



DIVISION OF
CORPORATION FINANCE

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

March 26, 2022

Edward S. Best
Mayer Brown LLP

Re: Chubb Limited (the "Company")
Incoming letter dated January 14, 2022

Dear Mr. Best:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by As You Sow Shareholder Action Account for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the Company issue a report addressing whether and how it intends to measure, disclose, and reduce the GHG emissions associated with its underwriting, insuring, and investment activities in alignment with the Paris Agreement's 1.5°C goal, requiring net zero emissions.

We are unable to concur in your view that the Company may exclude the Proposal or portions of the supporting statement under Rule 14a-8(i)(3). We do not believe that you have demonstrated objectively that the portions of the supporting statement you reference are materially false or misleading. We also are unable to conclude that the Proposal, taken as a whole, is so vague or indefinite that it is rendered materially misleading.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal transcends ordinary business matters and does not seek to micromanage the Company.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(10). Based on the information you have presented, it appears that the Company's public disclosures do not substantially implement the Proposal.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(11). In our view, the Proposal does not substantially duplicate the proposal submitted by Green Century Equity Fund.

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: Sanford Lewis

January 14, 2022

Via Email

Shareholderproposals@sec.gov
Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, N.E.
Washington, D.C. 20549

Re: Chubb Limited – Shareholder Proposal
Submitted by As You Sow – Rule 14a-8

Ladies and Gentlemen:

On behalf of Chubb Limited (“Chubb” or the “Company”) and pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934 (the “Exchange Act”), I hereby request confirmation that the staff (the “Staff”) of the Division of Corporation Finance (the “Division”) of the Securities and Exchange Commission (the “SEC” or the “Commission”) will not recommend enforcement action if, in reliance on Exchange Act Rule 14a-8, Chubb excludes a proposal submitted by As You Sow, on behalf of a shareholder, As You Sow Shareholder Action Account (collectively, the “Proponent”), from the proxy materials for Chubb’s 2022 annual general meeting of shareholders (the “Proxy Materials”).

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

- filed this letter with the SEC no later than 80 calendar days before the Company intends to file its definitive 2022 proxy materials with the SEC; and
- concurrently sent copies of this correspondence to the Proponent.

The Proposal

On December 7, 2021, Chubb received the following proposal for consideration at Chubb’s 2022 annual general meeting of shareholders:

BE IT RESOLVED: Shareholders request that Chubb issue a report, at reasonable cost and omitting proprietary information, addressing whether and how it intends to measure, disclose, and reduce the GHG emissions associated with its underwriting, insuring, and investment activities in alignment with the Paris Agreement’s 1.5°C goal, requiring net zero emissions.

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Pursuant to Rule 14a-8(j), I have enclosed a copy of the proposed resolution, together with the recitals in support of the resolution and the supporting statement, as Exhibit A (collectively, the “Proposal”), as transmitted to Chubb. I have also enclosed a copy of all relevant additional correspondence exchanged with the Proponent as Exhibit B. A copy of this letter is simultaneously being sent to the Proponent.

Bases for Exclusion

Chubb believes that the Proposal may be properly omitted from Chubb’s 2022 proxy materials pursuant to Rule 14a-8 under each of the following four grounds for exclusion, each of which is analyzed in separate sections of this letter:

1. **Rule 14a-8(i)(10):** The Proposal has been substantially implemented. Chubb already has considered whether and how to address reducing, measuring and disclosing greenhouse gas (“GHG”) emissions and has adopted policies and procedures for that goal. Chubb also prominently provides public disclosure of its initiatives, efforts and achievements in this area, including in 2021 announcing its formal support for a global transition to a net zero economy by 2050 as well as related pledges in its underwriting, insurance and investment activities to support the transition.
2. **Rule 14a-8(i)(3) and Rule 14a-9:** The Proposal is vague and indefinite, and contains numerous false and misleading statements, rendering the Proposal in violation of the proxy rules. In addition, the Proposal is subject to multiple interpretations where shareholders may be confused about what they would be voting on and therefore interpret the purpose of the Proposal differently.
3. **Rule 14a-8(i)(7):** The Proposal focuses on Chubb’s “ordinary business” operations, that is, fundamental factors involving its insurance product offerings and investments used to support its claim-paying ability, and seeks to micromanage Chubb’s business.
4. **Rule 14a-8(i)(11):** The Proposal substantially duplicates another shareholder proposal which Chubb received prior to the Proposal and which the Company would include in its Proxy Materials if the Staff does not concur with the separate no-action request submitted with respect to that earlier proposal.

I. The Proposal may be omitted under Rule 14a-8(i)(10) because it has been substantially implemented.

The Proposal requests that Chubb issue a report addressing whether and how it intends to measure, disclose, and reduce the GHG emissions associated with its underwriting, insuring, and investment activities in alignment with the Paris Agreement’s 1.5°C goal of net zero emissions..

In fact, Chubb already has substantially implemented the Proposal by issuing its 2021 Climate-Related Financial Disclosure and Environmental Report, which adopts the Task Force

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on Climate-related Financial Disclosures (“TCFD” and such report, the “TCFD Report”) and by reference to the disclosures therein. The TCFD Report is available at:

[https://www.chubb.com/content/dam/chubb-sites/chubb-com/us-en/about-chubb/environment/doc/Chubb_2021_Climate-](https://www.chubb.com/content/dam/chubb-sites/chubb-com/us-en/about-chubb/environment/doc/Chubb_2021_Climate-Related_Financial_Disclosure_and_Environmental_Report.pdf)

[Related_Financial_Disclosure_and_Environmental_Report.pdf](https://www.chubb.com/content/dam/chubb-sites/chubb-com/us-en/about-chubb/environment/doc/Chubb_2021_Climate-Related_Financial_Disclosure_and_Environmental_Report.pdf). Further, Chubb’s Board of Directors and management regularly consider and evaluate the issues of climate change and the emissions of GHG that contribute to it. These discussions include considerations relating to the Company’s insurance underwriting and investment activities, as well as Chubb’s own GHG emissions.

As an insurer, Chubb recognizes the existential threat of global warming and the necessity to move away from a reliance on fossil fuel carbon emissions that contribute to it. As disclosed in the TCFD Report, Chubb has taken clear steps to consider and develop strategies and plans to reduce GHG emissions, and to assess our coverage of carbon-intensive industries in the Company’s insurance and investment positions. These actions, further described below, that the Company has taken and will continue to develop and refine as more data and information become available and better understood are in clear alignment with the objective of the Proposal, which is for Chubb to do its part to reduce global GHG emissions and work towards a global transition to a net zero economy by 2050.

A. Chubb’s public support and related pledges for a global transition to a net zero economy by 2050 set forth in its TCFD Report demonstrate substantial implementation of the Proposal.

Chubb announced its support of a global transition to a net zero economy by 2050 in its TCFD Report (page 5). To solidify and provide details around its support, including how it plans to measure, disclose and reduce GHG emissions, page 5 of the TCFD Report describes additional pledges to support an orderly transition away from fossil fuels that will minimize disruption to modern social and economic activity:

- Chubb has set a new goal to achieve carbon neutrality in its own global operations (Scope 1 and Scope 2 emissions) by year-end 2022. This will be achieved through a combination of renewable energy and carbon offset purchases and is in complement to Chubb’s previously announced greenhouse gas reduction goals.
- Chubb will continue to develop and offer new insurance solutions for low- and zero-emission technologies.
- Chubb will seek to encourage the transition through its decisions on specific underwriting and investment risks.
- Chubb will continue to assess our coverage of carbon-intensive industries and their related strategies and plans for transitioning to a lower-carbon economy. This approach will ensure the company’s underwriting and investment positions evolve as practical alternatives become available.
- Chubb adopted the TCFD framework and has released its first TCFD Report.

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The Company has thought carefully and analytically about how it plans to address GHG emissions reductions both in its own operations and in its insurance and investment activities, and how we as a society and global economy can work to achieve the net zero goal in a realistic way.

The TCFD Report makes it abundantly clear that Chubb intends to measure and reduce GHG emissions associated with its investment and insurance operations as part of its support for a net zero transition. On pages 5 and 9, the Company pledges to “assess our coverage of carbon-intensive industries and their related strategies and plans for transitioning to a lower-carbon economy. In this way, we will ensure the company’s underwriting and investment positions evolve as practical alternatives become available.” Additionally the Company seeks to encourage the net zero transition through its (i) products and service offerings for low- and zero-emission technologies and (ii) through its decisions on specific underwriting and investment risks. These efforts demonstrate Chubb’s intent to observe the impact of GHG emissions in its operations and develop thoughtful solutions to address society’s need to transition away from fossil fuel energy use.

Furthermore, Chubb, through its evaluation of its underwriting and investment activities relating to fossil fuels, has developed policies and described them in the TCFD Report. On page 10 of the TCFD Report, the Company discloses its 2019 policy restricting coal underwriting and investment. The policy states that Chubb will not make new debt or equity investments in companies that generate more than 30% of revenues from thermal coal mining or that generate more than 30% of energy production from coal. It also states that Chubb no longer will underwrite the construction and operation of new coal-fired plants or new risks for companies that generate more than 30% of their revenues from coal mining or energy production from coal. Insurance coverage for existing coal plant risks that exceed this threshold will be phased out by 2022, and for utilities beginning in 2022. Exceptions to this policy will be considered until 2022 (i) in regions that do not have practical near-term alternative energy sources, and (ii) taking into account the insured’s commitments to reduce coal dependence. The coal policy has been implemented as written.

Additionally, Chubb has developed views on underwriting fossil fuels beyond coal, laid out on page 9 of its TCFD Report, stating “[d]eclining to underwrite or invest in all fossil fuel-related activity on a categorical basis does not represent a reasonable path to a net zero economy.” Chubb believes instead the path to net zero should be focused on promoting, developing and offering new insurance solutions for the technologies that will replace fossil fuels, not blanket exclusions when those replacements to fossil fuels do not yet have the scale to be primary energy sources. While Proponent disagrees with Chubb’s methods for achieving net zero, instead suggesting Chubb should simply adopt further restrictions on oil and gas underwriting and investments, Chubb’s approach is still consistent with the objective of the Proposal in reducing GHG emissions and using its operations to promote lower- and zero-carbon emissions technologies.

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Chubb's corporate greenhouse gas reduction program and disclosure. Chubb's TCFD Report also discusses Chubb's corporate greenhouse gas reduction goals, further demonstrating its support of a transition away from fossil fuel use. Page 10 of the TCFD Report notes that while its own contribution to global greenhouse gas emissions is comparatively small, Chubb announced a companywide goal to reduce its:

global greenhouse gas (GHG) emissions 20% on an absolute basis by 2025 and established a long-term goal to reduce absolute GHG emissions 40% by 2035. Both goals use 2016 emissions as the baseline and are aligned with the two-degree Celsius target outlined in the Paris Climate Agreement as well as the quantitatively supported science-based standards methodology of the United Nations Environment Program.

As of year-end 2019, Chubb achieved the first of its two goals. We reduced our GHG emissions by 22% off a 2016 baseline, exceeding our goal of reducing emissions 20% by 2025. As of year-end 2020, Chubb also reached the second of its two goals by reducing our GHG emissions 41% off a 2016 baseline. However, because of the anomalous effects of the Covid-19 pandemic, we do not consider the second goal "achieved" on a year-over-year basis. Chubb continues to pursue our long-term goal to reduce GHG emissions 40% by 2035.

Chubb's Environmental Statement. Chubb includes an Environmental Statement in its 2020 Annual Report, available at https://s1.q4cdn.com/677769242/files/doc_financials/2021/Chubb-Limited-Annual-Report-2020.pdf, and intends to include an updated Environmental Statement in its 2021 Annual Report. The Environmental Statement provides detailed information regarding Chubb's companywide goals to reduce GHG emissions, as described above. The Environmental Statement provides detailed information regarding Chubb's corporate GHG inventory program which uses methodology based on the World Resources Institute and the World Business Council for Sustainable Development (WRI/ WBCSD) GHG Protocol for data collection and analysis. The Environmental Statement also contains an independent third-party Verification Opinion Declaration from Apex Companies, LLC. Specifically, the Declaration specifies that Apex conducted an independent verification of the GHG emissions and energy consumption reported by Chubb from January 1, 2020 to December 31, 2020. Among other methodology, this verification process included Apex's "[r]eview of Chubb data and information systems and methodology for collection, aggregation, analysis and review of information used to determine GHG emissions." Apex's assurance opinion concluded "that Chubb has established appropriate systems for the collection, aggregation and analysis of quantitative data for determination of GHG emissions for the stated period and boundaries."

In addition, page 10 of Chubb's TCFD Report disclosed that in 2021, as part of its support for a global transition to a net zero economy by 2050, Chubb pledged to achieve carbon neutrality in its own global operations (Scope 1 and Scope 2 emissions) by year-end 2022. Chubb's metrics and targets for GHG reduction are further discussed on page 16 of the TCFD Report, including Scope 1 and 2 emissions disclosures.

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As described on pages 7-8 of Chubb's TCFD Report, Chubb's governance structure also contributes to its substantial implementation of the Proposal. This governance structure demonstrates the thoughtful process that has gone into Chubb's considerations of whether and how it intends to measure, disclose and reduce GHG emissions. In 2021 Chubb bolstered its governance around climate and environmental strategy, and has the mechanisms in place to further assess underwriting of specific risks, including those relating to fossil fuel risks. In particular Chubb has an Operational Climate Committee which oversees operationally-focused climate and sustainability policies, strategies and programs, including GHG measurement and reduction activities. In addition, its Climate Advisory Group pursues opportunities to develop and expand climate-relevant products and services. Chubb's Board of Directors and management-level Executive Committee provide oversight for the Company's climate and sustainability policies, strategies and programs, including GHG measurement and reduction activities and the development and expansion climate-relevant products and services.

As further explained in on pages 7-8 of the TCFD Report:

Chubb's global enterprise risk management (ERM) framework — which encompasses climate risk — is embraced by colleagues at all levels of the company, from the Chief Executive Officer, other executive leaders and the Board of Directors down to each business unit and function. . . . At the Board of Directors level, the Risk and Finance Committee helps execute the Board's supervisory responsibilities pertaining to ERM. The company's Executive Committee, comprised of the company's most senior executive leaders including the Chairman and CEO, General Counsel, Chief Risk Officer and the Vice Chairman who has responsibility for Chubb's global environmental program and climate sustainability strategy, has responsibility for ensuring that Chubb's environmental, social, and governance (ESG) and citizenship activities, including those related to climate issues, are consistent with the company's culture, values, corporate mission, and business objectives, including those pertaining to climate-related risks and opportunities. Chubb's Nominating and Governance Committee has responsibility at the Board level for reviewing ESG issues, including climate change.

As noted above, Chubb disclosed in its TCFD Report that it is continuing to assess its coverage of carbon-intensive industries and address individual risks in its underwriting and investing, including environmental risks. While it is continuing to understand the exposures, at this time Chubb does not intend to make any specific commitment to disclose GHG emissions from its insurance and investment activities (i.e., Scope 3 emissions) because the Company and the industry is still without a full understanding of its applicability to insurers and what should be included in the measurement. Therefore, the Company is not at this time planning to make a promise to reducing Scope 3 or any further commitments or targets without knowing what it means or how we intend as a Company, global economy and society to get there. This manner of action is consistent with the Proposal. The plain language of the Proposal states that the Proposal does not *require* that Chubb measure, disclose, and reduce the GHG emissions associated with its underwriting, insuring, and investment activities in alignment with the Paris Agreement's 1.5°C goal. Instead, it asks the Company to disclose “whether” and “how” it intends to do so.

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Consistent with disclosure in the TCFD Report, Chubb has determined not to make any such Scope 3 disclosures, commitments or targets at this time, but measures and considers ways to reduce GHG emissions in its insurance, underwriting and investment operations, all as the Proposal has requested. Consequently, the Proposal has been substantially implemented.

B. There is considerable no-action precedent in support of the Company's position that it has substantially implemented the Proposal in accordance with Rule 14a-8(i)(10).

The Staff has a long history of concurring with the exclusion of a shareholder proposal on the grounds that it has been substantially implemented in accordance with Rule 14a-8(i)(10) even if the company did not implement every aspect of the proposal where the company's actions addressed the underlying concerns of the proposal. See *Masco Corporation* (Mar. 29, 1999) (permitting exclusion on substantial implementation grounds where the company adopted a version of the proposal with slight modification and clarification as to one of its terms). See also *JPMorgan Chase & Co.* (Feb. 5, 2020) (concurring with the exclusion on substantial implementation grounds where the proposal requested the board review the Statement of the Purpose of a Corporation, provide oversight and guidance as to how the new statement of stakeholder theory should alter the Company's governance and management system, and publish recommendations regarding implementation where "the board's actions compare favorably with the guidelines of the Proposal"); *Exxon Mobil Corp. (Rossi)* (Mar. 19, 2010) (permitting differences between a company's actions and a shareholder proposal so long as the company's actions satisfactorily address the proposal's essential objectives); and *Exxon Mobil Corp. (Burt)* (Mar. 23, 2009) (concurring with the exclusion on substantial implementation grounds of a proposal requesting a political contribution report where the proponent argued there were differences between the company's current procedures and practices and actions sought by the proposal). Further, the Staff has concurred with the exclusion of shareholder proposals seeking a report when the contents of the requested report were disclosed in multiple pages or in multiple tabs on the company's corporate website. See *Comcast Corp.* (Apr. 9, 2021).

The substantial implementation standard has been applied to environment-related shareholder proposals in situations where the company has already provided the requested information in a report satisfying the "essential objective" of a proposal, even if the company did not take the exact action requested by the proponent, did not implement the proposal in every detail, or exercised discretion in determining how to implement the proposal. See *Exxon Mobil Corp. (As You Sow/Schubiner)* (Mar. 9, 2021) (permitting exclusion of a proposal requesting a report on the risk of stranded assets related to environmental impacts of its petrochemical investments based on disclosures the company already made in its energy and carbon summary and its sustainability report that address the essential objective of the proposal); *Hess Corporation* (Apr. 11, 2019) (permitting exclusion of a proposal requesting that the company issue a report on how it can reduce its carbon footprint in alignment with greenhouse gas reductions necessary to achieve the Paris Agreement's goal where the company had already provided the requested information in its sustainability report and CDP (formerly known as Carbon Disclosure Project) report); and *Exxon Mobil Corporation* (Apr. 3, 2019)

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(permitting exclusion of a proposal requesting the company issue a report on how it can reduce its carbon footprint in alignment with greenhouse gas emissions reductions in line with the Paris Agreement where the requested information was readily available in the company's public disclosures).

C. In conclusion, the Company has substantially implemented the Proposal.

Chubb has substantially implemented the essential objective of the Proposal because it has considered whether and how to measure, disclose, and reduce the GHG emissions associated with its underwriting, insuring, and investment activities, and published its views in the TCFD Report. The Company has carefully considered its ongoing approach to greenhouse gas emissions associated with its underwriting, insurance and investment activities from a net zero perspective. It has adopted policies, established goals and prominently disclosed its strategies to reducing greenhouse gas emissions and supporting net zero which are the key themes of the Proposal. The procedures, policies and actions that Chubb has taken compare favorably with the Proposal's request. Accordingly, Chubb has substantially implemented the Proposal. Therefore, the Proposal may be omitted from the Company's Proxy Materials pursuant to Rule 14a-8(i)(10).

II. The Proposal may be omitted under Rule 14a-8(i)(3) and Rule 14a-9 because it is vague and indefinite and contains false and misleading statements, rendering it in violation of the proxy rules.

Rule 14a-8(i)(3) provides that a shareholder proposal may be excluded from a registrant's proxy materials "[i]f the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials." As described below, exclusion of the Proposal is warranted because the inclusion of the supporting statement and the proposed resolution contained in the Proposal in the Company's forthcoming Proxy Materials would result in the Company filing a proxy statement containing a proposal so inherently vague and indefinite that it is materially misleading, even if certain elements or statements included therein were to be excluded.

A shareholder proposal should be excluded under Rule 14a-8(i)(3) if shareholders cannot make an informed decision as to whether to vote for a proposal. The Staff has explained that exclusion of a proposal may be appropriate where "the resolution contained in the proposal is so inherently vague or indefinite that neither the stockholders 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 Cisco Systems, Inc. (Oct. 7, 2016) and Alaska Air Group, Inc. (Mar. 10, 2016). The Staff has concurred in a registrant's exclusion of a proposal on vague and indefinite grounds where the registrant and its shareholders might interpret the proposed resolution differently such that actions taken by the registrant could significantly differ from the action intended by the shareholders voting on the proposal. See Puget Energy Inc. (Mar. 7, 2002) (citing Occidental Petroleum Corp. (Apr. 4, 1990)). Recently, the Staff concurred in the exclusion of a shareholder proposal that sought to "improve guiding principles of

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executive compensation,” noting that such proposal “lack[ed] sufficient description about the changes, actions or ideas for the company and its shareholders to consider that would potentially improve [such] guiding principles.” *Apple Inc.* (Dec. 6, 2019). Additionally, courts have ruled on cases involving vague proposals, finding that “shareholders are entitled to know precisely the breadth of the proposal on which they are asked to vote” and that a proposal should be excluded when “it [would be] impossible for the board of directors or the stockholders at large to comprehend precisely what the proposal would entail.” *New York City Employees’ Retirement System v. Brunswick Corp.*, 789 F. Supp. 144, 146 (S.D.N.Y. 1992); *Dyer v. SEC*, 287 F.2d 773, 781 (8th Cir. 1961). In Staff Legal Bulletin No. 14G (Oct. 16, 2012), the Staff explained that “[i]n evaluating whether a proposal may be excluded on this basis, we consider only the information contained in the proposal and supporting statement and determine whether, based on that information, shareholders and the company can determine what actions the proposal seeks.”

A. The Proposal contains numerous false and misleading statements that cause the entire Proposal to be materially false and misleading in violation of the proxy rules.

The Proposal contains numerous false and misleading statements. For example, the Proposal provides a series of assertions which it attempts to support with misleading footnotes to other publications. For example, it asserts “Projections have found that limiting global warming to 1.5 degrees versus 2 degrees will save \$20 trillion globally by 2100.” (emphasis added) However, the publication cited in footnote 1 in support of this assertion does not make such a definitive statement, instead referring to an editorial that discusses “probable savings.” (emphasis added) The Proposal next states that “exceeding 2 degrees could lead to climate damages in the hundreds of trillions.” In that case footnote 2 references a publication in which the first section under “Results” is labeled “**Uncertainty about damages.**” In addition to recognizing that there is uncertainty as to damages projections, the discussion regarding damages in the hundreds of trillions refer to temperatures *significantly* in excess of 2 degrees. In other words, the Proposal’s assertions regarding global costs are presented in absolute terms, ignoring the qualifications and nuances of the outside materials it references in an attempt to support its assertions. In this way, the Proposal is false and misleading. In its attempt to substantiate its statement that “[t]he U.S. insurance industry is under increasing pressure to address its contributions to climate change,” footnote 3 of the Proposal cites a report from a single UK registered charity, without providing any support establishing, or even discussing, the influence of that report or the non-profit that prepared it.

Because of the preponderance of false and misleading statements in the Proposal, Chubb should be able to exclude the Proposal in its entirety from its 2022 proxy materials pursuant to Rule 14a-8(i)(3). See for example, *Ferro Corporation* (Mar. 17, 2015), where the Staff concurred with the exclusion of a proposal in its entirety under Rule 14a-8(i)(3) where “certain factual statements in the supporting statement are materially false and misleading such that the proposal as a whole is materially false and misleading.” However, in the event that the Staff does not agree with this conclusion, the Company respectfully requests the Staff direct the Proponent to revise the Proposal to eliminate the false and misleading statements identified above.

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B. The Proposal is misleading because it is inherently vague and indefinite and subject to multiple interpretations.

Rule 14a-8(i)(3) provides that a shareholder proposal may be excluded from a registrant's proxy materials "[i]f the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials." As described below, exclusion of the Proposal is warranted because the inclusion of the supporting statement *and* the proposed resolution contained in the Proposal in the Company's forthcoming Proxy Materials would result in the Company filing a proxy statement containing a proposal so inherently vague and indefinite that it is materially misleading, even if certain elements or statements included therein were to be excluded.

A shareholder proposal should be excluded under Rule 14a-8(i)(3) if shareholders cannot make an informed decision as to whether to vote for a proposal. The Staff has explained that exclusion of a proposal may be appropriate where "the resolution contained in the proposal is so inherently vague or indefinite that neither the stockholders 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 Cisco Systems, Inc.* (Oct. 7, 2016) and *Alaska Air Group, Inc.* (Mar. 10, 2016). The Staff has concurred in a registrant's exclusion of a proposal on vague and indefinite grounds where the registrant and its shareholders might interpret the proposed resolution differently such that actions taken by the registrant could significantly differ from the action intended by the shareholders voting on the proposal. *See Pugen Energy Inc.* (Mar. 7, 2002) (citing *Occidental Petroleum Corp.* (Apr. 4, 1990)). Recently, the Staff concurred in the exclusion of a shareholder proposal that sought to "improve guiding principles of executive compensation," noting that such proposal "lack[ed] sufficient description about the changes, actions or ideas for the company and its shareholders to consider that would potentially improve [such] guiding principles." *Apple Inc.* (Dec. 6, 2019). Additionally, courts have ruled on cases involving vague proposals, finding that "shareholders are entitled to know precisely the breadth of the proposal on which they are asked to vote" and that a proposal should be excluded when "it [would be] impossible for the board of directors or the stockholders at large to comprehend precisely what the proposal would entail." *New York City Employees' Retirement System v. Brunswick Corp.*, 789 F. Supp. 144, 146 (S.D.N.Y. 1992); *Dyer v. SEC*, 287 F.2d 773, 781 (8th Cir. 1961). In Staff Legal Bulletin No. 14G (Oct. 16, 2012), the Staff explained that "[i]n evaluating whether a proposal may be excluded on this basis, we consider only the information contained in the proposal and supporting statement and determine whether, based on that information, shareholders and the company can determine what actions the proposal seeks."

The supporting statement, which is an integral part of the Proposal specifies that the Proposal is seeking a target for "its full range of emissions." Putting aside the fact that the supporting statement confusingly refers to "Travelers", a peer competitor, rather than "Chubb" and assuming that "its" in this context refers to Chubb's, the Proposal provides no clear guidance as to what is intended by the term "full range" and it is not reasonably ascertainable from either the Proposal itself or the supporting statement. While certain companies, such as oil and gas and

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other fossil fuel exploration and extraction companies, may be said to directly contribute to significant GHG emissions, the Proposal contains no such limitation. As such, it is unclear whether insureds with a comparatively small impact on GHG emissions should be covered by the report requested by the Proposal. Companies, entities, governments and individuals that could also possibly be subject to the Proposal would include the following:

- individual homes using gas as a source of heating;
- automobiles and other forms of transportation;
- national and sub-national governments that implement policies that permit, facilitate or incentivize the extraction of fossil fuels from their territories;
- companies and other entities that provide services to exploration and extraction companies and any other direct participants in the fossil fuel exploration and extraction industries, such as professional service providers, like legal service providers and accountants; and
- energy generation companies, which are significant purchasers of global fossil fuels;
- companies that provide the equipment and other materials to exploration and extraction companies, such as heavy machinery manufacturers;
- direct and indirect participants in the transportation sector, which are among the largest consumers of fossil fuels in the United States;
- any other business or individual that is a consumer of fossil fuels, and thus contributes to global demand for fossil fuels.

There are multiple interpretations involving which, if any, of the above the Proposal is intending to cover.

Without more specificity as to what the Proposal is asking shareholders to endorse, shareholders would have difficulty determining how to vote. Shareholders deserve to understand the proposed scope and breadth of the report in order to make any informed judgement on the Proposal, especially in light of its possible far-reaching effects on the Company's business.

As a result of the alternative interpretations of the Proposal, neither the shareholders 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. This makes the Proposal impermissibly vague and indefinite so as to be misleading.

Because of the utter lack of clarity with respect to terms central to the Proposal, neither the shareholders voting for the Proposal, nor the Company's Board of Directors in implementing the Proposal (if adopted), would be able to ascertain with any reasonable certainty what actions the Proposal requires. In addition, the Proposal and its supporting statement contain materially false and misleading statements. Finally, the Proposal could reasonably be interpreted in several different ways. Accordingly, the Company believes that the Proposal may be omitted from its Proxy Materials pursuant to Rule 14a-8(i)(3).

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III. The Proposal is excludable under Rule 14a-8(i)(7) because it deals with matters relating to the Company's ordinary business operations.

Under Rule 14a-8(i)(7), a registrant may omit from its proxy materials a shareholder proposal that relates to the registrant's "ordinary business" operations. In the 1998 amendments to Rule 14a-8, the Commission noted that the term "ordinary" in "ordinary business" "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 noted that the principal policy for this 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. The first 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" and the second "relates to the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *Id.*

A. The subject matter of the Proposal is fundamental to management's ability to run the Company's day-to-day business because it requests that the Board of Directors adopt new policies applicable to its underwriting and investment practices, which are at the very core of the Company's business model, and disclose them in a report.

When evaluating whether the actions sought by a proposal implicate tasks that are so fundamental to management's ability to run a company on a day-to-day basis that they could not be subject to direct shareholder oversight, the Staff has consistently acknowledged that shareholder proposals that could undermine a company's core business model and/or relate to the products and services offered by the company are appropriately excludable under Rule 14a-8(i)(7). In *Wells Fargo & Co.* (Jan. 28, 2013, *recon. denied* Mar. 4, 2013), for example, the Staff granted no-action relief under Rule 14a-8(i)(7) where the proposal requested that the company prepare a report discussing the adequacy of the registrant's policies in addressing the social and financial impacts of the registrant's direct deposit advance lending service, noting in particular that "the proposal relates to the products and services offered for sale by the [registrant]" and that "[p]roposals concerning the sale of particular products and services are generally excludable under rule 14a-8(i)(7)." Similarly, in *JPMorgan Chase & Co.* (Mar. 16, 2010), the Staff concurred in the exclusion of a proposal under Rule 14a-8(i)(7) where such proposal sought that the company's board of directors implement a policy mandating that the company cease issuing refund anticipation loans, which the proponent claimed were predatory loans. There, the company acknowledged that the proposal addressed an issue that the Staff itself recognized as a "significant policy issue." The company noted, however, that its "decisions as to whether to offer a particular product to its clients and the manner in which the [c]ompany offer those products and services, including pricing, are precisely the kind of fundamental, day-to-day operational

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matters meant to be covered by the ordinary business operations exception under Rule 14a-8(i)(7).” See also *Pfizer Inc.* (Mar. 1, 2016) (excluding a shareholder proposal requesting a report describing steps taken by Pfizer to prevent the sale of its medicines for use in executions, commenting that the proposal “relates to the sale or distribution” of the company’s products); *The Walt Disney Co.* (Nov. 23, 2015) (excluding a proposal requesting Walt Disney’s Board approve the release of a certain film on Blu-ray, noting that the proposal “relates to the products and services offered for sale by the company.”). The Company’s ability to write insurance is, indeed, its core business model.

The subject matter of the Proposal relates to certain of the Company’s product offerings, *i.e.*, insurance policies involving oil and gas, and its investments. The Staff has consistently permitted proposals relating to the content and sale of particular products and services to be excluded pursuant to Rule 14a-8(i)(7) as dealing with a matter relating to a company’s ordinary business operations even when the proposal touches upon a social issue. The Staff has repeatedly affirmed this position, stating in its replies to no-action requests regarding such shareholder proposals that: “[p]roposals concerning the sale of particular products and services are generally excludable under rule 14a-8(i)(7).” See, for example, *Amazon Inc.* (Mar. 11, 2016) (concurring with the exclusion of a proposal relating to animal cruelty in the supply chain) and *Rite Aid Corporation* (Mar. 24, 2015) (concurring with the exclusion of a proposal requesting that Rite Aid’s board adjust its governance policies with the aim of it reconsidering the sale of tobacco products in its stores). See also *The Home Depot, Inc.* (Mar. 20, 2020) (concurring with the exclusion of a proposal requesting that the company’s board of directors provide an annual report to shareholders on prison labor, summarizing the extent of known usage of prison labor in the company’s supply chain) and *Viacom Inc.* (Dec. 18, 2015) (concurring with exclusion of a proposal requesting a company to issue a report assessing the company’s policy responses to public concerns regarding linkages of food and beverage advertising to impacts on children’s health).

In addition, the Staff repeatedly has acknowledged that proposals addressing a company’s management of its relationship with customers implicates ordinary business concerns under Rule 14a-8(i)(7). For example, the Staff concurred with the exclusion under Rule 14a-8(i)(7) of a proposal involving customer relations in the context of monitoring customers’ adherence to and compliance with contracts, particularly concerns raised by employees regarding highly public policy issues. See *Amazon.com, Inc. (Dan Phung)* (Apr. 1, 2020). Similarly, the Staff has consistently recognized that a company’s decisions regarding the way it advertises and communicates with customers about certain products relate to a company’s ordinary business operations and thus may be excluded under Rule 14a-8(i)(7). See, for example, *Campbell Soup Co.* (Aug. 21, 2009) (concurring with the exclusion of a proposal requesting that the company “take a leadership role in educating people on [a] healthy diet” and use “its wonderful advertising techniques” to highlight consumer health because it addressed the “manner in which a company advertises its products”); and *The TJX Companies, Inc.* (Apr. 16, 2018) (concurring with the exclusion of a proposal requesting the company’s board to develop and disclose a new universal and comprehensive animal welfare policy applying to the company’s sale of products, with the majority of the proposal focusing on the company’s sale of products containing fur).

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B. Even though the Proposal touches upon a significant social policy issue, its primary focus is ordinary business matters.

The Staff has recognized that, regardless of whether certain proposals may extend beyond the topic of the subject companies' practices to implicate broader societal issues, if the essence of the proposal nevertheless impermissibly targets the ordinary business operations of a company, such proposals are excludable. *See Amazon.com, Inc.* (Mar. 17, 2016) (concurring with the exclusion of a proposal asking the company's board to prepare a report on the company's policy options to reduce potential pollution and public health problems from electronic waste generated as a result of its sales to consumers, and to increase the safe recycling of such wastes under Rule 14a-8(i)(7), noting that "the proposal relate[d] to the company's products and services and [did] not focus on a significant policy issue"); *Chipotle Mexican Grill, Inc.* (Dec. 30, 2015) (concurring with the exclusion of a proposal asking the company's board to adopt principles for minimum wage reform under Rule 14a-8(i)(7) because the proposal "relate[d] to general compensation matters"); *CIGNA Corp.* (Feb. 23, 2011) (concurring with the exclusion under Rule 14a-8(i)(7) when, although the proposal addressed the potential significant policy issue of access to affordable health care, it also asked CIGNA to report on expense management, an ordinary business matter); *General Electric Co.* (Dec. 7, 2007) (concurring with the exclusion of a shareholder proposal requesting that the company's board establish an independent committee to prepare a report on the potential damage to the registrant's brand as a result of sourcing products and services from the People's Republic of China, with the Staff noting in its response that the proposal "relat[ed] to [the company's] ordinary business operations (*i.e.*, *evaluation of risk*)" (emphasis added)); and *PPG Industries, Inc.* (Feb. 26, 2015) (concurring in the exclusion of a proposal requesting a report on options for policies and practices the company could adopt to reduce health hazards by eliminating the use of lead in paint and coatings under Rule 14a-8(i)(7) because the proposal related to the company's product development).

The Staff recently explained in Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L") that during the past four years, "an undue emphasis was placed on evaluating the significance of a policy issue to a particular company at the expense of whether the proposal *focuses on* a significant social policy" (emphasis added). While SLB 14L specified that the Staff will no longer consider whether a sufficient "*nexus*" exists between a proposal and the company at issue, there is a separate and distinct argument for exclusion under Rule 14a-8(i)(7) for a proposal does not *focus on* a significant social policy issue. The requirement that a proposal must focus on a significant social policy issue was explained by the Commission in the 1998 Release: [P]roposals . . . *focusing on* sufficiently significant social policy issues. . . 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" (emphasis added). The question of the *nexus* of a proposal to a *company* discussed in SLB 14L is different from the examination of whether a proposal that references a significant policy issue *focuses* primarily on such issue. SLB 14L does not address or affect the excludability under Rule 14a-8(i)(7) of a proposal that references a significant social policy where the central focus of the proposal is on products that a company offers as part of its ordinary business

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operations. The Staff has a long history of excluding proposals on this basis, which is consistent with the realigned approach explained in SLB 14L.

The Staff has concurred with the exclusion of proposals submitted to financial institutions requesting policies regarding lending and credit decisions that arguably involved a social issue. For example, the proposal in *Bank of America Corporation* (Feb. 24, 2010) requested a report describing, among other things, the company's policy regarding funding of companies engaged predominantly in mountain top removal coal mining. The Staff concurred with the exclusion of the proposal under Rule 14a-8(i)(7) stating "the proposal addresses matters beyond the environmental impact of Bank of America's project finance decisions, such as Bank of America's decisions to extend credit or provide other financial services to particular types of customers. Proposals concerning customer relations or the sale of particular services are generally excludable under rule 14a-8(i)(7)." *See also JPMorgan Chase & Co.* (Mar. 12, 2010) (concurring in the exclusion of a proposal requesting a report assessing the adoption of a policy barring future financing of companies engaged in mountain top removal coal mining).

The Company is in the business of underwriting insurance, and the Proposal focuses primarily on the products offered for sale by the Company and how the Company invests the revenues from such sales. Specifically, the Proposal focuses on the Company's decisions with regard to underwriting, insuring and investment activities and the identity of its customers, which are all ordinary business matters. The recitals of the resolution, which are an integral part of the Proposal, make clear that Proposal seeks "restrictions on oil and gas underwriting and investments." Although the Proposal may be viewed as related to the significant social policy issue of climate change, the action requested is for the Company to "address . . . its underwriting, insuring and investment activities." This relates to the products that the Company offers to its customers and categories of investments it purchases to support its insurance policies as well as its claims paying ability, which are at the core of the Company's ordinary business. The underlying thrust of the Proposal is to request the Company limit and perhaps cease certain of its product offerings, *i.e.*, insurance policies involving oil and gas customers, and investments involving oil and gas. This falls squarely within the Company's ordinary business operations, determining which risks it should and should not accept in exchange for premium or for its investments. Consequently, the Proposal's subject matter falls squarely within the Company's ordinary business operations and if implemented would substitute the judgment of shareholders for that of management on critical day-to-day business operations and is therefore excludable under Rule 14a-8(i)(7).

C. 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.

Even if a proposal involves a significant social policy issue, the proposal may nevertheless be excluded under Rule 14a-8(i)(7) if it seeks to micromanage the company by specifying in detail the manner in which the company should address the policy issue. *See Exxon Mobil Corporation* (Mar. 6, 2020) (concurring with the exclusion of a proposal requesting that

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the company's board charter a new board committee on climate risk, noting that as a result, "the Proposal unduly limits the board's flexibility and discretion in determining how the board should oversee climate risk"); *JPMorgan Chase & Co. (Christensen Fund)* (Mar. 30, 2018) (concurring on the basis of micromanagement with the exclusion of a proposal that requested a report on the reputational, financial and climate risks associated with project and corporate lending, underwriting, advising and investing for tar sands production and transportation, noting that the proposal sought to "impose specific methods for implementing complex policies"); and *Amazon.com, Inc.* (Jan. 18, 2018) (concurring with the exclusion of a proposal requesting the company list certain efficient showerheads before others on its website and describe the benefits of these showerheads).

The Staff recently explained in Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L") that "in order to assess whether a proposal probes matters 'too complex' for shareholders, as a group, to make an informed judgment, [the Staff] may consider the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic." In addition, the Staff stated with respect to proposals that request companies adopt timeframes or targets to address climate change: "Going forward we would not concur in the exclusion of [] proposals that suggest targets or timelines *so long as the proposals afford discretion to management as to how to achieve such goals.*" (emphasis added).

An informed vote on the Proposal requires an understanding of the Paris Agreement because the requested action seeks "alignment with the Paris Agreement's 1.5°C goal." A reasonable investor would not be sophisticated on the matter as it relates to insurance underwriting because the Paris Agreement emissions reduction goal is not specific to global insurance companies. Additionally, the Proponent has not provided, and we find no evidence of, available data or robust public discussion and analysis on the subject of the impact of insurance underwriting, insuring and investment practices on the Paris Agreement's 1.5°C goal. Furthermore, even if the Staff will no longer concur in the exclusion of proposals that provide a target, the Proposal does not afford discretion to the Board or management as to how to achieve the goal of reducing GHG emissions. Rather, the Proposal requires that in order to reach this goal, the Company must do so in alignment with the Paris Agreement's 1.5°C goal. There are many other publications or scenarios that also provide roadmaps to achieve net zero emissions.

Management has already determined its path to address the transition away from carbon-intensive energy sources, which is fully laid out in the Company's TCFD Report and in Sections I and II above. The Company's fossil fuel goals, policies and practices appreciate and understand the complexities of an orderly transition and takes into account real-world facts, scenarios and circumstances, including that there are currently insufficient alternative energy sources to completely replace fossil fuels at this time but that action can be taken to promote the growth and development of such sources. The Proponent is substituting its judgment for the judgment of the Company's Board and management, which has a robust governance structure of active Board and executive oversight, dedicated climate and risk committees and other experts analyzing the issues closely and providing strategies, goals and commitments aligned with reducing the threat

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of global warming in a manner that it believes is appropriate for the Company, the industry and the global economic and social order.

While the Company is committed to an orderly transition to a net zero economy, with government involvement, the Proposal advocates a singular method of implementing this complex objective – namely, adhering to the Paris Agreement’s 1.5° goal by having shareholders decide that the Company should restrict offering its core services to customers and making certain categories of investments. Implementing a sweeping policy such as the one proposed is a simplistic approach to address the critical and complicated objective of reducing global fossil fuel dependence, an objective that the Company has already publicly addressed in its TCFD Report. The Proposal fails to address any of the dynamics that would be important to consider as part of a complex strategy to assist in the transition to a low carbon economy. Limiting access to the Company’s underwriting coverage and scope of investments through adherence to the Paris Agreement’s 1.5° goal could have significant and uncertain consequences for the Company and its customers, all while neither the Company nor its shareholders know whether this policy will achieve any objective related to responsible climate policy. The Proposal is not supported by any facts or data that suggest that by adhering to the Paris Agreement’s 1.5 ° goal by avoiding or terminating relationships with particular companies, the Company will, on its own, have any significant impact to promote a realistic, orderly and effective transition to a carbon-free economy.

The Proposal here is similar to the proposal in *Marriott International, Inc.* (Mar. 17, 2010), where the proposal required that in order to achieve the goal of saving energy, the company install showerheads in test properties that “deliver no more than 1.6 gallons per minute (gpm) of flow” as well as a “mechanical switch that will allow for full water flow to almost no flow.” The Staff concurred in the exclusion of the proposal under Rule 14a-8(i)(7), explaining that:

...although the proposal raises concerns with global warming, the proposal seeks to micromanage the company to such a degree that exclusion of the proposal is appropriate. We note, in particular, that the proposal would require the company to test specific technologies that may be used to reduce energy consumption.

Here, too, although the Proposal raises concerns with global warming, it seeks to micromanage the Company by requiring compliance with a very specific report when there may be multiple ways to achieve the goal of the Proposal, including those already being implemented by the Company after careful thought and analysis of both micro and macro factors. The Proposal states that it has to be implemented “in alignment with the Paris Agreement’s 1.5°C goal, requiring net zero emissions,” explicitly imposing a specific method for implementation without regard to circumstance and without any reasonable exceptions. In addition, the Proposal is expressly directed to emissions relating to the Company’s underwriting, insuring, and investment activities.

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The Proposal would impose inflexible and far-reaching restrictions on the Company's day-to-day business without any understanding or study as to whether the actions would achieve the underlying objective. The Proposal would also constrain the decision-making process of the Company's Board and management. In SLB 14L, the Staff noted that as part of evaluating companies' micromanagement arguments, a proposal would need to "afford discretion to management as to how to achieve such goals."

There is more than one way to get to the net zero goal for GHG emissions. The Proposal, although directed at important objectives, would, at its core, provide shareholders with the authority to determine the type of clients to which the Company may provide its insurance underwriting products or the type of investments the Company may make. The Proposal is being overly prescriptive by directing that the net zero objective be achieved by adherence to the Paris Agreement's 1.5° goal. The Proposal does not afford discretion to the Board and management to consider and execute the appropriate response to direct and indirect oil and gas use and development and remain flexible in introducing new strategies as more information and technologies become available. The implementation of actions responsive to the underlying concerns articulated in the recital clauses of the resolution contained in the Proposal would result in the shareholders on their own directing the Company to highly restrict and potentially prohibit its insurance coverage to whole range of its existing clients and foregoing certain investment opportunities without consideration of strategic interests of the Company. For a global insurance company, the development, generation and selection of clients and the identification of investments to support claims paying ability are core functions of management that involves a range of considerations that shareholders are not in a position to address.

The Proposal would not provide management with any discretion to assess the risks and opportunities associated with the implementation of the underlying policy objectives, to leverage the extensive work it has done to establish its own existing climate-related business policies and to develop strategies in conjunction with its clients that could support a clean-energy transition and improved climate sustainability. Rather, shareholders are being asked to assume this managerial responsibility and dictate, by institutional policy, which companies are suitable to be the Company's clients and which companies are suitable for the Company to invest in, without providing any analysis of the impact of the Proposal on the Company.

Because the Proposal deals with the Company's ordinary business and seeks to micromanage the Company, the Company believes that the Proposal may be omitted from its Proxy Materials pursuant to Rule 14a-8(i)(7).

IV. To the extent that the Staff is unable to concur that (i) the Proposal may be excluded on any of the other grounds set forth in this letter and (ii) the Green Century Proposal described below may be excluded on any of the grounds set forth in a separate no-action request, the Proposal may be excluded under

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Rule 14a-8(i)(11) because it substantially duplicates the Green Century Proposal.

A. Rule 14a-8(i)(11) permits the exclusion of a shareholder proposal that substantially duplicates another proposal.

Rule 14a-8(i)(11) provides that a shareholder proposal may be excluded if it “substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company’s proxy materials for the same meeting.” The Commission has stated that “the purpose of [Rule 14a-8(i)(11)] is to eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other.” Exchange Act Release No. 12999 (Nov. 22, 1976) (the “1976 Release”).

The standard that the Staff has traditionally applied to determine whether a proposal substantially duplicates an earlier received proposal is whether the proposals present the same “principal thrust” or “principal focus.” See *Pacific Gas & Electric Co.* (Feb. 1, 1993). A proposal may be excluded as substantially duplicative of another proposal despite differences in terms or breadth and despite the proposals requesting different actions. See, e.g., *Exxon Mobil Corp.* (Mar. 13, 2020) (concurring with the exclusion of a proposal as substantially duplicative where the Staff explained “the two proposals share a concern for seeking additional transparency from the [c]ompany about its lobbying activities and how these activities align with the [c]ompany’s expressed policy positions of which one is the Company’s stated support of the Paris Climate Agreement” despite the proposals requesting different actions); *Wells Fargo & Co.* (Feb. 8, 2011) (concurring with the exclusion of a proposal seeking a review and report on the company’s loan modifications, foreclosures and securitizations as substantially duplicative of a proposal seeking a report that would include “home preservation rates” and “loss mitigation outcomes,” which would not necessarily be covered by the other proposal); *Ford Motor Co. (Leeds)* (Mar. 3, 2008) (concurring with the exclusion of a proposal to establish an independent committee to prevent Ford family stockholder conflicts of interest with non-family stockholders as substantially duplicative of a proposal requesting that the board take steps to adopt a recapitalization plan for all of the company’s outstanding stock to have one vote per share).

B. The Proposal may be excluded under Rule 14a-8(i)(11) because it substantially duplicates the Green Century Proposal, which was received earlier.

The Proposal substantially duplicates the shareholder proposal submitted by Green Century Capital Management, Inc. (“Green Century Proposal”, and together with the Proposal for the purposes of this Section B, the “Proposals”). See Exhibit C. Please note that the Company has separately submitted a no-action request asking the Staff to concur that the Green Century Proposal can be excluded for other reasons. If the Staff does not concur with the exclusion of the Green Century Proposal pursuant to such separate no-action request, the Company expects to include the Green Century Proposal in its 2022 Proxy Materials.

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The Green Century Proposal states in relevant part:

RESOLVED: Shareholders request that Chubb's Board of Directors adopt and disclose new policies to help ensure that its underwriting practices do not support new fossil fuel supplies, in alignment with the IEA's Net Zero Emissions by 2050 Scenario.

The Company received the Green Century Proposal on December 6, 2021, which is before the Company received the Proposal on December 7, 2021. The Company intends to include the Green Century Proposal in its 2022 proxy materials if the Staff does not concur in the Company's view that the Green Century Proposal may be excluded.

The principal thrust and focus of the Proposal and the Green Century Proposal are the same: using insurance underwriting practices as a means of achieving net zero emissions. The requests are slightly different. The Green Century Proposal requests that the Company adopt policies to help ensure that its underwriting practices do not support new fossil fuel supplies, in alignment with the IEA's Net Zero Emissions by 2050 Scenario, and the Proposal requests a report addressing whether and how the Company intends to measure, disclose and reduce GHG emissions associated with its underwriting, insuring and investment activities in alignment with the Paris Agreement's goal of requiring net zero emissions. However, both Proposals focus on the adoption of policies that would result in a 1.5 degrees Celsius goal and net zero GHG emissions. The proposals share the focus of the Company using its insurance underwriting practices for the purpose of reducing GHG emissions and disclosing information on its net zero target emissions.

In this regard, the Proposal and the Green Century Proposal are similar to the proposals at issue in *Ford Motor Co.* (Feb. 19, 2004), where the Staff concurred that Ford could exclude a proposal requesting that the company "adopt (as internal corporate policy) goals concerning fuel mileage or [GHG] reductions similar to those which would be achieved by meeting or exceeding the highest standards contained in recent congressional proposals" because it substantially duplicated a prior proposal requesting that the company "report to shareholders . . . (a) performance data from the years 1994 through 2003 and ten-year projections of estimated total annual [GHG] emissions from its products in operation; (b) how the company will ensure competitive positioning based on emerging near and long-term GHG regulatory scenarios at the state, regional, national and international levels; (c) how the [c]ompany can significantly reduce [GHG] emissions from its fleet of vehicle products (using a 2003 baseline) by 2013 and 2023" (emphasis added). Ford successfully argued that "although the terms and the breadth of the two proposals are somewhat different, the principal thrust and focus are substantially the same, namely to encourage the [c]ompany to adopt policies that reduce greenhouse gas emissions in order to enhance competitiveness." This is similar to the proposals the Company received, where Green Century Proposal requested the adoption of policies and the Proposal from As You Sow requested a report. The substantial duplication argument is especially compelling in the current situation because the Green Century Proposal not only requests adoption of policies but also disclosure of those policies. See also *Exxon Mobil Corp. (Neva Rockefeller Goodwin)* (Mar.

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19, 2010) (concurring with the exclusion of a proposal requesting a report on how reduced demand for fossil fuels would affect the company's long-term strategic plan as substantially duplicative of a proposal asking for a report to assess the financial risks associated with climate change where the company argued "both seek an assessment of and report on the risks that the [c]ompany faces as a result of climate change and the [b]oard's related activities").

The Staff has previously concurred that when the subject of a report requested in a later proposal would be encompassed within the scope of a report proposed in a prior proposal, exclusion under Rule 14a-8(i)(11) is permitted. For example, in *Chevron Corp.* (Mar. 23, 2009, recon. denied Apr. 6, 2009), the company sought to exclude a proposal requesting that an independent committee prepare a report on the environmental damage that would result from the company's expanding oil sands operations in the Canadian boreal forest because it was substantially duplicative of a previously submitted proposal requesting the Company "adopt quantitative, long-term goals, based on current technologies, for reducing total greenhouse gas emissions from the Company's products and operations" and "report to shareholders . . . on its plans to achieve these goals." In that situation, Chevron successfully argued that the analysis of the matters raised in the later submitted proposal would be "naturally encompass[ed]" in its implementation of the earlier submitted proposal. Similarly, in *General Motors Corp.* (Mar. 13, 2008), the Staff permitted General Motors to exclude a proposal requesting "that a committee of independent directors . . . assess the steps the company is taking to meet new fuel economy and [GHG] emission standards for its fleets of cars and trucks, and issue a report to shareholders" because it was substantially duplicative of a prior proposal requesting that "the [b]oard of [d]irectors publicly adopt quantitative goals, based on current and emerging technologies, for reducing total [GHG] emissions from the company's products and operations; and that the company report to shareholders." General Motors successfully argued that the report requested in the second proposal concerning new fuel standards would be covered in any report addressing GHG emissions generally.

In the current situation, and like those in *Chevron Corp.* and *General Motors Corp.*, discussed above, the Green Century Proposal substantially encompasses the scope of the report requested by the Proponent's Proposal. The fossil fuel underwriting concerns that the Green Century Proposal highlights would be a significant component of the report that the Proponent requests on "whether and how" Chubb intends to measure, disclose, and reduce the GHG emissions. As noted earlier in this letter, Chubb has a coal policy covering both underwriting and investment, which is already publicly disclosed and would be discussed in any disclosure responsive to the Green Century Proposal, reflecting how Chubb has determined to address GHG emissions associated with its underwriting, insuring, and investment activities, and thereby duplicating the content of the report requested by the Proposal. Because the actions requested in the Green Century Proposal would include the analysis requested in the Proposal, exclusion of the Proposal pursuant to Rule 14a-8(i)(11) is appropriate.

Finally, because the Proposal substantially duplicates the Green Century Proposal, if the Company were required to include both Proposals in its proxy materials, there is a risk that the Company's shareholders would be confused when asked to vote on both. As noted above, the

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purpose of Rule 14a-8(i)(11) “is to eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other.” 1976 Release. Accordingly, the Company believes that the Proposal may be excluded as substantially duplicative of the Green Century Proposal.

V. Conclusion

For the foregoing reasons, I request your confirmation that the Staff will not recommend enforcement action to the Commission if Chubb omits the Proposal from its 2022 Proxy Materials.

If the Staff has any questions, please contact Laura Richman of Mayer Brown LLP at (312) 701-7304 or lrichman@mayerbrown.com or the undersigned at (312) 701-7199 or ebest@mayerbrown.com. We would appreciate it if you would send your response by email.

Very truly yours,



Edward S. Best

cc: Gina Rebollar, Chief Corporate Lawyer and Deputy General Counsel,
Global Corporate Affairs, of Chubb
Danielle Fugere, President & Chief Counsel of As you Sow
shareholderengagement@asyousow.org

EXHIBIT A
Proposal



VIA EMAIL

December 7, 2021

Joseph F. Wayland
Executive Vice President, General Counsel and Secretary
Chubb Limited



Dear Mr. Wayland,

As You Sow is submitting the attached shareholder proposal using shares owned by the *As You Sow* Shareholder Action Account (“Proponent”), a shareholder of Chubb Limited, for a vote at Chubb Limited’s 2022 annual shareholder meeting. This proposal requests Chubb Limited’s Board issue a report addressing whether and how it intends to measure, disclose, and reduce the GHG emissions associated with its underwriting, insuring, and investment activities in alignment with the Paris Agreement’s 1.5°C goal, requiring net zero emissions. The *As You Sow* Shareholder Action Account meets Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934 requirements including the continuous ownership of over \$25,000 worth of Company stock, with voting rights, which the *As You Sow* Shareholder Action Account has held continuously for over one year and will continue to hold through the date of the Company’s annual meeting in 2022.

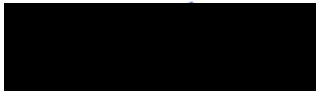
The *As You Sow* Shareholder Action Account supports this proposal and a representative of *As You Sow* will attend the stockholder meeting to move the resolution as required.

We are available to discuss this issue and are optimistic that such a discussion could result in resolution of the Proponent’s concerns. Danielle Fugere, President & Chief Counsel ([REDACTED]), is the contact person on behalf of *As You Sow* for this proposal. Danielle Fugere, is available for a meeting with the Company regarding this shareholder proposal at the following days/times: December 23, 2021 at 2:00pm Eastern Standard Time or December 23, 2021 at 2:30pm Eastern Standard Time.

Please also send all correspondence regarding this proposal to



Sincerely,



Andrew Behar
CEO, *As You Sow*

Enclosures

- Shareholder Proposal

cc: Karen Beyer, Senior Vice President, Investor Relations



WHEREAS: Insurance companies have a critical role to play in meeting the Paris Agreement’s 1.5 degrees Celsius (1.5°C) goal, requiring net zero greenhouse gas (GHG) emissions by 2050. Projections¹ have found that limiting global warming to 1.5 degrees versus 2 degrees will save \$20 trillion globally by 2100, while exceeding 2 degrees could lead to climate damages in the hundreds of trillions.² The U.S. insurance industry is under increasing pressure to address its contributions to climate change from its underwriting, insuring, and investing activities.³

These financial activities contribute to systemic portfolio risk to the global economy, investors, and insurers’ profitability. The U.S. Commodity Futures Trading Commission recently acknowledged that climate change could impair the productive capacity of the national economy and recommended that state insurance regulators require insurers to assess how their underwriting activity and investment portfolios may be impacted by climate-related risks.

This growing public pressure for the insurance industry to account for its climate related risks and impacts is exemplified by legislation recently passed in Connecticut⁴ requiring regulators to incorporate emissions reduction targets into their supervision of insurers.

Shareholders are concerned that Chubb is not adequately reducing the climate footprint of its underwriting, insuring, and investing activities. This failure creates significant risk. Chubb reported pretax catastrophe losses of \$1.15 billion in Q3 2021, with \$806 million of that figure attributable to Hurricane Ida.⁵ This follows a larger global trend: insured losses from natural disasters reached \$42 billion in the first six months of 2021, a ten year high.⁶

Chubb is a climate laggard in the global insurance sector, ranking in the bottom half in a survey of the 30 largest global insurers,⁷ due largely to its lack of restrictions on oil and gas underwriting and investments. In contrast, peers are beginning to address the GHG emissions associated with their underwriting and investment activities.⁸ Thirteen global insurers have also joined the United Nations’ Net Zero Insurance Alliance in which they commit to transition their emissions from insurance and reinsurance underwriting portfolios to net zero by 2050.

Chubb does not measure or disclose its financed emissions, including those attributable to underwriting, insuring, and investments, nor has it adopted targets aligned with the Paris Agreement’s 1.5°C goal for such emissions.

BE IT RESOLVED: Shareholders request that Chubb issue a report, at reasonable cost and omitting proprietary information, addressing whether and how it intends to measure, disclose, and reduce the

¹ <https://www.nature.com/articles/d41586-018-05219-5>

² <https://www.nature.com/articles/s41467-020-18797-8/>

³ <https://shareaction.org/reports/insuring-disaster-a-ranking>

⁴ <https://www.businessinsurance.com/article/20210617/NEWS06/912342605/Connecticut-bill-calls-for-regulation-of-insurers%E2%80%99-climate-risks>

⁵ <https://www.reinsurancene.ws/chubb-sees-q3-net-income-rise-54-despite-1bn-of-catastrophe-losses/>

⁶ <https://www.weforum.org/agenda/2021/07/natural-disasters-cost-economic-insurance-2021-extreme-weather-floods-polar-vortex/>

⁷ <https://insure-our-future.com/scorecard>

⁸ <https://insure-our-future.com/scorecard>

GHG emissions associated with its underwriting, insuring, and investment activities in alignment with the Paris Agreement's 1.5°C goal, requiring net zero emissions.

SUPPORTING STATEMENT: Shareholders recommend the report disclose, at board discretion:

- Whether Travelers will begin measuring and disclosing the emissions associated with the full range of its operations and by when, and
- Whether Travelers will set a Paris aligned, net zero target, for its full range of emissions. and on what timeline

EXHIBIT B
Additional Correspondence

Gina Rebollar
*Chief Corporate Lawyer and
Deputy General Counsel, Global Corporate Affairs*

VIA E-MAIL AND COURIER

December 14, 2021

Danielle Fugere
President & Chief Counsel
As You Sow



Re: Shareholder Proposal – Chubb Limited

Dear Ms. Fugere:

We received the letter from As You Sow (“AYS”) on behalf of As You Sow Shareholder Action Account (the “Proponent”), which was submitted to the Company via e-mail on December 7, 2021 (the “Submission Date”), requesting that Chubb Limited (“Chubb” or the “Company”) include a proposed resolution and accompanying supporting statement (the “Proposal”) in its proxy materials for the Company’s 2022 annual general meeting of shareholders.

We are requesting information regarding the Proponent’s eligibility to submit the proposal. Unless it can be demonstrated within the proper time frame that the Proponent meets the ownership requirements of Rule 14a-8 under the Securities Exchange Act of 1934 as amended, (“Exchange Act”), as described below, we will be entitled to and will consider excluding the Proposal from the proxy materials for the Company’s 2022 annual general meeting.

In order to be eligible to include a proposal in the proxy materials for the Company’s 2022 annual general meeting, Rule 14a-8(b) provides that a shareholder proponent must submit sufficient proof of its continuous ownership of company shares. Specifically, Rule 14a-8 requires that the Proponent demonstrate that it continuously owned at least:

- \$2,000 in market value of the Company’s securities entitled to vote on the Proposal for at least three years preceding and including the Submission Date; or
- \$15,000 in market value of the Company’s securities entitled to vote on the Proposal for at least two years preceding and including the Submission Date; or

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- \$25,000 in market value of the Company's securities entitled to vote on the Proposal for at least one year preceding and including the Submission Date; or
- \$2,000 of the Company's securities entitled to vote on the Proposal for at least one year as of January 4, 2021, and that the Proponent has continuously maintained a minimum investment amount of at least \$2,000 of such shares from January 4, 2021 through the Submission Date.

(Each of the above thresholds, an "Ownership Requirement," and collectively, the "Ownership Requirements.")

AYS states in its letter that the Proponent has "continuous ownership of over \$25,000 worth of Company stock, with voting rights," which the Proponent "has held continuously for over one year and will continue to hold through the date of the Company's annual meeting in 2022." However, we have reviewed the records of the Company and the Proponent does not appear as registered owner of Chubb common shares and thus we are unable to confirm the Proponent's current ownership of Chubb common shares or the length of time for which the Proponent (or any entity affiliated with the Proponent) has held the shares. In addition, to date we have not received proof that the Proponent has satisfied any of the Ownership Requirements. To remedy this defect, you must submit sufficient proof that the Proponent has satisfied at least one of the Ownership Requirements.

Assuming the Proponent (or any entity affiliated with the Proponent or for whom the Proponent is authorized to act) is an unregistered (or beneficial) owner, pursuant to Rule 14a-8(b), in order to prove eligibility to submit a proposal for inclusion in Chubb's 2022 proxy materials, the Proponent must provide a written statement from the "record" holder (usually a broker or a bank) of the shares beneficially owned, verifying that as of the Submission Date, the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements described above. The Securities and Exchange Commission ("SEC") made clear in its Staff Legal Bulletin No. 14G ("SLB 14G") that it views a "proposal's date of submission as the date the proposal is postmarked or transmitted electronically." As such, the proof of ownership must demonstrate the required ownership for the entire time period set forth in the applicable Ownership Requirement preceding and including December 7, 2021, which is the date the proposal was transmitted electronically.

Please be aware that in accordance with the SEC's Staff Legal Bulletin No. 14F ("SLB 14F"), SLB 14G and SEC's Staff Legal Bulletin No. 14L ("SLB 14L"), when the shareholder is a beneficial owner of securities an ownership verification statement must come from a DTC participant or its affiliate. The Depository Trust Company (DTC a/k/a Cede & Co.) is a registered clearing agency that acts as a securities depository. You can confirm whether the Proponent's broker or bank is a DTC participant by asking them, or by checking DTC's participant list which is currently available on the Internet at <https://www.dtcc.com/~media/Files/Downloads/client-center/DTC/alpha.ashx>. If the Proponent's bank or broker is not a DTC participant, you may need to satisfy the proof of ownership requirements by obtaining multiple statements, for example (1) one from the

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Proponent's bank or broker confirming its ownership and (2) another from the DTC participant confirming the bank or broker's ownership.

To the extent that the Company common shares identified in the proof of ownership that the Proponent submits are not directly held in the Proponent's name (i.e., such as shares held in a trust or by an affiliated entity), please provide written evidence indicating that the Proponent has authority to act on behalf of the shareholder named in the proof of ownership with respect to such shares as of the Submission Date (December 7, 2021), including with respect to submitting the Proposal and making the statement with respect to the intention to hold the required amount of shares through the annual meeting date. Any such written evidence should be signed and dated by the shareholder named in the proof of ownership.

Rule 14a-8 requires that proof of ownership must be provided no later than 14 calendar days from the date of receipt of this letter. If no such proof is provided in the required time frame, the Proposal will be excluded from our proxy statement. A response must be postmarked, or transmitted electronically, no later than 14 calendar days from the date of receipt of this letter.

Please address any response to me at the address above. Alternatively, you may e-mail the response to [REDACTED]

Chubb has not yet reviewed the Proposal to determine whether it complies with the other requirements for shareholder proposals found in Rules 14a-8 and 14a-9 under the Exchange Act and reserves the right to take appropriate action under such rules if it does not.

For your convenience, I have enclosed copies of (1) Rule 14a-8, (2) SLB 14F, (3) SLB 14G and (4) SLB 14L.

Please contact me if you have any questions.

Sincerely,

[REDACTED]
Gina Rebollar
Chief Corporate Lawyer and Deputy General Counsel, Global Corporate Affairs

Attachments

§240.14a-8 Shareholder proposals.

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

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

(b) *Question 2: Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?* (1) To be eligible to submit a proposal, you must satisfy the following requirements:

(i) You must have continuously held:

(A) At least \$2,000 in market value of the company's securities entitled to vote on the proposal for at least three years; or

(B) At least \$15,000 in market value of the company's securities entitled to vote on the proposal for at least two years; or

(C) At least \$25,000 in market value of the company's securities entitled to vote on the proposal for at least one year; or

(D) The amounts specified in paragraph (b)(3) of this section. This paragraph (b)(1)(i)(D) will expire on the same date that §240.14a-8(b)(3) expires; and

(ii) You must provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; and

(iii) You must provide the company with a written statement that you are able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal. You must include your contact information as well as business days and specific times that you are available to discuss the proposal with the company. You must identify times that are within the regular business hours of the company's principal executive offices. If these hours are not disclosed in the company's proxy statement for the prior year's annual meeting, you must identify times that are between 9 a.m. and 5:30 p.m. in the time zone of the company's principal executive offices. If you elect to co-file a proposal, all co-filers must either:

(A) Agree to the same dates and times of availability, or

(B) Identify a single lead filer who will provide dates and times of the lead filer's availability to engage on behalf of all co-filers; and

(iv) If you use a representative to submit a shareholder proposal on your behalf, you must provide the company with written documentation that:

(A) Identifies the company to which the proposal is directed;

(B) Identifies the annual or special meeting for which the proposal is submitted;

(C) Identifies you as the proponent and identifies the person acting on your behalf as your representative;

(D) Includes your statement authorizing the designated representative to submit the proposal and otherwise act on your behalf;

(E) Identifies the specific topic of the proposal to be submitted;

(F) Includes your statement supporting the proposal; and

(G) Is signed and dated by you.

(v) The requirements of paragraph (b)(1)(iv) of this section shall not apply to shareholders that are entities so long as the representative's authority to act on the shareholder's behalf is apparent and self-evident such that a reasonable person would understand that the agent has authority to submit the proposal and otherwise act on the shareholder's behalf.

(vi) For purposes of paragraph (b)(1)(i) of this section, you may not aggregate your holdings with those of another shareholder or group of shareholders to meet the requisite amount of securities necessary to be eligible to submit a proposal.

(2) One of the following methods must be used to demonstrate your eligibility to submit a proposal:

(i) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the meeting of shareholders.

(ii) If, like many shareholders, you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

(A) The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively. You must also include your own written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; or

(B) The second way to prove ownership applies only if you were required to file, and filed, a Schedule 13D (§240.13d-101), Schedule 13G (§240.13d-102), Form 3 (§249.103 of this chapter), Form 4 (§249.104 of this chapter), and/or Form 5 (§249.105 of this chapter), or amendments to those documents or updated forms, demonstrating that you meet at least one of the share ownership requirements under paragraph (b)(1)(i)(A) through (C) of this section. If you have filed one or more of these documents with the SEC, you may demonstrate your eligibility to submit a proposal by submitting to the company:

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

(2) Your written statement that you continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively; and

(3) Your written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the company's annual or special meeting.

(3) If you continuously held at least \$2,000 of a company's securities entitled to vote on the proposal for at least one year as of January 4, 2021, and you have continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company, you will be eligible to submit a proposal to such company for an annual or special meeting to be held prior to January 1, 2023. If you rely on this provision, you must provide the company with your written statement that you intend to continue to hold at least \$2,000 of such securities through the date of the shareholders' meeting for which the proposal is submitted. You must also follow the procedures set forth in paragraph (b)(2) of this section to demonstrate that:

(i) You continuously held at least \$2,000 of the company's securities entitled to vote on the proposal for at least one year as of January 4, 2021; and

(ii) You have continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company.

(iii) This paragraph (b)(3) will expire on January 1, 2023.

(c) *Question 3:* How many proposals may I submit? Each person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders' meeting. A person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders' meeting.

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

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

(2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.

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

(f) *Question 6: What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section?* (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under §240.14a-8 and provide you with a copy under Question 10 below, §240.14a-8(j).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) *Director elections*: If the proposal:

(i) Would disqualify a nominee who is standing for election;

(ii) Would remove a director from office before his or her term expired;

(iii) Questions the competence, business judgment, or character of one or more nominees or directors;

(iv) Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or

(v) Otherwise could affect the outcome of the upcoming election of directors.

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

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

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

NOTE TO PARAGRAPH (i)(10): A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S-K (§229.402 of this chapter) or any successor to Item 402 (a "say-on-pay vote") or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by §240.14a-21(b) of this chapter a single year (*i.e.*, one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by §240.14a-21(b) of this chapter.

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

(12) *Resubmissions*. If the proposal addresses substantially the same subject matter as a proposal, or proposals, previously included in the company's proxy materials within the preceding five calendar years if the most recent vote occurred within the preceding three calendar years and the most recent vote was:

- (i) Less than 5 percent of the votes cast if previously voted on once;
- (ii) Less than 15 percent of the votes cast if previously voted on twice; or
- (iii) Less than 25 percent of the votes cast if previously voted on three or more times.

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

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

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

(i) The proposal;

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

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

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

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

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

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

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

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

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

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

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

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

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

[63 FR 29119, May 28, 1998; 63 FR 50622, 50623, Sept. 22, 1998, as amended at 72 FR 4168, Jan. 29, 2007; 72 FR 70456, Dec. 11, 2007; 73 FR 977, Jan. 4, 2008; 76 FR 6045, Feb. 2, 2011; 75 FR 56782, Sept. 16, 2010; 85 FR 70294, Nov. 4, 2020]

EFFECTIVE DATE NOTE: At 85 FR 70294, Nov. 4, 2020, §240.14a-8 was amended by adding paragraph (b)(3), effective Jan. 4, 2021 through Jan. 1, 2023.

Shareholder Proposals

Staff Legal Bulletin No. 14F (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 18, 2011

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

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

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

A. The purpose of this bulletin

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

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

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

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

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

To be eligible to submit a shareholder proposal, a shareholder must have continuously held at least \$2,000 in market value, or 1%, of the company’s securities entitled to be voted on the proposal at the shareholder meeting for at least one year as of the date the shareholder submits the proposal. The shareholder must also continue to hold the required amount of securities through the date of the meeting and must provide the company with a written statement of intent to do so.¹

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

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

2. The role of the Depository Trust Company

Most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company ("DTC"), a registered clearing agency acting as a securities depository. Such brokers and banks are often referred to as "participants" in DTC.⁴ The names of these DTC participants, however, do not appear as the registered owners of the securities deposited with DTC on the list of shareholders maintained by the company or, more typically, by its transfer agent. Rather, DTC's nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants. A company can request from DTC a "securities position listing" as of a specified date, which identifies the DTC participants having a position in the company's securities and the number of securities held by each DTC participant on that date.⁵

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

In *The Hain Celestial Group, Inc.* (Oct. 1, 2008), we took the position that an introducing broker could be considered a "record" holder for purposes of Rule 14a-8(b)(2)(i). An introducing broker is a broker that engages in sales and other activities involving customer contact, such as opening customer accounts and accepting customer orders, but is not permitted to maintain custody of customer funds and securities.⁶ Instead, an introducing broker engages another broker, known as a "clearing broker," to hold custody of client funds and securities, to clear and execute customer trades, and to handle other functions such as issuing confirmations of customer trades and customer account statements. Clearing brokers generally are DTC participants; introducing brokers generally are not. As introducing brokers generally are not DTC participants, and therefore typically do not appear on DTC's securities position listing, *Hain Celestial* has required companies to accept proof of ownership letters from brokers in cases where, unlike the positions of registered owners and brokers and banks that are DTC participants, the company is unable to verify the positions against its own or its transfer agent's records or against DTC's securities position listing.

In light of questions we have received following two recent court cases relating to proof of ownership under Rule 14a-8⁷ and in light of the Commission's discussion of registered and beneficial owners in the Proxy Mechanics Concept Release, we have reconsidered our views as to what types of brokers and banks should be considered "record" holders under Rule 14a-8(b)(2)(i). Because of the transparency of DTC participants' positions in a company's securities, we will take the view going forward that, for Rule 14a-8(b)(2)(i) purposes, only DTC participants should be viewed as "record" holders of securities that are deposited at DTC. As a result, we will no longer follow *Hain Celestial*.

We believe that taking this approach as to who constitutes a "record" holder for purposes of Rule 14a-8(b)(2)(i) will provide greater certainty to beneficial owners and companies. We also note that this approach is consistent with

Exchange Act Rule 12g5-1 and a 1988 staff no-action letter addressing that rule,⁸ under which brokers and banks that are DTC participants are considered to be the record holders of securities on deposit with DTC when calculating the number of record holders for purposes of Sections 12(g) and 15(d) of the Exchange Act.

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

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

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

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

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

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

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

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

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

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

First, Rule 14a-8(b) requires a shareholder to provide proof of ownership that he or she has "continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal" (emphasis added).¹⁰ We note that many proof of ownership letters do not satisfy this requirement because they do not verify the shareholder's beneficial ownership for the entire one-year period preceding and including the date the proposal is submitted. In some cases, the letter speaks as of a date *before* the date the proposal is submitted, thereby leaving a gap between the date of the verification and the date the proposal is submitted. In other cases, the letter speaks as of a date *after*

the date the proposal was submitted but covers a period of only one year, thus failing to verify the shareholder's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

Second, many letters fail to confirm continuous ownership of the securities. This can occur when a broker or bank submits a letter that confirms the shareholder's beneficial ownership only as of a specified date but omits any reference to continuous ownership for a one-year period.

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

“As of [date the proposal is submitted], [name of shareholder] held, and has held continuously for at least one year, [number of securities] shares of [company name] [class of securities].”¹¹

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

D. The submission of revised proposals

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

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

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

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

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

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

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

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

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

We have previously addressed the requirements for withdrawing a Rule 14a-8 no-action request in SLB Nos. 14 and 14C. SLB No. 14 notes that a company should include with a withdrawal letter documentation demonstrating that a shareholder has withdrawn the proposal. In cases where a proposal submitted by multiple shareholders is withdrawn, SLB No. 14C states that, if each shareholder has designated a lead individual to act on its behalf and the company is able to demonstrate that the individual is authorized to act on behalf of all of the proponents, the company need only provide a letter from that lead individual indicating that the lead individual is withdrawing the proposal on behalf of all of the proponents.

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

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

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

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

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

¹ See Rule 14a-8(b).

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

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

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

⁵ See Exchange Act Rule 17Ad-8.

⁶ See Net Capital Rule, Release No. 34-31511 (Nov. 24, 1992) [57 FR 56973] (“Net Capital Rule Release”), at Section II.C.

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

⁸ *Techne Corp.* (Sept. 20, 1988).

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

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

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

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

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

company after the company has either submitted a Rule 14a-8 no-action request to exclude an earlier proposal submitted by the same proponent or notified the proponent that the earlier proposal was excludable under the rule.

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

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

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

Modified: Oct. 18, 2011

Shareholder Proposals

Staff Legal Bulletin No. 14G (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 16, 2012

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

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

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

A. The purpose of this bulletin

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

- the parties that can provide proof of ownership under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8;
- the manner in which companies should notify proponents of a failure to provide proof of ownership for the one-year period required under Rule 14a-8(b)(1); and
- the use of website references in proposals and supporting statements.

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

B. Parties that can provide proof of ownership under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

1. Sufficiency of proof of ownership letters provided by affiliates of DTC participants for purposes of Rule 14a-8(b)(2)(i)

To be eligible to submit a proposal under Rule 14a-8, a shareholder must, among other things, provide documentation evidencing that the shareholder has continuously held at least \$2,000 in market value, or 1%, of the company’s securities entitled to be voted on the proposal at the shareholder meeting for at least one year as of

the date the shareholder submits the proposal. If the shareholder is a beneficial owner of the securities, which means that the securities are held in book-entry form through a securities intermediary, Rule 14a-8(b)(2)(i) provides that this documentation can be in the form of a “written statement from the ‘record’ holder of your securities (usually a broker or bank). . . .”

In SLB No. 14F, the Division described its view that only securities intermediaries that are participants in the Depository Trust Company (“DTC”) should be viewed as “record” holders of securities that are deposited at DTC for purposes of Rule 14a-8(b)(2)(i). Therefore, a beneficial owner must obtain a proof of ownership letter from the DTC participant through which its securities are held at DTC in order to satisfy the proof of ownership requirements in Rule 14a-8.

During the most recent proxy season, some companies questioned the sufficiency of proof of ownership letters from entities that were not themselves DTC participants, but were affiliates of DTC participants.¹ By virtue of the affiliate relationship, we believe that a securities intermediary holding shares through its affiliated DTC participant should be in a position to verify its customers’ ownership of securities. Accordingly, we are of the view that, for purposes of Rule 14a-8(b)(2)(i), a proof of ownership letter from an affiliate of a DTC participant satisfies the requirement to provide a proof of ownership letter from a DTC participant.

2. Adequacy of proof of ownership letters from securities intermediaries that are not brokers or banks

We understand that there are circumstances in which securities intermediaries that are not brokers or banks maintain securities accounts in the ordinary course of their business. A shareholder who holds securities through a securities intermediary that is not a broker or bank can satisfy Rule 14a-8’s documentation requirement by submitting a proof of ownership letter from that securities intermediary.² If the securities intermediary is not a DTC participant or an affiliate of a DTC participant, then the shareholder will also need to obtain a proof of ownership letter from the DTC participant or an affiliate of a DTC participant that can verify the holdings of the securities intermediary.

C. Manner in which companies should notify proponents of a failure to provide proof of ownership for the one-year period required under Rule 14a-8(b)(1)

As discussed in Section C of SLB No. 14F, a common error in proof of ownership letters is that they do not verify a proponent’s beneficial ownership for the entire one-year period preceding and including the date the proposal was submitted, as required by Rule 14a-8(b)(1). In some cases, the letter speaks as of a date *before* the date the proposal was submitted, thereby leaving a gap between the date of verification and the date the proposal was submitted. In other cases, the letter speaks as of a date *after* the date the proposal was submitted but covers a period of only one year, thus failing to verify the proponent’s beneficial ownership over the required full one-year period preceding the date of the proposal’s submission.

Under Rule 14a-8(f), if a proponent fails to follow one of the eligibility or procedural requirements of the rule, a company may exclude the proposal only if it notifies the proponent of the defect and the proponent fails to correct it. In SLB No. 14 and SLB No. 14B, we explained that companies should provide adequate detail about what a proponent must do to remedy all eligibility or procedural defects.

We are concerned that companies’ notices of defect are not adequately describing the defects or explaining what a proponent must do to remedy defects in proof of ownership letters. For example, some companies’ notices of defect make no mention of the gap in the period of ownership covered by the proponent’s proof of ownership letter or other specific deficiencies that the company has identified. We do not believe that such notices of defect serve the purpose of Rule 14a-8(f).

Accordingly, going forward, we will not concur in the exclusion of a proposal under Rules 14a-8(b) and 14a-8(f) on the basis that a proponent's proof of ownership does not cover the one-year period preceding and including the date the proposal is submitted unless the company provides a notice of defect that identifies the specific date on which the proposal was submitted and explains that the proponent must obtain a new proof of ownership letter verifying continuous ownership of the requisite amount of securities for the one-year period preceding and including such date to cure the defect. We view the proposal's date of submission as the date the proposal is postmarked or transmitted electronically. Identifying in the notice of defect the specific date on which the proposal was submitted will help a proponent better understand how to remedy the defects described above and will be particularly helpful in those instances in which it may be difficult for a proponent to determine the date of submission, such as when the proposal is not postmarked on the same day it is placed in the mail. In addition, companies should include copies of the postmark or evidence of electronic transmission with their no-action requests.

D. Use of website addresses in proposals and supporting statements

Recently, a number of proponents have included in their proposals or in their supporting statements the addresses to websites that provide more information about their proposals. In some cases, companies have sought to exclude either the website address or the entire proposal due to the reference to the website address.

In SLB No. 14, we explained that a reference to a website address in a proposal does not raise the concerns addressed by the 500-word limitation in Rule 14a-8(d). We continue to be of this view and, accordingly, we will continue to count a website address as one word for purposes of Rule 14a-8(d). To the extent that the company seeks the exclusion of a website reference in a proposal, but not the proposal itself, we will continue to follow the guidance stated in SLB No. 14, which provides that references to website addresses in proposals or supporting statements could be subject to exclusion under Rule 14a-8(i)(3) if the information contained on the website is materially false or misleading, irrelevant to the subject matter of the proposal or otherwise in contravention of the proxy rules, including Rule 14a-9.³

In light of the growing interest in including references to website addresses in proposals and supporting statements, we are providing additional guidance on the appropriate use of website addresses in proposals and supporting statements.⁴

1. References to website addresses in a proposal or supporting statement and Rule 14a-8(i)(3)

References to websites in a proposal or supporting statement may raise concerns under Rule 14a-8(i)(3). In SLB No. 14B, we stated that the exclusion of a proposal under Rule 14a-8(i)(3) as vague and indefinite may be appropriate if neither the shareholders 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. In evaluating whether a proposal may be excluded on this basis, we consider only the information contained in the proposal and supporting statement and determine whether, based on that information, shareholders and the company can determine what actions the proposal seeks.

If a proposal or supporting statement refers to a website that provides information necessary for shareholders and the company to understand with reasonable certainty exactly what actions or measures the proposal requires, and such information is not also contained in the proposal or in the supporting statement, then we believe the proposal would raise concerns under Rule 14a-9 and would be subject to exclusion under Rule 14a-8(i)(3) as vague and indefinite. By contrast, if shareholders and the company can understand with reasonable certainty exactly what actions or measures the proposal requires without reviewing the information provided on the website, then we believe that the proposal would not be subject to exclusion under Rule 14a-8(i)(3) on the basis of the reference to the website address. In this case, the information on the website only supplements the information contained in the proposal and in the supporting statement.

2. Providing the company with the materials that will be published on the referenced website

We recognize that if a proposal references a website that is not operational at the time the proposal is submitted, it will be impossible for a company or the staff to evaluate whether the website reference may be excluded. In our view, a reference to a non-operational website in a proposal or supporting statement could be excluded under Rule 14a-8(i)(3) as irrelevant to the subject matter of a proposal. We understand, however, that a proponent may wish to include a reference to a website containing information related to the proposal but wait to activate the website until it becomes clear that the proposal will be included in the company's proxy materials. Therefore, we will not concur that a reference to a website may be excluded as irrelevant under Rule 14a-8(i)(3) on the basis that it is not yet operational if the proponent, at the time the proposal is submitted, provides the company with the materials that are intended for publication on the website and a representation that the website will become operational at, or prior to, the time the company files its definitive proxy materials.

3. Potential issues that may arise if the content of a referenced website changes after the proposal is submitted

To the extent the information on a website changes after submission of a proposal and the company believes the revised information renders the website reference excludable under Rule 14a-8, a company seeking our concurrence that the website reference may be excluded must submit a letter presenting its reasons for doing so. While Rule 14a-8(j) requires a company to submit its reasons for exclusion with the Commission no later than 80 calendar days before it files its definitive proxy materials, we may concur that the changes to the referenced website constitute "good cause" for the company to file its reasons for excluding the website reference after the 80-day deadline and grant the company's request that the 80-day requirement be waived.

¹ An entity is an "affiliate" of a DTC participant if such entity directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the DTC participant.

² Rule 14a-8(b)(2)(i) itself acknowledges that the record holder is "usually," but not always, a broker or bank.

³ Rule 14a-9 prohibits statements in proxy materials which, at the time and in the light of the circumstances under which they are made, are false or misleading with respect to any material fact, or which omit to state any material fact necessary in order to make the statements not false or misleading.

⁴ A website that provides more information about a shareholder proposal may constitute a proxy solicitation under the proxy rules. Accordingly, we remind shareholders who elect to include website addresses in their proposals to comply with all applicable rules regarding proxy solicitations.

Announcement

Shareholder Proposals: Staff Legal Bulletin No. 14L (CF)

Division of Corporation Finance Securities and Exchange Commission

Action: Publication of CF Staff Legal Bulletin

Date: November 3, 2021

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

Supplementary Information: The statements in this bulletin represent the views of the Division of Corporation Finance (the “Division”). This bulletin is not a rule, regulation or statement of the Securities and Exchange Commission (the “Commission”). Further, the Commission has neither approved nor disapproved its content. This bulletin, like all staff guidance, has no legal force or effect: it does not alter or amend applicable law, and it creates no new or additional obligations for any person.

Contacts: For further information, please contact the Division’s Office of Chief Counsel by submitting a web-based request form at https://www.sec.gov/forms/corp_fin_interpretive.

A. The Purpose of This Bulletin

The Division is rescinding Staff Legal Bulletin Nos. 14I, 14J and 14K (the “rescinded SLBs”) after a review of staff experience applying the guidance in them. In addition, to the extent the views expressed in any other prior Division staff legal bulletin could be viewed as contrary to those expressed herein, this staff legal bulletin controls.

This bulletin outlines the Division’s views on Rule 14a-8(i)(7), the ordinary business exception, and Rule 14a-8(i)(5), the economic relevance exception. We are also republishing, with primarily technical, conforming changes, the guidance contained in SLB Nos. 14I and 14K relating to the use of graphics and images, and proof of ownership letters. In addition, we are providing new guidance on the use of e-mail for submission of proposals, delivery of notice of defects, and responses to those notices.

In Rule 14a-8, the Commission has provided a means by which shareholders can present proposals for the shareholders’ consideration in the company’s proxy statement. This process has become a cornerstone of shareholder engagement on important matters. Rule 14a-8 sets forth several bases for exclusion of such proposals. Companies often request assurance that the staff will not recommend enforcement action if they omit a proposal based on one of these exclusions (“no-action relief”). The Division is issuing this bulletin to streamline and simplify our process for reviewing no-action requests, and to clarify the standards staff will apply when evaluating these requests.

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

1. Background

Rule 14a-8(i)(7), the ordinary business exception, is one of the substantive bases for exclusion of a shareholder proposal in Rule 14a-8. It permits a company to exclude a proposal that “deals with a matter relating to the company’s ordinary business operations.” The purpose of the exception 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.”^[1]

2. Significant Social Policy Exception

Based on a review of the rescinded SLBs and staff experience applying the guidance in them, we recognize that an undue emphasis was placed on evaluating the significance of a policy issue to a particular company at the expense of whether the proposal focuses on a significant social policy,^[2] complicating the application of Commission policy to proposals. In particular, we have found that focusing on the significance of a policy issue to a particular company has drawn the staff into factual considerations that do not advance the policy objectives behind the ordinary business exception. We have also concluded that such analysis did not yield consistent, predictable results.

Going forward, the staff will realign its approach for determining whether a proposal relates to “ordinary business” with the standard the Commission initially articulated in 1976, which provided an exception for certain proposals that raise significant social policy issues,^[3] and which the Commission subsequently reaffirmed in the 1998 Release. This exception is essential for preserving shareholders’ right to bring important issues before other shareholders by means of the company’s proxy statement, while also recognizing the board’s authority over most day-to-day business matters. For these reasons, staff will no longer focus on determining the nexus between a policy issue and the company, but will instead focus on the social policy significance of the issue that is the subject of the shareholder proposal. In making this determination, the staff will consider whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company.^[4]

Under this realigned approach, proposals that the staff previously viewed as excludable because they did not appear to raise a policy issue of significance for the company may no longer be viewed as excludable under Rule 14a-8(i)(7). For example, proposals squarely raising human capital management issues with a broad societal impact would not be subject to exclusion solely because the proponent did not demonstrate that the human capital management issue was significant to the company.^[5]

Because the staff is no longer taking a company-specific approach to evaluating the significance of a policy issue under Rule 14a-8(i)(7), it will no longer expect a board analysis as described in the rescinded SLBs as part of demonstrating that the proposal is excludable under the ordinary business exclusion. Based on our experience, we believe that board analysis may distract the company and the staff from the proper application of the exclusion. Additionally, the “delta” component of board analysis – demonstrating that the difference between the company’s existing actions addressing the policy issue and the proposal’s request is insignificant – sometimes confounded the application of Rule 14a-8(i)(10)’s substantial implementation standard.

3. Micromanagement

Upon further consideration, the staff has determined that its recent application of the micromanagement concept, as outlined in SLB Nos. 14J and 14K, expanded the concept of micromanagement beyond the Commission’s policy directives. Specifically, we believe that the rescinded guidance may have been taken to mean that any limit on company or board discretion constitutes micromanagement.

The Commission has stated that the policy underlying the ordinary business exception rests on two central considerations. The first relates to the proposal’s subject matter; the second relates to the degree to which the

proposal “micromanages” 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.”^[6] The Commission clarified in the 1998 Release that specific methods, timelines, or detail do not necessarily amount to micromanagement and are not dispositive of excludability.

Consistent with Commission guidance, the staff will take a measured approach to evaluating companies’ micromanagement arguments – recognizing that proposals seeking detail or seeking to promote timeframes or methods do not per se constitute micromanagement. Instead, we will focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management. We would expect the level of detail included in a shareholder proposal to be consistent with that needed to enable investors to assess an issuer’s impacts, progress towards goals, risks or other strategic matters appropriate for shareholder input.

Our recent letter to ConocoPhillips Company^[7] provides an example of our current approach to micromanagement. In that letter the staff denied no-action relief for a proposal requesting that the company set targets covering the greenhouse gas emissions of the company’s operations and products. The proposal requested that the company set emission reduction targets and it did not impose a specific method for doing so. The staff concluded this proposal did not micromanage to such a degree to justify exclusion under Rule 14a-8(i) (7).

Additionally, in order to assess whether a proposal probes matters “too complex” for shareholders, as a group, to make an informed judgment,^[8] we may consider the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic. The staff may also consider references to well-established national or international frameworks when assessing proposals related to disclosure, target setting, and timeframes as indicative of topics that shareholders are well-equipped to evaluate.

This approach is consistent with the Commission’s views on the ordinary business exclusion, which is designed to preserve management’s discretion on ordinary business matters but not prevent shareholders from providing high-level direction on large strategic corporate matters. As the Commission stated in its 1998 Release:

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

While the analysis in this bulletin may apply to any subject matter, many of the proposals addressed in the rescinded SLBs requested companies adopt timeframes or targets to address climate change that the staff concurred were excludable on micromanagement grounds.^[9] Going forward we would not concur in the exclusion of similar proposals that suggest targets or timelines so long as the proposals afford discretion to management as to how to achieve such goals.^[10] We believe our current approach to micromanagement will help to avoid the dilemma many proponents faced when seeking to craft proposals with sufficient specificity and direction to avoid being excluded under Rule 14a-8(i)(10), substantial implementation, while being general enough to avoid exclusion for “micromanagement.”^[11]

C. Rule 14a-8(i)(5)

Rule 14a-8(i)(5), the “economic relevance” exception, permits a company to exclude a proposal that “relates to operations which account for less than 5 percent of the company’s total assets at the end of its most recent fiscal

year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business."

Based on a review of the rescinded SLBs and staff experience applying the guidance in them, we are returning to our longstanding approach, prior to SLB No. 14I, of analyzing Rule 14a-8(i)(5) in a manner we believe is consistent with *Lovenheim v. Iroquois Brands, Ltd.*^[12] As a result, and consistent with our pre-SLB No. 14I approach and *Lovenheim*, proposals that raise issues of broad social or ethical concern related to the company's business may not be excluded, even if the relevant business falls below the economic thresholds of Rule 14a-8(i)(5). In light of this approach, the staff will no longer expect a board analysis for its consideration of a no-action request under Rule 14a-8(i)(5).

D. Rule 14a-8(d)^[13]

1. Background

Rule 14a-8(d) is one of the procedural bases for exclusion of a shareholder proposal in Rule 14a-8. It provides that a "proposal, including any accompanying supporting statement, may not exceed 500 words."

2. The Use of Images in Shareholder Proposals

Questions have arisen concerning the application of Rule 14a-8(d) to proposals that include graphs and/or images.^[14] The staff has expressed the view that the use of "500 words" and absence of express reference to graphics or images in Rule 14a-8(d) do not prohibit the inclusion of graphs and/or images in proposals.^[15] Just as companies include graphics that are not expressly permitted under the disclosure rules, the Division is of the view that Rule 14a-8(d) does not preclude shareholders from using graphics to convey information about their proposals.^[16]

The Division recognizes the potential for abuse in this area. The Division believes, however, that these potential abuses can be addressed through other provisions of Rule 14a-8. For example, exclusion of graphs and/or images would be appropriate under Rule 14a-8(i)(3) where they:

- make the proposal materially false or misleading;
- render the proposal so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing it, would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires;
- directly or indirectly impugn character, integrity or personal reputation, or directly or indirectly make charges concerning improper, illegal, or immoral conduct or association, without factual foundation; or
- are irrelevant to a consideration of the subject matter of the proposal, such that there is a strong likelihood that a reasonable shareholder would be uncertain as to the matter on which he or she is being asked to vote.^[17]

Exclusion would also be appropriate under Rule 14a-8(d) if the total number of words in a proposal, including words in the graphics, exceeds 500.

E. Proof of Ownership Letters^[18]

In relevant part, Rule 14a-8(b) provides that a proponent must prove eligibility to submit a proposal by offering proof that it "continuously held" the required amount of securities for the required amount of time.^[19]

In Section C of SLB No. 14F, we identified two common errors shareholders make when submitting proof of ownership for purposes of satisfying Rule 14a-8(b)(2).^[20] In an effort to reduce such errors, we provided a suggested format for shareholders and their brokers or banks to follow when supplying the required verification of ownership.^[21] Below, we have updated the suggested format to reflect recent changes to the ownership

thresholds due to the Commission's 2020 rulemaking.^[22] We note that brokers and banks are not required to follow this format.

“As of [date the proposal is submitted], [name of shareholder] held, and has held continuously for at least [one year] [two years] [three years], [number of securities] shares of [company name] [class of securities].”

Some companies apply an overly technical reading of proof of ownership letters as a means to exclude a proposal. We generally do not find arguments along these lines to be persuasive. For example, we did not concur with the excludability of a proposal based on Rule 14a-8(b) where the proof of ownership letter deviated from the format set forth in SLB No. 14F.^[23] In those cases, we concluded that the proponent nonetheless had supplied documentary support sufficiently evidencing the requisite minimum ownership requirements, as required by Rule 14a-8(b). We took a plain meaning approach to interpreting the text of the proof of ownership letter, and we expect companies to apply a similar approach in their review of such letters.

While we encourage shareholders and their brokers or banks to use the sample language provided above to avoid this issue, such formulation is neither mandatory nor the exclusive means of demonstrating the ownership requirements of Rule 14a-8(b).^[24] We recognize that the requirements of Rule 14a-8(b) can be quite technical. Accordingly, companies should not seek to exclude a shareholder proposal based on drafting variances in the proof of ownership letter if the language used in such letter is clear and sufficiently evidences the requisite minimum ownership requirements.

We also do not interpret the recent amendments to Rule 14a-8(b)^[25] to contemplate a change in how brokers or banks fulfill their role. In our view, they may continue to provide confirmation as to how many shares the proponent held continuously and need not separately calculate the share valuation, which may instead be done by the proponent and presented to the receiving issuer consistent with the Commission's 2020 rulemaking.^[26] Finally, we believe that companies should identify any specific defects in the proof of ownership letter, even if the company previously sent a deficiency notice prior to receiving the proponent's proof of ownership if such deficiency notice did not identify the specific defect(s).

F. Use of E-mail

Over the past few years, and particularly during the pandemic, both proponents and companies have increasingly relied on the use of emails to submit proposals and make other communications. Some companies and proponents have expressed a preference for emails, particularly in cases where offices are closed. Unlike the use of third-party mail delivery that provides the sender with a proof of delivery, parties should keep in mind that methods for the confirmation of email delivery may differ. Email delivery confirmations and company server logs may not be sufficient to prove receipt of emails as they only serve to prove that emails were sent. In addition, spam filters or incorrect email addresses can prevent an email from being delivered to the appropriate recipient. The staff therefore suggests that to prove delivery of an email for purposes of Rule 14a-8, the sender should seek a reply e-mail from the recipient in which the recipient acknowledges receipt of the e-mail. The staff also encourages both companies and shareholder proponents to acknowledge receipt of emails when requested. Email read receipts, if received by the sender, may also help to establish that emails were received.

1. Submission of Proposals

Rule 14a-8(e)(1) provides that in order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery. Therefore, where a dispute arises regarding a proposal's timely delivery, shareholder proponents risk exclusion of their proposals if they do not receive a confirmation of receipt from the company in order to prove timely delivery with email submissions. Additionally, in those instances where the company does not disclose in its proxy statement an email address for submitting proposals, we encourage shareholder proponents to contact the company to obtain the correct email

address for submitting proposals before doing so and we encourage companies to provide such email addresses upon request.

2. Delivery of Notices of Defects

Similarly, if companies use email to deliver deficiency notices to proponents, we encourage them to seek a confirmation of receipt from the proponent or the representative in order to prove timely delivery. Rule 14a-8(f)(1) provides that the company must notify the shareholder of any defects within 14 calendar days of receipt of the proposal, and accordingly, the company has the burden to prove timely delivery of the notice.

3. Submitting Responses to Notices of Defects

Rule 14a-8(f)(1) also provides that a shareholder's response to a deficiency notice must be postmarked, or transmitted electronically, no later than 14 days from the date of receipt of the company's notification. If a shareholder uses email to respond to a company's deficiency notice, the burden is on the shareholder or representative to use an appropriate email address (e.g., an email address provided by the company, or the email address of the counsel who sent the deficiency notice), and we encourage them to seek confirmation of receipt.

[1] Release No. 34-40018 (May 21, 1998) (the "1998 Release"). Stated a bit differently, the Commission has explained that "[t]he 'ordinary business' exclusion is based in part on state corporate law establishing spheres of authority for the board of directors on one hand, and the company's shareholders on the other." Release No. 34-39093 (Sept. 18, 1997).

[2] For example, SLB No. 14K explained that the staff "takes a company-specific approach in evaluating significance, rather than recognizing particular issues or categories of issues as universally 'significant.'" Staff Legal Bulletin No. 14K (Oct. 16, 2019).

[3] Release No. 34-12999 (Nov. 22, 1976) (the "1976 Release") (stating, in part, "proposals of that nature [relating to the economic and safety considerations of a nuclear power plant], as well as others that have major implications, will in the future be considered beyond the realm of an issuer's ordinary business operations").

[4] 1998 Release ("[P]roposals . . . focusing on sufficiently significant social policy issues. . . 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").

[5] See, e.g., *Dollar General Corporation* (Mar. 6, 2020) (granting no-action relief for exclusion of a proposal requesting the board to issue a report on the use of contractual provisions requiring employees to arbitrate employment-related claims because the proposal did not focus on specific policy implications of the use of arbitration at the company). We note that in the 1998 Release the Commission stated: "[P]roposals relating to [workforce management] 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." Matters related to employment discrimination are but one example of the workforce management proposals that may rise to the level of transcending the company's ordinary business operations.

[6] 1998 Release.

[7] *ConocoPhillips Company* (Mar. 19, 2021).

[8] See 1998 Release and 1976 Release.

[9] See, e.g., *PayPal Holdings, Inc.* (Mar. 6, 2018) (granting no-action relief for exclusion of a proposal asking the company to prepare a report on the feasibility of achieving net-zero emissions by 2030 because the staff concluded it micromanaged the company); *Devon Energy Corporation* (Mar. 4, 2019) (granting no-action relief for

exclusion of a proposal requesting that the board in annual reporting include disclosure of short-, medium- and long-term greenhouse gas targets aligned with the Paris Climate Agreement because the staff viewed the proposal as requiring the adoption of time-bound targets).

[10] See *ConocoPhillips Company* (Mar. 19, 2021).

[11] To be more specific, shareholder proponents have expressed concerns that a proposal that was broadly worded might face exclusion under Rule 14a-8(i)(10). Conversely, if a proposal was too specific it risked exclusion under Rule 14a-8(i)(7) for micromanagement.

[12] 618 F. Supp. 554 (D.D.C. 1985).

[13] This section previously appeared in SLB No. 14I (Nov. 1, 2017) and is republished here with only minor, conforming changes.

[14] Rule 14a-8(d) is intended to limit the amount of space a shareholder proposal may occupy in a company's proxy statement. See 1976 Release.

[15] See *General Electric Co.* (Feb. 3, 2017, Feb. 23, 2017); *General Electric Co.* (Feb. 23, 2016). These decisions were consistent with a longstanding Division position. See *Ferrofluidics Corp.* (Sept. 18, 1992).

[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.

[17] See *General Electric Co.* (Feb. 23, 2017).

[18] This section previously appeared in SLB No. 14K (Oct. 16, 2019) and is republished here with minor, conforming changes. Additional discussion is provided in the final paragraph.

[19] Rule 14a-8(b) requires proponents to have continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively.

[20] Staff Legal Bulletin No. 14F (Oct. 18, 2011).

[21] The Division suggested the following formulation: "As of [date the proposal is submitted], [name of shareholder] held, and has held continuously for at least one year, [number of securities] shares of [company name] [class of securities]."

[22] Release No. 34-89964 (Sept. 23, 2020) (the "2020 Release").

[23] See *Amazon.com, Inc.* (Apr. 3, 2019); *Gilead Sciences, Inc.* (Mar. 7, 2019).

[24] See Staff Legal Bulletin No. 14F, n. 11.

[25] See 2020 Release.

[26] 2020 Release at n.55 ("Due to market fluctuations, the value of a shareholder's investment in a company may vary throughout the applicable holding period before the shareholder submits the proposal. In order to determine whether the shareholder satisfies the relevant ownership threshold, the shareholder should look at whether, on any date within the 60 calendar days before the date the shareholder submits the proposal, the shareholder's investment is valued at the relevant threshold or greater. For these purposes, companies and shareholders should determine the market value by multiplying the number of securities the shareholder continuously held for the relevant period by the highest selling price during the 60 calendar days before the shareholder submitted the proposal. For purposes of this calculation, it is important to note that a security's highest selling price is not necessarily the same as its highest closing price.") (citations omitted).

Modified: Nov. 3, 2021

From: Shareholder Engagement <[REDACTED]>
Sent: Tuesday, December 7, 2021 11:42 AM
To: ACLCorpSec <[REDACTED]>; InvestorRelations Department
<[REDACTED]>
Cc: Danielle Fugere <[REDACTED]>; Gail Follansbee <[REDACTED]>; Rachel Lowy
<[REDACTED]>
Subject: [EXTERNAL] Chubb Limited - Shareholder Proposal Documents

Dear Mr. Wayland,

Attached please find filing documents submitting a shareholder proposal for inclusion in the company's 2022 proxy statement.

It would be much appreciated if you could please confirm receipt of this email.

Thank you and best regards,

Rachel Lowy

Rachel Lowy (she/her/hers)

Shareholder Relations Associate

As You Sow

[REDACTED]

[REDACTED]

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Hello Gina-

Confirming receipt of this deficiency letter as of today, Tuesday 12/14/21.

The proof of ownership has been requested from the shareholder's custodian. We will respond within 14 days of receipt of this notice, so by Monday 12/28/21.

Thank you and best regards,
Gail

Gail Follansbee (she/her)
Coordinator, Shareholder Relations

As You Sow

[REDACTED]
[REDACTED]
[REDACTED] | www.asyousow.org

From: "Rebollar, Gina" <[REDACTED]>
Date: Tuesday, December 14, 2021 at 9:32 AM
To: Danielle Fugere <[REDACTED]>, Shareholder Engagement
<[REDACTED]>
Subject: AYS proposal

Ms. Fugere:

Please find attached a letter on behalf of Chubb Limited in reference to a shareholder proposal submitted by As You Sow on behalf of As You Sow Shareholder Action Account. A hard copy of this letter has also been sent to you via FedEx.

Regards,

Gina Rebollar

This email (including any attachments) is intended for the designated recipient(s) only, and may be confidential, non-public, proprietary, and/or protected by the attorney-client or other privilege. Unauthorized reading, distribution, copying or other use of this communication is prohibited and may be unlawful. Receipt by anyone other than the intended recipient(s) should not be deemed a waiver of any privilege or protection. If you are not the intended recipient or if you believe that you have received this email in error, please notify the sender immediately and delete all copies from your computer system without reading, saving, printing, forwarding or using it in any manner. Although it has been checked for viruses and other malicious software ("malware"), we do not warrant, represent or guarantee in any way that this communication is free of malware or potentially damaging defects. All liability for any actual or alleged loss, damage, or injury arising out of or resulting in any way from the receipt, opening or use of this email is expressly disclaimed.

From: Rebollar, Gina
Sent: Monday, December 20, 2021 10:05 AM
To: Shareholder Engagement <[REDACTED]>
Cc: Danielle Fugere <[REDACTED]>; David Shugar <[REDACTED]>; Rachel Lowy <[REDACTED]>
Subject: RE: AYS proposal - Chubb

Gail: Thank you for your email. Chubb acknowledges receipt of this email and its attachment, although we have not yet reviewed the Proposal or the attachment to this email to determine whether they comply with the requirements for shareholder proposals found in Rules 14a-8 and 14a-9 under the Exchange Act.

From: Shareholder Engagement <[REDACTED]>
Sent: Friday, December 17, 2021 10:25 PM
To: Rebollar, Gina <[REDACTED]>
Cc: Danielle Fugere <[REDACTED]>; David Shugar <[REDACTED]>; Rachel Lowy <[REDACTED]>
Subject: [EXTERNAL] Re: AYS proposal - Chubb

Hello Gina,

Attached is the proof of ownership for your reference:
Proponent As You Sow Shareholder Action Account [REDACTED] shares

Please confirm receipt of this proof and that all deficiencies have been satisfied.

Thank you,
Gail

Gail Follansbee (she/her)
Manager, Shareholder Relations

As You Sow

[REDACTED]
[REDACTED]
[REDACTED] | www.asyousow.org

From: Shareholder Engagement <[REDACTED]>
Date: Tuesday, December 14, 2021 at 3:43 PM
To: "Rebollar, Gina" <[REDACTED]>
Cc: Danielle Fugere <[REDACTED]>, David Shugar <[REDACTED]>, Rachel Lowy <[REDACTED]>, Gail Follansbee <[REDACTED]>
Subject: Re: AYS proposal - Chubb

EXHIBIT C
Green Century Proposal

Whereas:

The Intergovernmental Panel on Climate Change (IPCC) reported that global greenhouse gas emissions must reach net zero by 2050 in order to limit a global temperature increase to 1.5 degrees Celsius by 2100, thereby averting the worst impacts of climate change. Building on the IPCC's findings, the International Energy Agency (IEA) issued a report, *Net Zero by 2050*, which provides a comprehensive pathway for the energy sector to transition to net zero emissions by 2050. The report is unequivocal about the expansion of fossil fuel supplies, saying "Beyond projects already committed as of 2021, there are no new oil and gas fields approved for development in our pathway, and no new coal mines or mine extensions are required" to ensure stable and affordable energy supplies.

As a property and casualty insurer, Chubb Limited (Chubb) is uniquely exposed to climate risks because it underwrites policies meant to protect its customers' homes and businesses from the impacts of climate-driven catastrophes such as storms, wildfires, and heat waves. It simultaneously underwrites policies for the fossil fuel industry, whose emissions are widely believed to amplify devastating storms, wildfires, and heat waves. These practices are fundamentally incompatible.

While Chubb restricts underwriting new coal fired power plants and underwriting and investing in companies that primarily operate in coal mining and coal power, investors are concerned that Chubb's efforts are not sufficiently aligned with global efforts to reduce emissions through, for example, the Paris Agreement. Further, the Company lags behind European peers, including AXA, Allianz, Aviva, Generali, Munich Re, SCOR, Swiss Re, and Zurich, that have committed to transitioning their underwriting portfolios to net zero emissions by 2050.

To develop a credible net zero commitment, the United Nations Environmental Program Finance Initiative suggests that financial institutions including insurers engaged in underwriting "begin aligning with the required assumptions and implications of Intergovernmental Panel on Climate Change's 1.5 degrees Celsius no / low overshoot pathways as soon as possible." Further, "All no / low overshoot scenarios indicate an immediate reduction in fossil fuels, signaling that investment in new fossil fuel development is not aligned with 1.5 degrees Celsius."

RESOLVED: Shareholders request that Chubb's Board of Directors adopt and disclose new policies to help ensure that its underwriting practices do not support new fossil fuel supplies, in alignment with the IEA's Net Zero Emissions by 2050 Scenario.

Supporting Statement

The board and management, in its discretion, should define the scope, time frames and parameters of the policy, including defining "new fossil fuel supplies," with an eye toward the well-accepted definition that new fossil fuel supplies include exploration for and / or development of oil, gas, and coal resources or reserves beyond those fields or mines already in production.

SANFORD J. LEWIS, ATTORNEY

PO Box 231
Amherst, MA 01004-0231
413 549-7333
sanfordlewis@strategiccounsel.net

February 15, 2022

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 Chubb Limited Regarding Fossil Fuel Financing on Behalf of As You Sow Shareholder Action Account

Ladies and Gentlemen:

As You Sow Shareholder Action Account (the "Proponent") is the beneficial owner of common stock of Chubb Limited (the "Company" or "Chubb") and has submitted a shareholder proposal (the "Proposal") to the Company. I have been asked by the Proponent to respond to the letter dated January 14, 2022 ("Company Letter") sent to the Securities and Exchange Commission by Edward S. Best of the law firm of Mayer Brown LLP. In that Letter, the Company contends that the Proposal may be excluded from the Company's 2022 proxy statement. Proponent's response follows. A copy of this letter is being emailed concurrently to Mr. Best.

The materials attached demonstrate that the Company has no basis under Rule 14a-8 for exclusion of the Proposal. As such, we respectfully request that the Staff inform the Company that it is denying the no action Letter request.

SUMMARY

The Proposal requests that the Company issue a report addressing whether and how it intends to measure, disclose, and reduce the GHG emissions associated with its underwriting, insuring, and investment activities in alignment with the Paris Agreement's 1.5°C goal, requiring net zero emissions.

The Company Letter asserts that the Proposal has been substantially implemented because the Company already has considered whether and how to address reducing, measuring, and disclosing greenhouse gas ("GHG") emissions and has adopted policies and procedures for that goal.

However, the Proposal was prepared in light of the Company's existing actions and disclosures, which are unresponsive to the Proposal's guidelines and essential purpose which asks how the Company intends to reduce its underwriting, insuring, and investing activities **in alignment with the Paris Agreement's 1.5 °C goal**. Alignment with the 1.5°C goal requires specific year on year reductions in these specified areas. Chubb has not made any specific commitment to meet this goal with regard to the emissions associated with its underwriting, insuring, and investment activities, nor has it stated that it does not intend to do so. As other companies adopt 1.5°C aligned goals, it is important to understand whether Chubb intends to act in alignment or not. Stating that it has adopted policies and procedures to reduce emissions is not responsive to the request.

The Company Letter asserts that the Proposal is excludable under Rule 14a-8(i)(3) as being vague and indefinite as either containing false and misleading statements or being subject to multiple interpretations through which shareholders may be confused about what they would be voting on. The Proposal's request is not vague. The Company's arguments amount to advocacy issues that the Company may want to raise in its opposition statement, but which do not rise to false factual statements that merit exclusion. The Proponent acknowledges that the language in the supporting statement erroneously referenced Travelers Insurance and requests that the Staff allow Proponent to revise the clerical error by substituting "Chubb" for "Travelers" in the supporting statement.

The Company Letter asserts that the Proposal is excludable under Rule 14a-8(i)(7) as raising ordinary business operations by addressing factors involving its insurance product offerings and that it seeks to micromanage Chubb's business. The Proposal is consistent with Staff precedents on GHG targets, leaves sufficient flexibility to board and management in implementation, and is consistent with widespread investor engagement on well accepted GHG reduction frameworks including the Science Based Targets initiative and company alignment with the global Paris agreement.

Finally, the Company Letter asserts under Rule 14a-8(i)(11) that the Proposal substantially duplicates another shareholder proposal which the Company would include in its Proxy Materials if the Staff does not concur with the separate no-action request submitted with respect to that earlier proposal. In this instance, the Proposal does not duplicate the previously submitted proposal. The prior proposal asks the company to adopt a policy limiting the underwriting of new fossil fuel development. The current Proposal asks the company to establish greenhouse gas goals aligned with the Paris agreement's 1.5°C goal. Shareholders would not be confused in voting on both proposals on the same proxy statement, and could reasonably cast different votes for the two different proposals. Therefore, this is not an instance in which the Proposal is excludable under Rule 14a-8(i)(11).

THE PROPOSAL

WHEREAS: Insurance companies have a critical role to play in meeting the Paris Agreement's 1.5 degrees Celsius (1.5°C) goal, requiring net zero greenhouse gas (GHG) emissions by 2050.

Projections¹ have found that limiting global warming to 1.5 degrees versus 2 degrees will save \$20 trillion globally by 2100, while exceeding 2 degrees could lead to climate damages in the hundreds of trillions.² The U.S. insurance industry is under increasing pressure to address its contributions to climate change from its underwriting, insuring, and investing activities?

These financial activities contribute to systemic portfolio risk to the global economy, investors, and insurers' profitability. The U.S. Commodity Futures Trading Commission recently acknowledged that climate change could impair the productive capacity of the national economy and recommended that state insurance regulators require insurers to assess how their underwriting activity and investment portfolios may be impacted by climate-related risks.

This growing public pressure for the insurance industry to account for its climate related risks and impacts is exemplified by legislation recently passed in Connecticut⁴ requiring regulators to incorporate emissions reduction targets into their supervision of insurers.

Shareholders are concerned that Chubb is not adequately reducing the climate footprint of its underwriting, insuring, and investing activities. This failure creates significant risk. Chubb reported pretax catastrophe losses of \$1.15 billion in Q3 2021, with \$806 million of that figure attributable to Hurricane Ida.⁵ This follows a larger global trend: insured losses from natural disasters reached \$42 billion in the first six months of 2021, a ten year high.⁶

Chubb is a climate laggard in the global insurance sector, ranking in the bottom half in a survey of the 30 largest global insurers due largely to its lack of restrictions on oil and gas underwriting and investments. In contrast, peers are beginning to address the GHG emissions associated with their underwriting and investment activities.⁸ Thirteen global insurers have also joined the United Nations' Net Zero Insurance Alliance in which they commit to transition their emissions from insurance and reinsurance underwriting portfolios to net zero by 2050.

Chubb does not measure or disclose its financed emissions, including those attributable to underwriting, insuring, and investments, nor has it adopted targets aligned with the Paris Agreement's 1.5°C goal for such emissions.

BE IT RESOLVED: Shareholders request that Chubb issue a report, at reasonable cost and omitting proprietary information, addressing whether and how it intends to measure, disclose, and reduce the GHG emissions associated with its underwriting, insuring, and investment activities in alignment with the Paris Agreement's 1.5°C goal, requiring net zero emissions.

SUPPORTING STATEMENT: Shareholders recommend the report disclose, at board discretion:

- Whether Travelers will begin measuring and disclosing the emissions associated with the full range of its operations and by when, and
- Whether Travelers will set a Paris aligned, net zero target, for its full range of emissions. and on what timeline

¹ <https://www.nature.com/articles/d41586-018-05219-5>

² <https://www.nature.com/articles/s41467-020-18797-8/>

³ <https://shareaction.org/reports/insuring-disaster-a-ranking>

⁴ <https://www.businessinsurance.com/article/20210617/NEWS06/912342605/Connecticut-bill-calls-for-regulation-of-insurers%26%80%99-climate-risks>

⁵ <https://www.reinsurancene.ws/chubb-sees-q3-net-income-rise-54-despite-1bn-of-catastrophe-losses/>

⁶ <https://www.weforum.org/agenda/2021/07/natural-disasters-cost-economic-insurance-2021-extreme-weather-floods-polar-vortex/>

⁷ <https://insure-our-future.com/scorecard>

⁸ <https://insure-our-future.com/scorecard>

BACKGROUND

In the global effort to mitigate climate change, many countries and corporations have committed to achieving net-zero emissions by 2050 and to align with the Paris Agreement's climate goals of constraining global temperature increase. As noted on page 2 of the Company Letter, Chubb Limited declared, in 2021, to “formally support a global transition to a net-zero economy by 2050.” While it is important to support the global transition, this statement provides no information as to what Chubb intends to do to support the transition. It certainly says nothing about whether the Company intends to measure, disclose, and reduce the GHG footprint of its underwriting and investment activities to align with the global 1.5°C goal.

Despite such general pledges, investors are aware that, in many instances corporate activities do not align with such pledges or mean the company is adopting a 1.5° C aligned GHG reduction commitment. Greenhouse gas (GHG) emissions continue to rise. Investors therefore seek clarity on planned company actions to reduce company contributions to global carbon risk. Clear reporting is necessary to understand what specific commitments, if any, underlie generalized pledges.

Climate and Insurance Companies. The IEA's Net Zero by 2050 scenario report concluded that current national and corporate climate pledges are consistent with a temperature rise of 2.1°C by 2100,¹ much higher than the global 1.5° C goal intended to reduce calamitous impacts of climate change. To reach the collective 1.5° C goal, more rigorous policies need to be implemented, especially with regard to underwriting and investing in high carbon activities. In light of this global need for ambitious action, the financial sector, including Chubb Limited, faces a significant challenge in redirecting financial flows to align with the net-zero by 2050 scenario.

The insurance sector is among the financial sectors within the scope of the United Nations Environment Program Finance Initiative (“UNEP FI”). UNEP FI issued recommendations for credible net-zero commitments from financial institutions, including insurers, which included a benchmark for financial institutions that have made net-zero commitments to “align as soon as possible”:

11. For a financial institution, “Scope 3” or the emissions associated with the financial institution's portfolio or loan (sometimes called “Portfolio Emissions”), constitute about 97% of their total emissions. Therefore, addressing emissions associated with the

¹ See Net Zero by 2050—A Roadmap for the Global Energy Sector, *found at*.
https://iea.blob.core.windows.net/assets/deebef5d-0c34-4539-9d0c-10b13d840027/NetZeroby2050-ARoadmapfortheGlobalEnergySector_CORR.pdf

financial institution's underlying portfolio exposures (companies, projects, etc.) is the top priority. Each of the underlying exposures that the financial institution finances, has its own Scope 1, 2 and 3 emissions. Credible commitments then will cover not only a financial institution's Scope 1, 2, and 3 emissions but also—distinctly—the Scope 1, 2 and 3 of the underlying exposures (or at least the combination of each exposure's Scope 1, 2 and 3 emissions that covers a progressively significant majority of that exposure's total emissions).⁹

The UNEP-FI has created a Net-Zero Insurance Alliance that insurers can join. It calls for and provides clarity about member commitments and expectations for demonstrating aligned action. The commitment by signatory companies includes:

Transitioning all operational and attributable greenhouse gas (GHG) emissions from its insurance and reinsurance underwriting portfolios to net-zero emissions by 2050 consistent with a maximum temperature rise of 1.5°C above pre-industrial levels by 2100 in order to contribute to the implementation of the COP21 Paris Agreement. . . .²

NZIA members individually commit to set science-based intermediate targets every five years and to independently report on their progress publicly and annually to contribute to achieving the goals of the Paris Climate Agreement.³ The adopted targets are to be based on scientific methods that build upon recognized methodologies.

Role of Chubb in Fossil Fuel Underwriting - As called out in a recent Share Action scorecard that assesses the progress of global insurers in addressing climate change: “Progress on climate change is insufficient, with most insurers lacking a clear and comprehensive policy.⁴ Chubb was among the group of lowest scoring companies, demonstrating poor management of material risks and opportunities related to climate change, including a lack of management of climate-related underwriting and investment policies.

Despite Chubb's stated commitment to a net-zero economy, it remains one of the largest oil and gas insurers, facilitating new oil and gas projects which will emit significant carbon emissions for decades to come. In its generalized commitment, the Company has not stated concretely how it will manage and reduce the impact of its underwriting activities. Similarly, it has not articulated how it will reduce the climate-related impact of its investing activities.

² <https://www.unepfi.org/psi/wp-content/uploads/2021/07/NZIA-Commitment.pdf>

³ *Id.*

⁴ Share Action, “Insuring Disaster”, May 2021, <https://api.shareaction.org/resources/reports/Insuring-Disaster.pdf>.

Due to the lack of specificity of its climate commitments, investors lack visibility into the transitional and climate risks to which Chubb is exposed, including the risk posed to customer insured assets, across virtually all lines of insurance. The growing impact of climate makes it necessary for insurance companies such as Chubb to be very clear about how they will manage and decrease the risks of insuring and investment activities.

In 2019, Chubb was an early leader in setting policies to limit certain aspects of underwriting of mining, coal plant construction, and coal-powered utilities. However, a mere three years later, Chubb has become a laggard of its peers with regard to its climate-related actions. Many insurers are now undertaking specific commitments to become 1.5° C aligned in their insuring and investment activities and are preparing to disclose both targets and related actions. Chubb has made no such commitments. Stating a commitment to Net Zero without providing information on how it is to be achieved and by what dates (i.e., targets) is not helpful for investors making investment decisions.

2021 was the second-most costly year on record for the world's insurers according to Munich Re.⁵ Insured losses totaled around \$120 billion from natural catastrophe.⁶ The U.S., ravaged by tornadoes and Hurricane Ida and freezes in Texas, accounted for an unusually large portion of the losses.⁷ U.S. insurers remain highly exposed to carbon emissions-intensive industries like oil, gas, coal and utilities. In 2019, the U.S. insurance industry had \$582 billion invested in some combination of oil, gas, coal, utilities or other fossil fuel related activities, an increase from \$519 billion in 2018.⁸ Emissions from underwriting and investing activities (i.e. the emissions generated by companies being underwritten or invested in) can be a proxy for climate risk because they add to the global inventory of emissions causing increases in global temperature and extreme weather.

ANALYSIS

A. **Rule 14a-8(i)(10)**

The Company Letter asserts that the Proposal is substantially implemented through the issuance of its 2021 Climate-Related Financial Disclosure and Environmental Report ("TCFD Report"). However, the Company's disclosures do not substantially implement the Proposal because the

⁵ <https://money.usnews.com/investing/news/articles/2022-01-10/natural-disasters-cost-insurers-120-billion-in-2021-munich-re-says>

⁶ <https://money.usnews.com/investing/news/articles/2022-01-10/natural-disasters-cost-insurers-120-billion-in-2021-munich-re-says>

⁷ <https://money.usnews.com/investing/news/articles/2022-01-10/natural-disasters-cost-insurers-120-billion-in-2021-munich-re-says>

⁸ <https://www.spglobal.com/esg/insights/climate-risks-for-insurers-why-the-industry-needs-to-act-now-to-address-climate-risk-on-both-sides-of-the-balance-sheet>

essential objective of this resolution, a report on the Company's plans to address GHG emissions associated with its underwriting, insuring, and investing activities in alignment with net zero, has not been met.

In the Staff's view, a determination that the Company has substantially implemented the proposal depends upon whether its "particular policies, practices, and procedures compare favorably with the guidelines of the proposal." *Texaco, Inc.* (avail. Mar. 28, 1991). Substantial implementation under Rule 14a-8(i)(10) requires a company's actions to have satisfactorily addressed *both* the proposal's guidelines and its essential objective. *Exelon Corp.* (avail. Feb. 26, 2010). In the present instance, the Company's reporting through its TCFD Report has not met this standard, and therefore has not substantially implemented the Proposal.

The guidelines and essential purpose of the proposal

The proposal is clearly focused on measurement, disclosure and reduction of the greenhouse gas emissions associated with the Company's underwriting, insuring and investment activities. This is the essential purpose of the proposal, and the guidelines necessitate the issuance of a report, that at a minimum, describes whether and how it intends to measure disclose and reduce those GHG emissions associated with those activities and aligned with the Paris agreement's 1.5° C goal which requires net zero emissions.

Comparing the company's activities

The Company's public support and related pledges for a global transition to a net zero economy by 2050 do not sufficiently address the questions of the Proposal.

While Chubb does measure and disclose its Scope 1 and 2 operational greenhouse gas emissions, it has not disclosed any Scope 3 measurement of the emissions associated with the companies it invests in or the activities it underwrites. For a financial institution, Scope 3 emissions can constitute approximately 97% of total emissions.⁹ Therefore, in order to sufficiently measure and disclose the carbon footprint associated with the Company's Scope 1-3 emissions, Chubb needs to include the emissions from its insurance, underwriting, and investment activities. Without this disclosure Chubb does not provide shareholders with adequate transparency, nor does it fulfill the ask of the Proposal. It also leads to issues of comparability amongst Chubb and its peers, which comparability is critical to investors making informed investment decisions.

The Company holds up its 2021 Task Force on Climate-Related Financial Disclosure Report as an example of meaningfully implementing the Proposal. However, this is not the case. All of TCFD's recommendations for insurance companies focus on assessing and pricing climate-related risks and opportunities, rather than measuring or reducing impact. And while TCFD

⁹ <https://g20sfwg.org/wp-content/uploads/2021/10/2021-UNEP-FI-Recommendations-for-Credible-Net-Zero-Commitments.pdf> p.7

recommends that companies in all sectors “disclose Scope 1, Scope 2, and, if appropriate, Scope 3 GHG emissions, and the related risks,”¹⁰ Chubb has not done so.

The Company Letter describes the activities it plans to undertake regarding underwriting and insurance. The references to the TCFD report exaggerate the extent to which the Company has conducted reporting in fulfillment of the Proposal. For instance, the Company letter notes on page 4 that it pledges to “assess our coverage of carbon intensive industries” and to “encourage the net zero transition” through decisions and offerings, and states an “intent to observe the impact of GHG emissions.” One cannot conclude that this description constitutes a clear response to the Proposal’s request for a report on “whether and how it intends to measure, disclose and reduce the GHG emissions associated with its underwriting insuring and investment activities.” There is no description of a measurement methodology, no emissions accounting of its financed emissions, and certainly no statement of targets to reduce its underwriting and investment-related emissions.

While Chubb sets a carbon neutrality target covering its Scope 1 and 2 operational emissions in its TCFD Report, it does not set emissions reduction targets for its investing or underwriting activities. In its TCFD report Chubb states that its understanding of climate change has led the Company “to formally support a global transition to a net zero economy by 2050.”¹¹ Chubb uses this statement as proof of substantially implementing the Proposal. However, support for the *global* transition to a net zero economy is not the same as pledging to align *its own* Scope 3 emissions with net zero by 2050.

In fact, buried in the Company Letter “substantial implementation” argument is an assertion **that is not contained in the TCFD report** but which represents the clearest statement from the Company that it does not actually intend to substantially implement the request of the Proposal:

While it is continuing to understand the exposures, at this time Chubb does not intend to make any specific commitment to disclose GHG emissions from its insurance and investment activities (i.e., Scope 3 emissions) because the Company and the industry is still without a full understanding of its applicability to insurers and what should be included in the measurement. Therefore, the Company is not at this time planning to make a promise to reducing Scope 3 or any further commitments or targets without knowing what it means or how we intend as a Company, global economy and society to get there.”¹²

The Company Letter does not appear to be pointing to a specific clause in its TCFD report or other company publications in making this assertion. If it had made this assertion in a public report to investors, this might have constituted an argument that the Company had fulfilled the

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<https://www.tcfhub.org/Downloads/pdfs/E20%20More%20information%20on%20supplemental%20guidance%20for%20the%20financial%20sector.pdf> p.32

¹¹ https://www.chubb.com/content/dam/chubb-sites/chubb-com/us-en/about-chubb/environment/doc/Chubb_2021_Climate-Related_Financial_Disclosure_and_Environmental_Report.pdf p.5

¹² Company Letter, page 6.

essential purpose of the Proposal. But instead, this intent has only been set forth in a no action request, and doing so does not fulfill the essential purpose of the Proposal for such information to be included in a report issued to investors.

Comparing peer activities

In contrast, members of the Net Zero Insurance Alliance are in alignment with what constitutes a net zero transition. Under the alliance, signatories commit to transition their insurance and reinsurance underwriting portfolios to net zero greenhouse gas emissions, consistent with a maximum temperature rise of 1.5°C above pre-industrial levels by 2100.¹³ The guidelines for meeting net zero commitments include setting underwriting criteria for GHG-intensive sectors, engaging with clients, offering insurance products for low- and zero-emission technologies. Signatories also commit to establish intermediate targets every 5 years. NZIA members must then publish their first intermediate targets within six months of the protocol's publication, and then begin annual reporting on progress.¹⁴

It is becoming the global norm for companies seeking alignment with net zero emissions to include Scope 3 emissions. The robust and globally recognized Science Based Targets Initiative's recently released Net Zero Standard states that for companies with Scope 3 emissions constituting over 40% of their value chain emissions, such emissions must be included in target setting. As it stands, Chubb's goal to achieve carbon neutrality for its Scope 1 and 2 operational emissions, e.g., buildings and electricity emissions, relies on a combination of renewable energy and carbon offsets purchased.¹⁵ Excluding Scope 3 emissions, however, which are far greater than its Scope 1 and 2 emissions, makes it impossible for Chubb to align its full scope of emissions with the Paris-aligned 1.5°C target setting framework. Additionally, Chubb's reliance on offsets for achieving 1.5° alignment is problematic, as neither the SBTi or the CA100 investor Benchmark accepts offsets as a sufficient way to meet Paris decarbonization goals.¹⁶ Furthermore, the Net Zero Insurance Alliance states that reliance on offsets to reach net zero should be limited.¹⁷

Staff precedents support denial of the substantial implementation claim

The Company Letter cites Staff precedents on p.7 where exclusion was allowed of shareholder proposals that sought a report on information already disclosed in companies' public disclosures. As Chubb has not disclosed the measurement or reduction of emissions from its underwriting, insurance and investment activities in publicly available documents, the Proposals cannot be deemed substantially implemented.

¹³ <https://www.unepfi.org/psi/wp-content/uploads/2021/07/NZIA-launch-press-release.pdf>

¹⁴ <https://www.unepfi.org/psi/wp-content/uploads/2021/07/NZIA-Commitment.pdf>

¹⁵ https://www.chubb.com/content/dam/chubb-sites/chubb-com/us-en/about-chubb/environment/doc/Chubb_2021_Climate-Related_Financial_Disclosure_and_Environmental_Report.pdf p.5

¹⁶ <https://sciencebasedtargets.org/resources/files/Net-Zero-Standard.pdf> p.10

¹⁷ <https://www.unepfi.org/psi/wp-content/uploads/2021/07/NZIA-launch-press-release.pdf>

Staff decisions confirm that when it comes to climate change proposals which contain guidelines requesting reporting geared to a specific set of concerns such as the development of targets aligned with external benchmarks, a failure to address the guidelines of the Proposal are a basis for rejecting a substantial implementation claim.

The Company's attempt to treat the Proposal as substantially implemented is similar to *Dominion Resources*, (February 11, 2014) where the Staff held that the proposal was not excludable under Rule 14a-8(i)(10). The proposal requested the Board of Directors "adopt quantifiable goals, taking into account Intergovernmental Panel on Climate Change guidance, for reducing total greenhouse-gas emissions" and to issue a report. Dominion argued that it had substantially implemented the proposal because it had adopted an "integrated strategy" regarding greenhouse gas (GHG) emissions and had goals set for renewable energy targets across its energy portfolio. Further, it had adopted a range of measures that would have the effect of decreasing its emissions, including converting coal plants to biomass, retiring others, and installing solar energy and fuel cell facilities. Dominion argued that it had substantially implemented the proposal based on its existing reporting and plans, and efforts to reduce carbon intensity. It was noted by the proponent that the renewable power standards the company planned to meet could allow total GHG emission to rise. As in the present case, the net effect was failure to align with the international guidance, thus the guidelines and purpose of the proposal were not met. The Staff held that the proposal had not been substantially implemented, noting that the proposal requested "that the board adopt quantitative goals, taking into account Intergovernmental Panel on Climate Change guidance, for reducing total greenhouse-gas emissions from the company's products and operations and report on its plans to achieve these goals."

Similarly, in *Alpha Natural Resources, Inc.* (March 19, 2013) the proposal requested that the company prepare a report on the company's goals and plans to address global concerns regarding fossil fuels and their contribution to climate change, including analysis of long- and short-term financial and operational risks to the company and society. The Staff did not find substantial implementation where the company had failed to disclose any analysis of long- and short-term financial and operational risks to the company and society. See also, *Dominion Resources, Inc.* (February 17, 2017 - two decisions), *The Middleby Corporation* (February 07, 2017), *The AES Corporation* (January 11, 2017), *Exxon Mobil Corporation* (March 22, 2016 - two decisions), *Chevron Corporation* (March 11, 2016), *Hess Corporation* (February 29, 2016), *Lowe's Companies, Inc.* (March 10, 2017).

A company can do extensive reporting on an issue and still not be considered to have substantially implemented a proposal seeking a report within the same issue area. For instance, in *Chesapeake Company* (April 13, 2010) the company asserted that its extensive web publications

constituted substantial implementation with the proposal on natural gas extraction. The Staff concluded that despite a volume of writing by the company on hydraulic fracturing, the matter was not substantially implemented given the guidelines of the proposal. Numerous other company attempts to exclude proposals under Rule 14a-8(i)(10) have failed where the company has provided public disclosure of some, but not all, of the elements of reporting requested. See for instance *Marathon Oil Corporation* (January 22, 2013); *Nike, Inc.* (July 5, 2012) (requesting reports on lobbying or political contributions and expenditures); *Southern Company* (March 16, 2011) (proposal requesting a report on the company's efforts, above and beyond current compliance, to reduce environmental and health hazards associated with coal combustion waste was not substantially implemented by existing report on coal combustion byproducts or other disclosures associated with the impacts of coal where reports did not provide the specific information requested in the proposal); *3M Company* (March 2, 2005) (proposal seeking actions relating to eleven principles on human and labor rights in China was not substantially implemented despite the fact that the company had its own set of comprehensive policies and guidelines on these issues); *ConocoPhillips* (January 31, 2011) (the proposal's objective that the company prepare a report on public safety, including "the Board's oversight of" a variety of related issues, was not substantially implemented where company had taken a significant number of steps to reduce the risk of accidents, and reported to stockholders and the public, but only made passing reference to the Board's role).

In conclusion, the intention of the resolution is for the Company to report on whether and how it intends to measure, disclose, and reduce the GHG emissions associated with its underwriting, insuring, and investment activities in alignment with the Paris Agreement's 1.5° C goal, requiring net zero emissions. Chubb has not fulfilled these guidelines through its TCFD Report. The Company cannot reasonably claim it has done so, and therefore the Proposal is not substantially implemented for purposes of Rule 14a-8(i)(10).

The Proposal may not be omitted under Rule 14a(i)(3) and Rule 14a-9 as it is neither vague and indefinite nor false and misleading.

A. The Proposal does not contain false and misleading statements.

On page 9, the Company asserts that it finds the Proposal's statement that: "Projections have found that limiting global warming to 1.5 degrees versus 2 degrees will save \$20 trillion globally by 2100" to be misleading because the cited paper discusses this in "probable savings." However, the Proposal statement begins with "Projections have found" which indicates that these numbers are modeled and therefore are an exercise in what could potentially occur, not definitively what is going to happen. The statement's citation is to the reputable scientific journal *Nature*. The Proposal language is not intended to be read as a scientific analysis, but to highlight potential risks to global systems from a climate advocacy perspective. While it is impossible to determine the exact savings that can be met from climate strategies given the high number of

variables, discussing “probable savings” is a helpful estimation of the financial risks associated with widespread climate inaction. Additionally, other analyses of the cost savings from limiting temperature rise find these numbers to be of a similar scale. A recently released Deloitte Paper examines the economic costs of climate inaction and the benefits of climate action on the U.S. economy. It finds that if the global average temperature reaches approximately 3°C by century’s end, the result in U.S. economic losses will approach \$14.5 trillion (in present-value terms) over the next 50 years.¹⁸ On the flip side, by achieving a net zero emissions economy by 2050, and keeping global temperature rise limited to as close to 1.5°C as possible, could result in \$3 trillion (in present value terms) added to the U.S. economy over the next 50 years.¹⁹

Next, the Company takes issue with the Proposal’s statement that “exceeding 2 degrees could lead to climate damages in the hundreds of trillions,” stating that the proposal’s “assertions regarding global costs are presented in absolute terms.” Given the language of “could lead to” that is used, this allows for the reader to understand that these costs are a possible scenario, while still highlighting what science is projecting. The Company also takes issue with the source stating these costs are from a scenario “significantly in excess of 2 degrees” when the Proposal states “exceeding 2 degrees.”²⁰ To label this distinction as false and misleading is unwarranted, the statement is accurate – the costs cited are for emissions that cause warming exceeding 2°C. Chubb does not limit its underwriting and investment emissions to 2°C, such that it should be concerned with limiting discussion of warming costs to exactly 2°C warming. The purpose of this exercise is to show the importance of meeting the Paris Agreement’s goal of 1.5°C and that allowing emissions to grow unabated and beyond 2° can be highly costly to the economy.

Lastly, the Company takes issue with a report cited on the Proposal’s statement of “[t]he U.S. insurance industry is under increasing pressure to address its contributions to climate change,”²¹ because the report is from a UK based non-profit. However, the report analyzes the largest global insurers, including Chubb, and a key finding of this report is that U.S. insurers had particularly poor performance, with 75% of US insurers scoring in the bottom tier of the report on ESG issues.²²

The Staff has long made it clear that it will not intervene in arguments that merely represent advocacy positions of the issuer or proponent rather than objectively false and misleading statements. In Staff Legal Bulletin 14B of September 15, 2004, where the Staff noted that the

¹⁸ <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/about-deloitte/us-the-turning-point-a-new-economic-climate-in-the-united-states-january-2022.pdf> p.6

¹⁹ <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/about-deloitte/us-the-turning-point-a-new-economic-climate-in-the-united-states-january-2022.pdf> p.7

²⁰ Chubb No Action p.9

²¹ Chubb No Action p.9

²² <https://api.shareaction.org/resources/reports/Insuring-Disaster.pdf> p.18

process of reviewing company no action letters had devolved to forcing the Staff to evaluate line-by-line company objections to the wording of proposals, the Staff stated:

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.

There continue to be certain situations where we believe modification or exclusion may be consistent with our intended application of rule 14a-8(i)(3). . . . Specifically, reliance on rule 14a-8(i)(3) to exclude or modify a statement may be appropriate where:

- statements directly or indirectly impugn character, integrity, or personal reputation, or directly or indirectly make charges concerning improper, illegal, or immoral conduct or association, without factual foundation;
- the company demonstrates objectively that a factual statement is materially false or misleading;

. . . . As such, the staff will concur in the company's reliance on rule 14a-8(i)(3) to exclude or modify a proposal or statement only where that company has demonstrated objectively that the proposal or statement is *materially* false or misleading. [emphasis added]

Applying this standard, it becomes clear that the Company Letter's assertions regarding the facts stated in the Proposal fall into the "not excludable" categories of statements in which the Company is either objecting to factual assertions that, while not materially false or misleading, may be countered, or which may be interpreted by shareholders in a manner that is unfavorable to the Company.

Reference to Travelers in supporting statement

The Proponent does acknowledge that there was an error in the supporting statement in referring to “Travelers,” a peer competitor, rather than “Chubb.” Proponent supports revising the Proposal to correct this error in the Supporting Statement by changing the references to refer to Chubb, and urges the Staff to allow the Proponent to make this correction.

The proposal is not amenable to multiple interpretations

The Company Letter also states that the Proposal may be excluded because the shareholders, or the company *in implementing the proposal would not be able to determine with any reasonable certainty exactly what actions or measured the proposal requires.*²³ In this instance, the Proposal does not leave room for shareholders to interpret the proposed resolution such that actions taken by the Company could significantly differ from the action intended by the shareholders voting on the proposal.

Shareholders are given proper information in the proposal to know what it means and what implementation would entail, based strictly on the proposal and supporting statement. The Proposal seeks information from Chubb on “how it intends to measure, disclose, and reduce the GHG emissions associated with its underwriting, insuring, and investment activities in alignment with the Paris Agreement’s 1.5C goal, requiring net zero emissions.” This is not a vague request.

The Company takes issue with Proposal’s use of the term “full range”, stating is not reasonably ascertained from either the Proposal itself or the supporting statement what this means. In the context of the proposal, requesting the Company give information of when it will “begin measuring and disclosing the emissions associated with the full range of its operations”, it is understandable what this entails. “Full range” is referring to inclusion of Scope 1-3 emissions and thus encompassing the emissions associated with its underwriting and investing activities.

The Company lists a range of activities and entities that it covers in its business,²⁴ stating it is unclear on which activities the Proposal is seeking to cover. The Proposal states that it is seeking measurement and disclosure from the Company’s investment and underwriting activities, so if any of those activities are being financed by Chubb, the Proposal is seeking emissions to be measured from those activities. It is not for the Proposal to state specifically which activities for Chubb to target first, given that is proprietary information and up to the Company’s discretion.

B. Rule 14a-8(i)(7) – The Proposal Does Not Address Ordinary Business

The Company Letter asserts that the Proposal addresses the ordinary business of the Company. However, when examining the Proposal against the Commission and Staff’s guidance on

²³ Chubb No Action p.10

²⁴ Chubb No Action p.11

shareholder proposals, including ordinary business and micromanagement, it is evident that the Proposal addresses a transcendent policy issue and does not micromanage or otherwise inappropriately address the Company's ordinary business.

Ordinary Business According to the Commission

In 1998, the Commission issued a rulemaking release ("1998 Release") updating and interpreting the ordinary business rule, by both reiterating and clarifying past precedents. That release was the last time that the Commission discussed and explained at length the meaning of the ordinary business exclusion. The Commission summarized *two central considerations* in making ordinary business determinations – whether the Proposal addresses a significant social policy issue, and whether it micromanages.

First, the Commission noted that certain tasks were generally considered so fundamental to management's ability to run a company on a day-to-day basis that they could not be subject to direct shareholder oversight (e.g., the hiring, promotion, and termination of employees, as well as decisions on retention of suppliers, and production quality and quantity). However, proposals related to such matters but *focused on sufficiently significant social policy issues* (i.e. significant discrimination matters) generally would not be excludable.

Second, proposals that addressed significant policy issues could be excluded to the extent they seek to "micromanage" a company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would be unable to make an informed judgment. This concern did not, however, result in the exclusion of all proposals seeking detailed timeframes or methods. As the 1998 Release indicated:

Timing questions, for instance, could involve significant policy where large differences are at stake, and proposals may seek a reasonable level of detail without running afoul of these considerations.

Proposals that passed the first prong but for which the wording involved some degree of micromanagement could be subject to a case-by-case analysis of *whether the proposal probes too deeply* for shareholder deliberation. The Staff's interpretation of micromanagement has evolved over the years, most recently articulated in the November 3, 2021 Staff Legal Bulletin 14L.²⁵ The Staff Legal Bulletin's analysis of issues of micromanagement comes down to two basic tests to determine whether a proposal "probes to deeply" for shareholders' consideration:

²⁵ The Staff Bulletin notes an evolution in the staff's thinking. In rescinding prior staff legal bulletins, the bulletin notes that: we believe that the rescinded guidance may have been taken to mean that any limit on company or board discretion constitutes micromanagement.

First, does the proposal frame the investor deliberation in a manner consistent with market discussions, available guidelines and the state of familiarity/expertise on the issues in the investing marketplace?

Second, does it leave sufficient flexibility for board and management discretion?

We will take each of these questions in turn. The second question also overlaps with the Company's exclusion argument regarding vagueness, so we will respond there to the Company's argument regarding Rule 14a-8(i)(3) as well.

A Deliberation Appropriate to Shareholders

Staff Legal Bulletin (SLB) 14L notes that in considering ordinary business challenges and micromanagement, the Staff will consider whether the deliberation posed by the proposal in question is consistent with current investor discourse and credible national or international guidelines:

We would expect the level of detail included in a shareholder proposal to be consistent with that needed to enable investors to assess an issuer's impacts, progress towards goals, risks or other strategic matters appropriate for shareholder input. [Emphasis added]

... in order to assess whether a proposal probes matters "too complex" for shareholders, as a group, to make an informed judgment, we may consider the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic. **The staff may also consider references to well-established national or international frameworks when assessing proposals related to disclosure, target setting, and timeframes as indicative of topics that shareholders are well-equipped to evaluate.** [Emphasis added]

In this instance, the existence of the United Nations' Net Zero Insurance Alliance, referenced in the Proposal, provides one relevant reference. The Proposal notes that thirteen global insurers²⁶

²⁶ The alliance is currently up to 18 members, seven of which are in the top 30 largest global insurers by market cap. <https://companiesmarketcap.com/insurance/largest-insurance-companies-by-market-cap/>The insurance coalition is part of the larger Glasgow Financial Alliance for Net Zero, which includes over 450 companies with more than \$130 trillion of assets committing to zero net financed emissions. <https://www.gfanzero.com/>

have joined the alliance and committed to transition their emissions from insurance and reinsurance underwriting portfolios to net zero by 2050. In contrast, the Company has not done so. The Net Zero Insurance Alliance, along with a range of other Net Zero industry groups, including for instance the Net Zero Assets Manager's Initiative, the CA 100+ Benchmark, the Science Based Target's Initiative, and others provide relevant references to well established national and international frameworks such that shareholders are very well equipped to evaluate this Proposal.

There is also growing investor and industry dialogue on the subject of insurers aligning their underwriting with global climate goals. For example the globally recognized consulting firm, McKinsey & Company, advises insurers to consider the environmental impact of their investments, just as banks and asset managers are doing, and to follow a plan to shift significant portions of their portfolios toward supporting a sustainable, decarbonized economy.²⁷

Lloyd's, the world's largest insurance marketplace, announced it will advocate and support all market participants to introduce and implement their own net zero plans in order to reach a net zero underwriting position for the market by 2050 at the latest. This new formal expectation will be embedded in the Lloyd's market oversight framework.²⁸

Movement on insurers' underwriting and investment emissions is not just happening at the global level, but also nationally within the United States. In September 2020, a group of 60 businesses wrote to U.S. insurance companies asking them to drop investments in fossil fuels to avoid worsening impacts of global climate change.²⁹ And more recently in March 2021, U.S. Senators wrote to Chubb specifically, asking if the Company's fossil fuel underwriting and investment policies are consistent with its broader commitments to sustainability. This is very similar to the heart of the matter of the Proposal: How will Chubb's underwriting and investment decisions align with a net zero by 2050 scenario (in line with its broad support of the net zero economy transition)?³⁰ In sum, investors are highly familiar with, and in fact are driving, a push toward companies aligning the full range of their Scope 1-3 GHG emissions with the global 1.5°C warming goal. Investors have voted on a range of similar proposals including recently a series of proposals asking U.S. banks to measure and disclose their Scope 3 financed emissions, set a 1.5°C aligned, net zero goals, and set interim targets designed to meet that long term goal.

²⁷ <https://www.mckinsey.com/industries/financial-services/our-insights/climate-change-and-p-and-c-insurance-the-threat-and-opportunity>

²⁸ <https://www.lloyds.com/about-lloyds/media-centre/press-releases/lloyds-joins-the-net-zero-insurance-alliance-and-becomes-part-of-the-glasgow-financial-alliance-for-net-zero>

²⁹ <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/businesses-call-on-us-insurers-to-join-global-trend-of-ditching-fossil-fuels-60386527>

³⁰

<https://static1.squarespace.com/static/5b7c9307f79392b49031d551/t/605cf32f9d526442eb0bca0c/1616704303928/Senators%27+Letter+-+Chubb.pdf>

Flexibility: The Proposal is not overly prescriptive in asking for a report as to whether and how the company will align its underwriting with the Paris Agreement’s 1.5°C goal.

The Paris Agreement has been ratified by 193 countries.³¹ More than 130 countries, including the United States, have since committed to or are considering how to achieve net zero emissions by 2050.³² The UNEP FI is calling for “financial institutions to use a science-based definition of net zero and to use sector pathways to track company progress according to their industry sectors. This will ultimately allow financial institutions to gain a holistic view of their alignment with a 1.5°C pathway and enable them to see whether they – and the real world companies within their portfolios – are on track to reach net-zero by 2050.”³³ UNEP FI further states that “net-zero commitments which are not explicitly tied to, or do not follow specifically 1.5°C IPCC carbon budget should not qualify as credible.”³⁴

The Proposal here asks Chubb to report on whether and how it will align with the world’s climate plan – the Paris goal to limit global temperature rise to 1.5°C. The Proposal does not dictate specific strategies as to how it will align its emissions with the global 1.5°C goal. The Proposal is consistent with long-standing precedent allowing proposals to ask for reporting on a goal, without micromanaging, by issuing a report on targets “describing if, and how, it plans to reduce its total contribution to climate change and align its operations and investments with the Paris Agreement’s goal.” Anadarko (March 4, 2019). As such, it does not micromanage even against the Staff’s most expansive interpretation of micromanagement.

Moreover, other Staff decisions have made it clear that it is appropriate to ask companies to set targets on GHG reduction. For instance, as Staff Legal Bulletin 14 L notes:

Our recent letter to *ConocoPhillips Company* provides an example of our current approach to micromanagement. In that letter the staff denied no-action relief for a proposal requesting that the company set targets covering the greenhouse gas emissions of the company’s operations and products. The proposal requested that the company set emission reduction targets and it did not impose a specific method for doing so. The staff concluded this proposal did not micromanage to such a degree to justify exclusion under Rule 14a-8(i)(7).

³¹ <https://unfccc.int/process/the-paris-agreement/status-of-ratification>

³² <https://www.un.org/en/climatechange/net-zero-coalition>

³³ <https://www.unepfi.org/news/industries/banking/unep-finance-initiative-delivers-g20-input-paper-with-recommendations-for-credible-net-zero-finance-commitments/>

³⁴ <https://g20sfwg.org/wp-content/uploads/2021/10/2021-UNEP-FI.-Recommendations-for-Credible-Net-Zero-Commitments.pdf> p.5

Similarly, in *Occidental Petroleum* (March 2, 2021) the Staff rejected micromanagement and ordinary business claims on a proposal asking the company to include medium-term targets covering the greenhouse gas (GHG) emissions of the Company's energy products (Scope 3) on their pathway to their long-term target, which was net-zero emissions before 2050.

See also Chevron Corp. (Jan. 18, 2021) (the Staff was unable to concur with the exclusion of a proposal that requested the company to set targets to substantially reduce the GHG emissions of their energy products (Scope 3) in the medium- and long-term); *Occidental Petroleum Corp.* (Mar. 19, 2021) (the Staff declined to concur with exclusion where the proposal asked the company to include medium-term targets covering GHG emissions from the company's energy products (Scope 3) "on their pathway to their long-term target, which is net-zero emissions before 2050").

The Company cites *Wells Fargo & Co.* and *JPMorgan Chase & Co* decisions as concurring with exclusions of proposals that dealt with particular products and services offered for sale.³⁵ However in both cases, these exclusions deal with very specific products (direct deposit advance lending service and issuing refund anticipation loans, respectively). The current Proposal, on the other hand, is not micromanaging Chubb in asking for emissions disclosure and reductions from its investment and underwriting activities which are significant areas of emissions for the company. These activities are the overarching business of Chubb. The Proposal does not pick out certain minor initiatives within these businesses or touch on any matters relating to pricing of Chubb's offerings.

The Proposal is not seeking to stop Chubb from undertaking specific initiatives or activities or to stop it from selling particular products, nor is it compelling new products, actions, or initiatives. The Proposal instead asks the company to assess and disclose the climate risk posed by its major businesses and to take related actions in line with global climate frameworks and goals. This is not micromanagement.

The Company discusses other cases on page 13 of the Company Letter related to product offerings, customer relations and advertising, which are not discussed at all in the Proposal. The Company states:

*Specifically, the Proposal focuses on the Company's decisions with regard to underwriting, insuring and investment activities and the identity of its customers, which are all ordinary business matters. The recitals of the resolution, which are an integral part of the Proposal, make clear that Proposal seeks "restrictions on oil and gas underwriting and investments."*³⁶

³⁵ Chubb No Action p.12

³⁶ Chubb No Action p.15

The Proposal does not mandate or restrict product offerings, customer relations and advertising, or any other specific activities. What the Proposal does ask the company to do is disclose and reduce the emissions associated with its business activities in line with the Paris Agreement or publicly state that it does not intend to do so. The Company is free to reduce emissions in any way it chooses. Further, there is no specific request to know the identity of the Company's customers.

In a decision closely analogous to the current Proposal at a financial services firm, the Staff ruled that it is not excludable under Rule 14a-8(i)(7) to request that the board report to shareholders the company'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. PNC Financial Services Group, Inc. (February 13, 2013). PNC unsuccessfully argued that the proposal should be omitted because it addressed ordinary business and micromanaged, essentially, that any proposal involving an evaluation of a wide range of factors associated with its lending, investing, and financing activities were part of its day-to-day lending and investment operations. The Staff rejected the Company's argument and found that the proposal did not intrude on ordinary business or micromanage the bank.³⁷ This follows the logic of numerous other proposals beyond the financial sector that similarly asked for action to reduce social or environmental impacts, both before and after the PNC decision, and found non-excludable under Rule 14a-8(i)(7).

Contrary to the Company's assertions, the Staff has made it clear in legal bulletins and in precedents that proposals directed to "nitty-gritty" aspects of the Company's business, including products or services offered, are not excludable to the extent they are focused on significant policy issues and do not attempt to micromanage business relationships. Thus, the current Proposal, which does not instruct the Company as to which clients it should serve but only seeks a policy for underwriting and investing that is consistent with global benchmarks, does not impinge on the ordinary business of the Company in a manner that renders it excludable. Staff Legal Bulletin 14H, October 22, 2015, made this clear:

[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**

³⁷ We note that the Task Force on Climate-Related Financial Disclosures (TCFD) process that was concluded last year emphasizes the importance for banks and other financial institutions of assessing and disclosing to shareholders climate risk and what companies are doing to reduce such risk. Early shareholder proposals such as *PNC Financial*, *Goldman Sachs* and others helped pave the way in emphasizing the importance to shareholders of understanding in detail how companies, including financial institutions, are addressing the growing risks of climate change. See <https://www.fsb-tcfd.org/publications/final-recommendations-report/>

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 potential for the proposal to touch on a company’s products or services is one such “nitty-gritty” issue that does not lead to exclusion when the proposal clearly focuses on a significant policy issue facing the company. In a similar challenge, JPMorgan made the same type of objection where the proposal requested that the company issue a report outlining if and how it intends to reduce the GHG emissions associated with its lending activities in alignment with the Paris Agreement’s goal of maintaining global temperature rise below 1.5 degrees Celsius. *J.P. Morgan Chase (February 28, 2020)*. The company had argued that the proposal impermissibly addressed the offering of products and services, an ordinary business matter. As in the present case, the Company’s argument cited the same cases in where the proposal at issue touched on products and services but lacked an overriding significant policy issue,³⁸ or where the proposal sought to dictate outcomes at the company in offering of particular products or services.³⁹ The Staff rejected the ordinary business assertion.

Significantly, the focus of a proposal on a policy level rather than directing the Company’s relations with particular suppliers or customers is sufficient to avoid the products and services exclusion. For example, in *TJX Companies (April 9, 2020)*, the proposal requested that the board commission an independent analysis of any material risks of continuing operations without a company-wide animal welfare policy or restrictions on animal-sourced products associated with animal cruelty. The company objected that the proposal was excludable as relating to sales of particular products, but the proponent effectively argued that the policy focus of the proposal on a clear, significant policy issue for the company caused the proposal to transcend ordinary business.

The Staff has long recognized that shareholder proposals may properly address business decisions regarding the sale of products where significant policy issues are at issue. See e.g., *Kimberly-Clark Corp. (Jan. 12, 1988)*; *Texaco, Inc. (February 28, 1984)*; *American Telephone and Telegraph Company (December 12, 1985)*; *Harsco Corporation (January 4, 1993)*; *Firststar Corporation (February 25, 1993)*. In Staff Legal Bulletin No. 14C, the Division considered proposals related to the environment and public health, which it had previously found to be significant policy considerations, and advised that “[t]o the extent that a proposal and supporting statement focus on the company minimizing or eliminating operations that may adversely affect

³⁸ *Hewlett-Packard Co. (Jan. 23, 2015)*, in which the Staff concurred with the exclusion of a proposal requesting that the board provide a report on the company’s sales of products and services to certain foreign entities, with the Staff noting that the proposal related to ordinary business and “does *not focus* on a significant policy issue” (emphasis added).

³⁹ See also *Bank of America Corp. (Trillium) (Feb. 24, 2010)*, the Staff concurred in the exclusion under Rule 14a-8(i)(7) of a proposal seeking analysis of the company’s implementation of its mountain top removal policy “beyond environmental issues”, i.e., whether to extend credit to particular customers.

the environment or the public's health, we do not concur with the company's view that there is a basis for it to exclude the proposal under rule 14a-8(i)(7)." SEC, Division of Corporation Finance, Staff Legal Bulletin No. 14C.

III. Rule 14a-8(i)(11)

Finally the Company Letter asserts that the *Proposal substantially duplicates the shareholder proposal submitted by Green Century Capital Management, Inc., a proposal which states in relevant part:*

*'RESOLVED: Shareholders request that Chubb's Board of Directors adopt and disclose new policies to help ensure that its underwriting practices do not support new fossil fuel supplies, in alignment with the IEA's Net Zero Emissions by 2050 Scenario.' ...The principal thrust and focus of the Proposal and the Green Century Proposal are the same: using insurance underwriting practices as a means of achieving net zero emissions.'*⁴⁰

Green Century's Proposal asks for policies to ensure underwriting practices do not support new fossil fuel supplies in alignment with IEA's Net Zero by 2050 Scenario. This is unmistakably a request that is not duplicative with the request of the Proposal.

Green Century's proposal is focused on alignment of Company actions with the IEA Net Zero scenario which finds that to meet 1.5°C goals, no new oil and gas production should occur, a scenario which impacts insurance investments and underwriting of fossil fuel companies and projects. In contrast, the Proposal here does not address *any* sectoral policies of the Company, or any specific businesses within those sectors. In fact, it does not address oil and gas activities at all, instead focusing on emissions disclosure and reductions associated with the full range of Chubb's activities, including its investment and underwriting activities. This distinction will result in a very different implementation plan than Green Century's proposal.

The measurement of emissions from underwriting and investment is a necessity for investors. Consistent and comparable Scope 3 emissions disclosures allow investors to assess potential broad portfolio risks to the Company, to compare against other insurance firms, and to understand their own exposure to climate risk. Similarly clearly disclosed decisions to align company emission reductions in critical business lines with the Paris Agreement provides crucial information, while not dictating to companies how to achieve such goal.

The Green Century's Proposal sets out specific action on particular portfolios of the Company – oil and gas portfolios. The Proposal, in contrast, takes a holistic view of the company's total business. In fact, the Proposal here will not only show the company its most carbon intense clients and portfolios, but will also show those that are the least carbon intense and lead to further business opportunities.

⁴⁰ Chubb No Action p.19

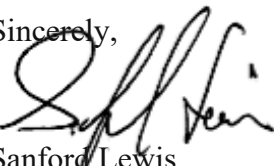
Therefore, the actions proposed in the two resolutions will not lead to implementation of similar reports. Moreover, shareholders can reasonably vote on both proposals and come to different conclusions regarding the advisability of the different approaches. Therefore, the proposals are not duplicative for purposes of Rule 14a-8(i)(11).

CONCLUSION

Ultimately, the ability of a shareholder proposal to produce beneficial change at a corporation is grounded in a fundamental test – whether shareholders vote in favor of the proposal. This inevitably turns on shareholders’ assessment of whether the proposal will advance value on a short- or long-term basis, whether at the individual company or across the economy.

The current Proposal is consistent with the rights and responsibilities of investors to assess the congruence of portfolio companies’ alignment with global climate goals. Based on the foregoing, we believe the Company has provided no basis for the conclusion that the Proposal is excludable from the 2022 proxy statement pursuant to Rule 14a-8. We urge the Staff to deny the no action request.

Sincerely,



Sanford Lewis