

VIA EMAIL: [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)  
Office of Chief Counsel  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

January 19, 2021

Re: Moody's Corporation

To Whom It May Concern:

This letter responds to a No-Action request letter ("Request Letter") submitted on December 21, 2020 by Ronald O. Mueller of Gibson Dunn, acting as an agent of Moody's Corporation (the "Company" or "Moody's"). Pursuant to Staff Legal Bulletin No. 14D (Nov. 7, 2008), we are submitting this correspondence through use of the Securities and Exchange Commission (the "Commission") e-mail address, [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov) (in lieu of providing six additional copies of this letter pursuant to Rule 14a-8(k)), and the undersigned has included his name, email address and telephone number in this letter. We are simultaneously forwarding by email a copy of this letter to the Company.

In its Request Letter, the Company states that it intends to omit from its proxy statement and form of proxy for its 2021 Annual Meeting of Shareholders a shareholder proposal (the "Proposal") and statement in support thereof (the "Supporting Statement") submitted by Calvert Research and Management ("Calvert") and attached as Exhibit A to the Request Letter. In the Request Letter, the Company misconstrues precedent from the Commission, as well as guidance provided by the Commission's staff (the "Staff"), and attempts to greatly expand the scope of proposals that a company could exclude from its proxy materials. For the reasons set forth below, we urge the Staff to decline to provide the Company's requested relief to exclude our Proposal.

### **False Assertions Relative to Rule 14a-8(i)(7)**

Rule 14a-8(i)(7) permits a company to exclude a shareholder proposal from its proxy materials "if the proposal deals with a matter relating to the company's ordinary business operations." The Commission has stated that the policy underlying the "ordinary business" exception rests on two central considerations.<sup>1</sup> The first consideration relates to the proposal's subject matter, evaluating whether the proposal raises a policy issue that transcends that company's ordinary

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<sup>1</sup> Exchange Act Release No. 40018, "Amendments to Rules on Shareholder Proposals" (May 21, 1998) (the "1998 Release").

business operations or deals with a matter relating to that company's ordinary business operations; the second consideration relates to the degree to which the proposal "micromanages" the company.

*A. The Proposal raises a policy issue that transcends the Company's ordinary business operations*

In the Request Letter, the Company seeks to identify proposals that would require a company to disclose its annual Consolidated EEO-1 Report, long established as appropriate for shareholder proposals,<sup>2</sup> as ordinary business unrelated to a social policy significant to the Company.

We believe that our Proposal is significant in a way that connects an important social policy issue directly to the Company. Our Supporting Statement explicitly frames the social policy issue at stake as follows: "The global coronavirus pandemic and police brutality against African-Americans have heightened public concern about racial equality. Rising expectations of employees and other stakeholders that companies will make a meaningful commitment to racial equity in the workplace have strengthened the longstanding case for prioritizing diversity in the workplace." The Proposal links this social policy issue to the Company itself, noting that, while "[a] lack of consistent disclosure of human capital practices makes it difficult for investors to evaluate corporate performance . . . [d]isclosure of the EEO-1 report would enable the company to provide a more complete picture of its workforce without additional burdens on the company to collect data."

The Staff's guidance has consistently emphasized the importance of the analysis of the company's board to the determination of whether the particular policy issue raised by the proposal is sufficiently significant in relation to the specific company.<sup>3</sup> In particular, the Staff has stated that it "expect[s] a company's no-action request to include a discussion that reflects the board's analysis of the particular policy issue raised and its significance."<sup>4</sup> Citing to Rule 14a-8(g), the Staff has made clear that "[w]hen a proposal raises a policy issue that appears to be significant, a company's no-action request should focus on the significance of the issue to that company. If the company does not meet that burden, the staff believes the matter may not be excluded under Rule 14a-8(i)(7)." Here, the Company, perhaps wisely, does not argue that diversity is not an important policy issue for the company, stating instead that "[t]he Company is committed to a diverse and inclusive culture that celebrates diversity among its employees." In fact, the Request Letter points the Staff to Moody's Diversity & Inclusion Pledge on its website, where the front page quotes in large letters the Company's Chief Diversity Officer, stating "[d]iversity and inclusion are in Moody's DNA." It would seem clear that the social policy issue the Proposal seeks to address is, in fact, quite significant to Moody's. Through their own examples, Moody's has indicated that the social policy issue at stake here is in its very DNA, and

<sup>2</sup> See, e.g., *V.F. Corp.* (avail. Feb. 14, 1991).

<sup>3</sup> Staff Legal Bulletin No. 14K (Oct. 16, 2019). See also, *See also*, Staff Legal Bulletin 14E (Oct. 27, 2009) (noting that "[i]n those cases in which a proposal's underlying subject matter transcends the day-to-day business matters of the company and raises policy issues so significant that it would be appropriate for a shareholder vote, the proposal generally will not be excludable under Rule 14a-8(i)(7) as long as a sufficient nexus exists between the nature of the proposal and the company."); Staff Legal Bulletin No. 14I (Nov. 1, 2017) and Staff Legal Bulletin No. 14J (Oct. 23, 2018).

<sup>4</sup> Staff Legal Bulletin No. 14I (Nov. 1, 2017).

so the Company fails to meet the burden established by Staff guidance to show that the policy issue at hand is *not* one of significance to the Company.

In fact, the Request Letter cites to *V.F. Corp.* (avail. Feb. 14, 1991), a no-action letter wherein the Staff refused to concur with the exclusion of a proposal very similar to our Proposal. The proposal at issue in *V.F. Corp.* called for the provision by the company of its consolidated (numerical) EEO-1 report in each annual report to shareholders. The Company seeks to distinguish this example, in which the Staff found that the proposal “appears to relate to matters involving general policy decisions which are beyond the conduct of the Company’s day-to-day operations” by pointing to Staff Legal Bulletin 14K (“SLB 14K”). In SLB 14K, the Staff notes that it takes a “company-specific approach” in evaluating significance. However, the Company’s only evidence that the Proposal is not related to a significant policy matter of the Company is to state that it is “overly broad, by requesting the disclosure of overall numbers of employees in specific job categories, and overly narrow, in that such a report covers only a portion of the Company’s workforce.” The Company seems to be arguing that because they don’t like the format of the form mandated by the U.S. Equal Employment Opportunity Commission (the “EEOC”), they should not have to disclose it. This position, however, is unrelated to the significance of the policy issue itself to the Company, and we believe it is appropriate for *shareholders* to decide whether this additional detail is important investment information. Further, we would emphasize that the Proposal in no way precludes the Company from providing additional information with the disclosure of the EEO-1 report, so as to provide shareholders with context and information that it believes is more complete.

From a social policy perspective, we would note that voting results indicate that many shareholders agree that EEO-1 reporting is an important matter to shareholders. Since 2013, approximately 40 EEO-1 proposals have been voted on with an average support of approximately 30% and several receiving majority support. Additionally, we would note that since July 2020, following engagement with Calvert, 27 of the 100 largest companies in the United States have informed Calvert that they will disclose their EEO-1 reports, joining 15 that were previously disclosing the report. To date, Moody’s has refused shareholder requests to meet on this topic.

*B. The Proposal’s subject matter does not deal with matters relating to the Company’s “ordinary business”*

Failing to show the absence of a significant social policy issue, the Company claims (without citing to Commission or Staff guidance to support their argument), that proposals that reference or address a significant policy may nonetheless be excluded when such proposals also involve ‘ordinary business’ issues. The Company cites several examples of successful ‘ordinary business’ challenges in order to argue that any proposal regarding workplace matters should be excludable as dealing with a company’s ordinary business. In fact, there is a well established distinction between proposals that raise questions of specific labor practices, which are excludable, and proposals asking for diversity data, which are not. The examples cited by the Company fall into the former category because they either advocate for or require implementation of new practices regarding wages, benefits, qualifications and dispute mechanisms, general management of the workforce or the creation and implementation of

sweeping social reform policies.<sup>5</sup> Our Proposal should be distinguished, however, because it does not call for the adoption of any new workplace practices, nor does it seek to influence the Company's management of its workforce. Rather, the Proposal merely seeks transparency by requiring that the Company release a report it is already required to provide to the federal government without seeking to mandate how the Company addresses the underlying questions of human capital management.

*C. The Proposal does not seek to micromanage the Company*

In the Request Letter, Moody's asserts that we are seeking to micromanage the Company. We dispute this on its face, since we are asking for no new policies, practices, or report generation, but merely seeking the release of an existing report. Further, as we have noted above, disclosure of EEO-1 reports has become commonplace among companies, as are shareholder proposals on this topic.<sup>6</sup>

We would point to Commission and Staff guidance on micromanagement, which consistently identifies concerns about "complex" business matters as implicating concerns of micromanagement.<sup>7</sup> The request made in our Proposal is hardly complex, given that the Company has already produced the report for the EEOC. If the Company successfully argues that sustainability reporting writ large is too complex for shareholder input, it could have the impact of nullifying most engagement between investors and companies on environmental and social issues, which would seem out of step with Commission and Staff guidance discussed herein (and cited by the Company) that matters of significant social policy are squarely within the realm of shareholder proposals that should not be excluded under Rule 14a-8(i)(7). Further, it would be contrary to decades of practice, in which sustainability disclosure generally, including with respect to certain workforce matters, is central to engagement between companies and shareholders, including through the resolution process. The Company seems to be advocating for a new standard that would deny shareholders a voice in the kind of information they receive from companies.

The examples cited by the Company in an effort to bolster its assertion that our Proposal seeks to micromanage the Company are inapplicable here because, in each case, the proposal at issue sought to require that the company generate a new report that was highly detailed, specific and/or

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<sup>5</sup>See *Deere & Co.* (avail. Nov. 14, 2014) (proposal sought the implementation and enforcement of a company-wide employee code of conduct including an anti-discrimination policy); *Apache Corp.* (avail. Mar. 5, 2008) (proposal sought the implementation of equal employment opportunity policies); *PetSmart, Inc.* (avail. Mar. 24, 2011) (proposal sought certification to the board from suppliers that they had not violated the Animal Welfare Act, the Lacey Act, or any state law equivalents); *Mattel, Inc.* (avail. Feb. 10, 2012) (proposal sought a requirement that suppliers to the company publish a report detailing their compliance with the International Council of Toy Industries Code of Business Practices). See also, *United Technologies Corp.* (avail. Feb. 19, 1993) (the Staff provided the following examples of excludable ordinary business categories: "employee health benefits, general compensation issues not focused on senior executives, management of the workplace, employee supervision, labor-management relations, employee hiring and firing, conditions of the employment and employee training and motivation").

<sup>6</sup> According to data compiled by Proxy Insight with respect to ten shareholder proposals on diversity reporting filed for the 2019-2020 proxy seasons, these proposals received, on average, approximately 50% of shareholder support, ranging from 33%-70%. As noted above, 42 of the top 100 companies have released or have committed to releasing their EEO-1 reports as of January 14, 2021.

<sup>7</sup> See Exchange Act Release No. 40018, "Amendments to Rules on Shareholder Proposals" (May 21, 1998); see also Staff Legal Bulletin No. 14K (Oct. 16, 2019).

time-consuming.<sup>8</sup> As previously noted, our Proposal is distinguishable from these examples, as it seeks disclosure of a report that the Company is already required to prepare and provide to an agency of the federal government.

The assertion that including a timeframe in a proposal constitutes micromanagement is another example of the weakness of the Company's argument. The inclusion of timeframes is nearly universal in shareholder proposals. Without a timeframe, a company operating in bad faith could agree to a proposal and then indefinitely postpone implementation. If the Staff accepts this argument, it would moot nearly all shareholder proposals.

The timeframe included in our Proposal is more flexible than many included in shareholder proposals, because it ties release of the report to the Company's own timetable for submission to the EEOC, rather than a fixed date. This ensures that shareholders receive timely information, while the Company is not compelled to alter its internal timeline for preparation of the report.

In fact, the Commission in the 1998 Release, the most recent and authoritative Commission-level statement regarding the application of micromanagement, made it clear that requests regarding methods and timelines can be acceptable:

. . . . in the Proposing Release we explained that one of the considerations in making the ordinary business determination was the degree to which the proposal seeks to micromanage the company. We cited examples such as where the proposal seeks intricate detail, or seeks to impose specific timeframes or to impose specific methods for implementing complex policies. **Some commenters thought that the examples cited seemed to imply that all proposals seeking detail, or seeking to promote timeframes or methods, necessarily amount to ordinary business. . . We did not intend such an implication. Timing questions, for instance, could involve significant policy where large differences are at stake, and proposals may seek a reasonable level of detail without running afoul of these considerations.** (Emphasis added).

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<sup>8</sup> See *General Electric Co.* (avail. Mar. 5, 2019); *Amazon.com, Inc. (Oxfam America, Inc.)* (avail. Apr. 3, 2019); *Wal-Mart Stores Inc.* (avail. Apr. 10, 1991); *Ford Motor Co.* (avail. Mar. 2, 2004); *Deere & Co.* (avail. Dec. 27, 2017); *Apple Inc.* (avail. Dec. 21, 2017).

## Conclusion

In permitting the exclusion of proposals, Rule 14a-8(g) imposes the burden of proof on companies. Companies seeking to establish the availability of exclusion under Rule 14a-8, therefore, have the burden of showing ineligibility. As argued above, the Company has failed to meet that burden. Therefore, the Staff must deny the No-Action request. Moody's could more productively use its time and resources negotiating with shareholders, rather than simply trying to avoid the topic.

I would be pleased to respond to Staff questions or to negotiate with Moody's mutually agreeable terms for withdrawing the Proposal. Reach me directly by e-mailing [jwilson@calvert.com](mailto:jwilson@calvert.com) or by telephone at 202-238-2227.

Sincerely,

A handwritten signature in black ink, appearing to read 'John K. Wilson', with a long horizontal flourish extending to the right.

John K. Wilson  
Vice President – Director of Corporate Engagement

December 21, 2020

**VIA E-MAIL**

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

Re: *Moody's Corporation*  
*Shareholder Proposal of Calvert Research and Management*  
*Securities Exchange Act of 1934—Rule 14a-8*

Ladies and Gentlemen:

This letter is to inform you that our client, Moody's Corporation (the "Company"), intends to omit from its proxy statement and form of proxy for its 2021 Annual Meeting of Shareholders (collectively, the "2021 Proxy Materials") a shareholder proposal (the "Proposal") with recitals and a statement in support thereof (the "Supporting Statement") received from Calvert Research and Management (the "Proponent").

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

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the Company intends to file its definitive 2021 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D") provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the "Staff"). Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to this Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

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## THE PROPOSAL

The Proposal states:

RESOLVED: Shareholders request that the Board of Directors adopt a policy requiring Moody's to disclose on its website the annual Consolidated EEO-1 Report. The company shall disclose its EEO-1 Report no later than 60 days after the date of its submission to the EEOC.

A copy of the Proposal, as well as related correspondence with the Proponent, is attached to this letter as Exhibit A.

## BASES FOR EXCLUSION

For the reasons discussed below, we believe that the Proposal may be excluded from the 2021 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal (i) deals with matters relating to the Company's ordinary business operations and (ii) micromanages the Company by seeking to impose specific time-frames or methods for implementing complex policies related to the Company's operations.

## ANALYSIS

### **The Proposal May Be Excluded Pursuant To Rule 14a-8(i)(7) Because It Involves Matters Related To The Company's Ordinary Business Operations**

The Company is a leading global risk assessment firm that empowers organizations to make better decisions. Its data, analytical solutions and insights help decision-makers identify opportunities and manage the risks of doing business with others. With over 11,400 employees in more than 40 countries, the Company combines international presence with local expertise and over a century of experience in financial markets. The Company is committed to a diverse and inclusive culture that celebrates diversity among its employees and, as articulated in the Company's Diversity and Inclusion Pledge, believes "a workforce that represents an array of backgrounds and experiences helps create an environment that maximizes every employee's contribution, widens the leadership pipeline, and enhances our work, including the quality of our opinions, products and services."<sup>1</sup>

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<sup>1</sup> See the Company's Diversity and Inclusion Pledge, *available at* <https://about.moody's.io/diversity>.



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While the Company recognizes the importance of diversity and inclusion within its broader human capital management strategy, policies, and practices, it also believes that the issues companies face on these dimensions differ greatly depending on factors such as industry, geography and workforce composition, particularly given the dozens of highly competitive labor markets in which the Company recruits, and that there is no “one-size-fits-all” solution to these matters. The Proposal, however, takes a “one-size-fits-all” approach in requesting that the Company’s board adopt a policy requiring public disclosure of a U.S. government-mandated EEO-1 report that (1) covers approximately one-third of the Company’s global workforce and (2) prescribes workforce reporting using a set of job categories which do not align with the manner in which the Company analyzes workforce data in connection with its human capital management strategies and practices, both geographically and across many categories of managers and professionals (among others), but which instead were designed for use by a government agency. In addition, the Proposal addresses broadly how the Company communicates with investors and employees regarding its human capital management, including with respect to attracting, retaining and engaging with its employees, which are quintessential ordinary business matters. Although the Proposal touches upon important societal considerations relating to racial equity, diversity, and inclusion, it fails to raise a significant social policy concern specific to the Company.

Finally, the Proposal is overly prescriptive in that it seeks to impose specific and detailed reporting metrics and time-frames on the Company’s public disclosures regarding human capital management, thereby seeking to dictate a specific method for implementing complex policies on how to report on human capital management as a substitute for the judgment of management. For these reasons, consistent with the cited precedent below, we believe the Proposal is excludable under Rule 14a-8(i)(7).

#### A. *Background on the EEO-1 Report*

The EEO-1 report is a survey mandated by federal statute and regulation<sup>2</sup> requiring certain companies to annually report to the U.S. Equal Employment Opportunity Commission (the “EEOC”) such companies’ U.S. employment data categorized by gender and race/ethnicity

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<sup>2</sup> The EEO-1 report is collected annually under the authority of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, et. seq., as amended, and applicable EEOC regulations, Sections 1602.7-1602.14, Chapter XIV, Title 29 of the Code of Federal Regulations. See EEO-1 Instruction Booklet, available at <https://www.eeoc.gov/employers/eeo-1-survey/eeo-1-instruction-booklet>.

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across 10 prescribed job categories.<sup>3</sup> The report sets forth the overall number of employees in each of these categories, and further details the number of employees in each of the job categories based on specified self-identified categories of race, ethnicity, and gender. These reports are submitted to the EEOC and generally are confidential and cannot be made public by the EEOC other than pursuant to certain proceedings.

The Proposal's Supporting Statement asserts that the Company's EEO-1 report provides a "comprehensive breakdown of [the Company's] workforce by race and gender according to 10 employment categories." However, this is not accurate as to the Company's workforce, because the EEO-1 report only covers the Company's U.S. employees, which represents approximately one-third of its total global employee base. The Proposal's Supporting Statement also asserts that disclosure of the EEO-1 report "enables an evaluation of the company's strengths and opportunities for improvement and performance trend." However, because EEO-1 reports do not present information in a format that corresponds to the job categories that are relevant to the Company's employee population and does not reflect the composition of the labor markets in which the Company competes, the Company does not view disclosure of its EEO-1 report as achieving or supporting that objective. Thus, in several respects, the information in the EEO-1 report is not within the ambit of the Proposal's overall stated objectives.

*B. Background On Rule 14a-8(i)(7)*

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company's "ordinary business" operations. According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" "refers to matters that are not necessarily 'ordinary' in the common meaning of the word," but instead the term "is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release").

In the 1998 Release, the Commission stated that the central policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the

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<sup>3</sup> The categories are Exec/Sr. Officials & Managers, First/Mid Officials & Managers, Professionals, Technicians, Sales Workers, Admin Support, Craft Workers, Operatives, Laborers and Helpers, and Service Workers. See EEO-1 Job Classification Guide, available at <https://www.eeoc.gov/employers/eo-1-survey/reference-documents>.

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board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.” The Commission also identified two central considerations that underlie this policy. The first consideration is that “[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.” Examples of the tasks cited by the Commission include “management of the workforce, such as the hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers.” *Id.* The second consideration is related to “the degree to which the proposal seeks to ‘micro-manage’ the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)). The Proposal implicates both considerations set forth in the 1998 Release.

The 1998 Release further distinguishes proposals pertaining to ordinary business matters from those involving “significant social policy issues.” *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)). Staff Legal Bulletin 14E (Oct. 27, 2009) states that “[i]n those cases in which a proposal’s underlying subject matter transcends the day-to-day business matters of the company and raises policy issues so significant that it would be appropriate for a shareholder vote, the proposal generally will not be excludable under Rule 14a-8(i)(7) as long as a sufficient nexus exists between the nature of the proposal and the company.” The Staff reaffirmed this position in Note 32 of Staff Legal Bulletin 14H (Oct. 22, 2015), explaining “[w]hether the significant policy exception applies depends, in part, on the connection between the significant policy issue and the company’s business operations.” In this regard, when assessing proposals under Rule 14a-8(i)(7), the Staff considers the terms of the resolution and its supporting statement as a whole. *See* Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005) (“In determining whether the focus of these proposals is a significant social policy issue, we consider both the proposal and the supporting statement as a whole.”)

A shareholder proposal being framed in the form of a request for a report does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the issuer. *See* Exchange Act Release No. 20091 (Aug. 16, 1983). In addition, the Staff has indicated that “[where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under [R]ule 14a-8(i)(7).” *Johnson Controls, Inc.* (avail. Oct. 26, 1999). Similarly, the Staff has concurred that a proposal requesting adoption of a policy is excludable if the underlying subject matter pertains to ordinary business and does not implicate a significant social policy issue. *See, e.g., The TJX Companies, Inc.* (avail. Apr. 16, 2018) (concurring in the exclusion under Rule 14a-8(i)(7) of a proposal requesting that

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the company adopt “a new universal and comprehensive animal welfare policy applying to all of the [c]ompany’s stores, merchandise and suppliers” because the proposal related to ordinary business operations); *Time Warner Inc. (Ridenour)* (avail. Mar. 13, 2018) (concurring in the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company “adopt a policy requiring that the [c]ompany’s news operations tell the truth, and issue an annual report to shareholders explaining instances where the [c]ompany failed to meet this basic journalistic obligation” because the proposal related to ordinary business operations); *The Walt Disney Co.* (avail. Dec. 12, 2017) (same).

*C. The Proposal Is Excludable Because It Relates To The Ordinary Business Matter Of Managing The Company’s Workforce*

The Proposal requests that the Company adopt a policy requiring the Company to annually disclose its EEO-1 report. In support of this request, the Proposal indicates that the EEO-1 report provides “a comprehensive breakdown of [the Company’s] workforce by race and gender,” that “[d]etailed workforce diversity data is one critical component of transparency regarding human capital management,” that diverse teams are associated with “greater employee engagement, increased attraction and retention of talent, and a sense of purpose in the workforce,” and that such disclosure would provide a “platform for the company to describe the connection between human capital management and corporate strategy and facilitate informed engagement with investors.” These statements make plain that the Proposal is primarily focused on issues that are core components of the Company’s ordinary business operations – communications with investors regarding workforce composition and human capital management and, to a lesser degree, with employees to promote recruitment, retention, and engagement.

The Commission and Staff have long held that a shareholder proposal may be excluded under Rule 14a-8(i)(7) if it, like the Proposal, relates to a company’s management of its workforce. Notably, in *United Technologies Corp.* (avail. Feb. 19, 1993), the Staff provided the following examples of excludable ordinary business categories: “employee health benefits, general compensation issues not focused on senior executives, management of the workplace, *employee supervision, labor-management relations*, employee hiring and firing, conditions of the employment and *employee training and motivation*” (emphasis added). Importantly, the Commission subsequently recognized in the 1998 Release that “management of the workforce” is “fundamental to management’s ability to run a company on a day-to-day basis.”

Consistent with the 1998 Release, the Staff has recognized that a wide variety of proposals relating to the management of a company’s workforce are excludable under Rule 14a-8(i)(7). For example, in *Walmart, Inc.* (avail. Apr. 8, 2019), the Staff concurred with the exclusion of

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a proposal requesting “that the board prepare a report to evaluate the risk of discrimination that may result from the [c]ompany’s policies and practices for hourly workers taking absences from work for personal or family illness” as relating to “management of its workforce.” *See also Apple, Inc.* (avail. Dec. 20, 2019, *recon. denied* Jan. 17, 2020) (concurring with the exclusion of a proposal requesting a “report detailing the potential risks associated with omitting ‘viewpoint’ and ‘ideology’ from its written equal employment opportunity (EEO) policy” as “not transcend[ing] the [c]ompany’s ordinary business operations”); *Merck & Co., Inc.* (avail. Mar. 7, 2002) (concurring that a proposal requesting that the company keep shareholders informed regarding the resolution of employment disputes could be excluded as it related to the company’s “management of the workforce”); *Burlington Northern Santa Fe Corp.*, (avail. Feb. 15, 2000) (concurring that a proposal relating to employment policies could be excluded as it related to “management of the workforce”).

Here, the Proposal requests the adoption of a policy requiring public disclosure of the Company’s EEO-1 report, and the Supporting Statement focuses on the Company’s “human capital practices.” The Proponent elaborates on the purpose of the Proposal by asserting that “A lack of consistent disclosure of human capital practices makes it difficult for investors to evaluate corporate performance.” Elsewhere in the recitals, the Proponent states that the requested disclosure would “provide a platform for the company to describe the connection between human capital management and corporate strategy and facilitate informed engagement with investors.” In addition, in the Supporting Statement, the Proponent states that by making the requested disclosure, the Company “may be better positioned to attract and retain talent” and could enhance employee productivity.

The Company’s decisions with respect to how it reports to investors on the management of its workforce and what disclosures it provides to attract, retain, and engage with its employees, are fundamental to the management of the Company’s business and inherently implicate the day-to-day operation of the Company. These decisions are multifaceted, complex, and based on factors beyond the knowledge and expertise of shareholders, reflecting the composition, diversity, and geographic scope of the Company’s workforce. For example, the disclosure advocated for by the Proposal would report on approximately one-third of the Company’s global employee population, and would force presentation of employment categories that do not align with how the Company views and manages its workforce.

The Company believes that disclosure of the EEO-1 report with its prescribed set of categories would not provide an accurate view of either the Company’s workforce composition or its diversity and inclusion efforts and progress, as the EEO-1 report does not provide for disclosure in a manner that is consistent with the Company’s specific and unique



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human capital management needs and concerns. The Company believes that a more nuanced approach to disclosure, which takes into consideration the facts and circumstances of the Company, including its worldwide operations, and which the Company can review and adapt each year as the scope of its operations change, better serves the aim of providing information useful to shareholders in assessing the Company's human capital management policies, practices, and performance. In this regard, it is notable that the determination on how best to engage with investors on a company's human capital management was recently addressed by the Commission's rulemaking on Modernization of Regulation S-K Items 101, 103, and 105. In its adopting release, the Commission declined to adopt prescriptive disclosure elements for human capital management and instead adopted a principles-based approach, noting that "[e]ach registrant's disclosure must be tailored to its unique business, workforce, and facts and circumstances" and that a principles-based approach, rather than prescriptive disclosure mandates, would "likely lead to more meaningful disclosure being provided to investors." Exchange Act Release No. 33-10825 (August 26, 2020).

#### *D. The Proposal Does Not Transcend The Company's Ordinary Business Operations*

As noted above, the Company is committed to a diverse and inclusive culture that celebrates diversity among its employees. As well, the Company and we recognize that investors' interest in issues of employee diversity, opportunity, and advancement, and issuers' disclosures on such topics, have greatly expanded over the past decade. However, that does not mean that every proposal referencing disclosure of a company's workforce numbers and composition that includes ethnic, racial and gender data raises a significant policy issue that transcends a company's ordinary business. While the Staff stated in the 1998 Release that proposals "focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable," the Proposal does not focus on a significant policy issue with respect to the Company, but instead makes generic and unsubstantiated assertions arguing for a uniform reporting standard across public companies. For example, the Supporting Statement asserts:

- "A lack of consistent disclosure of human capital practices makes it difficult for investors to evaluate corporate performance."
- "Information about the effectiveness [of] company diversity investments, must be complete, comparable and consistent."
- "Annual EEO-1 disclosure . . . facilitates comparison across firms."

Even when a proposal references or addresses a significant policy issue within the meaning of the Staff's interpretations of Rule 14a-8(i)(7), it may be excluded when the proposal also involves ordinary business issues. For example, in *Deere & Co.* (avail. Nov. 14, 2014), the Staff concurred in the exclusion of a proposal requesting the implementation and enforcement of a company-wide employee code of conduct that included an anti-

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discrimination policy, because the proposal also related to the company's "policies concerning its employees," an ordinary business matter. Similarly, in *Apache Corp.* (avail. Mar. 5, 2008), the Staff concurred in the exclusion of a proposal requesting the implementation of equal employment opportunity policies based on certain principles because "some of the principles relate to Apache's ordinary business operations." *See also, PetSmart, Inc.* (avail. Mar. 24, 2011) (concurring in exclusion of a proposal requesting that the board require its suppliers to certify they had not violated "the Animal Welfare Act, the Lacey Act, or any state law equivalents," noting that "[a]lthough the humane treatment of animals is a significant policy issue, . . . the scope of the laws covered by the proposal is 'fairly broad in nature from serious violations such as animal abuse to violations of administrative matters such as record keeping'"); *Mattel, Inc.* (avail. Feb. 10, 2012) (concurring in the exclusion of a proposal that requested the company require its suppliers publish a report detailing their compliance with the International Council of Toy Industries Code of Business Practices, noting that the ICTI Code encompasses "several topics that relate to...ordinary business operations and are not significant policy issues").

As drafted and explained in the Supporting Statement, the Proposal does not focus on a significant policy issue. Instead, implementation of the Proposal would result in detailed disclosure of the number of employees in each of ten employment categories, while at the same time addressing only approximately one-third of the Company's global workforce. While the Proposal's Supporting Statement refers to the "heightened public concern about racial equity," notes that "[d]iverse and inclusive teams are associated with greater employee engagement, increased attraction and retention of talent, and a sense of purpose in the workplace," and suggests that disclosure of the EEO-1 report would provide a "platform for the company to describe the connection between human capital management and corporate strategy and facilitate informed engagement with investors", these statements relate not to significant policy concerns specific to the Company, but rather to diversity and inclusion and workforce composition and management more generally. In this respect, the Proposal is comparable to the proposals regarding employee arbitration policies that the Staff addressed in the past year. Specifically, in *Dollar General Corp.* (avail. Mar. 6, 2020), the Staff concurred in exclusion of a proposal that generally addressed the alleged effects across companies of the use of employee arbitration clauses, stating, "In our view, notwithstanding some references in the supporting statement to potentially important social issues, the [p]roposal as a whole deals with a matter relating to the [c]ompany's ordinary business operations – the overall 'use' of arbitration – and does not focus on any particular policy implication of that use at this particular company." Similarly here, the Supporting Statement claims potential benefits for investors if *all* public companies were to provide "consistent disclosure of human capital practices," but does not raise a significant policy issue as to why the Company in particular should annually disclose its EEO-1 report. Instead, the Supporting Statement addresses benefits to the Company in terms of potentially allowing the

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Company to be “better positioned to attract and retain talent,” which is quintessentially an ordinary business consideration.

We are aware that almost thirty years ago, in *V.F. Corp.* (avail. Feb. 14, 1991), the Staff did not concur with the exclusion of a proposal requesting the board undertake certain tasks with respect to its equal opportunity and affirmative action programs and support for minority/women’s business, including “[e]stablish[ing] a policy of reporting to shareholders on the Corporation’s progress with its equal employment opportunity and affirmative action programs by providing the consolidated (numerical) EEO-1 report in each annual report . . . .” The Staff did not concur with exclusion of that proposal, noting that the proposal’s subject “appears to relate to matters involving general policy decisions which are beyond the conduct of the Company’s day-to-day operations.” However, in Staff Legal Bulletin 14K, the Staff stated, “The staff takes a company-specific approach in evaluating significance, rather than recognizing particular issues or categories of issues as universally ‘significant.’ Accordingly, a policy issue that is significant to one company may not be significant to another.” Staff Legal Bulletin No. 14K (Oct. 16, 2019) (“SLB 14K”). Under this standard, the Proposal fails to raise a policy issue that transcends the Company’s ordinary business operations. Because the actual language of the Proposal is both overly broad, by requesting the disclosure of overall numbers of employees in specific job categories, and overly narrow, in that such a report covers only a portion of the Company’s workforce, such a report is not linked to a significant policy concern at the Company, and in any case would fail to provide shareholders with a complete or accurate view of the Company’s human capital management strategies, policies and practices, and therefore result in misleading disclosure to investors. Thus, the Proposal is properly excludable under Rule 14a-8(i)(7) as relating to the Company’s ordinary business consistent with the precedents discussed above.

*E. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because it Seeks to Micromanage The Company*

The Commission stated in the 1998 Release that one of the considerations underlying the ordinary business exclusion is “the degree to which the proposal seeks to ‘micro-manage’ the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” The 1998 Release further states that “[t]his consideration may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies.” In Staff Legal Bulletin No. 14J (Oct. 23, 2018), the Staff explained that “[u]nlike the first consideration [of the ordinary business exclusion], which looks to a proposal’s subject matter, the second consideration looks only to the degree to which a proposal seeks to micromanage. Thus, a



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proposal that may not be excludable under the first consideration may be excludable under the second if it micromanages the company.”

More recently, in SLB 14K, the Staff further clarified that “a proposal, regardless of its precatory nature, that prescribes specific timeframes or methods for implementing complex policies . . . may be viewed as micromanaging the company.” Moreover, “the precatory nature of a proposal does not bear on the degree to which a proposal micromanages.” *Id.* Instead, the Staff assesses the “level of prescriptiveness of the proposal,” and “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.” *Id.*

The Staff has consistently permitted exclusion of shareholder proposals that attempt to micromanage a company by substituting shareholder judgment for that of management with respect to complex day-to-day business operations. For example, in *General Electric Co.* (avail. Mar. 5, 2019), the proposal requested a board committee to direct an outside firm to “undertake a thorough review of any compensation, including supplementary pension impacts, paid or credited to the 25 most highly compensated executives in any given year for the period of 2014 through 2017 to determine if that level of compensation was warranted for each individual” and “what means and methods of recoupment might be available to [s]hareowners.” The proposal further requested that information on the foregoing “be set forth in the 2019 Annual Report to Shareowners,” including decisions of the committee regarding “which executives, if any, should be affected, in what manner, and to what extent.” The Staff concurred that the proposal could be excluded under Rule 14a-8(i)(7) based on micromanagement, noting “the [p]roposal would, among other things, dictate the scope of executives and time period to be covered by the review, direct a board committee to make individualized decisions with respect to the level and potential recoupment of the executives’ compensation, and detail the manner of disclosing the specifics of those decisions.” *See also Amazon.com, Inc. (Oxfam America, Inc.)* (avail. Apr. 3, 2019) (concurring with the exclusion of a proposal requesting that the company prepare human rights impact reports for at least three food products sold by the company presenting a high risk of adverse human rights impacts because the proposal sought “to impose specific methods for implementing complex policies in place of the ongoing judgments of management as overseen by its board of directors”).

The Staff has also found that a proposal that generally deals with matters that have been found to be outside the scope of excludability under Rule 14a-8(i)(7) may nevertheless be excludable when the proposal seeks actions that are specific and detailed in nature – including requests for detailed reporting. For example, in *Wal-Mart Stores, Inc.* (avail. Apr. 10, 1991), the Staff concurred with the exclusion of a proposal seeking a report on racial and

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gender composition of the company's workforce, affirmative action program and other similar programs, noting that the proposal involved a request for "detailed information on the composition of the Company's work force, employment practices and policies." *See also, Ford Motor Co.* (avail. Mar. 2, 2004), the Staff concurred that a proposal requesting a report on global warming was excludable because it addressed "the specific method of preparation and the specific information to be included in a highly detailed report."

The Staff has also recently concurred with the exclusion under Rule 14a-8(i)(7) on micro-management grounds of less prescriptive shareholder proposals than the Proposal. In *Deere & Co.* (avail. Dec. 27, 2017), the Staff concurred with the exclusion of a proposal requesting that the company "prepare a report to shareholders by December 31, 2018 that evaluates the potential for the [c]ompany . . . to achiev[e] 'net-zero' emissions of greenhouse gases by a fixed future target date" because the proposal sought to "micromanage the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." In *Apple Inc.* (avail. Dec. 21, 2017), the Staff concurred with the exclusion of a proposal requesting that the company "prepare a report to shareholders by December 31, 2019 that evaluates the potential for the [c]ompany to achieve, by a fixed date, 'net-zero' emissions of greenhouse gases by the [c]ompany and its major suppliers."

In this case, the Proposal micromanages the Company by effectively incorporating all of the extensive and prescriptive regulations and instructions relating to the preparation of an EEO-1 report, including prescribing ten employee categories that must be reported on even though they do not align with how the Company manages and evaluates its workforce, enumerating gender categories that may not align with how employees self-identify, and specifying ethnic and racial categories that may not reflect the workforce populations in the markets in which the Company competes for talent. Through the EEO-1 regulations, the Proposal also limits the dates as of which such information must be provided, and the Proposal itself prescribes the timing for public disclosure of the requested report.

As such, the Proposal's request for disclosure of the EEO-1 report, by its very nature, requires disclosure of workforce data in a particularized and granular format, using employment categories and data formats mandated by a government agency, notwithstanding that this format and these job categories do not take into consideration the specific and highly competitive job markets in which the Company operates and competes, and do not at all align with how the Company analyzes employment data for purposes of measuring progress against its human capital management and diversity and inclusion strategies, goals and initiatives. Instead of requesting, for example, the percentage of employees who are female or racially/ethnically diverse across job categories that the Company uses in its management of its workforce, the Proposal is overly prescriptive by

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requesting that the Company disclose an incomplete data set regarding its workforce, in a particularized, granular fashion, and on a very specific timeline, and therefore seeks to micromanage the Company in the operation of its business. Consistent with the precedent cited above, because the Proposal seeks to impose specific time-frames or methods for implementing complex policies as a substitute for the judgment of management, the Proposal may be excluded pursuant to Rule 14a-8(i)(7) because it attempts to micromanage the Company.

## CONCLUSION

Based upon the foregoing analysis, the Company intends to exclude the Proposal from its 2021 Proxy Materials, and we respectfully request that the Staff concur that the Proposal may be excluded under Rule 14a-8.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to [shareholderproposals@gibsondunn.com](mailto:shareholderproposals@gibsondunn.com). If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8671 or Elizabeth M. McCarroll, the Company's Corporate Secretary and Associate General Counsel, at (212) 553-3664.

Sincerely,



Ronald O. Mueller

cc: Elizabeth M. McCarroll, Moody's Corporation  
Alexander Bonelli, Calvert Research and Management

**EXHIBIT A**

**From:** Alexander Bonelli <[ABonelli@Calvert.Com](mailto:ABonelli@Calvert.Com)>

**Sent:** Wednesday, November 11, 2020 9:55 AM

**To:** Moody's Investor Relations <[ir@moodys.com](mailto:ir@moodys.com)>; McCarroll, Elizabeth <[Elizabeth.McCarroll@moodys.com](mailto:Elizabeth.McCarroll@moodys.com)>

**Subject:** Calvert EEO-1 Resolution

**Importance:** High

Hello,

I wanted to acknowledge that Calvert has filed a shareholder resolution, with supporting documentation attached, for Moody's to disclose EEO-1 data. We would welcome the opportunity to meet to discuss our request before the 2021 annual meeting. Please acknowledge receipt of this email.

Thank you,

**Alexander Bonelli**

Shareholder Engagement Associate  
202 238 2240

Calvert Research and Management  
1825 Connecticut Avenue NW, Suite 400  
Washington, DC 20009



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November 9, 2020

Elizabeth M. McCarroll  
Corporate Secretary and Associate General Counsel  
Moody's  
Seven World Trade Center 250 Greenwich Street New York, NY 10007

Dear Mrs. Elizabeth M. McCarroll,

Calvert Research and Management ("Calvert") is a leader in Responsible Investing, with over \$23.4 billion of mutual fund and separate account assets under management as of June 30, 2020.

Our clients are the beneficial owners of at least \$25,000 in market value of securities entitled to be voted at the next shareholder meeting. Supporting documentation is available upon request. Furthermore, our clients have held these securities continuously for at least one year, and intend to continue to own the requisite number of shares in the Company through the date of the 2021 annual meeting of shareholders.

We are notifying you, in a timely manner, of the enclosed shareholder proposal for vote at the upcoming stockholders meeting. We submit it for inclusion in the proxy statement in accordance with Rule 14a-8 under the Securities Exchange Act of 1943 (17 C.F.R. § 240.14a-8).

As long-standing shareholders, we are filing the enclosed resolution requesting that Moody's [publicly disclose its EEO-1 data or other request] to evaluate performance against diversity commitments and initiatives.

If prior to the annual meeting you agree to the request outlined in the resolution, we believe that this resolution would be unnecessary. We are available to meet at [date and time], or other mutually agreed upon date, to discuss our request.

Please direct any correspondence to Alexander Bonelli at (202) 238-2240, or contact him via email at [ABonelli@Calvert.com](mailto:ABonelli@Calvert.com).

We appreciate your attention to this matter and look forward to working with you.

*X Alexander Bonelli*

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Alexander Bonelli  
Shareholder Engagement Associate

## WHEREAS:

Moody's is required to furnish an EEO-1 report - a comprehensive breakdown of its workforce by race and gender according to 10 employment categories – to the United States Equal Employment Opportunity Council annually.

As intangible assets increasingly drive corporate value creation, investors seek a better understanding of human capital management strategy and performance. A lack of consistent disclosure of human capital practices makes it difficult for investors to evaluate corporate performance.

Detailed workforce diversity data is one critical component of transparency regarding human capital management. Diverse and inclusive teams are associated with greater employee engagement, increased attraction and retention of talent, and a sense of purpose in the workforce.

Disclosure of the EEO-1 report would enable the company to provide a more complete picture of its workforce without additional burdens on the company to collect data. Such disclosure would provide a platform for the company to describe the connection between human capital management and corporate strategy and facilitate informed engagement with investors.

Information about the effectiveness a company diversity investments, must be complete, comparable and consistent. Investors need annual disclosure of granular demographic data in order to know whether investments in diversity have paid off through changes in the numbers of people by race and gender at different levels of the company.

Annual EEO-1 disclosure enables an evaluation of the company's strengths and opportunities for improvement and performance trend, and facilitates comparison across firms.

Yet, Moody's does not provide this fundamental information to shareholders. The company provides limited diversity disclosure that is considerably less detailed than the EEO-1 report and does not allow for an informed analysis of equal opportunity at the company.

**RESOLVED:** Shareholders request that the Board of Directors adopt a policy requiring Moody's to disclose on its website the annual Consolidated EEO-1 Report. The company shall disclose its EEO-1 Report no later than 60 days after the date of its submission to the EEOC.

## SUPPORTING STATEMENT:

The global coronavirus pandemic and police brutality against African-Americans have heightened public concern about racial equity. Rising expectations of employees and other stakeholders that companies will make a meaningful commitment to racial equity in the workplace have strengthened the longstanding case for prioritizing diversity in the



workplace. In particular, companies that signal their commitment to racial diversity through workforce transparency may be better positioned to attract and retain talent.

Underscoring the link between diversity and inclusion and human capital management, research from The Conference Boards' *DNA of Engagement* initiative argues that the synergy between employee engagement and inclusion is a key component of overall employee productivity and Deloitte highlights diversity as an important element in building and sustaining a strong sense of corporate purpose.<sup>12</sup>

A May 2020 report from McKinsey *Diversity Wins: How Inclusion Matters* found “that companies in the top quartile for gender diversity on executive teams were 25 percent more likely to have above-average profitability than companies in the fourth quartile.”

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<sup>1</sup> <https://conference-board.org/research/dna-of-engagement/executive-summary-how-organizations-can-align-engagement-inclusion>

<sup>2</sup> <https://corpgov.law.harvard.edu/2020/09/16/the-workforce-takes-center-stage-the-boards-evolving-role/>



November 9<sup>th</sup>, 2020

Calvert Research and Management  
1825 Connecticut Ave. NW, Suite 400  
Washington, DC 20009

To whom it may concern,

This letter is to confirm that as of 11/9/2020 our accounting records indicate that the Calvert fund listed below held the below amount of shares of the stock Moody's. Shares of this company were held continuously for one year as detailed below.

Fund	Fund Name	Fund	Security Name	11/9/2019	11/9/2020 Shares
D872	CLVRT US LG CAP CORERSP INDXFD	615369105	Moody's	15,920	18,953

Please feel free to contact me if you need any further information.

Sincerely,

Derek Franz  
Assistant Vice President  
State Street Bank and Trust Company