-year period preceding and including the date the proposal is submitted. In some cases, the letter speaks as of a date *before* the date the proposal is submitted, thereby leaving a gap between the date of the verification and the date the proposal is submitted. In other cases, the letter speaks as of a date *after* the date the proposal was submitted but covers a period of only one year, thus failing to verify the shareholder's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

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.

We recognize that the requirements of Rule 14a-8(b) are highly prescriptive and can cause inconvenience for shareholders when submitting proposals. Although our administration of Rule 14a-8(b) is constrained by the terms of the rule, we believe that shareholders can avoid the two errors highlighted above by arranging to have their broker or bank provide the required verification of ownership as of the date they plan to submit the proposal using the following format:

"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]."<sup>11</sup>

As discussed above, a shareholder may also need to provide a separate written statement from the DTC participant through which the shareholder's securities are held if the shareholder's broker or bank is not a DTC participant.

### **D. The submission of revised proposals**

On occasion, a shareholder will revise a proposal after submitting it to a company. This section addresses questions we have received regarding revisions to a proposal or supporting statement.

**1. A shareholder submits a timely proposal. The shareholder then submits a revised proposal before the company's deadline for receiving proposals. Must the company accept the revisions?**

Yes. In this situation, we believe the revised proposal serves as a replacement of the initial proposal. By submitting a revised proposal, the shareholder has effectively withdrawn the initial proposal. Therefore, the shareholder is not in violation of the one-proposal limitation in Rule 14a-8(c).<sup>12</sup> If the company intends to submit a no-action request, it must do so with respect to the revised proposal.

We recognize that in Question and Answer E.2 of SLB No. 14, we indicated that if a shareholder makes revisions to a proposal before the company submits its no-action request, the company can choose whether to accept the revisions. However, this guidance has led some companies to believe that, in cases where shareholders attempt to make changes to an initial proposal, the company is free to ignore such revisions even if the revised proposal is submitted before the company's deadline for receiving shareholder proposals. We are revising our guidance on this issue to make clear that a company may not ignore a revised proposal in this situation.<sup>13</sup>

**2. A shareholder submits a timely proposal. After the deadline for receiving proposals, the shareholder submits a revised proposal. Must the company accept the revisions?**

No. If a shareholder submits revisions to a proposal after the deadline for receiving proposals under Rule 14a-8(e), the company is not required to accept the revisions. However, if the company does not accept the revisions, it must treat the revised proposal as a second proposal and submit a notice stating its intention to exclude the revised proposal, as required by Rule 14a-8(j). The company's notice may cite Rule 14a-8(e) as the reason for excluding the revised proposal. If the company does not accept the revisions and intends to exclude the initial proposal, it would also need to submit its reasons for excluding the initial proposal.

**3. If a shareholder submits a revised proposal, as of which date must the shareholder prove his or her share ownership?**

A shareholder must prove ownership as of the date the original proposal is submitted. When the Commission has discussed revisions to proposals,<sup>14</sup> it has not suggested that a revision triggers a requirement to provide proof of ownership a second time. As outlined in Rule 14a-8(b), proving ownership includes providing a written statement that the shareholder intends to continue to hold the securities through the date of the shareholder meeting. Rule 14a-8(f)(2) provides that if the shareholder "fails in [his or her] promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of [the same shareholder's] proposals from its proxy materials for any meeting held in the following two calendar years." With these provisions in mind, we do not interpret Rule 14a-8 as requiring additional proof of ownership when a shareholder submits a revised proposal.<sup>15</sup>

**E. Procedures for withdrawing no-action requests for proposals submitted by multiple proponents**

We have previously addressed the requirements for withdrawing a Rule 14a-8 no-action request in SLB Nos. 14 and 14C. SLB No. 14 notes that a *company should include with a withdrawal letter documentation demonstrating that a shareholder has withdrawn the proposal*. In cases where a proposal submitted by multiple shareholders is withdrawn, SLB No. 14C states that, if each shareholder has designated a lead individual to act

on its behalf and the company is able to demonstrate that the individual is authorized to act on behalf of all of the proponents, the company need only provide a letter from that lead individual indicating that the lead individual is withdrawing the proposal on behalf of all of the proponents.

Because there is no relief granted by the staff in cases where a no-action request is withdrawn following the withdrawal of the related proposal, we recognize that the threshold for withdrawing a no-action request need not be overly burdensome. Going forward, we will process a withdrawal request if the company provides a letter from the lead filer that includes a representation that the lead filer is authorized to withdraw the proposal on behalf of each proponent identified in the company's no-action request.<sup>16</sup>

#### **F. Use of email to transmit our Rule 14a-8 no-action responses to companies and proponents**

To date, the Division has transmitted copies of our Rule 14a-8 no-action responses, including copies of the correspondence we have received in connection with such requests, by U.S. mail to companies and proponents. We also post our response and the related correspondence to the Commission's website shortly after issuance of our response.

In order to accelerate delivery of staff responses to companies and proponents, and to reduce our copying and postage costs, going forward, we intend to transmit our Rule 14a-8 no-action responses by email to companies and proponents. We therefore encourage both companies and proponents to include email contact information in any correspondence to each other and to us. We will use U.S. mail to transmit our no-action response to any company or proponent for which we do not have email contact information.

Given the availability of our responses and the related correspondence on the Commission's website and the requirement under Rule 14a-8 for companies and proponents to copy each other on correspondence submitted to the Commission, we believe it is unnecessary to transmit copies of the related correspondence along with our no-action response. Therefore, we intend to transmit only our staff response and not the correspondence we receive from the parties. We will continue to post to the Commission's website copies of this correspondence at the same time that we post our staff no-action response.

---

<sup>1</sup> See Rule 14a-8(b).

<sup>2</sup> For an explanation of the types of share ownership in the U.S., see Concept Release on U.S. Proxy System, Release No. 34-62495 (July 14, 2010) [75 FR 42982] ("Proxy Mechanics Concept Release"), at Section II.A. The term "beneficial owner" does not have a uniform meaning under the federal securities laws. It has a different meaning in this bulletin as compared to "beneficial owner" and "beneficial ownership" in Sections 13 and 16 of the Exchange Act. Our use of the term in this bulletin is not intended to suggest that registered owners are not beneficial owners for purposes of those Exchange Act provisions. See Proposed Amendments to Rule 14a-8 under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders, Release No. 34-12598 (July 7, 1976) [41 FR 29982], at n.2 ("The term 'beneficial owner' when used in the context of the proxy rules, and in light of the purposes of those rules, may be interpreted to have a broader meaning than it would for certain other purpose[s] under the federal securities laws, such as reporting pursuant to the Williams Act.").

<sup>3</sup> If a shareholder has filed a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5 reflecting ownership of the required amount of shares, the shareholder may instead prove ownership by submitting a copy of such filings and providing the additional information that is described in Rule 14a-8(b)(2)(ii).

<sup>4</sup> DTC holds the deposited securities in "fungible bulk," meaning that there are no specifically identifiable shares directly owned by the DTC participants. Rather, each DTC participant holds a pro rata interest or position in the aggregate number of shares of a particular issuer held at DTC. Correspondingly, each customer of a DTC participant – such as an individual investor – owns a pro rata interest in the shares in which the DTC participant has a pro rata interest. See Proxy Mechanics Concept Release, at Section II.B.2.a.

<sup>5</sup> See Exchange Act Rule 17Ad-8.

<sup>6</sup> See Net Capital Rule, Release No. 34-31511 (Nov. 24, 1992) [57 FR 56973] ("Net Capital Rule Release"), at Section II.C.

<sup>7</sup> See *KBR Inc. v. Chevedden*, Civil Action No. H-11-0196, 2011 U.S. Dist. LEXIS 36431, 2011 WL 1463611 (S.D. Tex. Apr. 4, 2011); *Apache Corp. v. Chevedden*, 696 F. Supp. 2d 723 (S.D. Tex. 2010). In both cases, the court concluded that a securities intermediary was not a record holder for purposes of Rule 14a-8(b) because it did not appear on a list of the company's non-objecting beneficial owners or on any DTC securities position listing, nor was the intermediary a DTC participant.

<sup>8</sup> *Techne Corp.* (Sept. 20, 1988).

<sup>9</sup> In addition, if the shareholder's broker is an introducing broker, the shareholder's account statements should include the clearing broker's identity and telephone number. See Net Capital Rule Release, at Section II.C.(iii). The clearing broker will generally be a DTC participant.

<sup>10</sup> For purposes of Rule 14a-8(b), the submission date of a proposal will generally precede the company's receipt date of the proposal, absent the use of electronic or other means of same-day delivery.

<sup>11</sup> This format is acceptable for purposes of Rule 14a-8(b), but it is not mandatory or exclusive.

<sup>12</sup> As such, it is not appropriate for a company to send a notice of defect for multiple proposals under Rule 14a-8(c) upon receiving a revised proposal.

<sup>13</sup> This position will apply to all proposals submitted after an initial proposal but before the company's deadline for receiving proposals, regardless of whether they are explicitly labeled as "revisions" to an initial proposal, unless the shareholder affirmatively indicates an intent to submit a second, *additional* proposal for inclusion in the company's proxy materials. In that case, the company must send the shareholder a notice of defect pursuant to Rule 14a-8(f)(1) if it intends to exclude either proposal from its proxy materials in reliance on Rule 14a-8(c). In light of this guidance, with respect to proposals or revisions received before a company's deadline for submission, we will no longer follow *Layne Christensen Co.* (Mar. 21, 2011) and other prior staff no-action letters in which we took the view that a proposal would violate the Rule 14a-8(c) one-proposal limitation if such proposal is submitted to a company after the company has either submitted a Rule 14a-8 no-action request to exclude an earlier proposal submitted by

the same proponent or notified the proponent that the earlier proposal was excludable under the rule.

<sup>14</sup> See, e.g., *Adoption of Amendments Relating to Proposals by Security Holders*, Release No. 34-12999 (Nov. 22, 1976) [41 FR 52994].

<sup>15</sup> Because the relevant date for proving ownership under Rule 14a-8(b) is the date the proposal is submitted, a proponent who does not adequately prove ownership in connection with a proposal is not permitted to submit another proposal for the same meeting on a later date.

<sup>16</sup> Nothing in this staff position has any effect on the status of any shareholder proposal that is not withdrawn by the proponent or its authorized representative.

<http://www.sec.gov/interps/legal/cfs1b14f.htm>

---

[Home](#) | [Previous Page](#)

Modified: 10/18/2011

## **§240.14a-8 Shareholder proposals.**

This section addresses when a company must include a shareholder's proposal in its proxy statement and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company's proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured this section in a question-and-answer format so that it is easier to understand. The references to "you" are to a shareholder seeking to submit the proposal.

(a) *Question 1: What is a proposal?* A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word "proposal" as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).

(b) *Question 2: Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?* (1) In order to be eligible to submit a proposal, you 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 you submit the proposal. You must continue to hold those securities through the date of the meeting.

(2) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the securities through the date of the meeting of shareholders. However, if like many shareholders you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your *eligibility to the company in one of two ways:*

(i) The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held the securities for at least one year. You must also include your own written statement that you intend to continue to hold the securities through the date of the meeting of shareholders; or

(ii) The second way to prove ownership applies only if you have filed a Schedule 13D (§240.13d-101), Schedule 13G (§240.13d-102), Form 3 (§249.103 of this chapter), Form 4 (§249.104 of this chapter) and/or Form 5 (§249.105 of this chapter), or amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins. If you have filed one of these documents with the SEC, you may demonstrate your eligibility by submitting to the

company:

(A) A copy of the schedule and/or form, and any subsequent amendments reporting a change in your ownership level;

(B) Your written statement that you continuously held the required number of shares for the one-year period as of the date of the statement; and

(C) Your written statement that you intend to continue ownership of the shares through the date of the company's annual or special meeting.

(c) *Question 3:* How many proposals may I submit? Each shareholder may submit no more than one proposal to a company for a particular shareholders' meeting.

(d) *Question 4:* How long can my proposal be? The proposal, including any accompanying supporting statement, may not exceed 500 words.

(e) *Question 5:* What is the deadline for submitting a proposal? (1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q (§249.308a of this chapter), or in shareholder reports of investment companies under §270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

(2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The 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. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.

(3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.

(f) *Question 6:* What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section? (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later

have to make a submission under §240.14a-8 and provide you with a copy under Question 10 below, §240.14a-8(j).

(2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.

(g) *Question 7:* Who has the burden of persuading the Commission or its staff that my proposal can be excluded? Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.

(h) *Question 8:* Must I appear personally at the shareholders' meeting to present the proposal? (1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

(2) If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.

(3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.

(i) *Question 9:* If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal? (1) Improper under state law: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

Note to paragraph(i)(1): Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

(2) *Violation of law:* If the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject;

Note to paragraph(i)(2): We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law would result in a violation of any state or federal law.

(3) *Violation of proxy rules:* If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including §240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;

---

(4) *Personal grievance; special interest*: If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;

(5) *Relevance*: If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;

(6) *Absence of power/authority*: If the company would lack the power or authority to implement the proposal;

(7) *Management functions*: If the proposal deals with a matter relating to the company's ordinary business operations;

(8) *Relates to election*: If the proposal relates to a nomination or an election for membership on the company's board of directors or analogous governing body or a procedure for such nomination or election;

(9) *Conflicts with company's proposal*: If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;

Note to paragraph(i)(9): A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

(10) *Substantially implemented*: If the company has already substantially implemented the proposal;

(11) *Duplication*: If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;

(12) *Resubmissions*: If the proposal deals with substantially the same subject matter as another proposal or proposals that has or have been previously included in the company's proxy materials within the preceding 5 calendar years, a company may exclude it from its proxy materials for any meeting held within 3 calendar years of the last time it was included if the proposal received:

(i) Less than 3% of the vote if proposed once within the preceding 5 calendar years;

(ii) Less than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years; or

(iii) Less than 10% of the vote on its last submission to shareholders if proposed three times or more previously within the preceding 5 calendar years; and

(13) *Specific amount of dividends*: If the proposal relates to specific amounts of cash or stock dividends.

(j) *Question 10:* What procedures must the company follow if it intends to exclude my proposal? (1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

(2) The company must file six paper copies of the following:

(i) The proposal;

(ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and

(iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

(k) *Question 11:* May I submit my own statement to the Commission responding to the company's arguments?

Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

(l) *Question 12:* If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?

(1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.

(2) The company is not responsible for the contents of your proposal or supporting statement.

(m) *Question 13:* What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?

(1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.

(2) However, if you believe that the company's opposition to your proposal contains

materially false or misleading statements that may violate our anti-fraud rule, §240.14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

(3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:

(i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or

(ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under §240.14a-6.

[63 FR 29119, May 28, 1998; 63 FR 50622, 50623, Sept. 22, 1998, as amended at 72 FR 4168, Jan. 29, 2007; 72 FR 70456, Dec. 11, 2007; 73 FR 977, Jan. 4, 2008]

PACKAGE PICKUP NOTICE

Complete the below, print a hardcopy and attach to the package for your HQ Mail Clerk for pickup.

UPS - GROUND  UPS - NEXT DAY  DHL  REGISTERED (INT'L)  CERTIFIED (DOMESTIC)  DATE: December 17, 2019  
EXPRESS MAIL  SATURDAY DELIVERY  OTHER (PLEASE SPECIFY)

PROOF OF DELIVERY  YES  NO

FROM (NAME/DEPARTMENT)  
Marie Clouthier for Sherry M. Englander

ADDRESSED TO  
MS. NATASHA LAMB  
MANAGING PARTNER  
ARJUNA CAPITAL  
1 ELM STREET  
MANCHESTER, MA 01944

DEC 17, 2019 ACT WT 0.1 LBS #PK 1  
EVC 10A PAK BL UT  
TRACKING# 1275105X0149664823  
BILL LADING: 100595-6401-INVESTOR RELATIONS  
REF 2 JF/M. CLOUTHIER

SHIPMENT NR RATE CHARGES:  
DV 0.00 CNS 0.00  
DC 0.00 COD 0.00  
AH 0.00 DGD 0.00  
TOT NR CHG 15.73 PR 0.00  
FRT: SHP SVC 15.73 USD  
RS 0.00  
NR+HC 15.73  
ROD 0.00  
THIS DOCUMENT IS NOT AN INVOICE

CONTACT  
MS. NATASHA LAMB PHONE 978-704-0114

CONTENTS  
Receipt Letter

MAILROOM USE ONLY

LETTER/PACKAGE NO. RECEIVED BY (CENTRAL MAILROOM) / DATE & TIME  
/

MAIL RECEIPT 132-2992 ID Number: ITX 14:46:51

# Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

**Tracking Number**

1Z75105X0149664823

**Weight**

0.10 LBS

**Service**

UPS Next Day Air®

**Shipped / Billed On**

12/17/2019

**Delivered On**

12/18/2019 4:02 P.M.

**Delivered To**

MANCHESTER, MA, US

**Received By**

FROST

**Left At**

Office

Thank you for giving us this opportunity to serve you. Details are only available for shipments delivered within the last 120 days. Please print for your records if you require this information after 120 days.

Sincerely,

UPS

Tracking results provided by UPS: 12/20/2019 3:17 P.M. EST

## Bates, Tamara L

---

**From:** Broussard, Jenifer L on behalf of Shareholder Relations /SM  
**Sent:** Thursday, December 19, 2019 10:30 AM  
**To:** Englande, Sherry M; Williams, John Enrique  
**Subject:** FW: Shareholder Proposal on climate risk board committee

**Importance:** High

FYI; received in SR inbox just now.

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

From: Natasha Lamb [mailto:natasha@arjuna-capital.com]  
Sent: Thursday, December 19, 2019 10:26 AM  
To: Shareholder Relations /SM <shareholderrelations@exxonmobil.com>  
Cc: Palmer, Molly A <[REDACTED]>; Alfa Zimmerman <alfa@arjuna-capital.com>  
Subject: FW: Shareholder Proposal on climate risk board committee  
Importance: High

Dear Mr. Hansen,

I looked for a number to contact you directly by phone, as I think your letter may have been meant for a different shareholder, but I didn't see one. I received your letter dated December 17th, 2019 concerning alleged date deficiencies between the proof letter and the submission date of Mr. Seitchik's Climate Change Board Committee proposal. As you can see in the attached document (the Proposal Submission), the date of submission was December 11th, not December 10th. And that date is consistent with the custodian verification letter from Charles Schwab. It is also consistent with the December 11th date when the Proposal was shipped by FedEx. The Proposal arrived on December 12th, not December 10th, and was signed for by J.FAZ at 10:26AM.

We also emailed the proposal to Ms. Palmer on December 13th (email below).

Please confirm that the content of your December 17th letter is void, given the actual date of submission and delivery shown above.

Happy holidays,

Natasha

Natasha Lamb

MANAGING PARTNER / PORTFOLIO MANAGER

WWW.ARJUNA-CAPITAL.COM

natasha@arjuna-capital.com

978.704.0114

Disclaimer: This message and any attachments are intended solely for the use of the intended recipient(s) and may contain information that is privileged, confidential or proprietary. If you are not an intended recipient, please notify the sender, and then please delete and destroy all copies and attachments, as taking of any action on the information is prohibited. Unless specifically indicated, this message is not financial advice or a solicitation of any investment products or other financial product or service. Arjuna Capital is registered under the Investment Advisers Act of 1940, as amended. More information about Arjuna Capital is available on our Form ADV Part 2, available upon request.

From: Natasha Lamb <natasha@arjuna-capital.com>  
Date: Friday, December 13, 2019 at 5:13 PM  
To: "Palmer, Molly A" <[REDACTED]>  
Cc: Alfa Zimmerman <alfa@arjuna-capital.com>  
Subject: Shareholder Proposal on climate risk board committee

Dear Ms. Palmer,

Please find attached the shareholder proposal we are submitting for inclusion in the 2020 ExxonMobil proxy statement. It was sent in the mail to arrive yesterday as well. We welcome discussion with Exxon about the contents of the proposal. Please confirm receipt.

Best regards,

Natasha

Natasha Lamb

MANAGING PARTNER / PORTFOLIO MANAGER

WWW.ARJUNA-CAPITAL.COM

natasha@arjuna-capital.com

978.704.0114

Disclaimer: This message and any attachments are intended solely for the use of the intended recipient(s) and may contain information that is privileged, confidential or proprietary. If you are not an intended recipient, please notify the sender, and then please delete and destroy all copies and attachments, as taking of any action on the information is prohibited. Unless specifically indicated, this message is not financial advice or a solicitation of any investment products or other financial product or service. Arjuna Capital is registered under the Investment Advisers Act of 1940, as amended. More information about Arjuna Capital is available on our Form ADV Part 2, available upon request.

## Bates, Tamara L

---

**From:** Broussard, Jenifer L on behalf of Shareholder Relations /SM  
**Sent:** Thursday, December 19, 2019 10:38 AM  
**To:** Englande, Sherry M; Williams, John Enrique  
**Subject:** RE-SENDING: Shareholder Proposal on climate risk board committee  
**Attachments:** Exxon Proposal Arjuna Capital 2020.pdf

**Importance:** High

Please disregard previous version of this email sent to you, which had not been cleared from "junk" folder, thus attachment did not follow.

**From:** Natasha Lamb [mailto:natasha@arjuna-capital.com]  
**Sent:** Thursday, December 19, 2019 10:26 AM  
**To:** Shareholder Relations /SM <shareholderrelations@exxonmobil.com>  
**Cc:** Palmer, Molly A <[REDACTED]>; Alfa Zimmerman <alfa@arjuna-capital.com>  
**Subject:** FW: Shareholder Proposal on climate risk board committee  
**Importance:** High

Dear Mr. Hansen,

I looked for a number to contact you directly by phone, as I think your letter may have been meant for a different shareholder, but I didn't see one. I received your letter dated December 17<sup>th</sup>, 2019 concerning alleged date deficiencies between the proof letter and the submission date of Mr. Seitchik's Climate Change Board Committee proposal. As you can see in the attached document (the Proposal Submission), the date of submission was December 11<sup>th</sup>, not December 10<sup>th</sup>. And that date is consistent with the custodian verification letter from Charles Schwab. It is also consistent with the December 11<sup>th</sup> date when the Proposal was shipped by FedEx. The Proposal arrived on December 12<sup>th</sup>, not December 10<sup>th</sup>, and was signed for by J.FAZ at 10:26AM.

We also emailed the proposal to Ms. Palmer on December 13<sup>th</sup> (email below).

Please confirm that the content of your December 17<sup>th</sup> letter is void, given the actual date of submission and delivery shown above.

Happy holidays,

Natasha

**ARJUNA**  **CAPITAL**  
ENLIGHTENED INVESTING

Natasha Lamb  
MANAGING PARTNER / PORTFOLIO MANAGER

[WWW.ARJUNA-CAPITAL.COM](http://WWW.ARJUNA-CAPITAL.COM)

[natasha@arjuna-capital.com](mailto:natasha@arjuna-capital.com)

978.704.0114

Disclaimer: This message and any attachments are intended solely for the use of the intended recipient(s) and may contain information that is privileged, confidential or proprietary. If you are not an intended recipient, please notify the sender, and then please delete and destroy all copies and attachments, as taking of any action on the information is prohibited. Unless specifically indicated, this message is not financial advice or a solicitation of any investment products or other financial product or service. Arjuna Capital is registered under the Investment Advisers Act of 1940, as amended. More information about Arjuna Capital is available on our Form ADV Part 2, available upon request.

---

**From:** Natasha Lamb <[natasha@arjuna-capital.com](mailto:natasha@arjuna-capital.com)>

**Date:** Friday, December 13, 2019 at 5:13 PM

**To:** "Palmer, Molly A" <[REDACTED]>

**Cc:** Alfa Zimmerman <[alfa@arjuna-capital.com](mailto:alfa@arjuna-capital.com)>

**Subject:** Shareholder Proposal on climate risk board committee

Dear Ms. Palmer,

Please find attached the shareholder proposal we are submitting for inclusion in the 2020 ExxonMobil proxy statement. It was sent in the mail to arrive yesterday as well. We welcome discussion with Exxon about the contents of the proposal. Please confirm receipt.

Best regards,

Natasha



Natasha Lamb

MANAGING PARTNER / PORTFOLIO MANAGER

[WWW.ARJUNA-CAPITAL.COM](http://WWW.ARJUNA-CAPITAL.COM)

[natasha@arjuna-capital.com](mailto:natasha@arjuna-capital.com)

978.704.0114

Disclaimer: This message and any attachments are intended solely for the use of the intended recipient(s) and may contain information that is privileged, confidential or proprietary. If you are not an intended recipient, please notify the sender, and then please delete and destroy all copies and attachments, as taking of any action on the information is prohibited. Unless specifically indicated, this message is not financial advice or a solicitation of any investment products or other financial product or service. Arjuna Capital is registered under the Investment Advisers Act of 1940, as amended. More information about Arjuna Capital is available on our Form ADV Part 2, available upon request.

ARJUNA  CAPITAL  
ENLIGHTENED INVESTING

December 11, 2019

VIA FEDEX OVERNIGHT

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

To Whom It May Concern:

Arjuna Capital is an investment firm focused on sustainable and impact investing.

I am hereby authorized to notify you of our intention to lead file the enclosed shareholder resolution with Exxon Mobil Corporation on behalf of our client Adam Seitchik. Arjuna Capital 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, Adam Seitchik holds more than \$2,000 of XOM common stock, acquired more than one year prior to today's date and held continuously for that time. Our client will remain invested in this position continuously through the date of the 2020 annual meeting.

Enclosed please find verification of this position and letter from Adam Seitchik authorizing Arjuna Capital to undertake this filing on his behalf. 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 ExxonMobil Corporation about the contents of our proposal. Please direct any written communications to me at the address below or to [natasha@arjuna-capital.com](mailto:natasha@arjuna-capital.com). Please also confirm receipt of this letter via email.

Sincerely,



Natasha Lamb  
Managing Partner  
c/o Arjuna Capital  
1 Elm Street  
Manchester, MA 01944

Enclosures

## Climate Risk Board Committee

**Resolved:** Shareholders request the Board of Directors charter a new Board Committee on Climate Risk to evaluate the board and management's climate strategy and to better inform board decision making on climate risks and opportunities. The charter should explicitly require the committee to report to the full board on corporate strategy, above and beyond matters of legal compliance, assessing the company's responses to climate related risks and opportunities, including the potential impacts of climate change on business, strategy, financial planning, and our company's operating environment.

**Supporting Statement:** While the ultimate responsibility for climate strategy should fall on the full board, a board committee can conduct a more focused review than the full board, and therefore better inform and strengthen board decision making by:

- Preparing reports to the board with depth and attention to existential climate risks;
- Making recommendations to the board regarding corporate planning time frames, carbon reduction goals, and capital allocation strategies to redirect its business model and financial flows consistent with the Paris Agreement;
- Providing leadership for the full board's climate deliberations;
- Coordinating with audit and compensation committees to ensure integrated attention to climate risk;
- Delineating responsibility and evaluating the efficacy of management and board responses to climate risks and opportunities.

A formal board committee charter clarifies a fiduciary duty of care on climate change matters. The board should consider the need for staffing to adequately resource the committee.<sup>1</sup>

**Whereas:** Board oversight of climate change strategy and planning is essential to address the existential threat of climate change to the fossil fuel industry and our Company. Climate risk merits the creation of a board committee to help lead the necessary transition.

Major oil companies face unprecedented disruption to their business driven by global imperatives to limit global warming and competition from non-carbon-emitting technologies. The Intergovernmental Panel on Climate Change projects dramatic drops in industry emissions of 50 to 90 percent by 2050 are necessary to limit global warming to 1.5 and 2 degrees Celsius.

As fiduciaries, our board is responsible for stewardship of business performance and long-term strategic planning, in light of risk factors like climate science and policy. Committee charter language can help to define the scope of fiduciary duties of committee members and ensure that effective systems are in place.

A failure to adequately plan for a low carbon transition, including climate change policy, competition from renewables, peak oil demand, and unburnable fossil fuel reserves, may place investor capital at substantial risk. Implementing the Proposal would represent a prudent path forward by formalizing board level oversight of climate change strategy so the company may remain successful in an increasingly decarbonizing economy.

---

<sup>1</sup> <https://ethicalboardroom.com/closing-the-information-gap/>

November 19, 2019

Natasha Lamb  
Managing Partner  
Arjuna Capital  
1 Elm Street  
Manchester, MA 01944

Dear Ms. Lamb,

I hereby authorize Arjuna Capital to file a shareholder proposal on my behalf at ExxonMobil (XOM) regarding a Climate Risk Board Committee for the company's annual meeting in 2020.

I am the beneficial owner of more than \$2,000 worth of common stock in ExxonMobil (XOM) that I have held continuously for more than one year. I intend to hold the aforementioned shares of stock through the date of the company's annual meeting in 2020.

I specifically give Arjuna Capital full authority to deal, on my behalf, with any and all aspects of the aforementioned shareholder proposal. I understand that my name may appear on the corporation's proxy statement as the filer of the aforementioned proposal.

Sincerely,



Adam Seitchik

c/o Arjuna Capital  
1 Elm Street  
Manchester, MA 01944

---

*charles* SCHWAB

December 11, 2019

To WHOM IT MAY CONCERN:

Re: Adam D. Seitchik / \*\*\*

This letter is to confirm that Charles Schwab & Co. is the record holder for the beneficial owner of the account above (\*\*\*) , which Arjuna Capital manages and which holds 42 shares of common stock in ExxonMobil Corporation (XOM).

As of December 11, 2019, Adam D. Seitchik held, and has held continuously for at least one year, 42 shares of XOM stock.

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

Sincerely,



John Gast  
Relationship Specialist/Advisor Services

Case ID # AM-5685854

Independent investment advisors are not owned by, affiliated with, or supervised by Charles Schwab & Co., Inc. ("Schwab"). ©2016 Charles Schwab & Co., Inc. All rights reserved.

Member SIPC. CRS 00038 (0609-9534) 09/16 SGC48613-00

**From:** Clouthier, Marie A  
**Sent:** Friday, January 03, 2020 12:09 PM  
**To:** 'natasha@arjuna-capital.com'  
**Cc:** Englande, Sherry M  
**Subject:** ExxonMobil Would Like to Schedule a Teleconference to Discuss Your Climate Change Board Committee Proposal

Dear Ms. Lamb,

We hope that this email finds you well. Neil Hansen would like to schedule an hour to discuss your proposal regarding a climate change board committee for inclusion in the 2020 Proxy Statement. We would like for Mr. Adam Seitchik, as proponent, to participate in the engagement as well.

Below you will find suggested date/time (Central Time) slots. We plan for the call to be no longer than an hour. We believe proponent engagement is important and value your perspective on this proposal, so we appreciate your willingness to meet by phone. Please respond to Marie Clouthier at [REDACTED] or [REDACTED] with your preferred timing as soon as convenient.

<b>ExxonMobil Engagement Availability Date/Time All time slots are CT</b>	
<b>DATE</b>	<b>(CT) TIME SLOTS</b>
2/5/2020	4-5PM
2/6/2020	9-10AM

We look forward to talking with you soon.

Sincerely,  
**Marie Clouthier**  
**Exxon Mobil Corporation**  
Investor Relations / Office of the Secretary  
[REDACTED]  
[REDACTED]

**From:** Natasha Lamb <natasha@arjuna-capital.com>  
**Sent:** Friday, January 03, 2020 12:09 PM  
**To:** Clouthier, Marie A  
**Subject:** Automatic reply: ExxonMobil Would Like to Schedule a Teleconference to Discuss Your Climate Change Board Committee Proposal

Sorry to miss you. I will return to the office on Monday, Jan 6. If you need immediate assistance after Dec 26, please contact my associate Alfa Zimmerman at [alfa@arjuna-capital.com](mailto:alfa@arjuna-capital.com).

Best wishes for a lovely holiday!

**Natasha Lamb**

MANAGING PARTNER / PORTFOLIO MANAGER

[WWW.ARJUNA-CAPITAL.COM](http://WWW.ARJUNA-CAPITAL.COM)

[natasha@arjuna-capital.com](mailto:natasha@arjuna-capital.com)

978.704.0114