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Via electronic mail

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 Goldman Sachs Regarding Underwriting Multiclass Stock on behalf of James McRitchie

Ladies and Gentlemen:

James McRitchie (the "Proponent") is beneficial owner of common stock of Goldman Sachs (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 December 23, 2020 ("Company Letter") sent to the Securities and Exchange Commission (the "SEC") by Beverly O'Toole. In that letter, the Company contends that the Proposal may be excluded from the Company's 2021 proxy statement.

Based on Proposal, as well as the letter sent by the Company, we respectfully submit that the Proposal must be included in the Company's 2021 proxy materials and that it is not excludable under Rule 14a-8. A copy of this letter is being emailed concurrently to Beverly O'Toole.

SUMMARY

The Proposal requests a study of the external costs associated with the Company's underwriting of multi-class offerings, i.e., offerings of corporate stock that deviates from the "one-share, one-vote" rule. The Company asserts that the Proposal is excludable either as relating to ordinary business (Rule 14a-8(i)(7)), or that the Proposal is vague and misleading (Rule 14a-8(i)(3)).

The Proposal is not excludable pursuant to Rule 14a-8(i)(7) because it solely addresses a significant policy issue posed by multiclass share structures. Such structures have been controversial throughout history because they undercut insider accountability, create incentives for insiders to manage the company in a manner harmful to society and the environment (and therefore diversified investors), and result in systemic reductions in economic productivity and efficiency.

Even though the Company's own communications with investor-customers have raised these concerns about the lack of accountability created by multiclass offerings, the Company continues to underwrite them without addressing these impacts. Concern about the emergence of persistent multiclass share ownership has been expressed by leading investors, SEC Commissioners, the SEC Investor Advocate, and the financial sector's Committee on Capital Market Regulation, which expressed concern that the prevalence of multiclass structures could damage "the economy as a whole." This is a significant policy issue of great concern to investors, and therefore transcends the ordinary business of the Company. Moreover, the scope of the Proposal does not stray into ordinary business matters.

The Company asserts that the Proposal is vague, yet reading the language of the Proposal, neither the Company nor shareholders would have difficulty in ascertaining how to go about implementing the Proposal and therefore, the Proposal is not vague within the meaning of Rule 14a-8(i)(3).

THE PROPOSAL

ITEM 4* – External Corporate Governance Cost Disclosure

RESOLVED, shareholders ask that the board commission and disclose a study on the external costs created by the Company underwriting multi-class equity offerings and the manner in which such costs affect the majority of its shareholders who rely on overall stock market return.

Our Company underwrites initial public offerings providing perpetual control to insiders with high-vote stock,[1] contributing to poor governance that harms investors as a class, including

[1] See, e.g., https://www.sec.gov/Archives/edgar/data/1792789/000119312520292381/d752207ds1.htm (Door Dash); https://www.sec.gov/Archives/edgar/data/1559720/000119312520294801/d81668ds1.htm (Airbnb).

companies with three classes of stock having 20, 1 and 0 votes, respectively.[2] As the Company advised the investors, its most critical stakeholder group, "[u]sing multi-class voting to insulate management from its own shareholders comes at a significant long-term cost."[3]

In addition to risk of poor returns for their own shareholders, these structures give unchecked power to insiders, whose concentrated interests are misaligned with the interests of typical diversified shareholders. As a working paper co-authored by a Nobel Laureate notes, "initial entrepreneurs are not well-diversified and so they want to maximize the value of their own company, not the joint value of all companies."[4]

By lending reputation and expertise to marketing governance structures that risk both underperformance and misalignment of corporate control with shareholder interests, the Company jeopardizes the viability of the one share, one vote governance model that creates significant economic wealth for shareholders and society. As a 2020 study noted, "if many similarly-situated companies [accept a higher cost of capital for multi-class shares], then the prevalence of dual class shares might have negative consequences for the economy as a whole."[5]

Understanding this information is essential to the Company's shareholders, who are almost all broadly diversified. Indeed, as of June 2020, the top three holders of our shares are Vanguard, BlackRock, and State Street—investment managers with indexed or otherwise broadly diversified investors. Their beneficial owners are materially harmed by facilitation of governance that may lower GDP, thus reducing equity market values.[6] While the Company may profit by ignoring externalized costs, its diversified shareholders ultimately pay them.

The Company's facilitation of poor corporate governance across the economy is a social issue of great importance. A study would help shareholders determine whether to seek a change in corporate direction, structure, or form in order to better serve their interests.

Please vote for: External Corporate Governance Cost Disclosure – Proposal [4*]

[1] See, e.g., https://www.sec.gov/Archives/edgar/data/1792789/000119312520292381/d752207ds1.htm (Door Dash); https://www.sec.gov/Archives/edgar/data/1559720/000119312520294801/d81668ds1.htm (Airbnb).
[2] See Adams and Ferreira, *One Share-One Vote: The Empirical Evidence*, 12 Rev. of Fin. 51 (2008); Bebchuk and Kastiel, The Untenable Case for Perpetual Dual-Class Stock, 103 Virginia L. Rev. 585, 594 (2017).

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[2] See Adams and Ferreira, *One Share-One Vote: The Empirical Evidence*, 12 Rev. of Fin. 51 (2008); Bebchuk and Kastiel, The Untenable Case for Perpetual Dual-Class Stock, 103 Virginia L. Rev. 585, 594 (2017).
[3] https://www.forbes.com/sites/simonconstable/2019/09/30/goldman-sachs-warning-one-share-one-vote-or-else-the-stocks-shares-will-suffer/?sh=6cb9916e71da
[4] Broccardo, Eleonora and Hart, Oliver D. and Zingales, Luigi, *Exit vs. Voice* (August 24, 2020), https://ssrn.com/abstract=3680815 or http://dx.doi.org/10.2139/ssrn.3680815
[5] https://www.capmktsreg.org/wp-content/uploads/2020/04/The-Rise-of-Dual-Class-Shares-04.08.20-1.pdf
[6] See, e.g., https://www.advisorperspectives.com/dshort/updates/2020/11/05/market-cap-to-gdp-an-updated-look-at-the-buffett-valuation-indicator (total market capitalization to GDP "is probably the best single measure of where valuations stand at any given moment") (quoting Warren Buffet).

[3] https://www.forbes.com/sites/simonconstable/2019/09/30/goldman-sachs-warning-one-share-one-vote-or-else-the-stocks-shares-will-suffer/?sh=6cb9916e71da
[4] Broccardo, Eleonora and Hart, Oliver D. and Zingales, Luigi, *Exit vs. Voice* (August 24, 2020), https://ssrn.com/abstract=3680815 or http://dx.doi.org/10.2139/ssrn.3680815
[5] https://www.capmktsreg.org/wp-content/uploads/2020/04/The-Rise-of-Dual-Class-Shares-04.08.20-1.pdf
[6] See, e.g., https://www.advisorperspectives.com/dshort/updates/2020/11/05/market-cap-to-gdp-an-updated-look-at-the-buffett-valuation-indicator (total market capitalization to GDP "is probably the best single measure of where valuations stand at any given moment") (quoting Warren Buffet).

ANALYSIS

1. Rule 14a-8(i)(7)

The Staff has indicated that a shareholder proposal that might otherwise be excludable as relating to ordinary business under Rule 14a-8(i)(7) may not be excludable if it raises significant social policy issues. Amendments to Rules on Shareholder Proposals, Exchange Act Release No. 34-40018, (May 21, 1998). In explaining ordinary business, the Release noted:

> *Certain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight. Examples include the management of the workforce, such as the hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers. However, proposals relating to such matters but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.*
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> *The determination as to whether a proposal deals with a matter relating to a company's ordinary business operations is made on a case-by-case basis, taking into account factors such as the nature of the proposal and the circumstances of the company to which it is directed.*

Shareholder proposals involve significant social policies if they involve issues that engender widespread debate, media attention and legislative and regulatory initiatives. Staff Legal Bulletin 14E (October 27, 2009) addressed considerations relevant to the present matter as well since the Proposal implicates certain risks to investors. Under the guidance of the bulletin, a proposal that requests analysis of risks to investors does not necessarily render the proposal excludable. Instead, the Staff suggested that a key question is whether the particular risk that is being analyzed involves a significant policy issue:

> *On a going-forward basis, rather than focusing on whether a proposal and supporting statement relate to the company engaging in an evaluation of risk, we will instead focus on the subject matter to which the risk pertains or that gives rise to the risk. The fact that a proposal would require an evaluation of risk will not be dispositive of whether the proposal may be excluded under Rule 14a-8(i)(7). Instead, similar to the way in which we analyze proposals asking for the preparation of a report, the formation of a committee or the inclusion of disclosure in a Commission-prescribed document — where we look to the underlying subject matter of the report, committee or disclosure to determine whether the proposal relates to ordinary business — we will consider whether the underlying subject matter of the risk evaluation involves a matter of ordinary business to the company. In those cases in which a proposal's underlying subject matter transcends the day-to-day business matters of the company and raises policy issues so significant that it would be appropriate for a shareholder vote, the proposal generally will not be excludable under Rule 14a-8(i)(7) as long as a sufficient nexus exists between the nature of the proposal and the company. Conversely, in those cases in which a proposal's underlying subject matter involves an ordinary business matter to the company, the proposal generally will be excludable under Rule 14a-8(i)(7). In determining whether the subject matter raises significant policy issues and has a sufficient nexus to the company, as described above, we will apply the same standards that we apply to other types of proposals under Rule 14a-8(i)(7)*

As we will discuss below, in the present matter, the reporting on risks and costs requested by the Proposal relate to an underlying significant policy issue, the proliferation of multiclass share ownership.

Significant policy issue: proliferation of multiclass IPOs raises major public controversy

The debate over multiclass share ownership in the U.S. dates to the nineteenth century. As discussed in more detail in Appendix A, debates around the Delaware Constitution of 1897,

which authorizes the corporate statute used for most IPOs,[7] focused on the question and President Calvin Coolidge considered acting on the question in the 1920s. The key policy concern is that entrenched corporate insiders are significantly less aligned with US economic success over the long term than are the typical diversified shareholders that own a majority of publicly traded shares. In addition, multiclass shares that create shares with zero votes not only entrench insiders but also deprive shareholders of the right to bring shareholder proposals and exercise other rights due voting shares under the rules promulgated pursuant to the Securities and Exchange Act of 1934, threatening the policies behind Section 14a-8 itself.

The long-simmering debate over the propriety of multiclass share voting structures led in the late 1980s and early 1990s to some limitations on conversion to multiclass share structures on the major exchanges. (This phase of the debate is discussed in more detail in Appendix A.) While a firm can effectuate an initial public offering with a multiclass voting structure, the exchanges currently prohibit conversion into such a structure once listed.

As the use of multiclass structures for IPOs has increased over the last 15 years, experience has borne out the concerns about unaccountability, mismanagement, inefficiency, and self-dealing by insiders who permanently control voting power at the companies. Beginning with Google's issuance of low-vote stock in 2004, an increasing number of IPOs have taken advantage of this opportunity, reaching a crescendo in 2017, when Snap, Inc. offered non-voting shares to the public. Investor concerns based on experience with the multiclass companies over recent years led to concerted efforts by investors to address the issue[8] and a 2018 Council of Institutional Investors petition to Nasdaq, the NYSE, and the SEC to prohibit such structures and institute a one-share/one-vote policy for public companies.[9] CII explained that multiclass voting was in violation of "bedrock" principles:

> *[T]his "founder knows best" approach challenges the bedrock corporate governance principle of "one share, one vote": Providers of capital should have a right to vote in proportion to the size of their ownership. A single class of common stock with equal voting rights makes the board of directors accountable to all of the shareholders—and more likely to respond when management stumbles. Multi-class structures deprive public shareholders of a meaningful voice in how the company is run because the public shareholders lack the votes to influence the board or management.*[10]

At least one US senator joined in urging action by the exchanges,[11] clearly articulating

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[7] *Delaware is the Jurisdiction of Choice for U.S. IPOs* (2014) ("In 2013, 83 percent of all new U.S. Initial Public Offerings (IPOs) chose to incorporate in Delaware"), available at https://export.delaware.gov/2014/06/02/delaware-is-the-jurisdiction-of-choice-for-u-s-ipos/.

[8] *See generally*, Andrew Winden and Andrew Baker, *Dual Class Exclusion,* Rock Center for Corporate Governance (2018), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3201578; Bebchuck and Kastiel, *supra* n. 2.

[9] The CII is a nonprofit association of institutional investors including asset owners with over $4 trillion in assets under management and asset managers with over $25 trillion in assets under management.

[10] CII press release (October 24, 2018) available at https://www.prnewswire.com/news-releases/investors-petition-nyse-nasdaq-to-curb-listings-of-ipo-dual-class-share-companies-300737019.html

[11] Letter from Elizabeth Warren, U.S. Senator, to John Carey, Vice President-Legal, NYSE Regulation, Inc. and NYSE Euronext

the policy concern as one of the basic rights of American investors:

> *If a company goes to the public markets to raise money, long-term ordinary common stock investors - a category that includes directly or indirectly millions of retirees and workers - should be entitled to certain basic rights. One of the most basic of those rights is one-share-one vote.*[12]

Once again, this letter from a US Senator to the leading stock exchanges seeking to protect "[o]ne of the most basic rights" signifies that the underwriting of offerings from multiclass structures implicates deeply important public policy questions.

Widespread investor opposition to multiclass structures and index modification

Institutional investors have lodged continuing objections to the proliferation of multiclass voting. In addition to the actions of CII, commentators have described the objections of asset owners and asset managers:

> *Leading public pension funds, such as CalPERS and CalSTRS, asset managers, such as Fidelity, State Street, T. Rowe Price and Vanguard, and proxy advisory services, such as Institutional Shareholder Services, have stated their opposition to dual-class structures in their proxy voting guidelines, threatening to vote against the directors of companies that have such structures. In January 2017, the Investor Stewardship Group, a new organization of influential institutional investors and asset managers holding an aggregate of $17 trillion in assets under management, announced its Corporate Governance Principles, which state that shareholders should be entitled to voting rights in proportion to their economic interest, newly public companies should adopt one-share/one-vote structures and directors of existing dual-class companies should phase out their controlling structures.*[13]

Stymied at the regulators, investors sought protection from index providers, arguing that because many investors chose to diversify their holdings by investing in funds or asset pools that followed established indexes, they were forced to buy into governance structures they did not want to own if those corporations were included in indexes.[14]

The three largest index providers began consultations on this question in the Spring of

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& Edward Knight, Executive Vice President and General Counsel, NASDAQ OMX (June 5, 2013), https://www.warren.senate.gov/files/documents/Senator%20Warren%20letter%20to%20NYSE,%20Nasdaq%20-%206-5-2013.pdf.

[12] *Id.*

[13] Winden and Baker, *supra* n. 8 at 10-11.

[14] *Id.*

2017.[15] The exchanges responded in different manners, with one provider excluding new issuances of multiclass shares, another requiring a minimum public float of all classes of stock and the third adjusting index weighting according to voting inequality.[16]

Research supports policy concerns

Evidence for the validity of these concerns was provided by a study published in 2004 by the National Bureau of Economic Research indicates that voting control by insiders can lead to management entrenchment that can have a negative impact on firm investment):[17]

> *Dual-class common stock allows for the separation of voting rights and cash flow rights across the different classes of equity. We construct a large sample of dual-class firms in the United States and analyze the relationships of insider's cash flow rights and voting rights with firm value, performance, and investment behavior. We find that relationship of firm value to cash flow rights is positive and concave and the relationship to voting rights is negative and convex. Identical quadratic relationships are found for the respective ownership variables with sales growth, capital expenditures, and the combination of R&D and advertising. Our evidence is consistent with an entrenchment effect of voting control that leads managers to underinvest and an incentive effect of cash flow ownership that induces managers to pursue more aggressive strategies.*[18]

The authors noted that "some firms adopt dual-class structures when their original owners are reluctant to cede control." These firms are less likely to tap the capital markets, typically invest less, grow more slowly, and have lower valuations.[19] Similarly, in their 2017 paper, Bebchuk and Kastiel noted:

> *Our analysis demonstrates that the potential advantages of dual-class structures (such as those resulting from founders' superior leadership skills) tend to recede, and the potential costs tend to rise, as time passes from the IPO. Furthermore, we show that controllers have perverse incentives to retain dual-class structures even when those structures become inefficient over time. Accordingly, even those who believe that dual-class structures are in many cases efficient at the time of the IPO should recognize the substantial risk that their efficiency may decline and disappear over time. Going forward, the debate should focus on the permissibility of finite-term dual-class structures — that is,*

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[15] *Id.* at 24.
[16] *Id.* at 24-31.
[17] Gompers, Ishii and Metrick, *Incentives vs. Control: An Analysis of U.S. Dual-class Companies* (Jan. 2004, available at https://www.nber.org/papers/w10240.
[18] *Id.* (abstract).
[19] *Id.* at 20.

> *structures that sunset after a fixed period of time (such as ten or fifteen years) unless their extension is approved by shareholders unaffiliated with the controller.*[20]

In 2020, the Committee on Capital Markets Regulation, whose membership includes forty leaders drawn from across the financial sector, including banks, broker-dealers, asset managers, private funds, and insurance companies, issued a report surveying multiclass structures around the world and recommending new disclosure requirements in the US.[21] An international comparative legal guide published a study addressing the "controversy:"

> *For some time, dual-class share structures have been a major source of controversy amongst corporate governance professionals. However, the recent IPO filings of prominent technology companies featuring dual-class share structures have served to reignite the debate.*[22]

This issue is not going away. The increasing trend of IPOs to use these control preserving devices threatens the viability of our economy. The continued willingness of market leaders like Goldman Sachs to participate in the multiclass stock structure trend—against their own best judgment of what is good for shareholders--[23] is a looming threat and implicates a critical policy issue.

Commission Level Discussion

Further proof that multiclass equity offerings are controversial, and a significant policy issue comes from the focus on the issue by SEC Commissioners. Two SEC commissioners have spoken out against multiclass structures. In a 2018 speech, Commissioner Kara Stein addressed the broad social policy concerns created by dual class structures:

> *Structures where a minority of insiders lock out the interests and rights of the majority may also have collateral effects on our capital markets. <u>They may be harmful not just for those companies, their shareholders, and their employees, but for the economy as a whole</u>.*[24]

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[20] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2954630 and summary athttps://corpgov.law.harvard.edu/2017/04/24/the-untenable-case-for-perpetual-dual-class-stock/.
See also The Perils of Small-Minority Controllers,
Georgetown Law Journal, Vol. 107, 2019, pp.1453-1514
<u>European Corporate Governance Institute (ECGI) - Law Working Paper No. 434/2018</u>
Harvard Law School John M. Olin Center Discussion Paper No. 985.
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3128375

[21] *The Rise of Dual Class Shares: Regulation and Implications* (April 2020) available at https://www.capmktsreg.org/2020/04/08/the-rise-of-dual-class-shares-regulation-and-implications/

[22] George Schoen and Keith Hallam, *Dual Class Structures in the United States* in Corporate Governance 2020 (ICLG 2020).

[23] *See* Policy, Procedures and Guidelines for Goldman Sachs Asset Management Global Proxy Voting (2020) (recommending votes FOR conversion to one-share, one vote structures and AGAINST conversion to or maintenance of multiclass voting structures) available at
https://www.gsam.com/content/dam/gsam/pdfs/us/en/miscellaneous/voting_proxy_policy.pdf?sa=n&rd=n.

[24] (Emphasis added), available at https://www.sec.gov/news/speech/speech-stein-021318#_ednref45.

That same year, Commissioner Robert Jackson gave a speech titled "Perpetual Dual-Class Stock: The Case against Corporate Royalty,"[25] in which he criticized not simply multiclass structures, but those that did not have definite endpoints:

> *Many have argued forcefully, however, that one-share, one-vote should be the rule for all public corporations. Whatever the benefits may be of permitting dual-class in a few well-known cases, these advocates argue, the costs for investors—who are left with no way to hold management's feet to the fire while dual-class is in place—outweigh those benefits.*
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> *But the question I want to ask today is not whether dual-class ownership is always good or bad. It's whether dual-class structures, once adopted, should last forever. Do Main Street investors in our public markets benefit when corporate insiders maintain outsized control in perpetuity?*
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> *This is not an academic exercise. You see, nearly half of the companies who went public with dual-class over the last 15 years gave corporate insiders outsized voting rights in perpetuity. Those companies are asking shareholders to trust management's business judgment—not just for five years, or 10 years, or even 50 years.* Forever.[26]

As Commissioner Stein noted, the public policy implications are not limited to the effects a multiclass structure has on the financial return of the corporation in question. A Columbia Law School professor explained that our entire economy can be affected by the unaccountability inherent when insiders capture control through such mechanisms:

> *The public/private hinge becomes relevant in addressing these questions. Mismatches between control rights and cash flow rights give rise not only to private agency costs, the focus of much corporate governance theorizing, but what might be called "public" agency costs. These refer to our concerns about unaccountable power in the socio-political realm. A match between cash flow rights and control rights naturally constrains these public agency costs.*[27]

The SEC's own Investor Advocate underscored the risk in a recent speech:

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[25] Available at https://www.sec.gov/news/speech/perpetual-dual-class-stock-case-against-corporate-royalty.

[26] *Id.* To be clear, the Company underwrites the very type of perpetual control structures that Commissioner Jackson described and about which he asked critical policy questions.

[27] Jeffrey Gordon, *Dual Class Common Stock: An Issue of Public and Private Law,* CLS Blue Sky Blog (January 2, 2019) (emphasis added) available at https://clsbluesky.law.columbia.edu/2019/01/02/dual-class-common-stock-an-issue-of-public-and-private-law/.

> *Today I would like to discuss a troubling trend—the increased use of dual-class shares by companies that seek to go public.*
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> . . .
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> *It is true that a few well-known companies have thrived with long-term founders. But less noticeable are the hundreds of public companies that now have entrenched management. A growing body of research suggests that, over the long term, entrenchment of founders produces lower returns for investors. Specifically, companies with dual-class structures tend to underperform companies with dispersed voting power.*
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> *And there is an even larger danger, from my perspective. Namely, without an appropriate level of accountability to shareholders, it is easy to predict that this trend will not end well. Investors will be hurt, and badly, if we continue down this path.*
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> . . .
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> *<u>In my view, what we now have in our public markets is a festering wound that, if left untreated, could metastasize unchecked and affect the entire system of our public markets</u>. The question, then, is what can be done to avoid the inevitable reckoning.*[28]

The Proposal advances a private ordering response to multiclass share ownership externalities

The public statements of the SEC Commissioners demonstrate that this is a significant policy issue. They also demonstrate the functional responsiveness and flexibility of the ordinary business doctrine to respond to significant policy issues on which the SEC is not yet prepared to act by fostering investor private ordering and policy experimentation through the shareholder proposal process. The SEC has a long tradition of recognizing the importance of private ordering, including the important role of the shareholder proposal process, through which investors and companies can develop effective remedies to market challenges and inefficiencies.

Commission Chair Mary Jo White gave a speech in 2016 describing the prominent examples of market-wide success in private ordering, including the near disappearance of staggered boards, majority vote standards becoming the norm across the S&P 500, and the recent successes of proxy access proposals resulting in 35% of the S&P 500 adopting proxy access, compared to 1% just two years prior.[29] For each of these examples of private ordering, the shareholder proposal process was a pivotal engine for change.

Commissioner Hester Peirce delivered a keynote speech at a public symposium on "Protecting the Public While Fostering Innovation and Entrepreneurship: First Principles for

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[28] Rick Fleming, *Dual-Class Shares: A Recipe for Disaster* (October 15, 2019) (emphasis added).
[29] Mary Jo White, Focusing the Lens of Disclosure to Set the Path Forward on Board Diversity, Non-GAAP, and Sustainability, June 27, 2016, https://www.sec.gov/news/speech/chair-white-icgn-speech.html

Effective Regulation." Peirce quoted from Professor Thomas Lambert's book *How to Regulate: A Guide for Policymakers* in her speech:

> *Private ordering is the baseline because, as the book explains, 'when property rights are well defined and transferable, and individuals are able to strike trustworthy exchange agreements, markets will emerge and channel productive resources to ... [the] production of the goods and services individuals value most.*[30]'

While continuing to deliberate on any policy fixes that the Commission might choose to enact, the Proposal represents an important opportunity for the market to begin to develop better data, analysis and engagement regarding the multiclass offerings and underwriting.

Staff Precedents on ordinary business and multiclass offerings demonstrate that the Proposal is not excludable as ordinary business.

The Staff has had numerous opportunities in the past to evaluate proposals attempting to address the issue of multiclass stock structures against the ordinary business standard. The Staff has repeatedly concluded that proposals regarding dual class or multiple class stock ownership were not excludable as relating to ordinary business. In the past, the proposals have typically requested various companies to recapitalize to eliminate dual class voting structures. *Ford Motor Company* (March 07, 2005), *Cablevision Systems Corporation* (March 14, 2014), *Affiliated Computer Services, Inc.* (August 09, 2005) *Vishay Intertechnology, Inc.* (March 23, 2009). The Staff has repeatedly found, despite the insistence of boards and management that these issues ought to be reserved to their discretion, that these are appropriate issues for shareholders to vote on.

Since the subject matter of the Proposal, the impacts of multiclass share ownership structures, has already been determined by the Staff to transcend ordinary business, the only remaining ordinary business question is whether somehow the form of the Proposal, focused on disclosure of the systemic/market wide impacts of underwriting multiple such issues, rather than immediate recapitalization of a single company to eliminate dual class structures, would be ordinary business and excludable while those proposals were not.

This is where the interpretive guidance of Staff Legal Bulletin 14E is clearly instructive.[31] The bulletin states that the staff "will consider whether the underlying subject matter of the risk evaluation involves a matter of ordinary business to the company." In this instance, the underlying subject matter involves looking to the economy-wide impact of multiclass share ownership. As in the prior Staff decisions, this is a controversy in which the factual context

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[30] Hester Peirce, Keynote Speech: Protecting the Public While Fostering Innovation and Entrepreneurship: First Principles for Effective Regulation," University of Missouri, (Feb. 8, 2019) https://www.sec.gov/news/speech/peirce-regulation-view-inside-machine.

[31] While the 14E bulletin used the term "risks to investors" and the Proposal uses the term "costs to investors", they each refer to the same concern—that investors' expectations will not be met, in the case of the Proposal because the misaligned incentives of controlling insiders will lead them to externalize costs and thus lower GDP. *See* John Kay and Mervyn King, RADICAL UNCERTAINTY; DECISION-MAKING BEYOND NUMBER at 123 (2020) ("Risk is failure of a projected narrative, derived from realistic expectations, to unfold as envisaged.")

(including long-lived and widespread debate and treatment at the highest levels of the SEC) confirms the matter's transcendence of ordinary business.

The Proposal concerns a significant policy issue and should not excluded because it touches on products and services

The Company Letter argues for an exclusion under Rule 14a-8(i)(7) because the Proposal addresses products and services offered to customers. Where the focus of the Proposal is clearly on a significant policy issue, the fact that it may touch on issues related to products and services does not cause it to be excludable. This was made clear in the Staff Legal Bulletin 14H, October 22, 2015:

> *[T]he Commission has stated that proposals focusing on a significant policy issue are not excludable under the ordinary business exception "because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." [Release No. 34-40018] Thus**, a proposal may transcend a company's ordinary business operations even if the significant policy issue relates to the "nitty-gritty of its core business**." [emphasis added]*

The Company Letter cites prior Staff decisions where, generally, the proposal focused on products and services and lacked an overriding significant policy issue, or where the proposal sought to dictate outcomes at the company in offering of particular products or services. This is not an instance in which the proposal focuses on attempting to limit or prescribe the sale of particular products or services. Instead, it asks the company to study the impacts that it has already acknowledged in a manner that will allow its diversified investors to more clearly understand the costs and risks associated with the continued practice of underwriting multiclass offerings.

In this instance, the distinction comes down to two particular factors: first, that the focus is on a significant policy issue rather than merely on underwriting policy, and second, that it does not actually require any changes to products or services sold, but only an assessment relative to the significant policy issue.

Lending criteria have been the permissible subject matter of shareholder proposals focused on predatory lending, for instance. In *JPMorgan Chase & Co.* (March 4, 2009), a proposal recommended that the company issue a report related to its credit card marketing, lending, collection practices, and the impacts the practices have on borrowers. The staff rejected exclusion on the basis of Rule 14a-8(i)(7). The same was found in *Bank of America Corporation* (February 26, 2009) and *Citigroup Inc.* (February 11, 2009). See, also *Conseco, Inc.* (April 5, 2001) (proposal calling for independent committee of outside directors to develop and enforce policies to ensure that Conseco does not engage in predatory lending). See also, *Associates First Capital Corporation* (March 13, 2000), *Cash America International, Inc.* (February 13, 2008); *Bank of America Corporation* (February 23, 2006), *JP Morgan Chase & Co.* (March 2, 2009). In all of these

instances, the company argued for the ordinary business exclusion of proposals geared toward addressing predatory lending, because the proposal in question focused on the company's lending practices. The staff universally rejected such claims.

In *Bank of America Corporation* (March 14, 2011), a proposal asked the board to have its audit committee conduct an independent review of the company's internal controls related to loan modifications, foreclosures, and securitizations, and to report to shareholders its findings. The Staff rejected the ordinary business claim; even though this clearly related to lending practices, the heightened focus on failing controls in the aftermath of the 2008 financial crisis demonstrated this was a valid and significant policy concern for shareholders.

Other significant policy issues have been at the core of proposals addressing lending policies, including proposals that may have had the effect of leading to criteria that change who the company chooses to do business with, and under what conditions -- far more prescriptively than the Proposal. For instance, in *Citicorp* (January 23, 1991), the proposal sought a report on the Company's lending policies in the developing world. The Staff noted in rejecting the ordinary business challenge, "[i]n reaching a position, the staff particularly notes that the proposal appears to involve questions of substantial economic importance that go beyond the Company's ordinary business operations."

This followed in the footsteps of *Merrill Lynch & Co.* (February 25, 2000), where the proposal requested that the board issue a report reviewing the underwriting, investing, and lending criteria of Merrill Lynch with a view to incorporating criteria related to a transaction's impact on the environment, human rights, and risk to the company's reputation. The proposal was found not excludable under Rule 14a-8(i)(7).[32]

In short, there is no basis for an assertion that a proposal, regardless of whether it addresses a significant policy issue, is excludable simply because it touches upon lending or underwriting criteria. The key question demonstrated by prior Staff decisions is whether the subject matter requiring a focus on lending or investing criteria is limited to a significant policy issue and whether the proposal is written in a manner that does not micromanage. The Proposal is compliant and not excludable under Rule 14a-8(i)(7).

Scope is limited to the significant policy issue

Exceptions to the general rule allowing a proposal that transcends ordinary business to be excludable have been made where the proposal addresses both ordinary business and transcendent social policy issues. Examples of proposals that have crossed the line to address

[32] Similarly, proposals addressing climate change have been found not excludable under Rule 14a-8(i)(7) despite addressing a company's lending and investment portfolio. The Staff has long determined that proposals addressing climate risk are appropriate for financial services companies so long as such proposals do not delve into the individual application of such policies to customers. For instance, in *PNC Financial Services Group, Inc.* (February 13, 2013) the Proposal requested that the Board report to shareholders PNC's assessment of the greenhouse gas emissions resulting from its lending portfolio and its exposure to climate change risk in lending, investing, and financing activities. The Staff determined that the Proposal was not excludable because it addressed the significant policy issue of climate change. PNC had argued, as the Company does here, that the Proposal micromanaged the business. The Staff rejected the claim. The present proposal is analogous, because it looks to specific impacts on the economy and investors of current underwriting practices, much as the PNC Financial Services proposal looking to quantify the greenhouse gas impact.

both ordinary and transcendent issues include *Bank of America Corporation* (February 26, 2019) where the proposal requested that the company begin an orderly process of retaining advisors to study strategic alternatives and empower a committee of its independent directors to evaluate those alternatives with advisors in exercise of their fiduciary responsibilities to maximize shareholder value. The staff noted that "the Proposal appears to relate to both extraordinary transactions and non-extraordinary transactions and therefore allowed exclusion. Same result *Donegal Group Inc.* (February 15, 2013), *Analysts International Corp* (March 11, 2013), Anchor *Bancorp, Inc. (*July 11, 2013). Another example of this phenomenon occurred in *Exxon Mobil Corporation* (March 6, 2012) where the proposal requested that the Board prepare a report discussing possible short and long term risks to the company's finances and operations posed by the environmental, social, and economic challenges associated with the oil sands. Because the proposal included reporting on "economic challenges associated with oil sands" that was not limited in scope to environmental and social issues, it included reporting on both ordinary business and transcendent policy issues and therefore exclusion was allowed under Rule 14a-8(i)(7).

In contrast, the scope of the Proposal is narrowly and correctly drawn to only address the significant policy issues--the subject of widespread debate--associated with multiclass share ownership. It does not extend beyond the relevant social policy issue.

The focus on economic impact of the company's underwriting activities does not make it an excludable ordinary business matter when the reason for the issue involved to be a significant policy issue revolves around economic impact on investors and the economy. For example, J.P. *Morgan Chase & Co.* (March 19, 2010) denied an ordinary business exclusion for a proposal that requested a report to shareholders on the firm's policy concerning the use of initial and variance margin (collateral) on all over-the-counter derivatives trades and its procedures to ensure that the collateral is maintained in segregated accounts and is not rehypothecated. The proponents had noted in the supporting statement that "For many years, the proponents have been concerned about the long-term consequences of irresponsible risk in investment products and have expressed these concerns to the company . . . . We believe that the report requested in this proposal will offer information needed to adequately assess our company's sustainability and overall risk, in order to avoid future financial crises." In denying the request for no-action, the Staff specifically noted "We note that the proposal raises concerns regarding the relationship between JPMorgan Chase's policies regarding collateralization of derivatives transactions and systemic financial risk. In our view, the proposal focuses on a significant policy issue for JPMorgan Chase."

Contrast the case cited by the Company, *Ameren Corporation* (February 8, 2018), where the proposal requested disclosure of costs to investors associated with the continued storage of high-level waste at a nuclear power plant. The Staff allowed exclusion as relating to ordinary business. In that instance, however, there was no predominant focus on a significant policy issue. Rather, the focus of the proposal was exclusively on impacts to investors of a routine regulated activity at the operation, the storage of high-level waste. The proposal did not focus on environmental impacts of the waste, which is an identified significant policy issue, but only on the impacts on investors.

Here, the Proposal directly addresses the economic impact caused by the significant policy issue of multiclass share offerings.

Nexus between the Proposal and the Company is clear

In the present instance, the nexus between the nature of the Proposal and the Company is clear. The Proposal asks for a report on the effect of underwriting multiclass IPOs. That phenomenon is increasing at an alarming rate: More than 20 percent of the companies listing shares on U.S. exchanges between 2017 and 2019 had a dual class structure, and from less than 5% of IPOs in 1984, the percentage is now approaching 25%.[33] But this understates the problem. More than a third of the money raised in IPOs may well be going to corporations with multiclass structures. As the Company reported in September of 2019:

> *In 2019, seven of the ten largest IPOs have issued shares with unequal voting rights. These firms account for 36% of the $37 billion of IPO proceeds raised YTD*[34]

The Company is one of the leading underwriters of IPOs, holding the coveted bookrunner position on 120 IPOs in 2020 valued at over $20 billion; it was the number one underwriter of IPOs in the combined years of 2019 and 2020.[35] The Company's underwriting decisions as a major financial institution have a significant effect on the direction taken by the market. Moreover, this is an issue the Company has already taken a position on in other parts of its investment banking business. As an asset manager, the Company has already decided to take action *against* multiclass voting structures whenever the opportunity arises—the policy for accounts they manage is to vote against <u>all</u> multiclass structures:

> *Vote FOR resolutions that seek to maintain or convert to a one-share, one-vote capital structure. Vote AGAINST requests for the creation or continuation of dual-class capital structures or the creation of new or additional super voting shares.*[36]

The Company's research business also publicly recognizes the problems with multiclass structures, stating "institutional investors overwhelmingly prefer a 'one share-one vote' governance structure and that, "the debatable benefit of insulating management from its own shareholders comes at a significant long-term cost."[37] Thus, the nexus of this issue to the Company is so tight that two of its other businesses have already taken a position against this structure.

The Proposal is not excludable pursuant to Rule 14a-8(i)(3)

The Company's argument that the Proposal is vague is grasps at straws to try to find

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[33] *Supra,* n. 21 at 3.
[34] Goldman Sachs, *Weekly Kickstart* at 2 (27 September 2019).
[35] *See* Dealogic, *Investment Banking Scorecard,* http://graphics.wsj.com/investment-banking-scorecard/.
[36] Policy, Procedures and Guidelines for GSAM Global Proxy Voting (March 2020) available at https://www.gsam.com/content/dam/gsam/pdfs/us/en/miscellaneous/voting_proxy_policy.pdf?sa=n&rd=n
[37] *Supra,* n. 34.

vagueness in a clearly written proposal. For instance, the Company Letter asserts that the Proposal fails to define "shareholders who rely on overall stock market return," as if either the shareholders or board would have difficulty understanding such a self-defining concept. Indeed, not only does the Proposal provide a clear definition—it provides examples in the form of the Company's three largest shareholders. These are the very type of shareholders that the Company's research arm has already identified as "institutional investors overwhelmingly prefer[ing] a 'one share-one vote' governance structure."[38] Over 70% of its shareholders are in fact institutional shareholders.[39]

The No-Action Request poses a series of rhetorical questions purporting to show that the Proposal is unclear with respect to "the scope" of the requested study:

> *For example, does the Proposal require the Company to assume that all of its shareholders "rely on overall stock market return" and assess the "affect" (whether positive, negative, tangible, or otherwise) of "external costs" with respect to the "majority" of them? Or, alternatively, is the Company required to first identify those shareholders who rely on overall market return and then assess the "affect" of "external costs" on the majority of that subset of shareholders?*

The answer is obvious within the four corners and logic of the Proposal that no, the Company does not have to assume all of its shareholders are rely on overall stock market return, just as it does not have to assume that every item it discloses is important to every Company shareholder. Nor does the Company have to identify which shareholders rely on overall market return, although, as the Proposal highlights, the top 3 shareholders of the Company are mutual or index funds, as are many others.

But what the Proposal does request is that the Company provide a report on how costs that are external to the Company affect the performance of the diversified portfolios of the owners of the Company.

Thus, there is nothing "vague" or "unexplained;" indeed, the Proposal cites the work of a Nobel Laureate to help illustrate the difference between what matters would interest a concentrated shareholders ("maximize the value of [the] company") and what different matters would interest a diversified owner ("the joint value of all companies.") It further cites Warren Buffet, widely regarded as one of the world's most successful investors, [40] as to why those diversified shareholders would care about GDP.

Which leads to the next imaginary instance of vagueness asserted in the Company Letter—that it could it is susceptible of "multiple and conflicting interpretations:"

> *The Proposal could be interpreted as requiring the commissioning of a broad macro-economic report analyzing all impacts, direct and indirect, social, financial, reputational, environmental, and*

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[38] *Id.*

[39] *See* https://finance.yahoo.com/quote/GS/holders?p=GS.

[40] *Forbes* online profile ("Known as the "Oracle of Omaha," Warren Buffett is one of the most successful investors of all time") available at https://www.forbes.com/profile/warren-buffett/?sh=3d8a1a146398.

> *otherwise, that the Company's "underwriting [of] multi-class equity offerings" could conceivably create. Alternatively, the Proposal could be interpreted as narrowly focusing on the actual financial costs incurred by customers that engage the Company to provide the aforementioned underwriting services in connection with a public equity offering (thus relating to the Company's cost and pricing model for its underwriting services).*[41]

There is literally nothing in the Proposal that suggests the latter reading. Nor could it be read to require the sort of over-the-top reading suggested in the first sentence. Discussing the diversified beneficial owners of the mutual fund companies that comprise the Company's three largest shareholders, the Proposal states:

> *Their beneficial owners are materially harmed by facilitation of governance that may lower GDP, thus reducing equity market values. While the Company may profit by ignoring externalized costs, its diversified shareholders ultimately pay them.*

It could not be clearer: the Proposal requests a report on how giving entrepreneurs perpetual power over the governance of public companies (which leads to different perspectives between concentrated controllers with minority economic interests and diversified owners with majority interests) can lead corporations to engage in activities that lower GDP and thus lower the value of the owners of diversified portfolios, like the Company's three largest shareholders. There is nothing vague or mysterious about this. Economists have done the work that shows the direct relationship between GDP and the cash flows of diversified portfolios.[42] Nor is the concept of measuring the effect of externalities on GDP unusual. A recent study by a major asset manager was able to discern that 55% of the profits attributed to publicly listed companies globally were countervailed by external costs absorbed by the rest of the economy:

> *In total, the earnings listed companies generate for shareholders currently total US$4.1 trillion, which would fall by 55% to US$1.9 trillion if those social and environmental impacts crystallised as financial costs. One third of companies would become loss-making.*[43]

Those costs do crystalize, as the cash flows, and ultimately, valuations of companies across the economy suffer. Other studies have shown the costs to GDP of climate change,[44]

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[41] Page 11 of the No-Action Request includes another long paragraph claiming that the Proposal does not adequately contextualize the term "external costs," but the two sentences quoted in the text fully answer each question raised in the No-Action Request.

[42] See *Universal Ownership: Why Environmental Externalities Matter to Institutional Investors,* Appendix IV (demonstrating linear relationship between GDP and a diversified portfolio) available at https://www.unepfi.org/fileadmin/documents/universal_ownership_full.pdf

[43] *Foresight,* Schroders, *available at* https://www.schroders.com/en/sysglobalassets/digital/insights/2019/pdfs/sustainability/sustainex/sustainex-short.pdf.

[44] , s*ee, e.g.,* Kahn, M., Mohaddes, K., Ng, R., Hashem Pesaran, M., Raissi, M, and Yang, J*., Long-Term Macroeconomic Effects of Climate Change: A Cross-Country Analysis*, IMF Working Paper (2019) (abstract) ("Our counterfactual analysis suggests that a persistent increase in average global temperature by 0.04°C per year, in the absence of mitigation policies, reduces world real GDP per capita by more than 7 percent by 2100. On the other hand, abiding by the Paris Agreement, thereby limiting the temperature increase to 0.01°C per annum, reduces the loss substantially to about 1 percent.")

inequality,[45] overuse of antibiotics,[46] and racial disparity,[47] all issues that corporate behavior can contribute to or ameliorate. These issues create risks to the entire economy that no investor can hedge against.

There is no question that compilation of such a report will require discretion and business judgment on the part of the Company because they will have to make decisions as to the level of detail. But that does not make the request vague. The fact is that the Proposal represents a fairly simple request: that the Company undertake to explain relationship among (1) the overall cost of externalities on the economy and diversified shareholders, (2) the conflict of interest that external costs create between concentrated controllers and majority owners, and (3) the Company's role in facilitating such conflicts. Being asked to report on these issues may be uncomfortable for the Company's management, but it there is nothing vague about it.

Finally, it must be noted that the Company's reluctance to report to its shareholder-investors is odd, in light of its already-public positions on multiclass shares. As noted above. in its own report to client-investors, it notes that "institutional investors overwhelmingly prefer a 'one share-one vote' governance structure."

Moreover, as noted above, the Company has made a blanket decision to disfavor such structures in the accounts for which it votes shares in a fiduciary capacity. In other words, it had already determined that the investors it serves as clients (1) dislike and (2) are better off without such structures. If it has already made those determinations, could it not explain to the investors who are its own shareholders the effect on continuing to support such structures in other capacities?

Finally, the Company Letter engages in a disingenuous inquiry as to what external costs should be reported in the report:

> *For example, they do not specify whether the Proponents intend for the requested report to focus on actual monetary costs, broader, intangible social costs, positive or negative impacts, or a combination thereof. The supporting statements refer repeatedly to "harm" investors will suffer (e.g., by lowered gross domestic product, reduced equity market values), but the relationship between such "harm" and the external costs within the scope of the requested report is fundamentally vague.*

There is ample context both within the Proposal and the Company's own analyses of these issues to understand the kind of costs and impacts implied by the Proposal. In the end, the Company's arguments regarding vagueness amount to an attempt to fabricate vagueness where there is none. Neither shareholders nor the board or management would be unable to discern how

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[45] Heather Boushey, Unbound: How Inequality Constricts Our Economy and What We Can Do about It (2019)

[46] *Drug-Resistant Infections: A Threat to Our Economic Future* (World Bank 2017) (AMR may decrease global GDP 3% by 2030, and almost 4% by 2050. At an intermediate discount rate, this will amount to economic losses by 2050 with a current value of $54 trillion) available at http://documents1.worldbank.org/curated/en/323311493396993758/pdf/final-report.pdf.

[47] Dana Peterson and Catherine Mann, *Closing the Racial Inequality Gaps: The Economic Cost of Black Inequality in the U.S.* (2020) (closing racial gaps could lead to $5 trillion in additional GDP over next five years) available at https://ir.citi.com/%2FPRxPvgNWu319AU1ajGf%2BsKbjJjBJSaTOSdw2DF4xynPwFB8a2jV1FaA3Idy7vY59bOtN2lxVQM%3D.

to implement the Proposal within the context and meaning provided in the Proposal itself.

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 2021 proxy statement pursuant to Rule 14a-8. 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 rick@theshareholdercommons.com or 302-593-0917.

Sincerely,

Frederick Alexander

Frederick Alexander

cc: Beverly O'Toole
James McRitchie

Appendix I

The controversial history of unequal voting at US corporations

An examination of the history of unequal voting in the United States demonstrates that underwriting issues of stock for corporations with multiclass voting structures raises a significant policy issue that far transcends the ordinary business of the Company.

The issue of voting has been an issue for almost as long as there have been corporations,[48] and multiclass voting has been a significant question addressed by policymakers, academics and interested parties in the United States in the nineteenth, twentieth and twenty-first centuries.

At the beginning of the nineteenth century, corporate charters were granted one at a time, by action of the state legislature.[49] In connection with granting charters, legislatures carefully measured out voting rights, often restricting the voting rights of significant owners and insiders in order to protect small shareholders, consumers, and other stakeholders.[50] But as the century progressed, states began to create general incorporation statutes that allowed individuals to form corporations simply by filing a complying corporate charter with the Secretary of State.[51]

As control of individual corporate voting structures passed out of the hands of legislatures, policymakers debated the proper limits of flexibility for voting. Indeed, in the debates surrounding the adoption of the Constitution of 1897 in Delaware, which included an article authorizing the legislature to create a general incorporation statute within specific limits, the delegates proposed and adopted an amendment to the original proposal in order to mandate the one-share, one vote rule. Delegate Nathan Pratt, who offered the amendment, made this simple argument:

> *This is intended to provide simply that those holding a majority of the stock shall control the corporation, and that is the reason I offered it.*[52]

Thus, efficacy of a one-share, one-vote rule was debated at the very beginning of the

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[48] See, e.g., Ratner, *The Government of Business Corporations: Critical Reflections on the Rule of "One Share, One Vote,"* 56 Cornell L. Rev. 1, 3 (1970) (noting that the "problem of shareholder voting was recognized at the earliest stages of the development of business corporations in England, 400 years ago").

[49] *See generally* Eric Hilt, *Early American Corporations and the State, in* Naomi Lamoreaux and William Novak, Corporations and American Democracy (Harvard University Press 2017).

[50] *See* Henry Hansmann and Mariana Pargendler, *The Evolution of Shareholder Voting Rights,* 123 Yale L. J. 948, 952-954 (arguing for consumer rights theory).

[51] *See* Hilt, *supra* n. 49 at 1; Adolf Berle and Gardiner Means, The Modern Corporation & Private Property pp. 125-128 (Transaction Press 2010, originally published in 1932).

[52] Debates and Proceedings of the Constitutional Convention of the State of Delaware, Vol. 4, pp. 3131-3133 (1896).

discussion over the form[53] of the general incorporation statute that would eventually become the leading corporation law in the U.S.[54] But the strict rule against varying from one-share, one-vote did not last, as the Delaware Constitution was amended soon thereafter to remove the limitation.[55] By the 1920's, large corporation were varying voting rights in order to separate control of the corporations from their ownership.[56]

But while states competing for corporate charters may have loosened the statutory rule, the policy issue implicated by using multiclass voting structures came to the fore, and there was a "public outcry".[57] This outcry reached the White House itself, as one commentator described the level of public controversy:

> *The appeals of Professor William Z. Ripley-a political economist at Harvard who had made the ideal of one share, one vote a personal crusade-led President Calvin Coolidge and the Congress to make "threatening noises" about the emerging dual class capital structures. The Justice Department announced an inquiry into the matter as well, and the entire issue could be read about on the front page of the New York Times. Because of this maelstrom, the New York Stock Exchange (NYSE) announced in January, 1926 that as a general matter, it would no longer list disparate voting common shares. The historic NYSE one share, one vote listing rule remained undisturbed for nearly sixty years.*[58]

The American Stock Exchange (then called the New York Curb) followed suit.[59] A question of corporate structure that reaches the President and Congress, and that engenders an investigation by the Justice Department and front page newspaper stories is indeed a "maelstrom," and certainly transcends the ordinary business of any single company.

In the 1980s, public companies traded on markets that did not have a rule against unequal

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[53] Although Delaware had adopted a general incorporation law in 1875, it was little used, as incorporators continued to seek charters through a legislative process until the 1897 Constitution ended the practice. *See* Joel Seligman, *A Brief History of Delaware's General Corporation Law of 1899* 1 Del. J. Corporate Law 249, 250 (1976).
[54] *See, e.g.,* Kevin LaCroix, *So Why Should Delaware Corporate Law Predominate? (*2015) ("Over half of the U.S. listed companies are incorporated in Delaware. Nearly two thirds of Fortune 500 companies are organized under the laws of Delaware.") available at https://www.dandodiary.com/2015/08/articles/securities-laws/so-why-should-delaware-corporate-law-predominate/.
[55] For the general trend, see Berle and Means, *supra,* n. 51 at 71 ("only recently have statutory changes made it possible to issue common stock that has no voting rights.")
[56] Id. at 71-72.
[57] Lucian Bebchuck and Kobi Kastiel, *The Untenable Case for Perpetual Class Stock,* 103 Va. L. Rev. 585, 596 (2017) ("This decision came in response to a public outcry, initially inspired by Harvard economist William Ripley, against the issuance of non-voting common stock by several prominent companies, including Dodge Brothers.")
[58] Peter Flocos, *Toward a Liability Rule Approach to the "One Share, One Vote" Controversy: An Epitaph for the SEC's Rule 19c-4,*138 Univ. Penn. L. Rev. 1761, 1762 (1990) (footnotes omitted).
[59] Id.; Berle and Means, *supra* n. 51 at 72.

voting began to recapitalize with multiclass structures.[60] This increasing competition among stock exchanges (reminiscent of the early century competition among incorporating jurisdictions) led the NYSE to consider changing its longstanding rule. The intense public reaction belies the Company's claim that unequal voting rights do not create a policy issue sufficient to transcend its ordinary business:

> *Once again, an economic trend toward dual class recapitalizations emerged. In 1984, the NYSE announced that it was putting a moratorium on enforcement of its longstanding general rule of one share, one vote pending further investigation of the rule. Subsequently, amidst a media fanfare reminiscent of the 1920s, the NYSE's directors in July, 1986 approved a resolution allowing the listing of securities created in a dual class transaction provided that the transaction was approved by a majority of the company's independent directors and publicly held outside shares. Once again, as in the 1920s, threatening noises emanated from Washington. A number of bills, all of them hostile to the Exchange's revisionism, sprang up in Congress soon thereafter. For the second time this century, scholarly commentary critical of the NYSE's actions and calling for restrictions upon dual class capital structures appeared. The Securities and Exchange Commission-a creature of the New Deal era that did not exist during the previous imbroglio over the one share, one vote issue-stepped into the breach in July, 1988 with the promulgation of Rule 19c-4.*[61]

Thus, the re-emergence of multiclass voting again raised objections from Congress and from academics, and from regulators as well, demonstrating the critical nature of the policy question. The resulting Rule 19c-4 limited adoption of unequal voting structures by listed companies.[62] The rule, however, was invalidated as being beyond the authority of the SEC,[63] but the stock exchanges have nevertheless adopted rules that prohibit already-listed companies from recapitalizing into unequal voting regimes.[64]

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[60] Flocos, *supra* n. 58 at 1762-1763 (1990).
[61] *Id.* (footnotes omitted).
[62] *Id.*
[63] *Business Roundtable v. SEC,* 905 F.2d 406 (D.C. Circuit 1990).
[64] *See* Bebchuck and Kastiel, *supra* n. 2 at 597.

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Beverly L. O'Toole
Managing Director
Associate General Counsel

Goldman Sachs

December 29, 2020

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

Re: *The Goldman Sachs Group, Inc.*
Shareholder Proposal of James McRitchie and Myra K. Young (John Chevedden)
Securities Exchange Act of 1934 ("Exchange Act")—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that The Goldman Sachs Group, Inc. (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") and statements in support thereof received from John Chevedden on behalf of James McRitchie and Myra K. Young (the "Proponents").

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 Proponents.

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 Proponents that if the Proponents elect to submit additional correspondence to the Commission or the Staff with respect to the 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.

FISMA & OMB Memorandum M-07-16

THE PROPOSAL

The Proposal states:

> RESOLVED, shareholders ask that the board commission and disclose a study on the external costs created by the Company underwriting multi-class equity offerings and the manner in which such costs affect the majority of its shareholders who rely on overall stock market return.

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

BASES FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2021 Proxy Materials pursuant to:

- Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company's ordinary business operations; and
- Rule 14a-8(i)(3) because the Proposal is impermissibly vague and indefinite so as to be inherently misleading.

ANALYSIS

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

A. Background.

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 [of] 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 underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting," and identified two central considerations that underlie this policy. As relevant here, one of these considerations was 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" (emphasis added). 1998 Release. In the instant case, the Proposal relates to the Company's decisions and considerations regarding whether or not to offer its underwriting services to customers, and, if so, to which customers, on what terms, and in what context.

Finally, framing a shareholder proposal in the form of a request for a report or study 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); *Johnson Controls, Inc.* (avail. Oct. 26, 1999) ("[Where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under [R]ule 14a-8(i)(7)."); *see also Ford Motor Co.* (avail. Mar. 2, 2004) (concurring with the exclusion of a proposal requesting that the company publish a report about global warming/cooling, where the report was required to include details of indirect environmental consequences of its primary automobile manufacturing business).

Similar to the well-established precedents and consistent with the Commission and Staff guidance cited above, the Proposal requests a report involving subject matters that address the Company's ordinary business operations, and therefore may be excluded under Rule 14a-8(i)(7).

B. The Proposal May Be Excluded Because Its Subject Matter Relates To The Products And Services That The Company Offers, Including The Company's Customer Relations.

The Proposal is excludable pursuant to Rule 14a-8(i)(7) because it relates to the Company's ordinary business operations, in that it directly relates to the Company's decision to offer underwriting services to its customers, a component of the Company's ordinary business as a leading global investment banking, securities, and investment management firm. The Proposal also relates to the Company's customer relations in so far as the underwriting services at issue are services and offerings routinely provided to the Company's clients and customers.

The Company provides a wide range of financial services to a substantial and diversified client base that includes corporations, financial institutions, governments, and individuals. The Company is an active participant in financial markets around the world, with offices in over 30 countries, and serves clients worldwide. Specifically, the Company engages in various lines of business, such as investment banking, global markets, asset management and consumer & wealth management. The Company's day-to-day business revolves around providing its clients and customers with financial products and services, including the underwriting of public offerings. Here, the Proposal asks for a report relating to "external costs created by the Company's underwriting multi-class equity offerings," and therefore focuses entirely on one of the Company's core products and services.

The Staff has frequently concurred that proposals regarding the provision of banking services and products offered by a financial institution concern matters of ordinary business and thus are excludable under Rule 14a-8(i)(7). In particular, the Staff has consistently permitted exclusion of proposals submitted to financial institutions that relate to the banks' credit policies, loan underwriting, and customer relations. For example, in a series of no-action letters, the Staff concurred with the exclusion under Rule 14a-8(i)(7) of a proposal that requested a board report on the direct deposit advance service offered by a number of financial services companies, under which the banks advanced loans to customers against recurring direct deposits in the customers' checking accounts. In those proposals, the proponents raised concerns with the advance services offered by those institutions, including the social and financial impacts of those services. In each case, the Staff concurred that the proposal was properly excludable pursuant to the ordinary business exclusion, stating, "[i]n this regard, we note that the proposal relates to the products and services offered for sale by the company. Proposals concerning the sale of particular products and services are generally excludable under [R]ule 14a-8(i)(7)." *See Wells Fargo & Co.* (avail. Jan. 28, 2013, *recon. denied* Mar. 4, 2013), *Fifth Third Bancorp* (avail. Jan. 28, 2013, *recon. denied* Mar. 4, 2013), *Regions Financial Corp.* (avail. Jan. 28, 2013). *See also JPMorgan Chase & Co.* (avail. Mar. 16, 2010) (concurring with the exclusion of a proposal regarding the company's decision to issue refund anticipation loans to customers, noting that "proposals concerning the sale of particular services are generally excludable under Rule 14a-8(i)(7)"); *Bank of America Corp.* (avail. Jan. 6, 2010) (concurring with the exclusion of a proposal requiring the company to stop accepting matricula consular cards as a form of identification, which effectively sought "to limit the banking services the [company could] provide to individuals the [p]roponent believe[d] [we]re illegal immigrants," because the proposal sought to control the company's "customer relations or the sale of particular services"); *Bank of America Corp.* (avail. Feb. 27, 2008) (concurring with the exclusion of a proposal requesting the preparation of a report detailing, in part, the company's policies and practices regarding the issuance of credit cards and lending of mortgage funds to individuals without Social Security numbers as relating to the company's "credit policies, loan underwriting and customer relations"); *J.P. Morgan Chase & Co.* (avail. Feb. 26, 2007) (concurring with the exclusion of a proposal requesting a report about company policies to safeguard against the provision of financial services to clients that enabled capital flight and resulted in tax avoidance as relating to the "sale of particular services"); *Wells Fargo & Co.* (avail. Feb. 16, 2006) (concurring with the exclusion of a proposal requesting that the company not provide its services to payday lenders as concerning "customer relations"); *Bank of America Corp.* (avail. Mar. 7, 2005) (same); *Banc One Corp.* (avail. Feb. 25, 1993) (concurring with the exclusion of a proposal that requested the corporation adopt procedures that would consider the impact on customers when they were denied credit).

In addition, the Staff has consistently concurred that proposals relating to a financial institution's *policies and practices* concerning its banking products and services concern ordinary business matters and thus are excludable. For example, the Staff recently concurred with the exclusion under Rule 14a-8(i)(7) of two proposals requesting that the boards of financial services companies complete a report evaluating each company's overdraft policies and practices and the impacts those have on customers. In each case, the proposal raised concerns that overdraft fees allegedly impacted certain customers more than others and that the provision of such services exposed the companies to

increased litigation and reputational risks. The Staff nonetheless concurred that the proposals related to "ordinary business operations," and specifically, "the products and services offered for sale" by those companies. *See Bank of America Corp. (Worcester County Food Bank and Plymouth Congregational Church of Seattle)* (avail. Feb. 21, 2019) ("*Bank of America 2019*"); *JPMorgan Chase & Co.* (avail. Feb. 21, 2019) ("*JPMorgan 2019*"). Like the decisions and practices at issue in *Bank of America 2019* and *JPMorgan 2019*, here, the Proposal is concerned with "external costs" stemming solely from the Company's policies to offer certain products and services (namely, its underwriting services) to certain customers. Consistent with *Bank of America 2019* and *JPMorgan 2019*, the Proposal is excludable because it fundamentally relates to the Company's ordinary business operations.

Here, like the precedents discussed above, the Proposal relates to "external costs" stemming from the Company's decisions regarding which public offerings to underwrite and therefore squarely relates to the Company's decisions concerning products and services that are offered to its customers. Similar to the proposals regarding direct deposit advance services and overdraft policies and practices, the Proposal seeks a report regarding the Company's provision of a particular service (underwriting services to customers with multi-class equity offerings) that the Proponents are concerned may have "external costs" to and borne by certain Company shareholders—but only in so far as those shareholders rely on "overall stock market return" since the Proposal seeks a report addressing the manner in which the costs at issue "affect the majority of [Company] shareholders who rely on overall stock market return." Throughout, the Proposal and the supporting statements focus on the Company's underwriting services, including its "facilitation" of multi-class equity offerings and "lending [of] reputation and expertise." Consistent with *JPMorgan 2019*, *Bank of America 2019*, and the other precedent cited above, the Proposal is therefore excludable under Rule 14a-8(i)(7) because it focuses on a specific service the Company offers to its customers, and thus relates to the Company's core day-to-day banking business.

Similarly, the Staff has also concurred with the exclusion of a proposal when it relates to potential impacts of a company's operations and activities, including economic costs, on the company's shareholders. For example, in *Ameren Corp.* (avail. Feb. 8, 2018), the proposal requested a report "*estimating shareholder losses* for the continued storage of high-level waste at Callaway 1," including the potential range of shareholder losses over the course of different year ranges into the future (emphasis added). The company argued that the proposal "would focus solely on financial issues – operational and compliance costs and 'shareholder losses'" and not on any significant policy issues to the company, and the Staff concurred with exclusion under Rule 14a-8(i)(7). *See also McDonald's Corp*. (avail. Mar. 22, 2019) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal seeking a report "disclos[ing] the economic risks [the company] faces as a result of campaigns targeting the [c]ompany over concerns about cruelty to chickens," where the company argued that such an assessment of potential economic costs are fundamental aspects of the company's ordinary business operations, and therefore are inappropriate for direct shareholder oversight).

Here, although the Proposal seeks a report on potential external costs (economic or otherwise) to Company shareholders as a result of the Company's underwriting activity, the consequences of the Company's actions on its shareholders are even more tangential than those consequences at issue in *Ameren*. Specifically, the Proposal seeks a report on how costs derived from Company actions ultimately affect "the majority of [Company] shareholders who rely on overall stock market return." Thus, the potential consequences of the Company's actions flow through to Company shareholders not directly via their ownership interests in the Company, but indirectly, through such shareholders' ownership interests in other companies, funds, and indexes. Remote or otherwise, the Company's evaluation of its operations and activities, including how and whether the foregoing may generate costs external to the Company, are central considerations for the Company's management of its ordinary business operations. As in *Ameren*, a proposal focusing on a report of this nature is excludable under Rule 14a-8(i)(7).

Decisions regarding the services and products the Company offers and to which customers are a fundamental responsibility of management, requiring consideration of a number of factors, including decisions regarding the type of customers with whom to engage and on what terms. Such considerations involve complex evaluations about which shareholders are not in a position to make an informed judgment. Balancing such considerations is a complex matter and is "so fundamental to management's ability to run a company on a day-to-day basis that [it] could not, as a practical matter, be subject to direct shareholder oversight." 1998 Release. Deciding whether or not to offer a particular product or service to customers is a bedrock aspect of the Company's day-to-day operations. Consistent with Staff precedent, the Proposal, by focusing on the Company's underwriting activity, addresses issues that are ordinary business matters for the Company and is properly excludable under Rule 14a-8(i)(7).

C. The Proposal Does Not Focus On Any Significant Policy Issue That Transcends The Company's Ordinary Business Operations.

The well-established precedent set forth above demonstrates that the Proposal squarely addresses ordinary business matters and, therefore, is excludable under Rule 14a-8(i)(7). The 1998 Release distinguishes proposals pertaining to ordinary business matters from those involving "significant social policy issues." *Id*. (citing Exchange Act Release No. 12999 (Nov. 22, 1976)). While "proposals . . . focusing on sufficiently significant social policy issues (*e.g.*, significant discrimination matters) generally would not be considered to be excludable," the Staff has indicated that proposals relating to both ordinary business matters and significant social policy issues may be excludable in their entirety in reliance on Rule 14a-8(i)(7) if they do not "transcend the day-to-day business matters" discussed in the proposals. 1998 Release. In this regard, when assessing proposals under Rule 14a-8(i)(7), the Staff considers "both the proposal and the supporting statement as a whole." Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005). Moreover, as Staff precedent has established, merely referencing topics in passing that might raise significant policy issues, but which do not define the scope of actions addressed in a proposal and which have only tangential implications for the issues that constitute the central focus of a proposal, does not transform an otherwise ordinary business proposal into one that transcends ordinary business.

Here, the Proposal seeks a report on the "external costs" created by the Company underwriting multi-class equity offerings and does not focus on any significant policy issues. Instead, as discussed above, the Proposal's principal focus is on the offering and sale of specific Company products and services. The Proposal's focus on ordinary business matters is not refuted simply because the supporting statements implicate corporate governance structures of *other public companies*. In this regard, while the Proposal's supporting statements touch upon corporate governance concerns, those concerns are neither addressed in nor central to the underlying ask of the Proposal nor do they relate to the Company's own corporate governance practices or policies. Rather, the Proponents postulate that the Company's act of offering underwriting services to a company that elects to have multiple classes or high-voting stock somehow equates to the "facilitation of poor corporate governance" broadly, which the Proponents further contend has negative impacts on the economy at large and may impact "diversified shareholders" investing in "overall stock market return." In this regard, it is clear that the Proposal is not focused on corporate governance practices or policies internal to or impacting the Company and its shareholders, but rather on how the offering of a particular service to particular customers may create "external costs" that may have a tangential effect on other stakeholders. Importantly, the Proposal does not ask the Company to examine or alter its own governance structure or corporate governance policies. Instead, it is squarely focused on requesting a report of "external costs" created by certain Company underwriting activity and a request to analyze how such costs might impact diversified Company shareholders (to the extent such shareholders rely on overall market return).

To this end, even if the Proposal were to raise a significant policy issue, the Staff has frequently concurred that a proposal that touches, or may touch, upon significant policy issues is nonetheless excludable if the proposal does not focus on such issues. For example, in *Wells Fargo (Harrington Investments, Inc.)* (avail. Feb. 27, 2019) ("*Wells Fargo*"), the proposal requested that the board commission an independent study and then report to shareholders on "options for the board . . . to amend [the] [c]ompany's governance documents to enhance fiduciary oversight of matters relating to customer service and satisfaction." In spite of language relating to various compliance and governance issues at the company, the Staff concurred with exclusion of the proposal based on ordinary business. While it is possible that one or more of those issues related to policy issues that transcend ordinary business and may have been significant to the company, the "Resolved" clause focused on customer relations, rendering the proposal excludable under Rule 14a-8(i)(7). As in *Wells Fargo*, it is not enough here for the Proposal to reference "governance" in the abstract and, without further context, the references in the Proposal to corporate governance concerning other public companies do not automatically invoke a significant corporate governance issue for the Company specifically, least of all one that transcends the Company's ordinary business. *See also Amazon.com, Inc. (Domini Impact Equity Fund and the New York State Common Retirement Fund)* (avail. Mar. 28, 2019) (concurring with the exclusion of a proposal that arguably touched on sustainability concerns where the proposal was broadly worded, encompassed a wide range of issues relating to the company's business and did not focus on any single issue, and where the Staff noted that "the [p]roposal relates generally to 'the community impacts' of the [c]ompany's operations and does not appear to focus on an issue that transcends ordinary business matters").

Here, the Proposal presents an even stronger case for exclusion than *Wells Fargo* as the Proposal does not focus on any significant policy issues for the Company. Additionally, the Proposal is not focused on any issues impacting the Company, nor does it seek to change or reform the Company's own policies or practices, governance-related or otherwise. As made clear in Staff Legal Bulletin 14K (Oct. 16, 2019), the Staff takes a "company-specific approach in evaluating significance, rather than recognizing particular issues or categories of issues as universally 'significant.'" Further, the kinds of corporate governance proposals the Staff has historically viewed as transcending ordinary business are those where the governance concern raised by the proposal related to the company's governance matters. *See, e.g.*, *MasterCard Inc.* (avail. Apr. 25, 2019) (unable to concur with the exclusion of a proposal requesting the company's board direct its nominating and corporate governance committee to create a standing committee to oversee company responses to human rights developments affecting the company's business, because, in the Staff's view, the proposal "transcends ordinary business matters"); *Paramount Packaging Corp.* (avail. Mar. 11, 1981) (unable to concur with the exclusion of a proposal requesting that the company retain at least one outside consulting firm to analyze the company's structure and make recommendations that could improve operating results, because, in the Staff's view, "a proposal that requests a consideration of the employment of outside consultants to review the [c]ompany's organization and structure involves an important matter of policy and not the day-to-day operation of the [c]ompany"). Consistent with the Staff's foregoing reasoning, because this Proposal is not seeking any reform or internal review of the Company's own structure, governance or otherwise, it is not the kind of proposal that the Staff has considered non-ordinary.

Instead, the Proposal focuses on the external costs of the Company's choice to offer its services to particular customers and the tangential impact those services might have on the value of shareholders' external investments more broadly. The Proposal's focus on ordinary business matters is not refuted by the supporting statements' assertion that "[t]he Company's facilitation of poor corporate governance across the economy is a social issue of great importance," nor its other references to "governance" and impacts on "society" and the "economy." Instead, the Proposal broadly focuses on "external costs" relating to certain of the Company's products and services, and as such relates primarily to ordinary business matters. Thus, similar to *Wells Fargo*, the Proposal fails to focus on any issue that might rise to the level of significance that would preclude exclusion.

By way of further example, the Staff has previously concurred with the exclusion of proposals that related to a large financial institution's decisions regarding the products and services offered for sale, despite raising social concerns regarding the impact of those products and services on the institution's customers. *See Bank of America 2019* and *JPMorgan 2019.* For example, in *JPMorgan 2019*, the proposal's recitals expressed concern that the overdraft policies at issue disproportionately impacted account holders that were "more financially vulnerable," including those who were "low-income, single, non-white, and renters," as well as "college-age customers and older Americans who rely heavily on Social Security Income." In this regard, the proposal articulated the proponent's concern with the impact that JPMorgan's overdraft policies and practices were having on its customers. Yet, these social impact concerns did not rise to the level of a significant policy issue. Similar to *JPMorgan 2019*, here, although the Proposal's supporting statements express concern for

diversified shareholders, reflect that the Proponents are troubled by "high-vote stock" and believe that class structure "contribut[es] to poor corporate governance that harms investors as a class," and claim that "poor corporate governance across the economy is a social issue of great importance," such broad social concerns do not rise to the level of a significant policy issue for the Company. Moreover, merely claiming an issue is one "of great importance" does not make it so, nor does the Proposal demonstrate how underwriting multi-class equity offerings at other companies equates to a significant social policy issue for the Company when its own current equity class structure reflects a single class of Common Stock with one vote per share. In fact, the absence of language in the Proposal expressly criticizing the Company's own corporate governance structure is notable.

As discussed above, the Proposal relates to ordinary business matters: the products and services that the Company offers, including its customer relations. More specifically, the Proposal focuses on these ordinary business matters as they relate to a discrete aspect of the Company's operations: its offering of underwriting services to customers with multi-class equity offerings. Accordingly, because the Proposal's request is directly related to the Company's ordinary business operations and does not transcend those ordinary business operations, similar to the proposals in the precedents discussed above, the Proposal may be excluded under Rule 14a-8(i)(7).

II. The Proposal May Be Excluded Under Rule 14a-8(i)(3) Because It Is Impermissibly Vague And Indefinite So As To Be Inherently Misleading.

Rule 14a-8(i)(3) permits the exclusion of a shareholder proposal if the proposal or supporting statement is contrary to any of the Commission's proxy rules or regulations, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials. The Staff consistently has taken the position that vague and indefinite shareholder proposals are inherently misleading and therefore excludable under Rule 14a-8(i)(3) because "neither the [share]holders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." Staff Legal Bulletin No. 14B (Sept. 15, 2004). *See also Dyer v. SEC*, 287 F.2d 773, 781 (8th Cir. 1961) ("[I]t appears to us that the proposal, as drafted and submitted to the company, is so vague and indefinite as to make it impossible for either the board of directors or the [share]holders at large to comprehend precisely what the proposal would entail."); *Capital One Financial Corp.* (avail. Feb. 7, 2003) (concurring with the exclusion of a shareholder proposal where the company argued that its shareholders "would not know with any certainty what they are voting either for or against"). As described below, the Proposal is so vague and indefinite that neither the Company nor the Company's shareholders could comprehend what the requested report would entail, nor is the subject matter of the requested report reasonably clear. Therefore, the Proposal is excludable under Rule 14a-8(i)(3).

Under this standard, the Staff has routinely concurred with the exclusion of proposals that fail to define key terms or otherwise fail to provide sufficient clarity or guidance to enable either shareholders or the company to understand how the proposal would be implemented. For example, the Staff recently concurred that a company could exclude, as vague and indefinite, a proposal

requesting that a company "reform the company's executive compensation committee." *eBay Inc.* (avail. April 10, 2019). The proposal's supporting statement did not request any specific reforms, but instead made observations about various elements of executive compensation. These statements did not indicate whether those elements of the company's executive compensation program needed reform or how they should or could be affected by reform of the compensation committee. In its response, the Staff noted that "neither shareholders nor the [c]ompany would be able to determine with any reasonable certainty the nature of the 'reform' the [p]roposal is requesting. Thus, the [p]roposal, taken as a whole, is so vague and indefinite that it is rendered materially misleading." Additionally, in *Apple Inc. (Zhao)* (avail. Dec. 6, 2019), the company sought exclusion of a proposal under Rule 14a-8(i)(3) because the proposal recommended the company "improve guiding principles of executive compensation" but failed to define or explain what improvements the proponent sought to the "guiding principles." The Staff noted that the proposal "lack[ed] sufficient description about the changes, actions or ideas for the [c]ompany and its shareholders to consider that would potentially improve the guiding principles" and concurred with exclusion of the proposal as "vague and indefinite." *See also Alaska Air Group, Inc.* (avail. Mar. 10, 2016) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal requesting an amendment to the company's bylaws and any other appropriate governing documents to require management to "strictly honor shareholders rights to disclosure identification and contact information" where the company asserted that the proposal "[did] not describe or define in any meaningfully determinate way the standard for [the] supposed 'shareholder[s] rights'" and that "it appear[ed] the [p]roponent ha[d] a different view of what those rights entail[ed] than is supported by generally understood principles of corporate law"); *AT&T Inc.* (avail. Feb. 21, 2014) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal requesting that the board review the company's policies and procedures relating to the "directors' moral, ethical and legal fiduciary duties and opportunities" where the phrase "moral, ethical and legal fiduciary" was not defined or meaningfully described); *Morgan Stanley* (avail. Mar. 12, 2013) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal where the key term "extraordinary transactions" could have multiple interpretations); *AT&T Inc.* (avail. Feb. 16, 2010, *recon. denied* Mar. 2, 2010) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal requesting a report on political contributions and payments used for "grassroots lobbying communications" as "vague and indefinite," where the company argued such term was not defined and constituted a material element of the proposal); *Bank of America Corp.* (avail. Feb 22, 2010) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal requesting the establishment of a board committee on "US Economic Security" where the proposal failed to define such term and where the company argued that the proposal contained a vague litany of factors to be considered, including the "long term health of the economy," the "well-being of US citizens" and "levels of domestic and foreign control," all of which rendered the proposal impermissibly vague).

Here, the Proposal fails to define a number of key terms and phrases essential to the Proposal. The Proposal seeks a report "on *the external costs* created by the Company underwriting multi-class equity offerings," as well as "the manner in which *such [external] costs affect* the majority of its *shareholders who rely on overall stock market return*" (emphasis added). Notably, and in the Proposal's own words, "*this information* is *essential*" for shareholders to understand (emphasis added). Therefore, it is necessary for shareholders to understand these terms and phrases in order to

reasonably determine what actions or measure the Proposal requires and, more importantly, whether or not the shareholders are in favor of undertaking the requested report.

The Proposal fails to define or provide any context around the key term "external costs," and similar to the proposals in the precedents cited above, the term does not have a commonly understood uniform meaning. Neither the "Resolved" clause nor the supporting statements provide sufficient clarity or direction as to what these external costs actually entail. For example, they do not specify whether the Proponents intend for the requested report to focus on actual monetary costs, broader, intangible social costs, positive or negative impacts, or a combination thereof. The supporting statements refer repeatedly to "harm" investors will suffer (*e.g.*, by lowered gross domestic product, reduced equity market values), but the relationship between such "harm" and the external costs within the scope of the requested report is fundamentally vague. More broadly, the Proposal provides no guidance as to what level of review would be deemed to satisfy the requested report, as it is not clear whether "external costs" are limited to only negative impacts, like lost value, or encompass any type of impact (positive or negative). This lack of clarity would make it difficult, for example, for the Company, in implementing any such report, to know whether or how to account for perceived benefits from underwriting certain offerings (*e.g.*, income generated to the Company and its shareholders from servicing these customers, or benefits accruing to the subject customer of such equity offerings, and by extension such customer's employees, customers, and stakeholders).

The final phrase of the Resolved clause also renders the Proposal inherently vague. The Proposal requests that the report address "the manner in which *such [external] costs affect* the majority of its *shareholders who rely on overall stock market return*" (emphasis added). However, the Proposal fails to define the term "shareholders who rely on overall stock market return" and neither the Proposal nor the supporting statements provide sufficient context to explain the scope of the requested assessment. For example, does the Proposal require the Company to assume that all of its shareholders "rely on overall stock market return" and assess the "affect" (whether positive, negative, tangible, or otherwise) of "external costs" with respect to the "majority" of them? Or, alternatively, is the Company required to first identify those shareholders who rely on overall market return and then assess the "affect" of "external costs" on the majority of that subset of shareholders? In either case, such vague and unexplained distinctions among the Company's shareholders are complicated by the fact that the as a publicly-traded company, the Company's shareholders can change every day. Accordingly, without further explanation or context, it is unclear what shareholders are the focus of the requested report.

In the absence of further guidance regarding the scope and nature of the requested report, shareholders would inevitably be left to grapple with multiple and conflicting interpretations about the central ask of the Proposal. The Proposal could be interpreted as requiring the commissioning of a broad macro-economic report analyzing all impacts, direct and indirect, social, financial, reputational, environmental, and otherwise, that the Company's "underwriting [of] multi-class equity offerings" could conceivably create. Alternatively, the Proposal could be interpreted as narrowly focusing on the actual financial costs incurred by customers that engage the Company to provide the aforementioned underwriting services in connection with a public equity offering (thus relating to the

Company's cost and pricing model for its underwriting services). A shareholder may be in favor of supporting a report of the Company's community impacts—but that same shareholder may not be in favor of supporting a report that could result in disclosure of the Company's sensitive and proprietary pricing models for its business offerings, which may put it at a competitive disadvantage, thereby potentially impacting the Company's performance. Different still, a shareholder may be in favor of this Proposal based on the expectation that the requested report would somehow inform such shareholder's own investment portfolio, since the Proposal purports to relate to "the manner in which *such costs affect* the majority of [Company] shareholders *who rely on overall stock market return*," despite there being no certainty whatsoever that any such report could or would ultimately link the Company's act of engaging in a very narrow and specific kind of underwriting (*i.e.*, those relating to multi-class equity offerings) to macro-economic impacts that both affect "overall stock market return" and the majority of the Company's own shareholder base, whom the Proposal presumes are deeply diversified investors. Given the inherent vagueness of the Proposal, there is likewise little assurance that, if the Proposal received majority support, the Company would implement it in the manner that the majority of shareholders expected. This is the kind of situation the Staff has consistently sought to avoid when concurring with the exclusion of similarly inherently vague proposals in the past.

In this regard, the Proposal is similar to *Apple*, *eBay*, and *AT&T*, as based on the language in the Proposal, neither the Company nor its shareholders would be able to determine with any reasonable certainty how to implement the Proposal, nor what information the requested report is intended to address. Just as *eBay* hinged on the vagueness of a simple and seemingly innocuous term, "reform," where the proposal failed to provide any hints or indication as to the manner and scope of reform being sought, so too here do the terms "external costs" and "affect," among others, as used in this Proposal, leave the Company and its shareholders unable to determine with any reasonable certainty the scope and nature of the requested undertaking. As such, the Proposal lacks sufficient specificity to indicate to the Company and to its shareholders what actions the Proposal requires, and the Proposal as a whole is thus rendered materially misleading. This is not a question of marginal ambiguity that the Company's Board of Directors or management could, in exercising its discretion, resolve. Rather, it is an inherent vagueness in the central subject matter that forms the cornerstone of the Proposal's request. Similar to *eBay*, when a proposal fails to define a term or key phrase that is essential to an understanding and execution of the proposal, the Proposal is excludable under Rule 14a-8(i)(3) as vague and indefinite.

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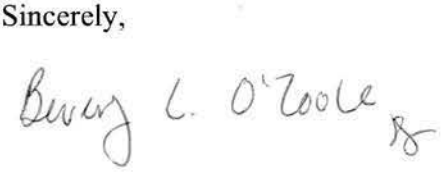
CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2021 Proxy Materials.

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 Beverly.OToole@gs.com. Should you have any questions or if you would like any additional information regarding the foregoing, please do not hesitate to contact me (212-357-1584; Beverly.OToole@gs.com) or Jamie Greenberg (212-902-0254; Jamie.Greenberg@gs.com). Thank you for your attention to this matter.

Sincerely,



Beverly L. O'Toole

Enclosures

cc: John Chevedden
James McRitchie and Myra K. Young

EXHIBIT A

From:	John Chevedden ***
Sent:	Wednesday, November 18, 2020 5:42 PM
To:	O'Toole, Beverly L; shareholderproposals@ny.email.gs.com
Cc:	Greenberg, Jamie; Mangone, Kara
Subject:	Rule 14a-8 Proposal (GS)``
Attachments:	GS-EX-2021.pdf

Dear Ms. O'Toole,
Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the substantial market capitalization of the company.

I expect to forward a broker letter soon so if you acknowledge this proposal in an email message it may very well save you from requesting a broker letter from me.

Sincerely,
John Chevedden

***

Ms. Beverly O'Toole <Beverly.OToole@gs.com>
Corporate Secretary
The Goldman Sachs Group, Inc. (GS)
200 West Street
New York NY 10282
PH: 212 902-1000
PH: 212-357-1584
FX: 212-428-9103

Dear Corporate Secretary,

We are pleased to be shareholders in The Goldman Sachs Group, Inc. (GS) and appreciate the company's leadership.

We are submitting a shareholder proposal for a vote at the next annual shareholder meeting requesting a study on the **external costs created by the Company underwriting multi-class equity offerings.**

The proposal meets all Rule 14a-8 requirements, including the continuous ownership of the required stock value for over a year. We pledge to continue to hold the required stock until after the date of the next shareholder meeting. Our submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

This letter confirms that we are delegating John Chevedden to act as our agent regarding this Rule 14a-8 proposal, including its submission, negotiations and/or modification, and presentation at the forthcoming shareholder meeting. Please direct all future communications regarding our rule 14a-8 proposal to John Chevedden ***
*** to facilitate prompt communication. Please identify James McRitchie and Myra K. Young as the proponents of the proposal exclusively.

Your consideration and the consideration of the Board of Directors is appreciated in responding to this proposal. Of course, we would be happy to negotiate terms. We expect to forward a broker letter soon, so if you simply acknowledge our proposal in an email message to *** . It may not be necessary for you to request such evidence of ownership.

Sincerely,

James McRitchie	November 18, 2020 Date
Myra K. Young	November 18, 2020 Date

cc: Beverly O'Toole, <shareholderproposals@gs.com>
Jamie Greenberg, Vice President and Assistant General Counsel <Jamie.Greenberg@gs.com>
Kara Mangone, <Kara.Mangone@gs.com>

[Goldman Sachs Group, Inc: Rule 14a-8 Proposal, November 18, 2020]
[This line and any line above it – *Not* for publication.]

ITEM 4* – External Corporate Governance Cost Disclosure

RESOLVED, shareholders ask that the board commission and disclose a study on the external costs created by the Company underwriting multi-class equity offerings and the manner in which such costs affect the majority of its shareholders who rely on overall stock market return.

Our Company underwrites initial public offerings providing perpetual control to insiders with high-vote stock,[1] contributing to poor governance that harms investors as a class, including companies with three classes of stock having 20, 1 and 0 votes, respectively.[2] As the Company advised the investors, its most critical stakeholder group, "[u]sing multi-class voting to insulate management from its own shareholders comes at a significant long-term cost."[3]

In addition to risk of poor returns for their own shareholders, these structures give unchecked power to insiders, whose concentrated interests are misaligned with the interests of typical diversified shareholders. As a working paper co-authored by a Nobel Laureate notes, "initial entrepreneurs are not well-diversified and so they want to maximize the value of their own company, not the joint value of all companies."[4]

By lending reputation and expertise to marketing governance structures that risk both underperformance and misalignment of corporate control with shareholder interests, the Company jeopardizes the viability of the one share, one vote governance model that creates significant economic wealth for shareholders and society. As a 2020 study noted, "if many similarly-situated companies [accept a higher cost of capital for multi-class shares], then the prevalence of dual class shares might have negative consequences for the economy as a whole."[5]

Understanding this information is essential to the Company's shareholders, who are almost all broadly diversified. Indeed, as of June 2020, the top three holders of our shares are Vanguard, BlackRock, and State Street—investment managers with indexed or otherwise broadly diversified investors. Their beneficial owners are materially harmed by facilitation of governance that may lower GDP, thus reducing equity market values.[6] While the Company may profit by ignoring externalized costs, its diversified shareholders ultimately pay them.

The Company's facilitation of poor corporate governance across the economy is a social issue of great importance. A study would help shareholders determine whether to seek a change in corporate direction, structure, or form in order to better serve their interests.

Please vote for: External Corporate Governance Cost Disclosure – Proposal [4*]

---

[1] See, e.g., https://www.sec.gov/Archives/edgar/data/1792789/000119312520292381/d752207ds1.htm (Door Dash); https://www.sec.gov/Archives/edgar/data/1559720/000119312520294801/d81668ds1.htm (Airbnb).
[2] See Adams and Ferreira, *One Share-One Vote: The Empirical Evidence*, 12 Rev. of Fin. 51 (2008); Bebchuk and Kastiel, The Untenable Case for Perpetual Dual-Class Stock, 103 Virginia L. Rev. 585, 594 (2017).
[3] https://www.forbes.com/sites/simonconstable/2019/09/30/goldman-sachs-warning-one-share-one-vote-or-else-the-stocks-shares-will-suffer/?sh=6cb9916e71da
[4] Broccardo, Eleonora and Hart, Oliver D. and Zingales, Luigi, *Exit vs. Voice* (August 24, 2020), https://ssrn.com/abstract=3680815 or http://dx.doi.org/10.2139/ssrn.3680815
[5] https://www.capmktsreg.org/wp-content/uploads/2020/04/The-Rise-of-Dual-Class-Shares-04.08.20-1.pdf
[6] See, e.g., https://www.advisorperspectives.com/dshort/updates/2020/11/05/market-cap-to-gdp-an-updated-look-at-the-buffett-valuation-indicator (total market capitalization to GDP "is probably the best single measure of where valuations stand at any given moment") (quoting Warren Buffet).

[This line and any below are *not* for publication]
Number 4* to be assigned by the Company

The graphic above is intended to be published with the rule 14a-8 proposal.
The graphic would be the same size as the largest management graphic (and accompanying bold or highlighted management text with a graphic) or any highlighted management executive summary used in conjunction with a management proposal or a rule 14a-8 shareholder proposal in the 2021 proxy.

The proponent is willing to discuss the in unison elimination of both shareholder graphic and management graphic in the proxy in regard to specific proposals.

Reference SEC Staff Legal Bulletin No. 14I (CF)
[16] Companies should not minimize or otherwise diminish the appearance of a shareholder's graphic. For example, if the company includes its own graphics in its proxy statement, it should give similar prominence to a shareholder's graphics. If a company's proxy statement appears in black and white, however, the shareholder proposal and accompanying graphics may also appear in black and white.

Notes: This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

> Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(i)(3) in the following circumstances:
>
> - the company objects to factual assertions because they are not supported;
> - the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
> - the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
> - the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.
>
> **We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.**

See also Sun Microsystems, Inc. (July 21, 2005)

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly be email ***
***

From: O'Toole, Beverly L <Beverly.OToole@ny.email.gs.com>
Sent: Thursday, November 19, 2020 5:48 AM
To: John Chevedden
Cc: Greenberg, Jamie; Mangone, Kara
Subject: RE: Rule 14a-8 Proposal (GS)``

I acknowledge receipt of this proposal.

Thank you,
Bev O'Toole

Beverly O'Toole
Managing Director
General Counsel, Corporate Governance
Goldman Sachs & Co. LLC
200 West Street, 15th Floor
New York, New York 10282-2198
telephone: 212-357-1584
facsimile: 212-428-9103

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***

From: John Chevedden
Sent: Wednesday, November 18, 2020 8:42 PM
To: O'Toole, Beverly L [Legal] <Beverly.OToole@ny.email.gs.com>; Shareholder Proposals_GS <shareholderproposals@ny.email.gs.com>
Cc: Greenberg, Jamie [Legal] <Jamie.Greenberg@ny.email.gs.com>; Mangone, Kara (Succoso) [EO] <Kara.Mangone@ny.ibd.email.gs.com>
Subject: Rule 14a-8 Proposal (GS)``

Dear Ms. O'Toole,
Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the substantial market capitalization of the company.

I expect to forward a broker letter soon so if you acknowledge this proposal in an email message it may very well save you from requesting a broker letter from me.

Sincerely,
John Chevedden

From: O"Toole, Beverly L
To: ***
Cc: Greenberg, Jamie
Subject: RE: Rule 14a-8 Center Justified Proposal Graphic (GS)
Date: Monday, November 23, 2020 3:53:35 PM

Mr. Chevedden:

With respect to the shareholder proposal graphic both for the proposal submitted by Jim McRitchie and Myra Young on November 18, 2020, as well as for your written consent proposal, I can confirm that our proxy statement has not in the past contained, and will not this year contain, graphics (such as thumbs up / thumbs down or "Xs" and check marks) in connection with recommendations with respect to either management or shareholder proposals. Accordingly, we will not be including the shareholder proposal graphics either.

So that you can see our previous proxy disclosure regarding management and shareholder proposals is graphic-free, a link to our proxy disclosure from the 2020 annual meeting can be found here (https://www.goldmansachs.com/investor-relations/financials/current/proxy-statements/2020-proxy-statement-pdf.pdf), and, in due course, we would as usual provide you with a full copy of how these proposals will appear in the 2021 annual meeting proxy statement.

In addition, with respect to the McRitchie/Young proposal, you indicated that a broker letter with respect to confirmation of their ownership was forthcoming. **We ask that you please provide such proof of ownership by November 30, 2020, which will alleviate the need to send the more formal SEC required notice.** We appreciate your help with this.

Best,
Bev O'Toole

Beverly O'Toole
Managing Director
General Counsel, Corporate Governance
Goldman Sachs & Co. LLC
200 West Street, 15th Floor
New York, New York 10282-2198
telephone: 212-357-1584
facsimile: 212-428-9103

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From: John Chevedden ***
Sent: Friday, November 20, 2020 6:04 PM
To: O'Toole, Beverly L [Legal] <Beverly.OToole@ny.email.gs.com>
Cc: Greenberg, Jamie [Legal] <Jamie.Greenberg@ny.email.gs.com>
Subject: Rule 14a-8 Center Justified Proposal Graphic (GS)

Dear Ms. O'Toole,
This is a better copy of the center justified graphic (for proxy publication) included with the rule 14a-8 proposal.
The graphic would be published just below the top title of the rule 14a-8 proposal.
Sincerely,
John Chevedden

The graphic below is intended to be published with the rule 14a-8 proposal.
The graphic would be the same size as the largest management graphic (and accompanying bold or highlighted management text with a graphic) or any highlighted management executive summary used in conjunction with a management proposal or a rule 14a-8 shareholder proposal in the 2021 proxy.

The proponent is willing to discuss the in unison elimination of both shareholder graphic and management graphic in the proxy in regard to specific proposals.

[16] Companies should not minimize or otherwise diminish the appearance of a shareholder's graphic. For example, if the company includes its own graphics in its proxy statement, it should give similar prominence to a shareholder's graphics. If a company's proxy statement appears in black and white, however, the shareholder proposal and accompanying graphics may also appear in black and white.

From: ***
To: O"Toole, Beverly L
Cc: Greenberg, Jamie
Subject: Re: Rule 14a-8 Center Justified Proposal Graphic (GS)
Date: Monday, November 23, 2020 7:00:19 PM

Dear Ms. O'Toole,
We expect to have the broker letter by Monday.
The graphic is needed to help make up for the special enhancements of the management position statement compared to the rule 14a-8 proposal as was the case with the 2020 GS proxy.
John Chevedden

From:	***
To:	O"Toole, Beverly L
Cc:	Greenberg, Jamie
Subject:	Rule 14a-8 Proposal (GS) blb
Date:	Tuesday, November 24, 2020 8:28:14 AM
Attachments:	24112020_2.pdf ATT00001.htm

Dear Ms. O'Toole,
Please see the attached broker letter.
Please confirm receipt.
Sincerely,
John Chevedden

Ameritrade

11/24/2020

James Mcritchie & Myra Young
***

Re: Your TD Ameritrade Account Ending in ***

Dear James Mcritchie & Myra Young,

Pursuant to your request, this letter is to confirm that as of the date of this letter, James McRitchie and Myra Young held and had held continuously for at least 13 months, no less than 40 common shares of Goldman Sachs Group Inc (GS) in an account ending in *** at TD Ameritrade. The DTC clearinghouse number for TD Ameritrade is 0188.

If we can be of any further assistance, please let us know. Just log in to your account and go to the Message Center to write us. You can also call Client Services at 800-669-3900. We're available 24 hours a day, seven days a week.

Sincerely,

Gabriel Elliott
Resource Specialist
TD Ameritrade

This information is furnished as part of a general information service and TD Ameritrade shall not be liable for any damages arising out of any inaccuracy in the information. Because this information may differ from your TD Ameritrade monthly statement, you should rely only on the TD Ameritrade monthly statement as the official record of your TD Ameritrade account.

Market volatility, volume, and system availability may delay account access and trade executions.

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From:	O"Toole, Beverly L
To:	***
Cc:	Greenberg, Jamie
Subject:	RE: Rule 14a-8 Proposal (GS) blb
Date:	Tuesday, November 24, 2020 8:32:11 AM

Thank you.

From: John Chevedden
Sent: Tuesday, November 24, 2020 11:28:07 AM
To: O'Toole, Beverly L [Legal]
Cc: Greenberg, Jamie [Legal]
Subject: Rule 14a-8 Proposal (GS) blb

Dear Ms. O'Toole,
Please see the attached broker letter.
Please confirm receipt.
Sincerely,
John Chevedden