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

DIVISION OF
CORPORATION FINANCE

April 4, 2022

Marc S. Gerber
Skadden, Arps, Slate, Meagher & Flom LLP

Re: BlackRock, Inc. (the "Company")
Incoming letter dated January 24, 2022

Dear Mr. Gerber:

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

The Proposal asks that, to the extent practicable, consistent with fiduciary duties, and otherwise legally and contractually permissible, the Company adopt stewardship practices designed to curtail corporate activities that externalize social and environmental costs that are likely to decrease the returns of portfolios that are diversified in accordance with portfolio theory, even if such curtailment could decrease returns at the externalizing company.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(2) or Rule 14a-8(i)(6). We are unable to conclude that the Proposal, if implemented, would cause the Company to violate federal law.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(3). We 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.

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: Frederick H. Alexander
The Shareholder Commons

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BY EMAIL (shareholderproposals@sec.gov)

January 24, 2022

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

RE: BlackRock, Inc. – 2022 Annual Meeting
Omission of Shareholder Proposal of
James McRitchie

Ladies and Gentlemen:

Pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended, we are writing on behalf of our client, BlackRock, Inc., a Delaware corporation ("BlackRock"), to request that the Staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") concur with BlackRock's view that, for the reasons stated below, it may exclude the shareholder proposal and supporting statement (the "Proposal") submitted by The Shareholder Commons on behalf of James McRitchie (the "Proponent") from the proxy materials to be distributed by BlackRock in connection with its 2022 annual meeting of shareholders (the "2022 proxy materials").

In accordance with Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D"), we are emailing this letter and its attachments to the Staff at shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), we are simultaneously sending a copy of this letter and its attachments to The Shareholder Commons, on behalf of the Proponent, as notice of BlackRock's intent to omit the Proposal from the 2022 proxy materials.

Rule 14a-8(k) and Section E of SLB 14D provide that shareholder proponents are required to send companies a copy of any correspondence that the shareholder proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to remind the Proponent that if the Proponent, or The Shareholder Commons on his behalf, submits correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should concurrently be furnished to BlackRock.

I. The Proposal

The text of the resolution contained in the Proposal is set forth below:

> **RESOLVED**, shareholders ask that, to the extent practicable, consistent with fiduciary duties, and otherwise legally and contractually permissible, the Company adopt stewardship practices designed to curtail corporate activities that externalize social and environmental costs that are likely to decrease the returns of portfolios that are diversified in accordance with portfolio theory, even if such curtailment could decrease returns at the externalizing company.

II. Bases for Exclusion

We hereby respectfully request that the Staff concur in BlackRock's view that it may exclude the Proposal from the 2022 proxy materials pursuant to:

- Rule 14a-8(i)(7) because the Proposal deals with matters relating to BlackRock's ordinary business operations;
- Rule 14a-8(i)(2) because the Proposal, if implemented, would require BlackRock to violate federal law;
- Rule 14a-8(i)(6) because BlackRock lacks the power and authority to implement the Proposal; and
- Rule 14a-8(i)(3) because the Proposal is impermissibly vague and indefinite.

III. Background

BlackRock received the Proposal on December 16, 2021, along with a cover letter from The Shareholder Commons and a letter authorizing The Shareholder Commons to act on the Proponent's behalf. On December 27, 2021, BlackRock received via email a letter from TD Ameritrade verifying the Proponent's stock ownership. Copies of the Proposal, the cover letter and related correspondence are attached hereto as Exhibit A.

IV. The Proposal May Be Excluded Pursuant to Rule 14a-8(i)(7) Because the Proposal Deals with Matters Relating to BlackRock's Ordinary Business Operations.

Under Rule 14a-8(i)(7), a shareholder proposal may be excluded from a company's proxy materials if the proposal "deals with matters relating to the company's ordinary business operations." In Exchange Act Release No. 34-40018 (May 21, 1998) (the "1998 Release"), the Commission stated that the policy underlying the ordinary business exclusion rests on two central considerations. The first recognizes that certain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight. The second consideration 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. As demonstrated below, the Proposal implicates both of these two central considerations.

1. The Proposal deals with BlackRock's ordinary business operations.

In accordance with the policy considerations underlying the ordinary business exclusion, the Staff has consistently permitted exclusion under Rule 14a-8(i)(7) of shareholder proposals relating to the products and services offered for sale by a company and the methods of distribution of those products and services. *See, e.g.*, *Verizon Communications Inc.* (Jan. 29, 2019) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company offer its shareholders the same discounts on its products and services that are available to its employees, noting that the proposal "relates to the [c]ompany's discount pricing policies"); *Pfizer Inc.* (Mar. 1, 2016) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report describing the steps the company has taken to prevent the sale of its medicines to prisons for the purpose of aiding executions, noting that the proposal "relates to the sale or distribution of [the company's] products"); *The Walt Disney Co.* (Nov. 23, 2015) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company's board of directors approve the release of a specific film on Blu-ray, noting that the proposal "relates to the products and services offered for sale by the company"); *Equity LifeStyle Properties, Inc.* (Feb. 6, 2013) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on, among other things, "the reputational risks associated with the setting of unfair, inequitable and excessive rent increases that cause undue hardship to older homeowners on fixed incomes" and "potential negative feedback stated directly to potential customers from current residents," noting that the "setting of prices for products and services is fundamental to management's ability to run a company on a day-to-day basis"); *JPMorgan Chase & Co.* (Mar. 16, 2010) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board implement a policy mandating that the [c]ompany cease its current practice of issuing refund anticipation loans, noting that the proposal "relate[s] to [the company's] decision to issue refund anticipation loans" and that "[p]roposals concerning the sale of particular services are generally excludable under rule 14a-8(i)(7)").

More specifically, in the context of asset management businesses, where investment stewardship is an inherent part of the services provided to an asset managers' clients, the Staff has applied the policy considerations underlying the ordinary business exception to permit exclusion of shareholder proposals relating to asset managers' proxy voting and engagement policies and practices. For example, in *State Street Corp.* (Mar. 26, 2021)*, the Staff recently permitted exclusion pursuant to Rule 14a-8(i)(7) of a nearly identical proposal submitted by the Proponent that asked for a report on how the company's "voting and engagement policies, which focus solely on individual corporation materiality to the exclusion of capital markets materiality, affect the majority of its clients and shareholders, who rely primarily on overall stock market performance for their returns." *See also Franklin Resources, Inc.* (Dec. 1, 2014) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting the board review the company's proxy voting policies and practices, taking into account the company's corporate responsibility and environmental positions and the fiduciary and economic case for the shareholder resolutions presented, and report the results of such review to investors as "relating to [the company's] ordinary business operations."); *State Street Corp.* (Feb. 24, 2009) (same).[1]

In addition, the Staff has permitted exclusion under Rule 14a-8(i)(7) of proposals requesting a report on the impact of a company's actions on overall market returns. *See, e.g.*, *JPMorgan Chase & Co.* (Mar. 26, 2021) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting the board report on the external costs created by the company underwriting multi-class equity offerings and the manner in which such costs affect the majority of its shareholders who rely on overall stock market return, noting that the proposal "does not transcend the [c]ompany's ordinary business operations"); *The Goldman Sachs Group, Inc.* (Mar. 9, 2021, *recon. denied* Mar. 19, 2021)* (same).

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* Citations marked with an asterisk indicate Staff decisions issued without a letter.

1 *But see Franklin Resources, Inc.* (Nov. 24, 2015) (discussed below).

In this instance, the Proposal focuses primarily on BlackRock's stewardship practices (which include proxy voting and engagement policies and practices) and how those policies and practices impact overall market returns, both of which are ordinary business matters. In particular, the Proposal's resolved clause requests that BlackRock "adopt stewardship practices designed to curtail corporate activities that externalize social and environmental costs that are likely to decrease the returns of portfolios that are diversified in accordance with portfolio theory." In addition, the Proposal's supporting statement claims that BlackRock's stewardship policy "does not address practices of a company that harm the global economy unless those practices also harm that company's financial performance." When read together, the Proposal's resolved clause and supporting statement emphasize the Proposal's focus on the impact of BlackRock's proxy voting and engagement policies and practices on overall market returns.

The Proposal's concern with the macroeconomic effect of BlackRock's proxy voting and engagement policies clearly demonstrates that the Proposal is focused on BlackRock's ordinary business matters. As a fiduciary asset manager, BlackRock has a duty to act in the best interests of its clients. As the Commission has stated, an investment adviser's fiduciary duties under the Investment Advisers Act of 1940 (the "Advisers Act") require the adviser to monitor corporate events and to vote proxies in a manner consistent with the best interests of its clients. *See* Investment Advisers Act Release No. IA-2106 (Jan. 31, 2003). Consistent with these duties, BlackRock has established the highly regarded BlackRock Investment Stewardship team ("BIS"), which plays a key role in BlackRock's efforts to promote sound corporate governance and business practices in order to help maximize long-term value for BlackRock's clients. BIS regularly publishes global governance and engagement guidelines and reports that guide BlackRock's proxy voting and engagement with companies for the benefit of BlackRock's clients, the ultimate owners of those companies.

The particular priorities in BIS' policies and engagements are determined based on BlackRock's observation of market developments and emerging governance themes. Decisions with respect to these priorities and practices are at the heart of BlackRock's business as a fiduciary asset manager and are so fundamental to BlackRock's day-to-day operations that they cannot, as a practical matter, be subject to direct shareholder oversight. Moreover, calling for the adoption of policies that would focus on the overall economic effect on "diversified" investors does not change the fact that these matters are precisely the types of core business functions that the Staff has long recognized are not appropriate for direct shareholder oversight. Therefore, the Proposal may be excluded under Rule 14a-8(i)(7) as relating to BlackRock's ordinary business operations.

We note that a proposal may not be excluded under Rule 14a-8(i)(7) if it is determined to focus on a significant policy issue. The fact that a proposal may touch upon a significant policy issue, however, does not preclude exclusion under Rule 14a-8(i)(7). Instead, the question is whether the proposal focuses primarily on a matter of broad public policy versus matters related to the company's ordinary business operations. *See* 1998 Release; Staff Legal Bulletin No. 14E (Oct. 27, 2009). The Staff has consistently permitted exclusion of shareholder proposals where the proposal focused on ordinary business matters, even though it also related to a potential significant policy issue. For example, in *PetSmart, Inc.* (Mar. 24, 2011), the proposal requested that the company's board require suppliers to certify that they had not violated certain laws regulating the treatment of animals. Those laws affected a wide array of matters dealing with the company's ordinary business operations beyond the humane treatment of animals, which the Staff has recognized as a significant policy issue. In permitting exclusion under Rule 14a-8(i)(7), the Staff noted the company's view that "the scope of the laws covered by the proposal is 'fairly broad in nature from serious violations such as animal abuse to violations of administrative matters such as record keeping.'" *See also, e.g.*, *CIGNA Corp.* (Feb. 23, 2011) (permitting 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); *Capital One Financial Corp.* (Feb. 3, 2005) (permitting exclusion under Rule 14a-8(i)(7) when, although the proposal addressed the significant policy issue of outsourcing, it also asked the company to disclose information about how it manages its workforce, an ordinary business matter).

We are aware that, under certain limited circumstances, the Staff has declined to permit the exclusion of proposals relating to the company's proxy voting policies on the basis that the proposal focused on a significant policy issue. For example, in *Franklin Resources, Inc.* (Nov. 24, 2015), the proposal requested that the board issue a climate change report to shareholders "assess[ing] any incongruities between the proxy voting practices of the company and its subsidiaries within the last year, and any of the company's policy positions regarding climate change."

In this instance, however, the Proposal does not appear to touch on any significant policy issue. However, even if the Proposal did touch on a potential significant policy issue, the Proposal's overwhelming concern with the macroeconomic effect of BlackRock's proxy voting policies and practices demonstrates that the Proposal's focus is on an ordinary business matter. Therefore, even if the Proposal could be viewed as touching upon a significant policy issue, its focus is on ordinary business matters.

Accordingly, the Proposal should be excluded from BlackRock's 2022 proxy materials pursuant to Rule 14a-8(i)(7) as relating to BlackRock's ordinary business operations.

2. The Proposal seeks to micromanage BlackRock.

The Staff has consistently agreed that shareholder proposals attempting to micromanage a company by probing too deeply into matters of a complex nature upon which shareholders, as a group, are not in a position to make an informed judgment are excludable under Rule 14a-8(i)(7). *See* 1998 Release; *see also, e.g.*, *JPMorgan Chase & Co.* (Mar. 22, 2019); *Royal Caribbean Cruises Ltd.* (Mar. 14, 2019); *Walgreens Boots Alliance, Inc.* (Nov. 20, 2018); *RH* (May 11, 2018); *Amazon.com, Inc.* (Jan. 18, 2018). As the Commission has explained, a proposal may probe too deeply into matters of a complex nature if it "involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies." *See 1998 Release.* Recently, in Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L"), the Staff explained that a proposal can be excluded on the basis of micromanagement based "on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management." *See also Deere & Company* (Jan. 3, 2022) (permitting exclusion on the basis of micromanagement of a proposal that requested annual publication of the written and oral content of any employee-training materials offered to any subset of the company's employees because it "prob[ed] too deeply into matters of a complex nature by seeking disclosure of intricate details regarding the [c]ompany's employment and training practices.").

In particular, the Staff has permitted exclusion on the basis of micromanagement of shareholder proposals urging the adoption of policies that impose specific methods for implementing complex policies. *See, e.g.*, *JPMorgan Chase & Co.* (Mar. 30, 2018) (permitting exclusion on the basis of micromanagement 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").

In this instance, the Proposal seeks to micromanage BlackRock by imposing specific methods for implementing complex policies and inappropriately limiting the discretion of BlackRock's management. It does so by requesting that BlackRock adopt stewardship practices "designed to curtail corporate activities that externalize social and environmental costs that are likely to decrease the returns of portfolios that are diversified in accordance with portfolio theory, even if such curtailment could decrease returns at the externalizing company." The Proposal's supporting statement explains that BlackRock's stewardship activities "could significantly improve beta by discouraging corporate practices that externalize costs," and that BlackRock does not "tell management what to do" even if "doing so were necessary to protect commonly shared social and environmental resources from exploitation." Taken together, the Proposal seeks to impose a specific method for implementing a complex policy because it dictates the considerations that BlackRock should take into account in its stewardship activities with companies in which it invests for the benefit of clients.

Decisions concerning BlackRock's stewardship practices and voting policies require complex business judgments and distinct assessments by BlackRock's stewardship team and management. In this respect, in developing and implementing stewardship practices and policies, BlackRock's stewardship team undertakes complex analyses of numerous factors to enable such policies and practices to reflect the corporate governance standards and norms that it believes support long-term value creation. By mandating that BlackRock consider any particular factor above others and forsake the feedback and insight gained from prior engagement with companies that BlackRock currently takes into consideration in favor of a "one size fits all" approach, the Proposal seeks to impose specific methods for implementing complex policies and, therefore, probes too deeply into matters of a complex nature upon which shareholders, as a group, are not in a position to make an informed judgment. Even under the "measured approach" described in SLB 14L, the Proposal would inappropriately limit management's discretion such that it micromanages BlackRock. The Proposal would, therefore, attempt to micromanage BlackRock by probing too deeply into matters of a complex nature upon which shareholders, as a group, are not in a position to make an informed judgment.

Accordingly, consistent with the precedent described above, the Proposal may be excluded pursuant to Rule 14a-8(i)(7) as relating to BlackRock's ordinary business operations.

V. The Proposal May be Excluded Pursuant to Rule 14a-8(i)(2) Because Implementation of the Proposal Would Cause BlackRock to Violate Federal Law.

Rule 14a-8(i)(2) permits a company to exclude a shareholder proposal if implementation of the proposal would cause the company to violate any state, federal or foreign law to which it is subject. For the reasons discussed below, BlackRock believes that adoption of the stewardship practices described in the Proposal would cause BlackRock to violate federal law. Accordingly, the Proposal is excludable under Rule 14a-8(i)(2) as it would cause BlackRock to violate federal law.

As described above, BlackRock is a fiduciary asset manager with a duty to act in the best interests of its clients. Section 206 of the Advisers Act, as interpreted by the

U.S. Supreme Court in *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 191 (1963), imposes a fiduciary duty on investment advisers, including BlackRock. These fiduciary duties require the adviser to vote proxies in a manner consistent with the best interests of its clients. In this regard, the Commission has stated that an investment adviser's fiduciary duty of loyalty under the Advisers Act requires the adviser to place its client's interest before its own or the interests of others. *See* Exchange Act Release No. 54165 (July 18, 2006).

The Proposal would cause BlackRock to violate its fiduciary duties because it would require BlackRock to place the interests of others above its own clients. In this regard, the Proposal requests that BlackRock "adopt stewardship practices designed to curtail corporate activities that externalize social and environmental costs . . . even if such curtailment could decrease returns at the externalizing company." The Proposal's supporting statement explains that these stewardship policies would be "designed to directly support the health of social and environmental systems" rather than focusing on "improving individual company performance." Thus, the Proposal seeks for BlackRock to recommend that companies act in ways that could harm to their individual economic performance, prioritizing "the global economy" and "commonly shared social and environmental resources" over its clients' best interests, the investors in such companies. Notably, the inclusion of language in the Proposal that these stewardship practices should be adopted "consistent with fiduciary duties, and otherwise legally and contractually permissible" does little to negate the illegality of the Proposal because the requested practices are inherently in violation of BlackRock's fiduciary duties.

In addition, The Shareholder Commons has publicly acknowledged that reform of fiduciary duty law would be necessary in order to achieve the goals set forth in the Proposal. Specifically, The Shareholder Commons website states that The Shareholder Commons "believes that state and federal lawmakers must ensure that the fiduciary duties of both corporate directors and investment professionals allow them to take broader societal concerns into account when it is important to investors that they do so" and that "the rules governing capital markets can be revised to reflect the importance to investors of a company's impact on the market as a whole, and particularly how it affects diversified portfolios."[2] Accordingly, the Proponent has conceded that the actions required by the Proposal could violate current fiduciary duty laws.

Therefore, the Proposal should be excluded from BlackRock's 2022 proxy materials pursuant to Rule 14a-8(i)(2) because implementation of the Proposal would cause BlackRock to violate federal law.

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2 *See* The Shareholder Commons, available at https://theshareholdercommons.com/opportunities/#policymakers.

VI. The Proposal May Be Excluded Pursuant to Rule 14a-8(i)(6) Because BlackRock Lacks the Power and Authority to Implement the Proposal.

Under Rule 14a-8(i)(6), a company may exclude a shareholder proposal if the company would lack the power or authority to implement the proposal. The Staff has consistently permitted exclusion of proposals under circumstances where implementation of the proposal would cause the company to violate law and, therefore, the company would have neither the power nor the authority to implement the proposal. *See, e.g.*, *Arlington Asset Investment Corp.* (April 23, 2021)* (permitting exclusion under Rules 14a-8(i)(2) and 14a-8(i)(6) of a proposal that requested the company's officers liquidate the company's entire investment portfolio and distribute the net proceeds to shareholders and the company argued that the proposal would cause the company to violate Virginia law); *eBay Inc.* (April 1, 2020)* (permitting exclusion under Rules 14a-8(i)(2) and 14a-8(i)(6) of a proposal requesting that the company reform its board structure to allows employees to elect 20% of board members and the company argued that the proposal would cause the company to violate Delaware law); *Trans World Entertainment Corporation* (May 2, 2019) (permitting exclusion under Rules 14a-8(i)(2) and 14a-8(i)(6) of a proposal requesting that the company's bylaws be amended to provide for an elevated quorum requirement and the company argued that the proposal would cause the company to violate New York law).

In this instance, BlackRock lacks the legal power or authority to implement the Proposal because neither BlackRock nor its Board of Directors may act in a manner inconsistent with BlackRock's fiduciary duties to its clients. As described above, if the Proposal is implemented, fundamental aspects of the Proposal would cause BlackRock to violate federal law. Accordingly, BlackRock believes that the Proposal is excludable under Rule 14a-8(i)(6).

VII. The Proposal May Be Excluded Pursuant to Rule 14a-8(i)(3) Because the Proposal Is Impermissibly Vague and Indefinite.

Under Rule 14a-8(i)(3), a shareholder proposal may be excluded from a company's proxy materials if 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 a company's proxy materials. *See* Staff Legal Bulletin No. 14B (Sept. 15, 2004) ("SLB 14B").

The Staff has recognized that exclusion is permitted pursuant to Rule 14a-8(i)(3) if "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." *See* SLB 14B; *see also Dyer v. SEC*, 287 F.2d 773, 781 (8th Cir. 1961) ("[I]t appears to us that the proposal, as drafted and submitted to the company, is so vague and indefinite as to make it impossible for either the board of directors or the stockholders at large to comprehend precisely what the proposal would entail."); *Fuqua Industries, Inc.* (Mar. 12, 1991) (permitting exclusion under Rule 14a-8(i)(3) of a proposal where the company and its shareholders might interpret the proposal differently, such that "any action ultimately taken by the [c]ompany upon implementation [of the proposal] could be significantly different from the actions envisioned by shareholders voting on the proposal").

In accordance with SLB 14B, the Staff has consistently permitted exclusion of shareholder proposals under Rule 14a-8(i)(3) as impermissibly vague and indefinite where the proposal contained an essential term or phrase that, in applying the particular proposal to the company, was unclear, such that neither the company nor shareholders would be able to determine with any reasonable certainty what actions or measures the proposal requires. *See, e.g.*, *Cisco Systems, Inc.* (Oct. 7, 2016) (permitting exclusion under Rule 14a-8(i)(3) of a proposal requesting that the board "not take any action whose primary purpose is to prevent the effectiveness of shareholder vote without a compelling justification for such action," where it was unclear what board actions would "prevent the effectiveness of [a] shareholder vote" and how the essential terms "primary purpose" and "compelling justification" would apply to board actions); *Pfizer Inc.* (Dec. 22, 2014, *recon. denied* Mar. 10, 2015) (permitting exclusion under Rule 14a-8(i)(3) of a proposal requesting that the board adopt a policy that "the Chair of the Board of Directors shall be an independent director who is not a current or former employee of the company, and whose only nontrivial professional, familial or financial connection to the company or its CEO is the directorship," where it was unclear whether the proposal intended to restrict or not restrict stock ownership of directors and any action taken by the company to implement the proposal, such as prohibiting directors from owning nontrivial amounts of company stock, could be significantly different from the actions envisioned by shareholders); *AT&T Inc.* (Feb. 21, 2014) (permitting exclusion under Rule 14a-8(i)(3) of a proposal requesting that the board review the company's policies and procedures relating to "directors' moral, ethical and legal fiduciary duties and opportunities" to ensure the protection of privacy rights, where it was unclear how the essential term "moral, ethical and legal fiduciary" applied to the directors' duties and opportunities); *General Dynamics Corp.* (Jan. 10, 2013) (permitting exclusion under Rule 14a-8(i)(3) of a proposal requesting a policy that, in the event of a change of control, there would be no acceleration in the vesting of future equity pay to senior executives, "provided that any unvested award may vest on a pro rata basis," where it was unclear how the essential term "pro rata" applied to the company's unvested awards); *The Boeing Co.* (Jan. 28, 2011, *recon. granted* Mar. 2, 2011) (permitting exclusion under Rule 14a-8(i)(3) of a proposal requesting that senior executives relinquish preexisting "executive pay rights," where it was unclear how to apply the essential term "executive pay rights").

In this instance, the Proposal is impermissibly vague and indefinite. It requests BlackRock "adopt stewardship practices designed to curtail corporate activities that externalize social and environmental costs." The essential term in this request — "externalize social and environmental costs" — is vague and indefinite, such that neither BlackRock nor its shareholders would be able to determine with any reasonable certainty what actions or measures the Proposal requires. The supporting statement does little to clarify this phrase – saying that "a company's externalities harm its diversified shareholders, even if they do not harm the company itself" but failing to define such externalities. In addition, even if BlackRock were able to specifically identify and quantify the social and environmental "externalities [that] harm [BlackRock's] diversified shareholders" and the "corporate practices that externalize [those] costs," the Proposal does not provide sufficiently clear guidance on the substance or goal of the stewardship practices BlackRock should adopt.

Similarly, the supporting statement's assertion that "the Company's stewardship policy does not address practices of a company that harm the global economy unless those practices also harm that company's financial performance" is impermissibly vague and indefinite. Neither the Proposal nor its supporting statement explain what these practices are or precisely how they should be addressed. Given these ambiguities, essential terms contained in the Proposal are so inherently vague and indefinite that neither shareholders voting on the Proposal, nor BlackRock in implementing the Proposal, if adopted, would be able to determine with any reasonable certainty what actions or measures the Proposal requires.

Accordingly, the Proposal may be excluded pursuant to Rule 14a-8(i)(3) on the basis that the Proposal is impermissibly vague and indefinite, in violation of Rule 14a-9.

VIII. Conclusion

Based upon the foregoing analysis, BlackRock respectfully requests that the Staff concur that it will take no action if BlackRock excludes the Proposal from the 2022 proxy materials.

Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of BlackRock's position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response. Please do not hesitate to contact the undersigned at (202) 371-7233.

Very truly yours,

Marc S. Gerber

Enclosures

cc: R. Andrew Dickson, III
Managing Director & Corporate Secretary
BlackRock, Inc.

James McRitchie

Sara E. Murphy
Chief Strategy Officer
The Shareholder Commons

EXHIBIT A

(see attached)

Via electronic mail
December 16, 2021

BlackRock, Inc.
40 East 52nd Street
New York, NY 10022

Attn: R. Andrew Dickson III, Corporate Secretary [redacted]

RE: Rule 14a-8 shareholder proposal for 2022 Annual Shareholder Meeting

Dear Mr. Dickson,

The Shareholder Commons ("TSC") is filing a shareholder proposal on behalf of James McRitchie, a shareholder of BlackRock, Inc. (the "Company"), for action at the next Company annual meeting. The Proponent submits the enclosed shareholder proposal for inclusion in the Company's 2022 proxy statement, for consideration by shareholders, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.

A letter from the Proponent authorizing TSC to act on his behalf is enclosed. A representative of the Proponent will attend the stockholders' meeting to move the resolution as required.

The Proponent and I are available to meet with the Company via teleconference on January 3, 2022, at 1:30 p.m. EST or 2:00 p.m. EST. In SLB 14L Section F, SEC Staff "encourages both companies and shareholder proponents to acknowledge receipt of emails when requested." Please acknowledge receipt of this proposal, and *kindly indicate whether you wish to accept either of our proposed meeting times*.

The proponent can be reached at [redacted] I can be contacted at +[redacted] or [redacted] Please address any future correspondence regarding the proposal to me. I am available to discuss this issue and would welcome the opportunity to engage.

Sincerely,

Sara E. Murphy

Sara E. Murphy

cc: Michelle Wang [redacted]
Brenda Schulz [redacted]
Samantha Tortora [redacted]

[BlackRock, Inc.: Rule 14a-8 Proposal, December 16, 2021]
[This line and any line above it – *Not* for publication]
ITEM 4*: Report on Asset Management Policies and Diversified Investors

RESOLVED*, shareholders ask that, to the extent practicable, consistent with fiduciary duties, and otherwise legally and contractually permissible, the Company adopt stewardship practices designed to curtail corporate activities that externalize social and environmental costs that are likely to decrease the returns of portfolios that are diversified in accordance with portfolio theory, even if such curtailment could decrease returns at the externalizing company.*

Supporting Statement:

Our Company is the world's largest asset manager, with close to $10 trillion in assets under management, primarily weighted toward indexed strategies. In line with portfolio theory, most of its clients are likely to be broadly diversified.[1]

Overall return of the financial markets ("beta") is the primary determinant of diversified investors' return. Beta itself relies on a healthy economy, which in turn relies on healthy social and environmental systems. But those systems are at risk from corporate practices that reduce the value of the economy by externalizing social and environmental costs. In short, a company's externalities harm its diversified shareholders, even if they do not harm the company itself.[2]

Given its market position, BlackRock's stewardship activities—engaging with portfolio companies and voting their shares—could significantly improve beta by discouraging corporate practices that externalize costs. This would increase the portfolio value of BlackRock's clients, and also increase the value of the assets it manages, thereby improving the returns of both its clients and shareholders.

However, BlackRock's social and environmental stewardship only focuses on improving individual company performance. BlackRock commits to engagement "that supports companies['']... efforts to deliver... value to shareholders."[3] In contrast, the Company's stewardship policy does not address practices of a company that harm the global economy unless those practices also harm that company's financial performance.

Indeed, BlackRock says expressly that it does "not tell management what to do."[4] This appears to be the case even if doing so were necessary to protect commonly shared social and environmental resources from exploitation. Similarly, BlackRock asks companies to have business plans "aligned" with a net-zero

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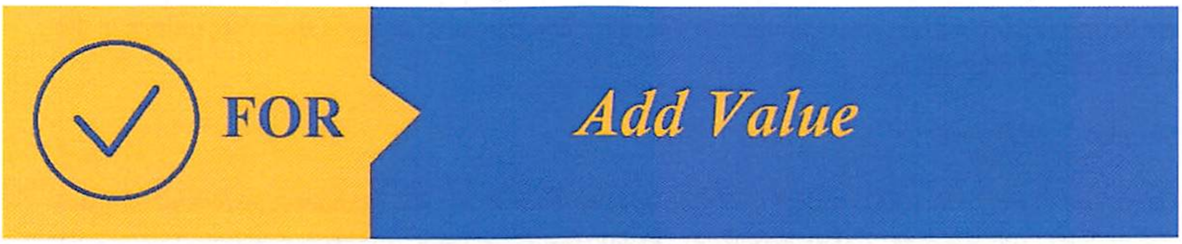
[1] *See, e.g.,* Uniform Prudent Investor Act, § 3 ("trustee shall diversify the investments of the trust" absent special circumstances.)
[2] https://www.unepfi.org/fileadmin/documents/universal_ownership_full.pdf; https://archive.fortune.com/magazines/fortune/fortune_archive/2001/12/10/314691/index.htm (total market capitalization to GDP "is probably the best single measure of where valuations stand at any given moment") (quoting Warren Buffet).
[3] https://www.blackrock.com/corporate/literature/fact-sheet/blk-responsible-investment-engprinciples-global-summary.pdf.
[4] https://www.blackrock.com/corporate/literature/publication/blk-commentary-engagement-on-natural-capital.pdf.

economy and to be "resilient" in a scenario where warming is limited to 1.5 degrees Celsius,[5] but such standards focus on the ability of the company to operate successfully in a world that is addressing climate change. In contrast, **there is no BlackRock policy requiring companies do their part to ensure those goals are met:** that would be telling management "what to do."

Stewardship policies designed to directly support the health of social and environmental systems would promote the interests of the BlackRock's clients and shareholders.

Please vote for: Report on Asset Management Policies and Diversified Investors – Proposal 4*



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

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

The proponent is willing to discuss mutual elimination of both shareholder graphic and any management graphic in the proxy in regard to this specific proposal.

Reference SEC Staff Legal Bulletin No. 14I (CF)

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

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

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(i)(3) in the following circumstances:

- the company objects to factual assertions because they are not supported;

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[5] *Supra, n.2*

- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;

- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or

- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.

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

I also remind you of the SEC's recent guidance and my request that you acknowledge receipt of this shareholder proposal submission. In SLB 14L Section F, https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals, Staff "encourages both companies and shareholder proponents to acknowledge receipt of emails when requested."

James McRitchie
[redacted]

December 16, 2021

BlackRock, Inc.
40 East 52nd Street
New York, NY 10022
Via: [redacted]

Attn: R. Andrew Dickson III, Corporate Secretary

I hereby authorize The Shareholder Commons to file a shareholder resolution on my behalf for BlackRock, Inc.'s ("the Company") 2022 annual shareholder meeting. The proposal specifically requests that the Company adopt stewardship practices that discourage corporate externalization of social and environmental costs that reduce diversified portfolio value.

I have continuously beneficially owned, for at least 3 years as of the date hereof, at least $2,000 worth of the Company's common stock. Verification of this ownership will be sent under separate cover. I intend to continue to hold such shares through the date of the Company's 2022 annual meeting of shareholders.

I support this proposal because it would help to curb activities on the part of the Company that may undermine the value of my broader portfolio. I specifically authorize The Shareholder Commons to engage with the Company on my behalf regarding the proposal and the underlying issues, and to negotiate a withdrawal of the proposal as The Shareholder Commons sees fit.

I understand that I may be identified on the corporation's proxy statement as the filer of the aforementioned resolution.

Sincerely,

J. McRitchie

James McRitchie

cc: Michelle Wang [redacted]
Brenda Schulz [redacted]
Samantha Tortora [redacted]

Frederick H. Alexander
rick@theshareholdercommons.com
+1.302.593.0917

February 22, 2022

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

RE: Shareholder proposal submitted by James McRitchie at BlackRock, Inc. concerning externalized costs of portfolio companies

Division of Corporate Finance Staff Members:

James McRitchie is beneficial owner of BlackRock, Inc. ("BlackRock" or the "Company") common stock, and has submitted a shareholder proposal (the "Proposal") to the Company. The Proponent has asked me to respond to the letter dated January 24, 2022 (the "Company Letter") that Marc Gerber ("Company Counsel") sent to the Securities and Exchange Commission (the "SEC"). In that letter, the Company contends that the Proposal may be excluded from the Company's 2022 proxy statement.

For the reasons discussed below, we respectfully submit that the Proposal must be included in the Company's 2022 proxy materials and is not excludable under Rule 14a-8. The Proposal is attached as an Appendix to this letter. A copy of this letter is being emailed concurrently to Company Counsel.

SUMMARY

The Company is the largest asset manager in the world, with more than $10 trillion in investment assets under management. The Proposal asks the Company to steward those assets in a manner that minimizes social and environmental harms that decrease the return its own clients receive on diversified portfolios, but only if such stewardship is consistent with law, including fiduciary law and contracts:

> ***RESOLVED****, shareholders ask that, to the extent practicable, consistent with fiduciary duties, and otherwise legally and contractually permissible, the Company adopt stewardship practices designed to curtail corporate activities that externalize social and environmental costs that are likely to decrease the returns of portfolios that are diversified in accordance with portfolio theory, even if such curtailment could decrease returns at the externalizing company.*

In short, the Proposal asks the Company—to the extent legally permitted—to ensure its stewardship polices do not accept corporate behavior that harms its own clients. The Company Letter does not deny that BlackRock's policy accepts such behavior by portfolio companies. In fact, BlackRock argues it would be illegal to stop a company from actively harming the Company's clients, stating, "the requested practices are inherently in violation of BlackRock's fiduciary duties."

If this is truly what the Company believes, it means, among other things, that BlackRock is currently allowing the companies in its S&P 500 index fund to engage in behavior that harms American workers, even if doing so shrinks the value of that index fund, so long as the behavior increases the value of the individual company in question.

As we show below, the assertion of illegality is untenable. In this case, however, the legal question is overshadowed by the disturbing fact that the largest asset owner in the world is declaring that it is acting as if it were legally bound to favor companies over its own clients. This admission surely demonstrates the critical nature of the policy issue at stake: **if the Company believes the Proposal is illegal, then $10 trillion in assets are being stewarded in a manner designed to sacrifice the economy at the altar of individual company returns, even though doing so hurts the Company's clients and the economy, as well as its own diversified shareholders.**

This circumstance underscores the imperative that shareholders be permitted to vote on the Proposal.

The Company asserts the Proposal is excludable either because (1) it relates to the Company's ordinary business (Rule 14a-8(i)(7)), (2) it is illegal and thus beyond the Company's power (Rule 14a-8(i)(2) & (6)), or (3) it is vague (Rule 14a-8(i)(3)). Each of these assertions is based on a misreading of the Proposal, which raises a significant public policy issue that (1) transcends the Company's ordinary business, (2) is fully consistent with the obligations of the Company as an asset manager, and (3) is unambiguous.

ANALYSIS

A. The proposal does not propose subordinating beneficiaries' interests to any other interests and cannot be excluded under either Rule 14a-8(i)(2) or (6)

1. *The Company's illegality argument relies on a mischaracterization of the Proposal*

Much of the Company Letter springs from the false claim that the Proposal might require BlackRock to put any interests before those of its clients. Specifically, the Company Letter states:

> *The Proposal's supporting statement explains that these stewardship policies would be "designed to directly support the health of social and environmental systems" rather than focusing on "improving individual company performance." Thus, the Proposal seeks for BlackRock to recommend that companies act in ways that could harm to their individual economic performance, prioritizing "the global economy" and "commonly shared social and environmental resources" over its clients' best interests, the investors in such companies. Notably, the inclusion of language in the*

> *Proposal that these stewardship practices should be adopted "consistent with fiduciary duties, and otherwise legally and contractually permissible" does little to negate the illegality of the Proposal because the requested practices are inherently in violation of BlackRock's fiduciary duties.*

The Company's argument under clauses (2) and (6) rests on the false assertion that the Proposal asks the Company to deprioritize its clients; the Company Letter characterizes the Proposal as a request for "prioritizing 'the global economy' and 'commonly shared social and environmental resources' over its clients' best interests." But these pasted-together snippets omit key language included in the Proposal, which explicitly requests that the Company prioritize social and environmental resources over individual company profits **only when doing so would benefit their clients**:

> *[S]hareholders ask that, to the extent practicable, **consistent with fiduciary duties**, and otherwise legally and contractually permissible, the Company adopt stewardship practices designed to curtail corporate activities that externalize social and environmental costs **that are likely to decrease the returns of portfolios that are diversified in accordance with portfolio theory**, even if such curtailment could decrease returns at the externalizing company.*

When read in full, the Proposal is clearly consistent with law. First, the Proposal specifically carves out any activities that would violate fiduciary duty or any other law or contract to which the Company is subject. More to the point, however, is the express goal of the requested action, which is to ensure that the Company practices stewardship that adequately protects its diversified clients from portfolio company behavior that may harm the investments of those clients. Rather than suggesting that the interests of Company clients should be ignored, the Proposal asks the Company to stop subordinating the interests of its diversified clients to those of the individual companies in which it invests.

The Company Letter claims the Proposal would require the Company to violate Section 206 of the Investment Advisers Act which, in the words of the Company Letter, requires fiduciaries "to vote proxies in a manner consistent with the best interests of its clients." That is precisely what the Proposal is asking the Company to do—to use voting and other shareholder rights to oppose behavior at portfolio companies that harms the diversified portfolios of the Company's clients.[1] As the supporting statement explains:

> *Overall return of the financial markets ("beta") is the primary determinant of diversified investors' return. Beta itself relies on a healthy economy, which in turn relies on healthy social and environmental systems. But those systems are at risk from corporate practices that reduce the value of the economy by externalizing social and environmental costs. In short, a company's externalities harm its diversified shareholders, even if they do*

[1] To be clear, the Proposal only requests that the Company act against value-maximizing activity at companies when it is consistent with its fiduciary duty; if the Company determines that value-optimizing behaviors at individual companies do not harm its clients, the Proposal would not require—or even suggest—intervention.

not harm the company itself.

Given its market position, BlackRock's stewardship activities—engaging with portfolio companies and voting their shares—could significantly improve beta by discouraging corporate practices that externalize costs. This would increase the portfolio value of BlackRock's clients, and also increase the value of the assets it manages, thereby improving the returns of both its clients and shareholders.

The Proposal cannot be reasonably read to suggest anything other than putting the interests of the Company's clients first. Indeed, the greatest threat to the interests of BlackRock clients is the Company's belief that it cannot steward companies away from behaviors that threaten those clients' interests if those behaviors benefit the individual company.[2]

2. *The Company's focus on maximizing the value of individual companies risks harming investors who hold diversified portfolios, contrary to its legal obligations*

a. Diversification and the importance of overall market return

Sound investment practice mandates that fiduciaries adequately diversify their portfolios.[3] This allows investors to reap the increased returns available from risky securities while greatly reducing their overall risk. This insight defines Modern Portfolio Theory.[4] This core principle is reflected in legal regimes that govern investment fiduciaries such as ERISA, the federal law that governs private pension plans. ERISA requires plan fiduciaries to act prudently "by diversifying the investments of the plan."[5] The late John Bogle, founder of one of the world's largest mutual fund companies, summarized the wisdom of a diversified investment strategy: "Don't look for the needle in the haystack; instead, buy the haystack."[6]

Thus, accepted investment theory and fiduciary standards require adequate diversification. However, once a portfolio is diversified, the most important factor determining return will not be how the companies in that portfolio perform relative to other companies ("alpha"), but rather how the market performs as a whole ("beta"). As one work describes this, "[a]ccording to widely accepted research, alpha is about one-tenth as important as beta [and] drives some 91 percent of the average portfolio's return."[7]

[2] The Company's claim that it believes carrying out the Proposal would be illegal must be taken at face value, meaning that it currently is subordinating the interests of its clients to the interests of certain individual companies in its portfolio. This failure of imagination demonstrates how important it is that the shareholders have an opportunity to vote on this matter.
[3] *See generally*, Burton G. Malkiel, A Random Walk Down Wall Street (2015)
[4] *Id.*
[5] 29 USC Section 404(a)(1)(C); see also Uniform Prudent Investor Act, § 3 ("trustee shall diversify the investments of the trust" absent special circumstances.).
[6] John C. Bogle, The Little Book of Common Sense Investing: The Only Way to Guarantee your Fair Share of the Stock Market, 86 (2007).
[7] Stephen Davis, Jon Lukomnik and David Pitt-Watson, *What They Do with Your Money* (2016).

b. Beta and ESG

This distinction between individual company returns and overall market return is critical because shareholder return at an individual company does not reflect its "externalized" costs, i.e., those costs it generates but does not pay. Externalized costs may include harmful emissions, resource depletion, and the instability and lost opportunities caused by inequality. Diversified shareholders (including the Company's clients) absorb the collective costs of such externalities because they degrade and endanger the stable, healthy systems upon which corporate financial returns depend. Thus, while individual companies can externalize costs from their own narrow perspective to "maximize shareholder value," diversified shareholders internalize these costs through lowered return on their portfolios.[8] Stewardship of the externalizing companies reduces externalities (even profitable ones) and provides an opportunity to increase portfolio-level return.

Thus, if a fiduciary such as BlackRock focuses only on the effect that environmental, social, and governance ("ESG") behaviors have on the performance of companies whose activity is at issue, and not on the external costs the behaviors create, the fiduciary may be sacrificing the 91 percent of potential return attributed to market return in order to optimize the 9 percent that comes from outperformance. Externalized social and environmental costs can play an outsized role in that 91 percent. A recent study (the "Schroders Report") by a major asset manager discerned that 55 percent of the profits attributed to publicly listed companies globally were consumed by external costs the rest of the economy absorbed:

> *In total, the earnings listed companies generate for shareholders currently total US$4.1 trillion, which would fall by 55% to US$1.9 trillion if those social and environmental impacts crystallised as financial costs. One third of companies would become loss-making.*[9]

But those costs will crystalize: as the economy absorbs them, growth and productivity will fall, leading to decreasing overall market returns.[10] The PRI, an investor initiative whose signatories (which have included the Company since 2008) have $89 trillion in assets under management, recently explained (in the "PRI Report") how an individual company's pursuit of profit can reduce diversified owners' return even

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[8] *Externalities and Corporate Objectives in a World with Diversified Shareholder/Consumers,* Robert G. Hansen and John R. Lott, JOURNAL OF FINANCIAL AND QUANTITATIVE ANALYSIS, 1996, vol. 31, issue 1, 43-68 (abstract) ("If shareholders own diversified portfolios, and if companies impose externalities on one another, shareholders do not want value maximization to be corporate policy. Instead, shareholders want companies to maximize portfolio values. This occurs when firms internalize between-firm externalities.")

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

[10] On the economic cost of climate change, s*ee, e.g.,* Swiss Re Institute, The Economics of Climate Change: *No Action Not an Option* (April 2021) (Up to 9.7% loss of global GDP by mid-century if temperature increase is consistent with current trajectory rather than if goal of the Paris Accords is met) available at https://www.swissre.com/dam/jcr:e73ee7c3-7f83-4c17-a2b8-8ef23a8d3312/swiss-re-institute-expertise-publication-economics-of-climate-change.pdf ; as to the economic cost of inequality, *see, e.g., Dana Peterson and Catherine Mann, Closing the Racial Inequality Gaps: The Economic Cost of Black Inequality in the U.S.* (2020) (closing racial gaps could lead to $5 trillion in additional GDP over next five years) available at https://ir.citi.com/%2FPRxPvgNWu319AU1ajGf%2BsKbjJjBJSaTOSdw2DF4xynPwFB8a2jV1FaA3Idy7vY59bOtN2lxVQM%3D; *Inequality is Slowing U.S. Economic Growth,* Economic Policy Institute (December 12, 2017) (Inequality reduces demand by 2-4% annually) available at https://www.epi.org/publication/secular-stagnation/; Heather Boushey, Unbound: How Inequality Constricts Our Economy and What We Can Do about It (2019).

if the company is included in their portfolio, highlighting problems that arise from optimizing for too narrow a scope:

> *A company strengthening its position by externalising costs onto others.* ***The net result for the [diversified] investor can be negative when the costs across the rest of the portfolio (or market/economy) outweigh the gains to the company****.*[11]

c. The Need for System Stewardship

Given the critical importance of overall market return, and the danger to that return from company activities that damage social and environmental systems, the Company's clients would clearly benefit if they were protected from companies that improve their own performance in ways that damage overall market return. To protect clients' interests, the Company must consider whether it can effectively steward companies to limit or eliminate conduct that threatens the social and economic systems on which investors with diversified portfolios rely.

Because investors collectively have the power to vote against the management at companies that endanger systems that are critical to all companies, they have the power to steward companies away from negative-sum activities and toward authentically productive profits. The PRI Report reaches the conclusion that collective investor action to manage social and environmental systems is needed to satisfy investment trustees' fiduciary duty:

> *Systemic issues require a deliberate focus on and prioritisation of outcomes at the economy or society-wide scale. This means stewardship that is less focused on the risks and returns of individual holdings, and more on addressing systemic or 'beta' issues such as climate change and corruption. It means prioritising the long-term, absolute returns for universal owners, including real-term financial and welfare outcomes for beneficiaries more broadly.*[12]

Yet BlackRock's pledge "not [to] tell management what to do" eliminates its capacity to be an effective steward. The Proposal asks the Company to expand its stewardship role to address a critical issue raised by an alliance of investors of which it has been a member for more than a decade. Providing the requested report would not violate state or federal law and is fully within the Company's authority.

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[11] PRI, *Active Ownership 2.0: The Evolution Stewardship Urgently Needs,* available at https://www.unpri.org/download?ac=9721. *See also Addressing Climate as a Systemic Risk: A call to action for U.S. financial regulators, available at* https://www.ceres.org/resources/reports/addressing-climate-systemic-risk ("The SEC should make clear that consideration of material environmental, social and governance (ESG) risk factors, such as climate change, to portfolio value is consistent with investor fiduciary duty."). Ceres is a non-profit organization with a network of investors with more than $29 trillion under management. The Company is a member of its Investor Network.

[12] *Id* (emphasis added.)

d. Recent scholarship reinforces the need for the Company to address overall market returns to best serve its clients

Contrary to the Company's assertion that it is illegal for asset managers to play a role in stewarding portfolio companies' impact on social and environmental systems, there is a growing recognition they have a duty to do so. A new report from the international law firm Freshfields Bruckhaus Deringer (the "Freshfields Report") explains how the reality of externalized costs reverberates in the fiduciary duty of investment trustees across jurisdictions:

> *System-wide risks are the sort of risks that cannot be mitigated simply by diversifying the investments in a portfolio. They threaten the functioning of the economic, financial and wider systems on which investment performance relies. If risks of this sort materialised, they would therefore damage the performance of a portfolio as a whole and all portfolios exposed to those systems.*[13]

Because investors have the power to vote on matters at investees that endanger systems critical to all companies, they have the power—and the responsibility—to steward companies away from such practices. The PRI Report described the need for diversified investors to prioritize systemic issues over individual companies in their portfolio, in contrast to BlackRock's prioritization of the latter over the former:

> *Systemic issues require a deliberate focus on and prioritisation of outcomes at the economy or society-wide scale **. This means stewardship that is less focused on the risks and returns of individual holdings, and more on addressing systemic or 'beta' issues such as climate change and corruption.** It means prioritising the long-term, absolute returns for universal owners, including real-term financial and welfare outcomes for beneficiaries more broadly.*[14]

In a similar vein, the Freshfields Report suggests alpha-oriented stewardship strategies (which prioritize financial return optimization at individual companies) are of limited value to diversified shareholders, and that system stewardship is the best way for investors to improve performance:

> ***The more diversified a portfolio, the less logical it may be to engage in stewardship to secure enterprise specific value protection or enhancement.*** *Diversification is specifically intended to minimise idiosyncratic impacts on portfolio performance…*
>
> *Yet diversified portfolios remain exposed to nondiversifiable risks, for*

[13] *A Legal Framework for Impact: Sustainability Impact in Investor Decision-Making* (2021). The report, which ran to 558 pages, studied the law of jurisdictions significant to global capital markets, including the United States, and the conclusions cited in this comment letter extend to U.S., trustee law.
[14] *Id.*

> *example where declining environmental or social sustainability undermines the performance of whole markets or sectors… **Indeed, for investors who are likely to hold diversified portfolios in the long-term, the question is particularly pressing since these are likely to be the main ways in which they may be able to make a difference.***[15]

For similar reasons, Professor John Coffee, the Adolf A. Berle Professor of Law at Columbia University Law School and Director of its Center on Corporate Governance, predicted system stewardship would surpass ESG integration in a recent law review article:

> ***This latter form of activism [system stewardship] is less interested in whether the target firm's stock price rises (or falls) than in whether the activist investor's engagement with the target causes the total value of this investor's portfolio to rise (which means that the gains to the other stocks in the portfolio exceed any loss to the target stock).*** *This recognition that change at one firm can affect the value of other firms in the portfolio implies a new goal for activism: namely, to engineer a net gain for the portfolio, possibly by reducing "negative externalities" that one firm is imposing on other firms in the investor's portfolio.*[16]

A second Columbia Law professor stated that failing to focus on portfolio effects means failing to maximize returns:

> *But engagements aimed at reducing systematic risk [system stewardship] do not run afoul of the "exclusive benefit" criterion; rather they are in service to it. **Indeed, pension fund managers who are not thinking about the systematic dimension in their engagements are falling short of the objective of maximizing risk-adjusted returns.***[17]

All these sources follow an undeniable logic: given the critical importance of overall market return, and the danger to that return from corporate activity that damages social and environmental systems, plan fiduciaries must protect plans from individual companies that focus on their own performance in ways that damage overall market return. Thus, far from being illegal, the shift the Proposal contemplates is likely necessary in order for the Company to meet its obligations as an investment manager.[18]

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[15] *Id.*

[16] Coffee, John C., The Coming Shift in Shareholder Activism: From "Firm-Specific" to "Systematic Risk" Proxy Campaigns (and How to Enable them), p.2 (August 26, 2021). Available at SSRN: https://ssrn.com/abstract=3908163 or http://dx.doi.org/10.2139/ssrn.3908163

[17] Jeffrey N. Gordon, *Systematic Stewardship,* ECGI Working Paper No. 566/2021, p.3 (February 2021) (emphasis added).

[18] The Company Letter claims two snippets taken from the website of the Proponent's representative constitute a public acknowledgment the Proposal is illegal. In fact, The Shareholders Commons advocates for strengthening laws and regulations to ensure that investment fiduciaries have a full suite of tools available to protect their clients from cost externalization. A desire to strengthen the policies that protect investors from cost externalization does not contradict the belief that current fiduciary law requires such fiduciaries to engage in the type of stewardship the Proposal contemplates when necessary to protect client interests.

B. The Proposal does not relate to ordinary business and thus cannot be excluded under Section 14a-8(i)(7)

The Proposal is not excludable pursuant to Rule 14a-8(i)(7) because it is directed to a significant social policy issue the Company's ongoing business poses: the question of how corporations account for the systemic and other costs they impose on other companies when they prioritize shareholder returns and ignore the costs they externalize. These externalized costs harm the economy and diversified investors such as the Company's clients and shareholders. This issue, sometimes referred to as "shareholder primacy," is an issue that has been the subject of significant public debate, legislation, and regulation.

The Company's argument that "[t]he Proposal's concern with the macroeconomic effect of BlackRock's proxy voting and engagement policies clearly demonstrates that the Proposal is focused on BlackRock's ordinary business matters," is just wrong. It is the dangerous macroeconomic effect of negative corporate externalities that makes shareholder primacy as currently practiced a significant policy issue. *See Johnson & Johnson* (February 8, 2022) (declining to exclude as ordinary business a proposal seeking a report on external costs arising from the company's policies concerning protection of COVID-19 technology and the effect of such costs on the company's diversified shareholders; the company had argued that "the Proposal focuses primarily on decisions concerning how Johnson & Johnson chooses to sell its products" and "the macroeconomic effect of… intellectual property decisions… is not a significant policy issue.")

1. Commission and Staff guidance

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

> *Certain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight. Examples include the management of the workforce, such as the hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers. However,* ***proposals relating to such matters but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to***

See, e.g., The Shareholder Commons and B Lab US/CAN, *Comment on Rule N-PX* (December 12, 2021) (requesting that proposed rule governing reporting of proxy voting by fiduciaries be expanded to allow beneficiaries to ensure that fiduciaries "are stewarding systems when necessary to protect their financial returns based on the risks that ESG performance by portfolio companies pose to plan portfolios"), available at https://www.sec.gov/comments/s7-11-21/s71121-20109413-263829.pdf; The Shareholder Commons' *Comment on Climate-Related Disclosure* (June 14, 2021) (arguing the Commission should establish disclosure rules that provide information concerning impact issuers have on society and the environment because "to be effective stewards, investors need sufficient information to understand whether and how companies in their portfolios are threatening the productivity of social and environmental systems") available at https://www.sec.gov/comments/climate-disclosure/cll12-8915574-244818.pdf.

> ***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.***

Staff Legal Bulletin 14A (July 12, 2002) noted public debate was indicative of the presence of a significant policy issue:

> *The Division has noted many times that the presence of widespread public debate regarding an issue is among the factors to be considered in determining whether proposals concerning that issue "transcend the day-to-day business matters."*[19]

Staff Legal Bulletin 14E (October 27, 2009) addressed additional relevant considerations. Under the bulletin guidance, a proposal that requests an analysis of risks to investors does not necessarily render the proposal excludable. Instead, the Staff suggested that a key question is whether the particular risk under analysis involves a significant policy issue:

> *On a going-forward basis, rather than focusing on whether a proposal and supporting statement relate to the company engaging in an evaluation of risk, we will instead focus on the subject matter to which the risk pertains or that gives rise to the risk.* ***The fact that a proposal would require an evaluation of risk will not be dispositive of whether the proposal may be excluded under Rule 14a-8(i)(7).*** *Instead, similar to the way in which we analyze proposals asking for the preparation of a report, the formation of a committee or the inclusion of disclosure in a Commission-prescribed document — where we look to the underlying subject matter of the report, committee or disclosure to determine whether the proposal relates to ordinary business — we will consider whether the underlying subject matter of the risk evaluation involves a matter of ordinary business to the company.*

The Staff has also stated that shareholder proposals involve significant social policies if they involve issues that engender widespread debate, media attention, and legislative and regulatory initiatives.[20]

SLB E also made clear that at the time the Staff required a proposal to have a “nexus” to the Company’s business in order to satisfy the significant policy exception. The Staff recently announced its intention to

[19] https://www.sec.gov/interps/legal/cfslb14a.htm#P36_4602
[20] JD Supra, *SEC Staff’s Latest Guidance Presents Dilemma for Companies Seeking to Exclude Shareholder Proposals on Environmental and Social Issues* (January 4, 2018) (“In a June 30, 2016 stakeholder meeting, the Staff indicated that significant policy issues are matters of widespread public debate, which include legislative and executive attention and press attention.”)

refocus the analysis of the significant social policy exception on the policy in question, and not the nexus between the policy issue and the company. Staff Legal Bulletin No. 14L (November 3, 2021):

> *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, 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.*

In addition to eliminating the nexus test, SLB L also limited the analysis as to whether a proposal related to a significant policy issue would "micromanage" the company:

> *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. …*
>
> *Additionally, 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. …*
>
> *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 one commentator described the change:

> *The new bulletin resets the interpretation of micromanagement to focus on whether the granularity of the proposal is consistent with shareholders' capacity to understand and deliberate; i.e., proponents are expected to tailor proposals to a level of inquiry that is consistent with the current state of investor discourse and knowledge.*[21]

As the quoted language from SLB L makes clear, the elimination of the extra hurdles would apply even if the proposal related to otherwise ordinary business. Thus, an otherwise eligible proposal that relates to ordinary business can no longer be excluded if those issues have "a broad societal impact" and are consistent with the current state of investor discourse and knowledge.

The Company Letter points out that the Staff concurred in the exclusion of a proposal that was similar to the Proposal in the prior proxy season. The clarifications and guidance provided in *SLB L* should remove any concern as to whether the issue the Proposal relates to a significant social policy with broad societal impact. Moreover, as described in *SLB L*, the Proposal is appropriate to the "sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic," as demonstrated below.

The Proposal's requested external cost-based stewardship relates directly to shareholder primacy, an underlying issue with broad societal impact: the appropriate way for BlackRock to address the social costs that some companies in its portfolio will inevitably externalize if they choose to optimize their own financial returns. The social costs created by companies pursuing profits are part of the public discourse discussed below.

2. *Significant policy issue: shareholder primacy and cost externalization*

The Proposal is unambiguous about the underlying policy issue: the Company is stewarding portfolio companies in a manner that maximizes individual company profits but may harm society (and ultimately most of its clients and shareholders' diversified portfolios). The supporting statement details how focus

[21] Sanford Lewis, *SEC Resets the Shareholder Proposal Process,* Harvard Law School Forum on Corporate Governance (December 23, 2021).

on individual company profitability may fail to address social and environmental practices that harm the global economy, and ultimately the return of diversified portfolios. This "trade" of company wealth for social harm is well documented in the Schroders Report, and addressed in the Freshfields Report, the PRI Report, and the Columbia Law scholarship, all as discussed in Section A.2. As further discussed below, this trade has broad societal impact and has been the subject of legislation, regulation, and public debate.

3. Corporate law and shareholder primacy

There has been a long debate as to whether companies should be run solely for the benefit of shareholders, or whether managers serve a broader set of constituencies. In the 1930's, this question became known as the Dodd-Berle debate, named after two proponents of the differing views. Al Sommers, a former SEC Commissioner, described the debate:

> *Professor Adolf A. Berle of Columbia Law School and Professor E. Merrick Dodd of Harvard engaged in a classic scholars' debate which was, and is now, of tremendous currency and relevance. The issue was plainly posed by the title of Professor Dodd's opening shot, For Whom Are Corporate Managers Trustees?' In response to an earlier article by Professor Berle to the effect that "managerial powers are held in trust for stockholders as sole beneficiaries of the corporate enterprise," Professor Dodd said that:*
>
> > [this writer] believes that public opinion, which ultimately makes law, has made and is today making substantial strides in the direction of a view of the business corporation as an economic institution which has a social service as well as a profit-making function, that this view has already had some effect upon legal theory, and that it is likely to have a greatly increased effect upon the latter in the near future.
>
> *In response, Professor Berle said: "Now I submit that you can not [sic] abandon emphasis on 'the view that business corporations exist for the sole purpose of making profits for their stockholder.*[22]

In today's markets, U.S. corporate directors generally follow Berle, and focus their efforts on improving the financial return of their corporation to its shareholders. While the debate continues as to whether corporations should in fact be managed for the benefit of only shareholders,[23] the shareholder primacy concept has dominated corporate law in recent decades. Moreover, the doctrine's current application eschews consideration of a business's external costs unless those costs affect the corporation's own

[22] A. A. Sommers, Jr., *Whom Should the Corporation Serve? The Berle-Dodd Debate Revisited Sixty Years Later,* 16 Del. J. Corp. Law 33, 36-37 (1991).
[23] Frederick Alexander, BENEFIT CORPORATION LAW AND GOVERNANCE: PURSUING PROFIT WITH PURPOSE (2018) at 21-26.

financial return to its shareholders. A series of Delaware court decisions cemented the place of shareholder primacy in the United States.[24]

eBay Domestic Holdings, Inc. v. Newmark[25] is a recent example of the judicial focus on shareholder wealth maximization. The court embraced shareholder primacy, finding it was a violation of the directors' fiduciary duties to make decisions primarily for the benefit of users of the corporation's platform:

> *Having chosen a for-profit corporate form, the craigslist directors are bound by the fiduciary duties and standards that accompany that form.* ***Those standards include acting to promote the value of the corporation for the benefit of its stockholders****. The "Inc." after the company name has to mean at least that. Thus,* ***I cannot accept as valid… a corporate policy that specifically, clearly, and admittedly seeks not to maximize the economic value of a for-profit Delaware corporation for the benefit of its stockholders****.*[26]

The former Chief Justice of the Delaware Supreme Court has explained that the law clearly favors shareholders, stating, "a clear-eyed look at the law of corporations in Delaware reveals that, within the limits of their discretion, directors must make stockholder welfare their sole end, and that other interests may be taken into consideration only as a means of promoting stockholder welfare."[27] Toward the end of the twentieth century, many jurisdictions in the United States adopted "constituency statutes," fully or partially opting out of shareholder primacy.[28] None of those states mandates stakeholder interest consideration, however.[29] Delaware, the jurisdiction in which the Company is incorporated, has not adopted such a statute.

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[24] *See Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc*., 506 A.2d 173 (Del. 1986) (holding that when a corporation is to be sold in a cash-out merger, the directors' duty is to maximize the cash value to shareholders, regardless of the interests of other constituencies, because there is no long term for the shareholders); *Katz v. Oak Indus. Inc*., 508 A.2d 873, 879 (Del. Ch. 1986) ("It is the obligation of directors to attempt, within the law, to maximize the long-run interests of the corporation's stockholders; that they may sometimes do so 'at the expense' of others [*e.g*., debtholders]… does not… constitute a breach of duty."); Leo E. Strine, Jr., *The Social Responsibility of Boards of Directors and Stockholders in Change of Control Transactions: Is There Any "There" There?*, 75 S. Cal. L. Rev. 1169, 1170 (2002) ("The predominant academic answer is that corporations exist primarily to generate stockholder wealth, and that the interests of other constituencies are incidental and subordinate to that primary concern.") Joan MacLeod Heminway, *Corporate Purpose and Litigation Risk in Publicly Held U.S. Benefit Corporations*, 40 Seattle Univ. L. Rev. 611, 613 (2017) ("Delaware decisional law is arguably particularly unfriendly to for-profit corporate boards that fail to place shareholder financial wealth maximization first in every decision they make.")

[25] 16 A.3d 1 (Del. Ch. 2010) (emphasis added).

[26] *Id.* at 34-35 (referring to corporate justification for shareholder rights plan meant to forestall a change in control that might threaten platform users' interests).

[27] Leo Strine, *The Dangers of Denial: The Need for a Clear-Eyed Understanding of the Power and Accountability Structure Established by the Delaware General Corporation Law* 50 WAKE FOREST LAW REVIEW 761 (2015).

[28] Alexander, *supra n. 23*, at 135–148.

[29] *Id.*

4. Legislative reaction: benefit corporations

Delaware's common-law commitment to shareholder primacy has led to a reaction regarding the risk it poses to stakeholders and the public.[30] Legislatures have responded by creating an alternative: beginning in 2010, U.S. jurisdictions began to adopt benefit corporation provisions, which created a corporate form that required directors to consider other stakeholder interests. Legislatures have acted in 44 U.S. jurisdictions (including Delaware), the Canadian province of British Columbia, and eight other countries over the last decade to make this new form available. In addition, legislation was introduced in both houses of the U.S. Congress that would have imposed benefit corporation duties on all billion-dollar companies' directors.[31]

5. Unwinding shareholder primacy protects shareholders

Benefit corporation statutes are a legislative expression of the need to provide corporations with a basis to account for non-shareholder interests with a priority equal to that given to shareholder interests. But there is also a strong argument that shareholders themselves are better served if a corporation deprioritizes its own financial returns. Lynn Stout, a leading academic opponent of shareholder primacy, explains that evolving arguments against shareholder primacy do not rely on a zero-sum calculus that protects stakeholders to the detriment of shareholders; instead, she explains that these arguments "focus not on how shareholder primacy hurts stakeholders or society per se, but on how shareholder primacy can hurt shareholders, both individually and immediately, and collectively and over time."[32]

Thus, because most shareholders are also stakeholders of their corporations through their diversified portfolios, the value maximization of any individual company in their portfolio may be detrimental to their interests:

> *[F]or widely held public corporations, most shareholders are broadly diversified investors who are dependent on a stable society and environment to support all of their investments and would be financially injured if some corporations create extra profits by externalizing social and environmental costs.*[33]

The Proposal's request for stewardship focused on externalities reflects this recognition that diversified shareholders' interests converge with broad social interests when it comes to corporate cost externalization. It shows why a proposal related to this policy issue is especially appropriate matter for a

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[30] *See generally,* Lynn Stout, THE SHAREHOLDER VALUE MYTH: HOW PUTTING SHAREHOLDERS FIRST HARMS INVESTORS, CORPORATIONS AND THE PUBLIC (2012).

[31] Copies of the legislation are available here: https://www.congress.gov/bill/116th-congress/senate-bill/3215?q=%7B%22search%22%3A%5B%22accountable+capitalism+act%22%5D%7D&s=1&r=1 (Senate) and here: https://www.congress.gov/bill/116th-congress/house-bill/6056?q=%7B%22search%22%3A%5B%22accountable+capitalism+act%22%5D%7D&s=2&r=2 (House)

[32] *See* n.30 at 59.

[33] Frederick Alexander, *How to Leverage Benefit Governance*, in Katayun Jaffari and Stephen Pike, ESG IN THE BOARDROOM: A GUIDEBOOK FOR DIRECTORS (American Bar Association, forthcoming).

shareholder vote. As detailed in the next subsection, policymakers have begun to incorporate this convergence into the rules that govern investment fiduciaries.

6. Regulatory and legislative reactions to shareholder primacy: trust law

This policy issue has also appeared in recent regulatory and legislative activity relating to trustees for retirement plans and other investment advisors. The Department of Labor recently proposed a Rule that would have made it more difficult for trustees to account for environmental and social costs, but, after receiving public comments, revised the final rule in a manner that gave trustees the ability to address corporate activity that created external social costs when the trustees believe those costs would affect their diversified portfolios—exactly the type of costs on which the Proposal seeks stewardship:

> *In addition, Final Rules should also permit stewardship that discourages portfolio companies from engaging in behaviour that harms society and the environment, and consequently the value of shareholders' diversified portfolios (For example, plan fiduciaries might vote to encourage all companies to lower their carbon footprint, not because it will necessarily increase return at each and every company, but because it will promote a strong economy and thus increase the return of their diversified portfolio).*[34]

Further evidencing the widespread debate around this issue, the President of the United States suspended those Final Rules by Executive Order on Inauguration Day[35] and a new set of Proposed Rules has been issued.[36]

Finally, in 2020 a bill was introduced in the U.S. House of Representatives that included an express finding that plan fiduciaries should consider the costs corporations in their portfolios impose on the financial system:

> *The Congress finds the following:*
>
> *Fiduciaries for retirement plans should…*
>
> *(D) consider the impact of plan investments on the stability and resilience of the financial system; …*[37]

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[34] Frederick Alexander, *The Final DOL Rules Confirm That Fiduciary Duty Includes 'Beta Activism,'* RESPONSIBLE INVESTOR (December 15, 2020) available at https://www.responsible-investor.com/articles/the-final-dol-rules-confirm-that-fiduciary-duty-includes-beta-activism.

[35] *Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis*, (January 20, 2021), available at https://www.federalregister.gov/documents/2021/01/25/2021-01765/protecting-public-health-and-the-environment-and-restoring-science-to-tackle-the-climate-crisis

[36] Proposed Rule RIN 1210-AC03, 85 FR 57272 (2021).

[37] H.R. 8959 (116th): Retirees Sustainable Investment Policies Act of 2020

While the bill related to costs to the financial system, rather than the full spectrum of systems that support a thriving economy, it was clearly focused on the same policy concern: costs that a company's profit-seeking activities impose on stakeholders.[38]

7. The Business Roundtable (BRT) statement

In addition to the activity noted in the prior section regarding regulatory and legislative activity around the issue of shareholder primacy and external costs to stakeholders, the business community—including the Company itself—has noted the importance of considering stakeholder interests other than those of shareholders. In August of 2019, the CEOs of 181 of the largest corporations in the United States signed on to the BRT Statement on the Purpose of a Corporation (the "Statement"), emphasizing that companies should not prioritize only their own financial returns to shareholders, but should consider the interests of other stakeholders as well:

> ***Americans** deserve an economy that allows each person to succeed through hard work and creativity and to lead a life of meaning and dignity. We believe the free-market system is the best means of generating good jobs, a strong and sustainable economy, innovation, a healthy environment and economic opportunity for all…*
>
> *While each of our individual companies serves its own corporate purpose, we share a fundamental commitment to all of our stakeholders. We commit to:*
>
> *Delivering value to our **customers**. We will further the tradition of American companies leading the way in meeting or exceeding customer expectations…*
>
> *Supporting the communities in which we work. We respect the **people in our communities** and protect the environment by embracing sustainable practices across our businesses…*
>
> *Each of our stakeholders is essential. We commit to deliver value to all of them, for the future success of our companies, our communities and **our country**.*[39]

Thus, the Statement, which the Company's own Chairman and CEO signed, explains exactly why the Proposal is a critical policy question: it asks the Company to focus on the social costs of its portfolio

[38] *See also* Frederick Alexander, Holly Ensign-Barstow, Lenore Palladino, and Andrew Kassoy, *From Shareholder Primacy to Stakeholder Capitalism: A Policy Agenda for Systems Change* (arguing that fiduciary duties of trustees should incorporate external costs of individual companies that harm portfolios).
[39] Available at https://opportunity.businessroundtable.org/ourcommitment/ (emphasis added).

companies' practices, which fall upon "Americans," "customers," "people in our community," and "our country," the very stakeholders to whom the Company publicly committed less than two years ago.

The reaction to the Statement's issuance (as well as the number of companies signing on) in August 2019 demonstrated the policy significance of addressing external costs. One dubious commentator noted, "For many of the BRT signatories, truly internalizing the meaning of their words would require rethinking their whole business."[40] Others noted the importance of the change, but also that it was meaningless without upending shareholder primacy:

> *Ensuring that our capitalist system is designed to create a shared and durable prosperity for all requires this culture shift. But it also requires corporations, and the investors who own them, to go beyond words and take action to upend the self-defeating doctrine of shareholder primacy.*[41]

Other commentators were worried that the Statement went too far:

> *Asking corporate managers to focus more on improving society and less on making profits may sound like a good strategy. But it's a blueprint for ineffective and counterproductive public policy on the one hand, and blame-shifting and lack of accountability on the other. This is a truth Milton Friedman recognized nearly five decades ago — and one that all corporate stakeholders ignore today at their peril.*[42]

Another writer agreed, linking the issue to the same essay by Milton Friedman:

> *The issue of which constituency – or "stakeholder" – has the highest priority has long been a classic corporate governance conundrum. Still, the prevailing consensus, as espoused by Milton Friedman in his September 13, 1970 New York Times Magazine article, has been corporate executives work for their owners (i.e., shareholders) and have a responsibility to do what those owners desire, which is to make as much money as (legally) possible. That all changed on August 19, 2019.*[43]

While exploring the commitments to corporate social responsibility, the latter two articles each returned to Friedman's famous article, which stated:

> *[T]he doctrine of 'social responsibility' taken seriously would extend the scope of the political mechanism to every human activity. It does not*

[40] Andrew Winston, *Is the Business Roundtable Statement Just Empty Rhetoric?* HARVARD BUSINESS REVIEW (August 30, 2019).
[41] Jay Coen-Gilbert, Andrew Kassoy and Bart Houlihan, *Don't Believe the Business Roundtable Until It's CEO's Actions Match Their Words,* FAST COMPANY (August 22, 2019).
[42] Karl Smith *Corporations Can Shun Shareholders, But Not Profits,* BLOOMBERG OPINION (August 27, 2019).
43 Christopher Carosa *Did Business Roundtable Just Break A Fiduciary Oath?*, FiduciaryNews.com. August 27, 2019, available at http://fiduciarynews.com/2019/08/did-business-roundtable-just-break-a-fiduciary-oath/.

> *differ in philosophy from the most explicitly collectivist doctrine. It differs only by professing to believe that collectivist ends can be attained without collectivist means. That is why, in my book Capitalism and Freedom, I have called it a 'fundamentally subversive doctrine' in a free society, and have said that in such a society, 'there is one and only one social responsibility of business—to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud.*[44]

Showing that the controversy is long-lived, the fiftieth anniversary of the essay in 2020 set off another round of commentary.[45] The issue also surfaced in the most recent U.S. presidential election, as one candidate decried "the era of shareholder capitalism."[46] In response, critics argued that favoring shareholders was the best recipe for a successful economy:

> *In reality, corporations do enormous social good precisely by seeking to generate returns for shareholders.*[47]

8. *The Proposal addresses the policy issue of shareholder primacy and corporate cost externalization in pursuit of financial return*

The outpouring of legislative activity around benefit corporations, regulatory and legislative activity around trustee obligations to consider external corporate costs, and commentary around the Statement recognizes a critical policy issue that has been argued since at least the time of the Dodd-Berle debate: should corporations continue to prioritize financial return or should they, at least in some instances, sacrifice financial return to reduce the social costs they would otherwise externalize?

The Proposal asks the Company to begin to address this question following stewardship practices designed to reduce the externalized costs of companies in its portfolios when those costs threaten its clients' portfolios. This question is a critical concern for shareholders. The Schroders Report determined that publicly listed companies imposed social and environmental costs on the economy with a value of $2.2 trillion annually—more than 2.5 percent of global GDP and more than half the profits those companies earned.[48] These costs have many sources, including pollution, water withdrawal, climate change, and employee stress. The study shows exactly the areas where corporations are likely to ignore stakeholder interests, to the detriment of the global economy. The questions the Proposal raises are directly responsive to this problematic paradigm, which constitutes a significant policy issue. See

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[44] Milton Friedman, *The Social Responsibility of Business Is to Increase Its Profits* N.Y. TIMES, Sept. 13, 1970 (magazine).
[45] See, e.g., *Friedman 50 Years later,* PROMARKET (collecting 27 essays about Friedman's article and its legacy) (Stigler Center for the Study of the Economy and the State).
[46] *Biden says investors 'don't need me,' calls for end of 'era of shareholder capitalism,'* (CNBC) (July 9, 2020), available at https://www.cnbc.com/2020/07/09/biden-says-investors-dont-need-me-calls-for-end-of-era-of-shareholder-capitalism.html.
[47] Andy Pudzer, *Biden's Assault on 'Shareholder Capitalism,* (Wall Street Journal) (August 17, 2020), available at https://www.wsj.com/articles/bidens-assault-on-shareholder-capitalism-11597705153.
[48] https://www.schroders.com/en/sysglobalassets/digital/insights/2019/pdfs/sustainability/sustainex/sustainex-short.pdf

Johnson & Johnson 2022 (declining to concur in exclusion of proposal addressing externalized costs and their effect on diversified shareholders). The issue is particularly salient at BlackRock, the world's largest asset manager with more than $10 trillion in assets under management: its voice matters, perhaps more than any other on this issue.

The Proposal's request for stewardship of portfolio companies that externalize social and environmental costs addresses the significant policy issue of shareholder primacy and is therefore not excludable for purposes of Rule 14a-8(i)(7).

9. The Proposal does not attempt to micromanage the Company

The Company Letter claims the Proposal would micromanage the Company and should thus be excluded even though it relates to a significant policy issue. However, the text of the Proposal asks the Company to adopt stewardship practices that protect its clients from likely harm caused by cost externalization. It does not prescribe the practices, nor does it prescribe how the Company should weigh and balance the many factors that will go into such stewardship. Despite the straw-dog arguments raised in the Company Letter, the Proposal does not mandate that the Company forgo other stewardship practices or consider any single "factor above all others." It simply requests that one type of stewardship be added to the mix and used when "practicable [and] consistent with fiduciary duties." Specific questions as to how the business is to be managed are appropriately left to the board and management, whose detailed understanding of the business will afford them the ability to design this important task.

The Company argues that the Proposal would limit its discretion. To the contrary, implementation of the Proposal would increase the Company's available options, because its stewardship currently focuses only on increasing returns at the company being engaged, as is made clear by BlackRock's argument that it is illegal to steward a company to prioritize its external impact over its financial returns. Thus, it is the Company that is engaging in a "one-size-fits-all" approach. Rather than micromanaging, the Proposal simply asks the Company to add one important concept that is missing from its client-service toolkit.

Ironically, the Company Letter also argues the Proposal is too vague, and in so doing, casts significant doubt on the seriousness of its contention that the Proposal "seeks to impose a specific method for implementing a complex policy." For instance, the Company Letter asserts that "the Proposal does not provide sufficiently clear guidance on the substance or goal of the stewardship practices BlackRock should adopt." The Company also argues that "[n]either the Proposal nor its supporting statement explain what these practices are." If these assertions the Company makes are true, it cannot be the case that the Proposal imposes a "specific method."

As discussed in the next section, the absence of precise prescriptions for implementation from the Proposal is a virtue: it will leave problem-solving firmly in the board and management's hands. Thus, rather than imposing any particular product, service, or decision, the Proposal asks the Company to develop practices and policies that will address trillions of dollars in externalities that portfolio companies are imposing on their clients.

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

After arguing that the Proposal would constitute micromanagement, BlackRock attacks the Proposal as too vague. The Company Letter correctly states the standard for disqualifying vagueness: "The Staff consistently has taken the position that vague and indefinite shareholder proposals are inherently misleading and therefore excludable under Rule 14a-8(i)(3) because 'neither the [share]holders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires.'" As shown below, the Proposal is not vague under that standard.

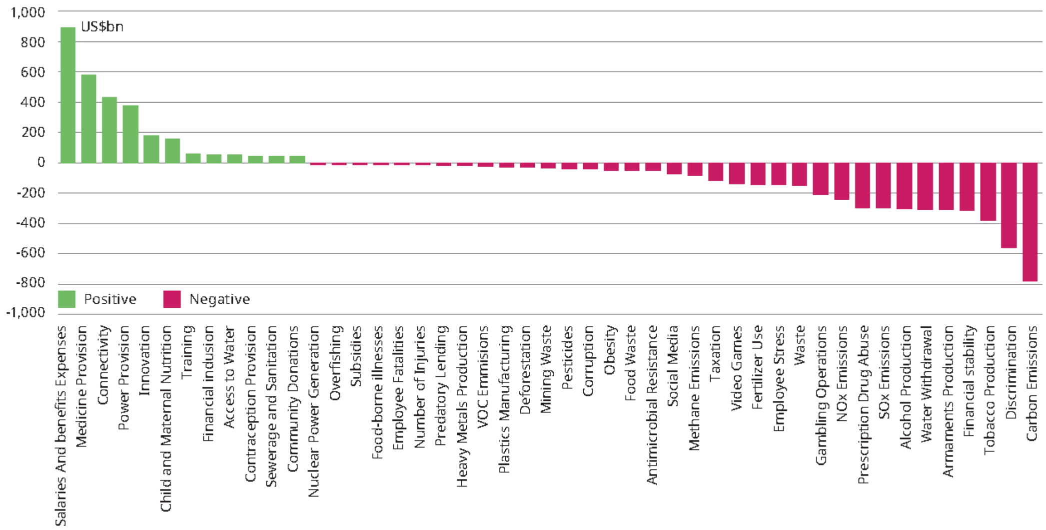
1. Neither the meaning of "externalize social and environmental costs" nor the goal of the Proposal is vague

The Company argues that the phrase "externalize social and environmental externalities" is vague. It also argues that the Proposal "does not provide sufficiently clear guidance on the substance or goal of the stewardship practices." In fact, however, the Proposal is quite precise about the type of externalities at which it is aimed, as well as the goal of the relevant stewardship practices: the Proposal asks the Company to provide stewardship that is designed to curtail corporate practices that "externalize social and environmental costs **that are likely to decrease the returns of the portfolios that are diversified**."

It is true the Proposal does not specify each of the particular externalities the Company should address through stewardship to benefit its clients. But of course, if the Proposal were to specify such externalities, the Company would complain that the Proposal micromanaged. In fact, the Company referred to the purportedly vague language in its section arguing that the Proposal constituted "micromanagement."

The Proposal is neither too specific nor too vague for the purposes of 14a-8; it proposes that the Company account for a type of cost that addresses a social policy issue, but leave the details of implementation to management. The types of costs corporations externalize to the detriment of diversified shareholders are clear. For example, the Schroders Report provides multiple indications of the types of trillions of dollars in costs that companies externalize annually:

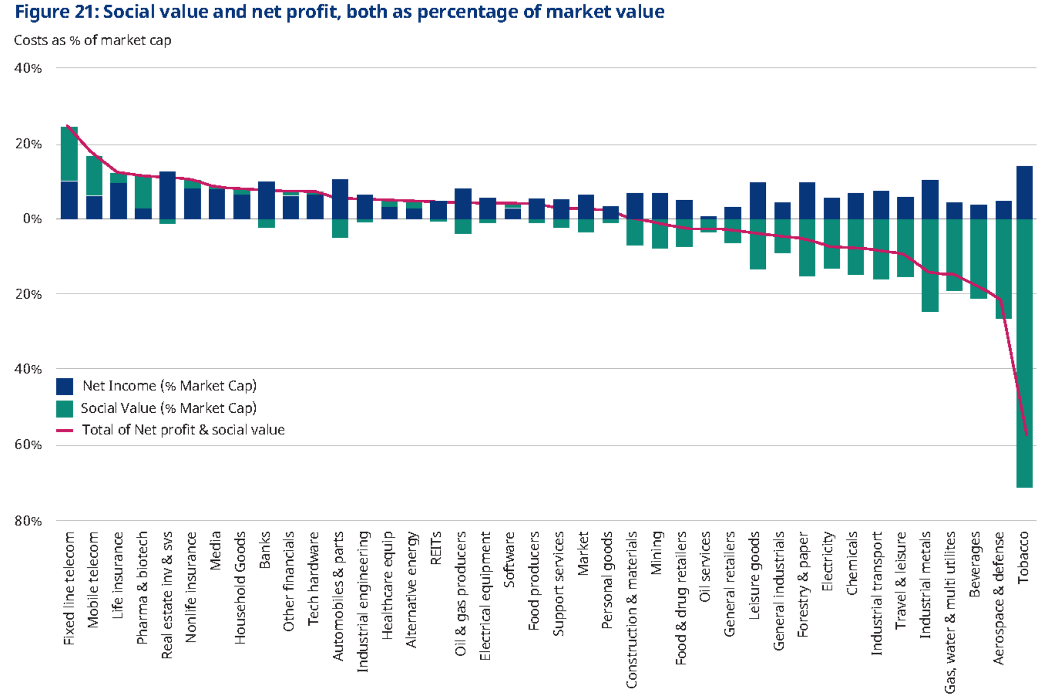
Figure 14: Listed companies' social and environmental impact by measure, $ trillion



Source: Schroders.

The Schroder's Report also provides a comparison, broken down by industry, of profits to externalized costs. This would certainly be a helpful resource if the Company were to seek areas where stewardship of externalized social and environmental costs would likely be most effective:

Figure 21: Social value and net profit, both as percentage of market value



Source: Schroders.

It is worth noting that on the right side of this diagram are industries whose destruction of social and environmental value exceed the profits they deliver to shareholders: these net value destroyers should be target rich for the type of stewardship the Proposal urges.

There are many other sources to which the Company could look in determining whether and where it could improve diversified client returns through stewardship practices that prioritized the reduction of externalities over individual company value. As noted above, GDP has a linear relationship to the return of a diversified portfolio, so stewardship addressing externalities that lower GDP are likely to improve diversified portfolio performance.

There are many sources for the relationship between corporate cost externalization and GDP. One study estimated that a global temperature increase of 2.1 degrees Celsius by 2050 would reduce GDP by 17.78 percent.[49] Moreover, just 100 companies are responsible for 71 percent of industrial global greenhouse gas emissions.[50] The carbon footprint of these companies affects beta, and thus the return of a diversified portfolio, no less (and perhaps more) than their own profitability.

Other examples include:

- *Obesity.* The World Health Organization assesses the unpriced social burdens of obesity as equaling almost 3 percent of global GDP annually.[51] The food and beverage business bears significant responsibility for this issue.[52]

- *Inequality.* It has been estimated that inequality has reduced demand by 2 to 4 percent of GDP in recent years.[53] In the United States, corporate depression of wages for low-income workers and exploding executive pay are expanding inequality.[54]

[49] *See supra,* n.**Error! Bookmark not defined.**.

[50] Swann Bommier & Cécile Renouard, *Corporate Responsibility in the Climate Crisis,* PUBLIC BOOKS and LA VIE DES IDÉES (January 21, 2019), available at https://www.publicbooks.org/corporate-responsibility-in-the-climate-crisis/#:~:text=Although%20states%20are%20largely%20responsible,global%20industrial%20greenhouse%20gas%20emissions.

[51] *See* Andrew Howard, *supra n.* ***Error! Bookmark not defined.***.

[52] *See, e.g.,* https://www.hsph.harvard.edu/nutritionsource/healthy-drinks/sugary-drinks/.

[53] Josh Bivens, *Inequality is slowing U.S. economic growth: Faster wage growth for low- and middle-wage workers is the solution,* Economic Policy Institute (December 12, 2017), available at https://www.epi.org/publication/secular-stagnation/

[54] Sam Pizzigati, *Putting the Brakes on Corporate America's Inequality Engine,* Inequality.org (November 15, 2019), available at https://inequality.org/great-divide/putting-the-brakes-on-corporate-americas-inequality-engine/#:~:text=Corporations%20are%20contributing%20to%20inequality%20on%20two%20fronts.&text=The%20legislation%20%E2%80%94%20the%20Tax%20Excessive,the%20higher%20the%20tax%20rate. *See generally*, Heather Boushey, UNBOUND: HOW INEQUALITY CONSTRICTS OUR ECONOMY AND WHAT WE CAN DO ABOUT IT, Harvard University Press (October 15, 2019).

- *Racial and gender disparities.* Gender and racial gaps created $2.9 trillion in losses to U.S. GDP in 2019,[55] and racial disparities are projected to cost the U.S. economy $5 trillion over five years.[56] Corporations have means to address this issue should they choose to do so.[57]

- *Antimicrobial Resistance.* The World Bank projects that antimicrobial resistance will reduce global GDP by as much as 3 percent by 2030 and almost 4 percent by 2050; at an intermediate discount rate, this will amount to economic losses by 2050 with a current value of $54 trillion.[58] A UK government-commissioned study puts the figure at $100 trillion.[59] Scholarship links this increasing resistance in part to commercial pressures in agriculture and consumer packaged goods industries.[60]

- *Democracy at risk.* Social media companies, in their search for platform traffic and advertising revenues, have been fundamental to the rise of far-right and authoritarian politicians and governments.[61] The election of Jair Bolsonaro as president of Brazil is due in part to this phenomenon, and is hastening the climate crisis.[62]

- *Political influence.* Companies also affect systems through political influence. A recent International Energy Agency study estimates that the investment necessary to create a net-zero economy by 2050 would increase global GDP by 4 percent by 2030,[63] which would benefit diversified investors greatly. Yet to increase their own financial returns, many individual companies spend considerable resources trying to convince policymakers and the public that constraining climate change is unnecessary.[64]

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[55] Shelby R. Buckman et al., *The Economic Gains from Equity,* Federal Reserve Bank of San Francisco (January 19, 2021), available at https://www.frbsf.org/our-district/files/economic-gains-from-equity.pdf.
[56] Dana M. Peterson and Catherine L. Mann, *Closing the Racial Inequality Gaps: The Economic Cost of Black Inequality in the U.S.*, Citi GPS (September 2020), available at http://citi.us/3olxWH0.
[57] *Id.*
[58] Drug-Resistant Infections: A Threat to Our Economic Future, World Bank Group (March 2017), available at http://documents1.worldbank.org/curated/en/323311493396993758/pdf/final-report.pdf
[59] *Antimicrobial Resistance: Tackling a crisis for the health and wealth of nations,* UK Government Review on Antimicrobial Resistance (December 2014), available at https://amr-review.org/sites/default/files/AMR%20Review%20Paper%20-%20Tackling%20a%20crisis%20for%20the%20health%20and%20wealth%20of%20nations_1.pdf.
[60] Carolyn Anne Michael, Dale Dominey-Howes, and Maurizio Labbate, *The Antimicrobial Resistance Crisis: Causes, Consequences, and Management,* Frontiers in Public Health vol. 2 145 (September 16, 2014), available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4165128/.
[61] Heidi Beirich and Wendy Via, *Democracies under Threat,* Global Project against Hate and Extremism (March 2021), available at https://www.politico.eu/wp-content/uploads/2021/03/16/GPAHE_Democracies-Under-Threat.pdf.
[62] Jonathan Witts, *Amazon Rainforest 'Will Collapse If Bolsonaro Remains President',* The Guardian (July 14, 2021) ("There are also global repercussions because land clearance is turning the Amazon region from climate friend to climate foe. A study published in Nature reveals forest burning now produces about three times more CO2 than the remaining vegetation is able to absorb. This accelerates global heating.")
[63] Stéphanie Bouckaert *et al.*, *Net Zero by 2050: A Roadmap for the Global Energy Sector,* International Energy Agency (May 2021), available at https://www.iea.org/reports/net-zero-by-2050.
[64] *See, e.g.,* Hiroko Tabuchi, *How One Firm Drove Influence Campaigns Nationwide for Big Oil,* NEW YORK TIMES (November 11, 2020), available at https://www.nytimes.com/2020/11/11/climate/fti-consulting.html. (Reporting that FTI Consulting, a publicly traded

None of this is mysterious: one recent law review article quantified the GDP loss associated with social and environmental issues that could affect or had affected diversified shareholders:

> *A particularly strong candidate for systematic stewardship is the risk associated with climate change associated with increasing levels of atmospheric CO^2… A 2017 report in Science, for example, estimates a loss of 1.2% of GDP for each degree centigrade rise; without intervention, analysts predict up to a 4 degree increase; the GDP impact would exceed the recession associated with the Great Financial Crisis. …*
>
> *The Great Financial Crisis demonstrated the systematic impact of the distress of systemically important financial institution… The S&P 500 experienced a peak-to-trough loss of 57% over the October 2007 to March 2009 period, overall stock market losses of nearly $8 trillion. This was associated with a comparable loss in GDP of 4.3% over the period…*[65]

The Company letter also complains that the Proposal is vague with respect to external costs because it does not explain "precisely how they should be addressed." Earlier in the Company Letter, the Staff is asked to find that the very same language was too specific; in particular, BlackRock made the following argument:

> *In this instance, the Proposal seeks to micromanage BlackRock* ***by imposing specific methods for implementing complex policies and inappropriately limiting the discretion of BlackRock's management****…* ***Taken together, the Proposal seeks to impose a specific method for implementing a complex policy because it dictates the considerations that BlackRock should take into account in its stewardship activities with companies in which it invests for the benefit of clients.***

That does not sound like a description of a vague proposal.

Internally inconsistent arguments aside, the type of stewardship the Proposal contemplates will require business judgment on the Company's part because it will have to make decisions as to which externalities both harm its clients and can be addressed through stewardship. No doubt this type of stewardship will pose hard questions. Addressing the true cost of corporate activity may be uncomfortable for the Company's board and management, but that does not make it vague. It is the Company's obligation as an asset manager to promote the best interests of its clients. *See PepsiCo 2021* (declining to concur in exclusion on vagueness grounds of proposal seeking report on externalized public-health costs from a food and beverage business and effect of those costs on diversified shareholders).

company, "helped design, staff and run organizations and websites funded by energy companies that can appear to represent grass-roots support for fossil-fuel initiatives.")
[65] Gordon, *supra,* n.17 pp. 27-29 (February 2021)

CONCLUSION

The Proposal clearly addresses a significant policy issue: the risks of the Company's continuing to prioritize its profits over the health of social and environmental systems and the threats such prioritization poses to the Company's diversified shareholders. The actions requested are legal and fully within the Company's power to execute. As such, we respectfully request that the Staff deny the Company's no-action letter request. If you have any questions, please contact me at rick@theshareholdercommons.com or 302-485-0497.

Sincerely,

Frederick Alexander
CEO

Cc: Marc Gerber
James McRitchie

PROPOSAL

RESOLVED*, shareholders ask that, to the extent practicable, consistent with fiduciary duties, and otherwise legally and contractually permissible, the Company adopt stewardship practices designed to curtail corporate activities that externalize social and environmental costs that are likely to decrease the returns of portfolios that are diversified in accordance with portfolio theory, even if such curtailment could decrease returns at the externalizing company.*

Supporting Statement:

Our Company is the world's largest asset manager, with close to $10 trillion in assets under management, primarily weighted toward indexed strategies. In line with portfolio theory, most of its clients are likely to be broadly diversified.[66]

Overall return of the financial markets ("beta") is the primary determinant of diversified investors' return. Beta itself relies on a healthy economy, which in turn relies on healthy social and environmental systems. But those systems are at risk from corporate practices that reduce the value of the economy by externalizing social and environmental costs. In short, a company's externalities harm its diversified shareholders, even if they do not harm the company itself.[67]

Given its market position, BlackRock's stewardship activities—engaging with portfolio companies and voting their shares—could significantly improve beta by discouraging corporate practices that externalize costs. This would increase the portfolio value of BlackRock's clients, and also increase the value of the assets it manages, thereby improving the returns of both its clients and shareholders.

However, BlackRock's social and environmental stewardship only focuses on improving individual company performance. BlackRock commits to engagement "that supports companies[']… efforts to deliver… value to shareholders."[68] In contrast, the Company's stewardship policy does not address practices of a company that harm the global economy unless those practices also harm that company's financial performance.

Indeed, BlackRock says expressly that it does "not tell management what to do."[69] This appears to be the case even if doing so were necessary to protect commonly shared social and environmental resources from exploitation. Similarly, BlackRock asks companies to have business plans "aligned" with a net-zero economy and to be "resilient" in a scenario where warming is limited to 1.5 degrees Celsius,[70] but such standards focus on the ability of the company to operate successfully in a world that is addressing

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[66] *See, e.g.,* Uniform Prudent Investor Act, § 3 ("trustee shall diversify the investments of the trust" absent special circumstances.)
[67] https://www.unepfi.org/fileadmin/documents/universal_ownership_full.pdf; https://archive.fortune.com/magazines/fortune/fortune_archive/2001/12/10/314691/index.htm (total market capitalization to GDP "is probably the best single measure of where valuations stand at any given moment") (quoting Warren Buffet).
[68] https://www.blackrock.com/corporate/literature/fact-sheet/blk-responsible-investment-engprinciples-global-summary.pdf.
[69] https://www.blackrock.com/corporate/literature/publication/blk-commentary-engagement-on-natural-capital.pdf.
[70] *Supra, n.2*

climate change. In contrast, **there is no BlackRock policy requiring companies do their part to ensure those goals are met:** that would be telling management "what to do."

Stewardship policies designed to directly support the health of social and environmental systems would promote the interests of the BlackRock's clients and shareholders.

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BY EMAIL (shareholderproposals@sec.gov)

March 9, 2022

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

RE: BlackRock Inc. – 2022 Annual Meeting
Supplement to Letter dated January 24, 2022
Relating to Shareholder Proposal of James McRitchie

Ladies and Gentlemen:

We refer to our letter dated January 24, 2022 (the "No-Action Request"), submitted on behalf of our client, BlackRock, Inc., a Delaware corporation ("BlackRock"), pursuant to which we requested that the Staff of the Division of Corporation Finance (the "Staff") of the U.S. Securities and Exchange Commission (the "Commission") concur with BlackRock's view that the shareholder proposal and supporting statement (the "Proposal") submitted by The Shareholder Commons ("TSC") on behalf of James McRitchie (the "Proponent") may be excluded from the proxy materials to be distributed by BlackRock in connection with its 2022 annual meeting of shareholders (the "2022 proxy materials").

This letter is in response to the letter to the Staff, dated February 22, 2022, submitted on behalf of the Proponent by TSC (the "Proponent's Letter"), and supplements the No-Action Request. In accordance with Rule 14a-8(j), a copy of this letter also is being sent to the Proponent.

The No-Action Request argued that the Staff should permit the exclusion of the Proposal pursuant to Rules 14a-8(i)(2) and 14a-8(i)(6), because the Proposal would require BlackRock to violate federal law; Rule 14a-8(i)(7), because the Proposal deals with matters relating to BlackRock's ordinary business operations; and Rule 14a-8(i)(3), because the Proposal is impermissibly vague and indefinite. The Proponent's Letter attempts to refute each of these arguments and falls short.

With respect to BlackRock's argument that the Proposal would require it to violate federal law, the Proponent's Letter claims that the Proposal does "not propose subordinating beneficiaries' interest to any other interests" and therefore cannot be excluded under either Rule 14a-8(i)(2) or Rule 14a-8(i)(6). This is patently misleading. While the Proponent's Letter correctly notes that the Proposal contains clauses to apply the Proposal "consistent with fiduciary duties, and [as] otherwise legally and contractually permissible," a proponent cannot evade the fact that a proposal calls for action inconsistent with legal obligations by simply inserting a carve out for fiduciary duties and legal obligations.

Regarding BlackRock's argument that the Proposal focuses on ordinary business operations, the Proponent's Letter claims that the Proposal instead focuses on the significant policy issue of "shareholder primacy." To our knowledge, however, this issue has never been recognized by the Staff as a significant policy issue. As discussed in the No-Action Request, the Proposal focuses squarely on BlackRock's stewardship practices (which include proxy voting and engagement policies and practices) and how those policies and practices impact overall market returns, both of which are ordinary business matters, as demonstrated by recent Staff decisions.

Finally, the Proponent's Letter attempts to argue that the meaning of "externalize social and environmental costs" as used in the Proposal is not vague and indefinite because "[t]here are many other sources to which [BlackRock] could look in determining whether and where it could improve diversified client returns." For example, the Proponent's Letter refers to a study on the correlation between profits and externalized costs prepared by Schroder's, a British asset manager. This reference only serves to demonstrate precisely how vague and indefinite the Proposal is because shareholders should not need to reference external sources to understand the Proposal. Notably, in Staff Legal Bulletin 14G (Oct. 16, 2012), the Staff explained that where proposals refer to external sources to provide 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, the proposal is subject to exclusion under Rule 14a-8(i)(3) as vague and indefinite. *See, e.g.*, *Moody's*

Corporation (Feb. 10, 2014) (permitting exclusion under Rule 14a-8(i)(3) of a proposal requesting that the board report to shareholders on the company's assessment of the feasibility and relevance of incorporating "ESG risk assessments" into credit ratings where the term "ESG" was not defined). In this instance, as described in the No-Action Request, neither shareholders nor BlackRock can determine with any reasonable certainty from the information contained in the Proposal and supporting statement what stewardship practices BlackRock is being asked to adopt. Accordingly, the Proposal may be excluded pursuant to Rule 14a-8(i)(3) on the basis that the Proposal is impermissibly vague and indefinite, in violation of Rule 14a-9.

Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of BlackRock's position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response. Please do not hesitate to contact the undersigned at (202) 371-7233.

Very truly yours,

Marc S. Gerber

cc: R. Andrew Dickson, III
Managing Director & Corporate Secretary
BlackRock, Inc.

James McRitchie

Sara E. Murphy
Chief Strategy Officer
The Shareholder Commons

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March 14, 2022

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

RE: Shareholder proposal to BlackRock Inc. concerning externalized costs of portfolio companies

Division of Corporate Finance Staff Members:

James McRitchie (the "Proponent") is beneficial owner of BlackRock Inc. (the "Company") common stock and has submitted a shareholder proposal (the "Proposal") to the Company. The Proponent has asked me to respond to the letter dated March 9, 2022 (the "Second Company Letter") that Marc Gerber ("Company Counsel") sent to the Securities and Exchange Commission (the "SEC"). The Company's Second Letter was written in response to the undersigned's letter dated February 22, 2022 (the "Proponent's Response"), which in turn responded to the Company's original no-action request regarding the Proposal (the "First Company Letter").

I am writing this letter to respond to assertions from the First Company Letter that are repeated in the Second Company Letter, each of which fails to respond to arguments made in the Proponent's Response.

Repeated assertion 1: ***The Proposal is illegal***

The Company made this assertion in the First Company Letter. The Proponent's Response explained, citing multiple authorities, why protecting the returns of diversified portfolios in many circumstances would satisfy the Company's fiduciary obligations. The Second Company Letter simply reasserts its claims of illegality, without responding to any of the Proponent's discussion, or explaining why using a standard "fiduciary out" clause does not properly address any residual situations where a commitment to the stewardship practices outlined in the Proposal would raise fiduciary concerns. Use of a fiduciary out here is presumably analogous to the practice of asset managers that, like the Company, joined the Net Zero Asset Manager's Alliance, which commits them to certain climate goals in their asset management businesses.[1] A leading law firm recently issued a White Paper explaining that asset managers that

[1] https://www.blackrock.com/us/individual/about-us/road-to-net-zero#.

become signatories to that initiative should adopt a stewardship program committing to advocate for net zero emissions, but subject to fiduciary duty:

> *To the extent consistent with fiduciary duties, implement a stewardship and engagement strategy, with a clear escalation and voting policy, that is consistent with our ambition for all assets under management to achieve net zero emissions by 2050 or sooner.*[2]

The Second Company Letter simply fails to explain why this common strategy does not fully address the Company's expressed concern.

Repeated assertion 2: ***Shareholder Primacy is not a significant policy issue***

The Company made this claim in the First Company Letter, and the Proponent's Response showed that under the standards the Commission and Staff have previously expressed, the issue the Proposal raises is clearly a significant policy issue that transcends ordinary business. The Second Company Letter does not respond to any of that discussion.

We will not repeat those arguments here, but we do note that the Congressional Joint Economic Committee has scheduled a hearing for March 16, 2022, with the name, "Examining the Impact of Shareholder Primacy: What It Means to Put Stock Prices First," showing continued legislative interest in this issue, one of the factors in determining whether an issue transcends ordinary business.

Repeated assertion 3: ***The phrase "externalize social and environmental externalities" is vague***

This assertion appeared in the First Company Letter and was addressed in the Proponent's Response:

> *The Company argues that the phrase "externalize social and environmental externalities" is vague. It also argues that the Proposal "does not provide sufficiently clear guidance on the substance or goal of the stewardship practices." In fact, however, the Proposal is quite precise about the type of externalities at which it is aimed, as well as the goal of the relevant stewardship practices: the Proposal asks the Company to provide stewardship that is designed to curtail corporate practices that "externalize social and environmental costs* ***that are likely to decrease the returns of the portfolios that are diversified****." (Emphasis in original.)*

Rather than responding to this explanation, the Company's Second Letter attempts to argue that a citation to a resource that could be used in applying this clear standard somehow creates ambiguity where none exists.

[2] Morgan Lewis, *Net Zero Asset Managers Initiative: Roadmap to a Compliant Commitment* (December 2021), available at https://www.morganlewis.com/-/media/files/publication/morgan-lewis-title/white-paper/2021/net-zero-asset-managers-initiative-roadmap-to-a-compliant-commitment.pdf.

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The shareholder primacy literature cited in the Company Response showed that asking an asset manager to steward portfolio companies to avoid externalizing costs is neither illegal nor ambiguous, and has become a central policy issue. Since the submission of the Company Response, a new article was published reiterating these points and specifically stating:

> *The traditional idea is that shareholders "want to maximize the net present value of the firm's earnings per dollar invested." In other words, shareholders have been described as "firm value maximizing." Yet, following the institutionalization of capital markets and the reconcentration of ownership in the hands of a few institutional investors, this description has become outdated. The largest asset managers—and in particular BlackRock, Vanguard and State Street—own significant stakes in an exceedingly large number of corporations operating in various industries and countries. Most importantly, the vast majority of their assets under management are invested in passive or index funds, the defining feature of which is that they do not try to beat the market but merely track an index, such as the S&P500 or the Nasdaq Composite. Investors in such funds are indifferent about the performance of any given firm in their portfolio. What they care about is the value of their portfolio as a whole.*[3]

We respectfully renew our request that the Staff inform the Company that it does nor concur in the Company's 14a-8 analysis. If you have any questions, please contact me at rick@theshareholdercommons.com or 302-485-0497.

Sincerely,

Frederick Alexander
CEO

cc:　Marc Gerber
　　James McRitchie

[3] Battocletti, Vittoria and Enriques, Luca and Romano, Alessandro, *Dual Class Shares in the Age of Common Ownership* (March 1, 2022). European Corporate Governance Institute - Law Working Paper No. 628, 2022, Available at https://ssrn.com/abstract=4046244.