



DIVISION OF
CORPORATION FINANCE

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

March 22, 2022

Louis Goldberg
Davis Polk & Wardwell LLP

Re: Exxon Mobil Corporation (the "Company")
Incoming letter dated January 22, 2022

Dear Mr. Goldberg:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the AFL-CIO Reserve Fund for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal urges the board to report to shareholders by the 2023 annual meeting on flaring events and the risk of industrial accidents that may arise from the use of temporary replacement workers.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal relates to, and does not transcend, ordinary business matters. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on Rule 14a-8(i)(7). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which the Company relies.

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2021-2022-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Brandon J. Rees
AFL-CIO

January 22, 2022

Re: Shareholder Proposal Submitted by AFL-CIO Reserve Fund

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

Ladies and Gentlemen:

On behalf of Exxon Mobil Corporation, a New Jersey corporation (the “**Company**”), and in accordance with Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), we are filing this letter with respect to the shareholder proposal (the “**Proposal**”) submitted by the AFL-CIO Reserve Fund (the “**Proponent**”) for inclusion in the proxy materials the Company intends to distribute in connection with its 2022 Annual Meeting of Shareholders (the “**2022 Proxy Materials**”). The Proposal is attached hereto as Exhibit A.

We hereby request confirmation that the Staff of the Division of Corporation Finance (the “**Staff**”) will not recommend any enforcement action if, in reliance on Rule 14a-8, the Company omits the Proposal from the 2022 Proxy Materials.

Pursuant to Staff Legal Bulletin No. 14D (CF), Shareholder Proposals (November 7, 2008), Question C, we have submitted this letter and any related correspondence via email to shareholderproposals@sec.gov. Also, in accordance with Rule 14a-8(j), a copy of this submission is being sent simultaneously to the Proponent as notification of the Company’s intention to omit the Proposal from the 2022 Proxy Materials. This letter constitutes the Company’s statement of the reasons it deems the omission of the Proposal to be proper.

THE PROPOSAL

The Proposal states:

RESOLVED: Shareholders of Exxon Mobil Corporation (“ExxonMobil”) urge the Board of Directors to report to shareholders by the 2023 annual meeting, at reasonable cost and excluding proprietary and personal information, on flaring events and the risk of industrial accidents that may arise from the use of temporary replacement workers.

REASONS FOR EXCLUSION OF THE PROPOSAL

The Company believes that the Proposal may be properly omitted from the 2022 Proxy Materials pursuant to Rule 14a-8(i)(7), because the Proposal deals with matters related to the Company’s ordinary business operations, and Rule 14a-8(i)(4), because the Proposal relates to the redress of a personal claim or grievance against the Company.

I. The Proposal may be excluded under Rule 14a-8(i)(7) because the Proposal deals with matters related to the Company's ordinary business operations.

Rule 14a-8(i)(7) allows a company to omit a shareholder proposal from its proxy materials if such proposal deals with a matter relating to the company's ordinary business operations. The policy underlying the ordinary business exception is based on two central considerations: (i) 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" and (ii) the "degree to which the proposal seeks to 'micromanage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." Exchange Act Release No. 34-40018 (May 21, 1998) (the "**1998 Release**"); see *also* Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("**SLB 14L**").

A. The Proposal Relates to the Company's Management of its Workforce.

With respect to this first policy consideration, the 1998 Release points to "the management of the workforce, such as the hiring, promotion, and termination of employees," as an example of the kind of shareholder proposal topic that is excludable as a matter of ordinary business operations under Rule 14a-8(i)(7). In *United Technologies Corp.* (Feb. 19, 1993), the Staff stated that it views "proposals directed at a company's employment policies and practices with respect to its non-executive workforce to be uniquely matters relating to the conduct of the company's ordinary business operations," and in particular, proposals addressing the categories of "management of the workplace, employee supervision, labor-management relations, employee hiring and firing [and] conditions of the employment" are excludable under the ordinary business exception. Subsequently, the Staff has consistently permitted exclusion of shareholder proposals under Rule 14(a)-8(i)(7) primarily relating to the management of the company's workforce or workplace environment. See *e.g.*, *Yum Brands* (Mar. 6, 2019) (concurring with the exclusion of a proposal that relates to claims of inequitable employment practices); *Bristol-Myers Squibb Co.* (Jan. 7, 2015) (concurring with the exclusion of a proposal that relates to the adoption of anti-discrimination principles); *Starwood Hotels & Resorts Worldwide, Inc.* (Feb. 14, 2012) (concurring with the exclusion of a proposal that relates to citizenship requirements for all workers in the U.S.); *Northrop Grumman Corp.* (Mar. 18, 2010) (concurring with the exclusion of a proposal that relates to the disclosure of the educational status of job candidates).

Here, the Proposal requests that the Company prepare a report regarding issues that may arise from the Company's decision to hire different kinds of workforce in particular situations. The supporting statement focuses on "retaining an experienced workforce" and operating two of the Company's facilities at reduced capacity with "temporary replacement workers." The Proposal's core focus is on management's decision to use "temporary replacement workers," as demonstrated by the fact that this phrase is referenced six times in the Proposal. While the Proposal generally cites to disclosure of the Company's human capital management policies and practices, the Proposal focuses squarely on management's decision-making on hiring full time versus temporary replacement workers. The Proposal further expresses concern about the "skill, training and experience" of the Company's workforce, which are exactly the types of issues that the Staff has concurred are ordinary business operations. As of December 31, 2020, the Company had 72,000 regular employees staffed around the world, including active executive, management, professional, technical and hourly wage employees who work full-time or part-time for the Company. In addition to managing such a large employee labor force, the Company must also manage the engagement and use of independent contractors or other types of personnel to supplement the Company's own employees. As a company, including affiliates and joint ventures, that operates 19 refineries, plants and other facilities that require day-to-day oversight of various workforce to fulfill the skills needed in these particular workplace environments, the Company's managerial decisions around the employment of distinct categories of the labor pool, including the use of temporary workers as the need arises to manage operations, are central to its ordinary business operations. The task of managing the Company's wide range of personnel is so

fundamental to management's ability to run the Company's ordinary business operations that it "could not, as a practical matter, be subject to direct shareholder oversight," as the Proposal effectively requests.

The Proposal also targets workplace safety and working conditions, which the Staff has recognized are matters of ordinary business and thus excludable under Rule 14(a)-8(i)(7). For example, in *Amazon.com, Inc.* (Apr. 1, 2020, *recon. denied* Apr. 9, 2020), the Staff concurred with exclusion of a shareholder proposal requesting a report on the steps the company has taken to reduce the risk of accidents, including a description of the Board's oversight of dedicated third-party contractors, stating in its response that "workplace accident prevention [is] an ordinary business matter." See also *The GEO Group Inc.* (Feb. 2, 2017) (concurring with the exclusion of a proposal requesting implementation of provisions relating to audits of the company's facilities examining issues such as workplace violence rates); *The Chemours Co.* (Jan. 17, 2017) (concurring with the exclusion of a proposal requesting that the Company publish a report describing the steps the Company has taken to reduce the risk of accidents, including a description of the Board's oversight of staffing levels); *Pilgrim's Pride Corp.* (Feb. 25, 2016) (concurring with the exclusion of a proposal requesting that the Company publish a report describing the company's policies, practices and performance related to occupational health and safety).

The Proposal requests a report on flaring events and the risk of industrial accidents that may occur based on the Company's use of temporary workers. The supporting statement references "safe operation," "industrial accidents," "safety measure[s]" and "safety hazard[s]," all of which the Proposal links to the Company's management of its workforce. In accordance with the Staff's determination that workplace safety and accident prevention are fundamentally matters of ordinary business, managerial decisions around the kind of workplace safety considerations raised by the Proposal are central to the Company's day-to-day operations.

Although the Proposal is phrased in terms of preparing a report, including the evaluation of certain risks, this framing does not change the underlying subject matter of the Proposal—the management of the Company's workforce, a task that is fundamental to the Company's ordinary business operations. The Commission has stated that a proposal requesting the publication 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) (the "1983 Release"); Staff Legal Bulletin No. 14E (Oct. 2009). See also *Johnson Controls, Inc.* (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)."). Because the Proposal relates to the Company's management of its workforce, a topic that the Staff has consistently found to be a matter of ordinary business that cannot, as a practical matter, be subject to shareholder oversight, the Company believes the Proposal may be properly omitted from the 2022 Proxy Materials pursuant to Rule 14a-8(i)(7).

B. The Proposal Does Not Transcend the Company's Ordinary Business Operations.

SLB 14L states that in making the determination on whether a proposal raises a significant social policy issue, the Staff will "focus on the social policy significance of the issue that is the subject of the shareholder proposal" and "consider whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company." The mere fact that a proposal is phrased to reference or invoke issues that could implicate significant social policy issues under the Staff's current interpretation of Rule 14a-8(i)(7) is not sufficient to transcend day-to-day business matters. A proposal may still be excluded when it effectively focuses on an ordinary business matter. See e.g., *Walmart Inc.* (Mar. 6, 2020) (concurring with the exclusion of a proposal requesting that the company publish a report on the use of contractual provisions requiring employees to arbitrate employment-related claims); *Amazon.com, Inc. (Domini Impact Equity Fund and the New York State Common Retirement Fund)* (Mar. 28, 2019) (concurring with the exclusion of a proposal requesting that the company publish a report on the impacts of

its operations when the company has “hundreds of facilities” around the world and employs a large workforce); *JPMorgan Chase & Co.* (Mar. 9, 2015) (concurring with the exclusion of a proposal requesting that the company amend its human rights-related policies related to political participation because the proposal related to the company’s “policies concerning its employees”).

The supporting statement makes cursory mention of “broad social impact,” “human capital management,” “communities,” and “environment” but the Proposal clearly does not actually focus on any of those issues, but rather on management’s selection of a specific category of workers within its labor force (i.e. temporary replacement workers), and alleged risks associated with such workers at affected Company facilities. The underlying subject matter is clearly related to management’s particular hiring decision-making in operating the Company. This subject matter is particular to the Company’s ordinary business operations, without “squarely raising human capital management issues with a broad societal impact,” as noted in SLB 14L and therefore does not transcend the Company’s ordinary business operations.

II. The Proposal may be excluded under Rule 14a-8(i)(4) because the Proposal relates to the redress of a personal claim or grievance against the company.

Rule 14a-8(i)(4) states in relevant part that a proposal may be excluded if it “relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to [the proponent], or to further a personal interest, which is not shared by the other shareholders at large.” This basis for exclusion is designed to “insure that the security holder proposal process [is] not abused by proponents attempting to achieve personal ends that are not necessarily in the common interest of the issuer’s shareholders generally.” 1983 Release. The Commission has also noted that “[t]he cost and time involved in dealing with” a shareholder proposal involving a personal grievance or furthering a personal interest not shared by other shareholders is “a disservice to the interests of the issuer and its security holders at large.” Exchange Act Release No. 19135 (Oct. 14, 1982) (the “**1982 Release**”). The personal grievance exception applies even to proposals phrased in terms that “might relate to matters which may be of general interest to all security holders,” and the omission of such neutrally worded proposals from a company’s proxy materials is justified “if it is clear from the facts presented by the issuer that the proponent is using the proposal as a tactic designed to redress a personal grievance or further a personal interest.” 1982 Release. The Staff has consistently concluded that companies may exclude proposals where the true intent was to further a personal interest or redress a personal claim or grievance, notwithstanding the inclusion of a facially neutral resolution or language. See e.g., *General Electric Co.* (Feb. 28, 2020); *ViacomCBS* (Aug. 22, 2018); *International Business Machines Corp.* (Jan. 6, 2017); *American Express Co.* (Jan. 6, 2017).

The Proposal represents the latest in a series of actions that the Proponent has taken this year against the Company. Its subject matter—the management of the Company’s workforce with respect to temporary workers in particular—is closely linked to an ongoing labor-related dispute between the Proponent and the Company that began in January 2021. Earlier this year, the Proponent issued a notice of intent to strike at the Company’s Beaumont, Texas refinery (the “**Beaumont facility**”), to which the Company responded with a notice of lockout. The lockout of employees represented by the United Steelworkers (“**USW**”), a labor organization affiliated with the Proponent, was initiated on May 1, 2021, and the Company has continued to operate the Beaumont facility with non-represented employees and temporary workers. The lockout remains in effect at the Beaumont facility, and a group of USW-represented employees have filed a petition with the National Labor Relations Board (the “**NLRB**”) to decertify the union. The Beaumont facility has continued operating at record utilization during the lockout. The supporting statement references the dispute at the Beaumont facility, indicating that the Proposal is yet another attempt by the Proponent to redress its personal grievance against the Company, and therefore an abuse of the shareholder proposal process. The table below demonstrates the numerous tactics that the Proponent has taken since the

beginning of the dispute, leading up to the submission of the Proposal in an attempt by the Proponent to further its personal grievance against the Company.

Date	Proponent Action Against the Company
Multiple charges, April – December 2021	Proponent submits multiple unfair labor practice complaints against the Company to the NLRB, alleging, for example, bad faith bargaining and unlawful lockout at the Beaumont facility.
June – September 2021	Proponent submits complaints against the Company to the Occupational Safety and Health Administration, challenging the Company’s Voluntary Protection Program status.
November 2021	Proponent meets with local officials regarding the Company’s tax incentives and later meets with the same officials to ask them to convince the Company to end the lockout.
November - December 2021	Proponent invites the Democratic Socialists of America to picket at the Beaumont facility and later invites Beto O’Rourke, a Democratic candidate running for Texas Governor, for a meeting and rally related to the Beaumont facility.
Multiple events, August – December 2021	Proponent participates in additional picketing and other activities of protestation against the Company, including at managers’ homes, industry events and Company headquarters.

While the Proposal is phrased in neutral terms that might appear to relate to matters that may be of general interest to all shareholders, such as references to a loss in market capitalization and the potential impact on the Company’s workforce, its communities and the environment, it is clear from the surrounding facts and series of actions that the Proponent has taken against the Company, that the Proponent is attempting to use the shareholder proposal process as a tactic to redress its personal grievance against the Company. Given that the Proposal is clearly motivated by a personal grievance arising from a labor dispute between the Proponent and the Company, the Company believes the Proposal may be properly omitted from the 2022 Proxy Materials pursuant to Rule 14a-8(i)(4).

CONCLUSION

For the reasons set forth above, the Company believes that the Proposal may be excluded from the Company’s 2022 Proxy Materials pursuant to Rule 14a-8(i)(7) and Rule 14a-8(i)(4). The Company respectfully requests the Staff’s concurrence with its decision to exclude the Proposal from its 2022 Proxy Materials and further requests confirmation that the Staff will not recommend enforcement action to the SEC if it so excludes the Proposal.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this request. Please do not hesitate to call me at (212) 450-4539 or James E. Parsons, the Company's Executive Counsel, at james.e.parsons@exxonmobil.com or (972) 940-6211 if we may be of any further assistance in this matter.

Respectfully yours,

A handwritten signature in black ink that reads "Louis Goldberg". The signature is written in a cursive, flowing style.

Louis Goldberg

Attachment

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

AFL-CIO Reserve Fund

Proposal

RESOLVED: Shareholders of Exxon Mobil Corporation (“ExxonMobil”) urge the Board of Directors to report to shareholders by the 2023 annual meeting, at reasonable cost and excluding proprietary and personal information, on flaring events and the risk of industrial accidents that may arise from the use of temporary replacement workers.

Supporting Statement:

The safe operation of ExxonMobil's facilities is of great importance to ExxonMobil shareholders. According to one academic study, each casualty resulting from a petrochemical industrial accident corresponds to a market capitalization loss of \$164 million, and that each toxic release corresponds to a loss of \$1 billion.¹ In our opinion, retaining an experienced workforce is a critical human capital management practice for ensuring the safe operation of petrochemical facilities.

This proposal seeks disclosure of human capital management information that relates to flaring events and the risk of industrial accidents. According to ExxonMobil, “Flaring is used in various stages of exploration and production operations throughout the world, primarily as a safety measure to prevent the accumulation of gases that could pose a potential safety hazard.”² For example, ExxonMobil's Beaumont, Texas refinery experienced an operational issue which required flaring on June 25, 2021.³

On May 1, 2021, ExxonMobil locked out approximately 650 workers at its Beaumont, Texas refinery and its blending and packaging plant. During the lockout, ExxonMobil has operated these facilities at reduced capacity with temporary replacement workers.⁴ We believe that ExxonMobil's decision to operate these facilities with temporary replacement workers creates potential safety risks. In our view, temporary replacement workers lack the skill, training and experience of ExxonMobil's permanent workforce.

Flaring events and the risk of industrial accidents have a broad social impact on ExxonMobil's workforce, the communities that it operates in, and the environment. We are concerned that the use of temporary replacement workers may increase the risk of such incidents. For these reasons, we believe that ExxonMobil's Board of Directors should review the use of temporary replacement workers in ExxonMobil's operations and provide greater transparency by issuing a report to shareholders.

We urge you to vote “FOR” this shareholder resolution.

¹ Gunther Capelle-Blancard and Marie-Aude Laguna, “How does the stock market respond to chemical disasters?,” *Journal of Environmental Economics and Management*, Volume 59, Issue 2, 2010, p. 192-205, <https://doi.org/10.1016/j.jeem.2009.11.002>.

² What is flaring.”Frequency Asked Questions, ExxonMobil, <https://coporate.exxonmobil.com/Sustainability/Emissions-and-climate/Frequently-asked-questions>.

³ ExxonMobil reports flaring at downtown Beaumont refinery, *Beaumont Enterprise*, June 26, 2021, <https://www.beaumontenterprise.com/businessarticle/ExxonMobil-reports-flaring-at-downtown-Beaumont-16276632.phe>.

⁴ “Exxon Beaumont, Texas refinery operating at 60% capacity -sources,” *Reuters*, June 30, 2021, <https://www.reuters.com/business/energy/exxon-beaumont-texas-Tefinery-oparating-60-Capacity-sourcas-2021-06-30/>.



AFL-CIO

AMERICA'S UNIONS

**American Federation
of Labor and
Congress of Industrial
Organizations**

815 Black Lives Matter
Plaza NW
Washington, DC 20006

202-637-5000

aflcio.org

EXECUTIVE COUNCIL

ELIZABETH H. SHULER
PRESIDENT

FREDRICK D. REDMOND
SECRETARY-TREASURER

TEFERE A. GEBRE
EXECUTIVE VICE PRESIDENT

Michael Sacco
Cecil Roberts
Matthew Loeb
Randi Weingarten
Fredric V. Rolando
Baldemar Velasquez
Lee A. Saunders
Terry O'Sullivan
James Callahan
DeMaurice Smith
Sean McGarvey
D. Taylor
Stuart Appelbaum
Bhairavi Desai
Paul Rinaldi
Mark Dimondstein
Cindy Estrada
Sara Nelson
Marc Perrone
Eric Dean
Joseph Sellers Jr.
Christopher Shelton
Lonnie R. Stephenson
Richard Lanigan
Robert Martinez
Gabrielle Carteris
Mark McManus
Elissa McBride
John Samuelsen
Vonda McDaniel
Gwen Mills
Charles Wowkanech
Bonnie Castillo
Warren Fairley
Ernest A. Logan
Capt. Joe DePete
James SleVIN
Tom Conway
John Costa
Tim Driscoll
Everett Kelley
Anthony Shelton
Ray Curry
Edward A. Kelly
Evelyn DeJesus
Cheryl Eliano
Matthew S. Biggs
Roxanne Brown
Arthur Maratea
James A. Williams Jr.

Via E-Mail

February 11, 2022

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

**Re: Exxon Mobil Corporation's Request to Exclude a Shareholder
Proposal Submitted by the AFL-CIO Reserve Fund**

Dear Sir or Madam:

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, the AFL-CIO Reserve Fund (the "Fund") submitted a shareholder proposal (the "Proposal") to Exxon Mobil Corporation (the "Company") on November 12, 2021 for a vote at the Company's 2022 annual meeting of shareholders. In a letter to the staff of the Division of Corporation Finance (the "Division Staff") dated January 22, 2022 (the "No Action Request"), the Company's representative from Davis Polk & Wardwell LLP stated that the Company intends to omit the Proposal from its proxy materials to be distributed to shareholders in connection with the Company's 2022 annual meeting of shareholders.

The resolved clause of the Fund's Proposal states:

RESOLVED: Shareholders of Exxon Mobil Corporation ("ExxonMobil") urge the Board of Directors to report to shareholders by the 2023 annual meeting, at reasonable cost and excluding proprietary and personal information, on flaring events and the risk of industrial accidents that may arise from the use of temporary replacement workers.

The No Action Request asks the Division Staff to concur that it will not recommend enforcement action if the Company excludes the Proposal in reliance on Rule 14a-8(i)(7), because the Proposal deals with matters related to the Company's ordinary business operations, and Rule 14a-8(i)(4), because the Proposal relates to the redress of a personal claim or grievance against the Company. For the reasons set forth below, the Proposal may not be excluded under Rule 14a-8(i)(7) because the Proposal addresses a social policy issue that

transcends the Company's day-to-day business matters. Nor may the Company exclude the Proposal under Rule 14a-8(i)(4) as the Fund does not have a personal claim or grievance against the Company, and the subject matter of the Proposal relates to a concern that is shared by all other shareholders.

I. The Proposal Addresses Social Policy Issues That Transcend Ordinary Business

The No Action Request argues that the Proposal may be excluded under Rule 14a-8(i)(7) because it involves matters related to the Company's management of its workforce. As explained below, this argument does not have merit because the Proposal addresses subject matters that are significant social policy issues. As the Division Staff stated in Exchange Act Release No. 34-40018 (May 21, 1998) [63 FR 29106], employment-related shareholder proposals that focus on sufficiently significant social policy issues may transcend the day-to-day business matters and therefore are appropriate for a shareholder vote. In Staff Legal Bulletin 14L (November 3, 2021), the Division Staff reaffirmed the significant social policy exception to the ordinary business exemption, including "human capital management issues with a broad societal impact."

The No Action Request cites various examples of proposals on workforce safety that have been permitted by the Division Staff to be excluded on ordinary business grounds. *Amazon.com, Inc.* (Apr. 1, 2020, *recon. denied* Apr. 9, 2020), *The GEO Group Inc.* (Feb. 2, 2017), and *Pilgrim's Pride Corp.* (Feb. 25, 2016) each requested detailed reports on the safety processes of the company's workforce. The proposals at *Amazon.com, Inc.* and *The Chemours Co.* requested a report on the steps the companies have taken to reduce the risk of accidents and the board's oversight of process safety management. The *Pilgrim's Pride Corp.* proposal sought a report on occupational health and safety in the workplace, and the proposal at *The GEO Group Inc.* requested an audit of safety incidents and other related issues at prison facilities.

The Fund's Proposal is easily distinguished from the workplace safety proposals cited by the No Action Request. Each of the workplace safety proposals cited by the No Action Request sought a report on the company's overall workforce safety processes and procedures. In contrast, the Fund's Proposal is narrowly focused on a single human capital management issue, namely the risks posed by the Company's use temporary replacement workers to operate the Company's facilities. Regarding this practice, the Proposal specifically requests information on flaring events and the risk of industrial accidents. As discussed below, flaring events, the risk of industrial accidents, and the use of temporary replacement workers are significant social policy issues. They therefore transcend day-to-day workforce safety as an ordinary business matter.

The Proposal seeks a report on flaring events and the risk of industrial accidents that may arise from the use of temporary replacement workers. Flaring is the burning of hydrocarbons and waste gas to prevent their direct release into the atmosphere and may occur routinely or in

emergency situations.¹ The Proposal's Supporting Statement explains that flaring is often used by the Company as a safety measure to prevent hazardous gas accumulation.² For example, the lack of an adequate flaring system was a contributing factor to the 2005 explosion at BP's Texas City Refinery that killed 15 workers.³ The Proposal's Supporting Statement highlights a June 25, 2021 operational upset at the Company's Beaumont, Texas refinery as an example of such flaring as a safety measure.⁴ At the time of this flaring incident, the Company was operating the Beaumont, Texas refinery with temporary replacement workers.⁵

Flaring is a significant social policy concern because of the impact of flaring on the environment. Flaring is subject to regulation to control the release of airborne pollutants into local communities.⁶ Flaring is also a source of greenhouse gas emissions that contribute to global warming.⁷ The U.S. Department of Energy recently issued a report to Congress on research to reduce flaring.⁸ The World Bank's Zero Routine Flaring by 2030 Initiative encourages companies to report on their flaring.⁹ Environmental groups have criticized the use of flaring by the petroleum industry.¹⁰ There are a variety of voluntary initiatives by the petroleum industry to

¹ EPA Enforcement Alert, "Frequent, Routine Flaring May Cause Excessive, Uncontrolled Sulfur Dioxide Releases," Environmental Protection Agency, October 2000, <https://www.epa.gov/sites/default/files/documents/flaring.pdf>.

² Frequently Asked Questions, "What is Flaring," ExxonMobil, Accessed February 11, 2022, <https://corporate.exxonmobil.com/Sustainability/Emissions-and-climate/Frequently-asked-questions>.

³ Steven Greenhouse, "BP Faces Record Fine for '05 Refinery Explosion," New York Times, October 30, 2009, <https://www.nytimes.com/2009/10/30/business/30labor.html>.

⁴ "Exxonmobil Reports Flaring at Downtown Beaumont Refinery," Beaumont Enterprise, June 26, 2021, <https://www.beaumontenterprise.com/business/article/ExxonMobil-reports-flaring-at-downtown-Beaumont-16276632.php>.

⁵ "Exxon Beaumont, Texas Refinery Operating At 60% Capacity - Sources," Reuters, June 30, 2021, <https://www.reuters.com/business/energy/exxon-beaumont-texas-refinery-operating-60-capacity-sources-2021-06-30/>.

⁶ Natural Gas Flaring and Venting: State and Federal Regulatory Overview, Trends, and Impacts, U.S. Department of Energy, June 2019, <https://www.energy.gov/fecm/downloads/natural-gas-flaring-and-venting-regulations-report>.

⁷ Global Gas Flaring Tracker Report, The World Bank, April 2021, <https://www.worldbank.org/en/topic/extractiveindustries/publication/global-gas-flaring-tracker-report>.

⁸ Flaring and Venting Reduction Research & Development Activities, U.S. Department of Energy, August 2021, <https://www.energy.gov/fecm/articles/doe-flaring-and-venting-rd-reducing-emissions-and-developing-valuable-low-carbon>.

⁹ "Zero Routine Flaring by 2030 (ZRF) Initiative," The World Bank, Accessed February 11, 2022, <https://www.worldbank.org/en/programs/zero-routine-flaring-by-2030/reporting>.

¹⁰ See e.g., Flaring in Texas: A Comprehensive Government Failure, Earthworks, August 2021, <https://41p14t2a856b1gs8ji2wv4k4-wpengine.netdna-ssl.com/assets/uploads/2021/08/Flaring-in-Texas-FINALsm.pdf>; The Burning Question: How to Fix Flaring, Environmental Defense Fund, October 21, 2021, <https://business.edf.org/files/ESG-by-EDF-Flaring-Report-Book-V2-Reduced.pdf>.

reduce flaring emissions.¹¹ The Company itself recently pledged to eliminate routine flaring related to oil production as part of the Company's 2030 net zero goal for the Permian Basin.¹²

Industrial accidents at petroleum refineries also raise significant social policy concerns regarding community and environmental safety. As noted by the Supporting Statement, the social impact of industrial accidents is not limited to the workforce, but also impacts the communities and environment where the Company operates. For example, a 2015 explosion at the Company's refinery in Torrance, California narrowly avoided releasing tens of thousands of pounds of deadly hydrofluoric acid into the local community.¹³ Accordingly, the Proposal's focus on industrial accidents is directly analogous to shareholder proposals on the safety of nuclear power plants that the Commission expressly recognized as a significant social policy issue that transcends ordinary business in Release No. 34-12999 (Nov. 22, 1976) [41 FR 52994].¹⁴

Finally, the Proposal's request for the report to address the Company's use of temporary replacement workers also raises a significant social policy issue. The growing use of temporary workers by employers in the United States is a controversial practice.¹⁵ According to the American Public Health Association, the growing use of temporary work arrangements has undermined workers' health and safety, particularly in hazardous temporary jobs.¹⁶ In Federal labor law, the term "temporary replacements" refers to workers that an employer hires to replace union members who are engaged in an unfair labor practices strike or who have been locked out

¹¹ Rebecca Schulz et. al., Flaring Emissions – Not on Track, IEA, November 2021, <https://www.iea.org/reports/flaring-emissions>.

¹² Press Release, "ExxonMobil Plans For Net Zero Emissions In Permian Basin Operations By 2030," Exxon Mobil Corporation, December 6, 2021, https://corporate.exxonmobil.com/News/Newsroom/News-releases/2021/1206_ExxonMobil-plans-for-net-zero-emissions-in-Permian-Basin-operations-by-2030.

¹³ Jie Jenny Zou, "The ExxonMobil Near-Disaster You Probably Haven't Heard Of," The Center for Public Integrity, February 10, 2017, <https://publicintegrity.org/environment/the-exxonmobil-near-disaster-you-probably-havent-heard-of/>.

¹⁴ Adoption of Amendments Relating to Proposals by Security Holders, Release No. 34-12999 (Nov. 22, 1976) [41 FR 52994 (Dec. 3, 1976)] ("Specifically, the term "ordinary business operations" has been deemed on occasion to include certain matters which have significant policy, economic or other implications inherent in them. For instance, a proposal that a utility company not construct a proposed nuclear power plant has in the past been considered excludable under former subparagraph (c) (5). In retrospect, however, it seems apparent that the economic and safety considerations attendant to nuclear power plants are of such magnitude that a determination whether to construct one is not an "ordinary" business matter. Accordingly, proposals of that nature, as well as others that have major implications, will in the future be considered beyond the realm of an issuer's ordinary business operations, and future interpretative letters of the Commission's staff will reflect that view.") (Emphasis added).

¹⁵ See "How the 2% lives: Temping is on the increase, affecting temps and staff workers alike," The Economist, July 16, 2016, <https://www.economist.com/finance-and-economics/2016/07/16/how-the-2-lives>.

¹⁶ "Ensuring Workplace Protections for Temporary Workers," American Public Health Association, November 18, 2014, <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2015/01/28/14/43/ensuring-workplace-protections-for-temporary-workers>.

by their employer.¹⁷ Commonly known as “scabs,”¹⁸ temporary replacement workers are controversial as evidenced by recent press attention to the Company.¹⁹

For these reasons, flaring events, industrial accidents, and the use of temporary replacement workers are significant social policy issues that transcend the day-to-day management of the workforce. The No Action Request has not met the burden of showing that the Company is entitled to omit the Proposal in reliance on Rule 14a-8(i)(7), and the Company’s request for relief to exclude the Proposal on ordinary business grounds should be denied.

II. The Fund Does Not Have a Personal Claim or Grievance Against the Company

The No Action Request also claims that the Proposal may be excluded pursuant to Rule 14a-8(i)(4) because the Proposal purportedly relates to a personal claim or grievance against the Company which is not shared by other shareholders. However, the Proposal does not ask the Company to alter or change its employment practices. It only requests a report on flaring events and the risk of industrial accidents that may result from the use of temporary replacement workers. The requested report will be provided to all shareholders of the Company, not just the Fund. As noted by Proposal’s Supporting Statement, the requested report is of interest to all shareholders of the Company given that each toxic release from a petrochemical industrial accident is associated with a \$1 billion loss in stock market capitalization.²⁰

The No Action Request concedes that the Proposal is phrased in neutral terms that relate to matters that are of general interest to all shareholders.²¹ The No Action Request instead argues that the surrounding facts and circumstances show that the Fund has a personal claim or grievance against the Company. Exchange Act Release No. 19135 (October 14, 1982) [47 FR 47420] noted that “it is incumbent upon an issuer to possess sufficient facts which demonstrate that the proposal was submitted in an attempt to redress a personal claim or grievance.” The

¹⁷See Harter Equipment, Inc., 280 N.L.R.B. 597 (1986).

¹⁸ “Scab, Noun - Definition of Scab,” The Merriam-Webster Dictionary, Accessed February 11, 2022, <https://www.merriam-webster.com/dictionary/scab> (“3 a: a contemptible person b (1): a worker who refuses to join a labor union (2): a union member who refuses to strike or returns to work before a strike has ended (3): a worker who accepts employment or replaces a union worker during a strike (4): one who works for less than union wages or on nonunion terms”).

¹⁹ “Exxon Hiring More Temporary Workers as Texas Refinery Lockout Continues,” Reuters, July 14, 2021, <https://www.reuters.com/business/energy/exxon-hiring-more-temporary-workers-texas-refinery-lockout-continues-2021-07-15/>; “Exxon Seeking Temporary Workers For Beaumont, Texas, Refinery During Lockout –Sources,” Reuters, April 26, 2021, <https://www.reuters.com/business/energy/exxon-seeking-temporary-workers-beaumont-texas-refinery-during-lockout-sources-2021-04-27/>.

²⁰ Gunther Capelle-Blancard and Marie-Aude Laguna, “How Does The Stock Market Respond To Chemical Disasters?,” Journal of Environmental Economics and Management, Volume 59, Issue 2, 2010, p. 192-205, <https://doi.org/10.1016/j.jeem.2009.11.002>.

²¹ No Action Request at p. 5 (“While the Proposal is phrased in neutral terms that might appear to relate to matters that may be of general interest to all shareholders, such as references to a loss in market capitalization and the potential impact on the Company’s workforce, its communities and the environment...”).

mere interest of the proponent in the subject matter of a proposal is not grounds for exclusion. Exchange Act Release No. 20091 (Aug. 16, 1983) [48 FR 38218] clarified that “Some commentators expressed concern that, as proposed, the “personal interest” grounds for exclusion could be applied to exclude a proposal relating to an issue in which a proponent was personally committed or intellectually and emotionally interested. This is not the Commission’s intent.”

The No Action Request first conflates the Fund as the “Proponent” of the Proposal with the union of the approximately 600 workers that the Company has locked out and temporarily replaced at its Beaumont, Texas facility. These workers are represented in collective bargaining by the United Steelworkers Local 13-243, not the Fund. The true “Proponent” of the Proposal is the Reserve Fund of the AFL-CIO, which is a voluntary federation of 57 labor unions that represent 12.5 million working men and women. While the United Steelworkers union is affiliated with the AFL-CIO, the AFL-CIO is a separate and distinct organization from the United Steelworkers Local 13-243. The AFL-CIO does not represent the Company’s locked out employees in collective bargaining. Under Federal labor law, private sector workers can only be represented in collective bargaining by their exclusive bargaining representative.²²

Next, the No Action Request describes various actions that the “Proponent” allegedly has taken in connection with the lockout at the Beaumont, Texas refinery. However, the No Action Request does not provide any documentation, references, or citations for the various allegations that the No Action Request has attributed to the “Proponent.” Moreover, the alleged actions appear to be related to the use of temporary replacement workers and the risk of industrial accidents at the Company’s Beaumont, Texas facility (e.g., “June – September 2021: Proponent submits complaints against the Company to the Occupational Safety and Health Administration, challenging the Company’s Voluntary Protection Program status”). Preventing industrial accidents is a concern that is shared by all shareholders and is not a personal claim or grievance against the Company by either the Fund or the United Steelworkers Local 13-243.

The Division Staff has consistently declined to concur with the exclusion of proposals under Rule 14a-8(i)(4) simply based on speculation or conjecture by the company that a proposal relates to a personal claim or grievance related to a labor dispute. For example, in *Dresser-Rand Group Inc.* (February 19, 2008), the Division Staff did not concur that a proposal related to executive compensation could be excluded because the union had criticized the company’s executive compensation during a strike. In *General Electric Co.* (February 3, 2004), the Division Staff declined to concur with the exclusion of a proposal by a labor union requesting a report on offshoring and outsourcing. In *Marriott International, Inc.* (March 19, 2002), the Division Staff declined to concur with the exclusion of a shareholder proposal by a labor union that requested a code of conduct to include the right to join unions and bargain collectively.

For these reasons, the No Action Request has failed to provide evidentiary support for its assertions that the Proposal is designed to advance a personal claim or grievance by the Fund that is not shared by shareholders generally. Because the No Action Request has not met its burden of

²² Section 9(a) of the National Labor Relations Act, 29 U.S.C. §159.

proof in demonstrating that the Fund has a personal claim or grievance against the Company, the Company should not be permitted to exclude the Proposal in reliance on Rule 14a-8(i)(4).

III. Conclusion

In conclusion, the Division Staff should not concur with the Company's No Action Request that the Proposal may be excluded. The Proposal may not be excluded under Rule 14a-8(i)(7) because the Proposal addresses significant social policy issues that transcend the Company's day-to-day business matters. Nor may the Company exclude the Proposal under Rule 14a-8(i)(4) as the Fund does not have a personal claim or grievance against the Company, and the subject matter of the Proposal relates to a concern that is shared by the other shareholders at large. If you have any questions, please contact me at (202) 637-5152 or brees@aficio.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. J. Rees', written in a cursive style.

Brandon J. Rees
Deputy Director, Corporations and Capital Markets

cc: Louis Goldberg, Davis Polk & Wardwell LLP
James E. Parsons, Exxon Mobil Corporation