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

DIVISION OF
CORPORATION FINANCE

March 25, 2022

Brian V. Breheny
Skadden, Arps, Slate, Meagher & Flom LLP

Re: JPMorgan Chase & Co. (the "Company")
Incoming letter dated January 11, 2022

Dear Mr. Breheny:

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 the board commission and disclose a study on how the Company can consider the financial position of the Company's diversified owners in establishing its underwriting practices in order to address the share price concerns that lead the Company to underwrite economically detrimental multiclass share offerings.

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

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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January 11, 2022

BY EMAIL (shareholderproposals@sec.gov)

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

Re: Shareholder Proposal Submitted by James McRitchie

Ladies and Gentlemen:

This letter is submitted on behalf of JPMorgan Chase & Co., a Delaware corporation (the "Company"), pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). The Company requests that the staff of the Division of Corporation Finance (the "Staff") of the U.S. Securities and Exchange Commission (the "Commission") not recommend enforcement action if the Company omits from its proxy materials for the Company's 2022 Annual Meeting of Shareholders (the "2022 Annual Meeting") the shareholder proposal and supporting statement (the "Proposal") submitted by James McRitchie with The Shareholder Commons authorized to act as Mr. McRitchie's agent. Mr. McRitchie and The Shareholder Commons are sometimes referred to collectively as the "Proponent."

This letter provides an explanation of why the Company believes it may exclude the Proposal and includes the attachments required by Rule 14a-8(j). In accordance with Section C of Staff Legal Bulletin 14D (Nov. 7, 2008) ("SLB 14D"), this letter is being submitted by email to shareholderproposals@sec.gov. A copy of this letter also is being sent to the Proponent as notice of the Company's intent to omit the Proposal from the Company's proxy materials for the 2022 Annual Meeting.

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 submits correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the Company.

Background

The Company received the Proposal on December 7, 2021, via email, along with a cover letter from The Shareholder Commons and a letter authorizing The Shareholder Commons to act on Mr. McRitchie's behalf. On December 9, 2021, the Company received, via email, a letter from TD Ameritrade verifying Mr. McRitchie's stock ownership in the Company. Copies of the Proposal, cover letter and related correspondence are attached hereto as Exhibit A.

Summary of the Proposal

The text of the resolution contained in the Proposal follows:

> **RESOLVED,** shareholders ask that the board commission and disclose a study on how the Company can consider the financial position of the Company's diversified owners in establishing its underwriting practices in order to address the share price concerns that lead the Company to underwrite economically detrimental multiclass share offerings.

Basis for Exclusion

We hereby respectfully request that the Staff concur in the Company's view that it may exclude the Proposal from the proxy materials for the 2022 Annual Meeting pursuant to Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company's ordinary business operations.

Analysis

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.

The Commission has stated that a proposal requesting the dissemination of a report is excludable under Rule 14a-8(i)(7) if the substance of the proposal is within the ordinary business of the company. *See* 1998 Release (noting that the first consideration underlying the ordinary business exclusion "relates to the subject matter of the proposal"); Exchange Act Release No. 34-20091 (Aug. 16, 1983) ("[T]he staff will consider whether the subject matter of the special report or the committee involves a matter of ordinary business; where it does, the proposal will be excludable under Rule 14a-8(c)(7).").

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 Company 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)").

The Staff also has consistently permitted exclusion of shareholder proposals relating to a company's relationships with its customers. *See, e.g., JPMorgan Chase*

& Co. (Feb. 21, 2019) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board complete a report on the impact to customers of the Company's overdraft policies); *JPMorgan Chase & Co.* (Mar. 12, 2010) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board publish a report assessing, among other things, the adoption of a policy barring future financing by the Company of companies engaged in mountain top removal coal mining, noting that the proposal related to the Company's "decisions to extend credit or provide other financial services to particular types of customers" and that "[p]roposals concerning customer relations or the sale of particular services are generally excludable under rule 14a-8(i)(7)"); *Anchor BanCorp Wisconsin Inc.* (May 13, 2009) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board adopt a new policy for the lending of funds to borrowers and the investment of assets after taking preliminary actions specified in the proposal, noting that the proposal related to the company's "ordinary business operations (i.e., credit policies, loan underwriting and customer relations)"); *JPMorgan Chase & Co.* (Feb. 21, 2006) (permitting exclusion under Rule 14a-8(i)(7) of a proposal recommending that the company not issue first mortgage home loans, except as required by law, no greater than four times the borrower's gross income, noting that the proposal related to the Company's "ordinary business operations (i.e., credit policies, loan underwriting and customer relations)").

In particular, the Staff recently permitted the Company to exclude a nearly identical proposal on the same topic under Rule 14a-8(i)(7) in *JPMorgan Chase & Co.* (Mar. 26, 2021). In that case, the proposal requested that the Company's board commission and disclose a study on the external costs created by the Company underwriting multi-class equity offerings and the manner in which such costs affect the majority of its shareholders who rely on overall stock market return. The Company argued that the proposal related to the ordinary business matters of the products and services offered for sale by the Company and the Company's relationships with its customers, and did not focus on a significant policy issue. In permitting exclusion of the proposal, the Staff noted that "the [p]roposal does not transcend the Company's ordinary business operations." *See also The Goldman Sachs Group, Inc.* (Mar. 9, 2021, *recon. denied* Mar. 19, 2021)* (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that 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).

In this instance, as was the case in *JPMorgan Chase & Co.* (Mar. 26, 2021), the proposal focuses primarily on the products and services offered for sale by the Company and the Company's relationships with its customers, which are ordinary

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

business matters. In particular, the Proposal's resolved clause requests that the Company consider and report on "the financial position of the Company's diversified owners in establishing its underwriting practices in order to address the share price concerns that lead the Company to underwrite economically detrimental multiclass share offerings." Moreover, the Proposal's request for a review on the impact of these decisions on the portfolios of "diversified" investors does not transform these matters from ordinary business matters, because the economic effect of such decisions is itself ordinary business.

Indeed, the Proposal's focus on these ordinary business matters is clear. In addition to the resolved clause, the Proposal's supporting statement notes that in order to "optimize its own financial returns, [the] Company underwrites initial public offerings" that may feature multi-class share structures. Such structures, the Proposal asserts, "threaten 'the economy as a whole'" and harm "shareholders, who are diversified, relying on broad economic growth to achieve their financial objectives," which is "a drag on GDP." When read together, the Proposal's resolved clause and supporting statement emphasize the Proposal's focus on a particular service that the Company engages in on behalf of its clients—the underwriting of multi-class share offerings.

In this regard, the Proposal's concern with the costs related to the underwriting of particular types of equity offerings (e.g., single class versus multi-class) on behalf of the Company's clients clearly demonstrates that the Proposal is focused on the Company's ordinary business matters. Indeed, the Proposal's supporting statement notes that the very purpose of the requested study is to inform shareholders "whether to seek a change in corporate direction," thereby explicitly focusing on the Company's business decisions regarding particular products and services. Similarly, the Company's decision to engage (or not engage) in the underwriting of multi-class equity offerings implicates ordinary business matters regarding the Company's relationships with its customers, who may desire particular products and services. Decisions with respect to the terms of individual securities in share offerings that the Company underwrites and the requirements of the Company's clients are at the heart of the Company's business as a global financial services company and are so fundamental to the Company's day-to-day operations that they cannot, as a practical matter, be subject to shareholder oversight. Therefore, the Proposal may be excluded under Rule 14a-8(i)(7) as relating to the products and services offered for sale by the Company and the Company's relationships with its customers.

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).

In this instance, as was the case in *JPMorgan Chase & Co.* (Mar. 26, 2021), the Proposal does not appear to touch on any significant policy issue. However, even if the Proposal did touch on a significant policy issue, the Proposal's overwhelming concern with the Company's underwriting of multi-class share offerings and the economic effects of those 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, consistent with the Staff's determination in *JPMorgan Chase & Co.* (Mar. 26, 2021) and the precedent described above, the Proposal may be excluded under Rule 14a-8(i)(7) as relating to the Company's ordinary business operations.

Conclusion

On the basis of the foregoing, the Company respectfully requests the concurrence of the Staff that the Proposal may be excluded from the Company's proxy materials for the 2022 Annual Meeting. If you have any questions or would like any additional information regarding the foregoing, please do not hesitate to contact me at (202) 371-7180. Thank you for your prompt attention to this matter.

Very truly yours,

Brian V. Breheny

Enclosures

cc: John H. Tribolati
Corporate Secretary
JPMorgan Chase & Co.

James McRitchie

Sara E. Murphy
Chief Strategy Officer
The Shareholder Commons

EXHIBIT A

(see attached)

Via electronic mail
December 7, 2021

JPMorgan Chase & Co.
[redacted]

Attn: Molly Carpenter, Corporate Secretary [redacted]

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

Dear Mr. Phelan,

The Shareholder Commons ("TSC") is filing a shareholder proposal on behalf of James McRitchie, a shareholder of JPMorgan Chase & Co. (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 December 20, 2021, at 2:00 p.m. EST or 2:30 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: [redacted]

[redacted]

James McRitchie
[redacted]

December 4, 2021

JPMorgan Chase & Co.
Office of the Secretary
[redacted]

Attn: Molly Carpenter, Corporate Secretary

I hereby authorize The Shareholder Commons to file a shareholder resolution on my behalf for JPMorgan Chase & Co.'s ("the Company") 2022 annual shareholder meeting. The proposal specifically requests that the Company publish a report disclosing how the Company can consider its diversified shareholders' financial position in its underwriting practices pertaining to economically detrimental multiclass share offerings.

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 may help to curb activities on the part of the Company that 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: [redacted]

[JPMorgan Chase & Co.: Rule 14a-8 Proposal, December 7, 2021]
[This line and any line above it – *Not* for publication]
ITEM 4*: Report on Strategies to Address Governance Costs

RESOLVED*, shareholders ask that the board commission and disclose a study on how the Company can consider the financial position of the Company's diversified owners in establishing its underwriting practices in order to address the share price concerns that lead the Company to underwrite economically detrimental multiclass share offerings.*

Supporting Statement:

To optimize its own financial returns, our Company underwrites initial public offerings providing perpetual control to insiders with high-vote stock,[1] contributing to poor governance that harms investors as a class.[2]

These structures give unchecked power to insiders, whose concentrated interests are not aligned with diversified shareholder interests. As one Nobel laureate notes, "initial entrepreneurs are not well-diversified and so they want to maximize the value of their own company, not the joint value of all companies."[3] The SEC's Investor Advocate underscored the economic risk of multiclass structures recently:

> *[W]hat we now have in our public markets is a festering wound that, if left untreated, could metastasize unchecked and affect the entire system of our public markets. The question, then, is what can be done to avoid the inevitable reckoning.*[4]

Similarly, an SEC Commissioner said:

> *Structures where a minority of insiders lock out the interests and rights of the majority may… be harmful for the economy as a whole.*[5]

By lending its reputation and expertise to these structures, the Company jeopardizes the viability of the governance model that created significant economic wealth. By continuing to underwrite such offerings, the Company prioritizes its own financial returns over the health of the global economy, in keeping with the Chairman's description of the Company's "stock price [as] a measure of the progress we have made over the years."[6]

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[1] See, e.g., https://www.sec.gov/Archives/edgar/data/0001650164/000119312521279379/d166297d424b4.htm (Toast, Inc.); https://www.sec.gov/Archives/edgar/data/0001822250/000119312520319302/d82777d424b4.htm (Wish).
[2] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=987488; https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2954630
[3] https://ssrn.com/abstract=3680815 or http://dx.doi.org/10.2139/ssrn.3680815
[4] Rick Fleming, *Dual-Class Shares: A Recipe for Disaster* (October 15, 2019) (emphasis added).
[5] Available at https://www.sec.gov/news/speech/speech-stein-021318#_ednref45.
[6] https://reports.jpmorganchase.com/investor-relations/2020/ar-ceo-letters.htm

But improving Company share price by practices that threaten "the economy as a whole" is a bad trade for most of the Company's shareholders, who are diversified, relying on broad economic growth to achieve their financial objectives. A Company strategy that increases its own share price but threatens global GDP is a threat to these owners: a drag on GDP created by facilitating poor governance will directly reduce their long-term returns.[7]

To address the reduced returns that would come from foregoing multiclass underwriting revenues, the Proposal would encourage the Company to study how it could (1) participate in public and private collaborations to end poor governance and (2) explicitly account for performance improvements in its shareholders' diversified portfolios. Such a report would help diversified shareholders determine whether to seek a change in corporate direction so that the Company can better serve their interests.

Please vote for: Report on Strategies to Address Governance Costs – 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):

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[7] https://www.unepfi.org/fileadmin/documents/universal_ownership_full.pdf

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

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

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

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

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."

Frederick H. Alexander
info@theshareholdercommons.com
+1.302.485.0497

January 27, 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 of James McRitchie to JPMorgan Chase & Co. regarding underwriting multi-class stock*

Division of Corporate Finance Staff Members:

James McRitchie (the "Proponent") is the beneficial owner of JPMorgan Chase & Co. (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 December 22, 2020 ("Company Letter") that Brian Breheny sent to the Securities and Exchange Commission (the "SEC"). In that letter, the Company contends the Proposal may be excluded from the Company's 2022 proxy statement.

For the reasons discussed in this letter, we respectfully contend the Proposal is not excludable under Rule 14a-8 and must therefore be included in the Company's 2022 proxy materials. A copy of this letter is being emailed concurrently to Mr. Breheny.

SUMMARY

The Proposal requests a study of how macroeconomic effects of multi-class share offerings—i.e., offerings of corporate stock that deviate from the "one-share, one-vote" ("OSOV") rule—affect Company shareholders. In particular, the study would address the Company's decision to continue to underwrite such offerings in pursuit of a higher Company share price, and whether that incremental increase in share price is a "bad trade" for the Company's diversified shareholder base. The Company asserts the proposal is excludable under Rule 14a-8(i)(7) as relating to ordinary business.

The Proposal is not excludable pursuant to Rule 14a-8(i)(7) because it addresses the significant policy issue posed by multi-class share structures, especially those designed to be perpetual. Such structures have been controversial for as long as corporations have existed as commercial structures. They undercut the accountability created by OSOV, create incentives for insiders to manage the company in a manner harmful to society and the environment (and therefore to diversified investors), and lead to systemic reductions in economic productivity and efficiency. In an economy dominated by publicly traded entities, where the actions of large corporations can generate or ameliorate an opioid crisis, preserve or degrade our environment, and sway the outcome of elections, the question of whether corporate management is accountable to the citizens who own the corporation is a fundamental policy issue, and shareholders should be able to ask for information about a company's activities that threaten the continued existence of such accountability across the economy.

The erosion of OSOV is, by itself, a significant policy issue of great concern to investors, and therefore transcends the Company's ordinary business. Moreover, the Company's decision to continue to underwrite such offerings without weighing the costs and risks to the broader economy embeds the Proposal within the broader policy issue of "shareholder primacy," which encourages corporations to optimize their own financial returns even when it requires corporate behavior that threatens the economy and diversified investors who rely on the economy's intrinsic value to support their portfolios.

The Company claims the Staff has already addressed this issue and found that a proposal to report on the true cost of underwriting practices that erode OSOV is not a significant policy issue and can therefore be excluded as ordinary business. Recent Staff guidance signaled a change in direction, however.

The Staff did permit exclusion of a similar proposal received by the Company last year under 14a-8(i)(7). In that instance, however, the Office of the Chief Counsel clarified that the proposal could be excluded because "it was not a significant policy issue **for the Company."** *JPMorgan Chase & Co.* (March 26, 2021) (emphasis added). These last three words make it clear the Staff did not find the OSOV question was not a significant policy issue, but rather the issue did not have sufficient nexus to the Company. Using the same three words, the Staff recently announced it would no longer apply the nexus requirement:

> *Under this realigned approach, proposals that the staff previously viewed as excludable because they did not appear to raise a policy issue of significance* ***for the company*** *may no longer be viewed as excludable under Rule 14a-8(i)(7).*[1]

Furthermore, other no-action responses that address shareholder primacy (a broader issue in which the OSOV question is embedded) demonstrate that corporate practices that maximize financial returns by externalizing significant economic costs do implicate a significant policy issue. These proposals were excluded under Rule 14a-8(i)(7) only when there was insufficient nexus between that issue and the company requesting relief. This shows the shareholder primacy question itself presents a significant policy issue, and since the nexus requirement has been eliminated, shareholder proposals (including the Proposal) that address shareholder primacy and otherwise meet Rule 14a-8 requirements (including relevance) should not be excluded under the ordinary business exception.

[1] Shareholder Proposals: Staff Legal Bulletin No. 14L (CF) (emphasis added) ("SLB L").

ANALYSIS

The Proposal is as follows:

> ***RESOLVED**, shareholders ask that the board commission and disclose a study on how the Company can consider the financial position of the Company's diversified owners in establishing its underwriting practices in order to address the share price concerns that lead the Company to underwrite economically detrimental multi-class share offerings.*

The report would analyze the external costs of a portion of the Company's business (underwriting multi-class offerings) and how those costs will affect the economy and its diversified investors.

1. Background

The Proposal asks for a report on the economic effects of underwriting multi-class IPOs. That phenomenon is increasing at an alarming rate: More than 20 percent of the companies that listed shares on U.S. exchanges between 2017 and 2019 had a dual-class structure[2] and for 2021, 31.7 percent of IPOs involved dual-class offerings.[3] This is the largest percentage recorded to date.

The Company was the third leading global underwriter of IPOs in 2021, holding the coveted book-runner position on 274 IPOs, valued at $36 billion.[4] The Company's underwriting decisions as a major financial institution have a significant effect on the direction the market takes. Moreover, this is an issue on which the Company has already taken a position in another part of its investment banking business. As an asset manager, the Company has already decided to *oppose* multi-class voting structures:

> *Generally, vote against dual-class recapitalizations as they offer an effective way for a firm to thwart hostile takeovers by concentrating voting power in the hands of management or other insiders.*[5]

2. The Proposal is not excludable pursuant to Rule 14a-8(i)(7)

The Company Letter correctly identifies underwriting as part of the Company's day-to-day business. That is not in dispute. The question is whether the Proposal implicates a significant social policy, in which case it may not be excluded under Rule 14a-8(i)(7), which otherwise allows exclusion of proposals related to ordinary business. As discussed below, the OSOV issue clearly does raise such an issue, both because the OSOV principle is itself a critical question for the economy and because it raises a broader question of whether companies should be harming the economy to optimize their own profits.

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[2] *The Rise of Dual Class Shares: Regulation and Implications* at 3 (April 2020) available at https://www.capmktsreg.org/2020/04/08/the-rise-of-dual-class-shares-regulation-and-implications/.
[3] Jay R. Ritter, *Initial Public Offerings: Dual Class Structure of IPOs Through 2021*
[4] *See* Dealogic, *Investment Banking Scorecard,* http://graphics.wsj.com/investment-banking-scorecard/
[5] *See Global Proxy Voting Procedures and Guidelines. J.P. Morgan Asset Management* (recommending votes against multi-class share recapitalizations) (updated January 1, 2020), available at https://am.jpmorgan.com/content/dam/jpm-am-aem/global/en/institutional/communications/lux-communication/corporate-governance-principles-and-voting-guidelines.pdf.

A. Staff guidance

The Staff has indicated that a shareholder proposal that might otherwise be excludable as relating to ordinary business under Rule 14a-8(i)(7) is not excludable if it raises significant social policy issues.[6] In explaining ordinary business, the Release noted:

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

Staff Legal Bulletin 14A (July 12, 2002) noted public debate was indicative 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."*[7]

The Staff has also indicated that shareholder proposals involve significant social policy issues if said issues engender widespread debate, media attention, and legislative and regulatory initiatives.[7]

However, the Staff had also announced a policy of concurring in the exclusion of proposals that raised a significant policy issue if the proposal did not have significant nexus to the company. As noted in the Summary, the Staff recently announced its intention to refocus its analysis of the significant social policy exception on the policy in question, and not the nexus between the policy issue and the company:

> *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,*

[6] Amendments to Rules on Shareholder Proposals, Exchange Act Release No. 34-40018 (May 21, 1998).
[7] 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.")

> *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.*

SLB L emphasizes that this change means proposals involving a significant policy issue will no longer be excluded simply because the issue is not significant for the company:

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

In addition to eliminating the nexus test, SLB L also reset the analysis as to whether a proposal related to a significant policy would "micromanage" the company. 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.*[9]

As the quoted language form *SLB L* makes clear, the elimination of the extra hurdles would apply even if the proposal related to the otherwise ordinary business described in the 1998 Release. Thus, an otherwise eligible proposal that relates to ordinary business, including products and services, can no longer be excluded if those issues have "a broad societal impact."

The report the Proposal requests relates to an underlying issue with broad societal impact: the threat multi-class offerings present to corporate accountability and the question of whether the Company should be amplifying that threat to increase its share price.

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[8] *Supra,* n.1 (emphasis added).
[9] Sanford Lewis, *SEC Resets the Shareholder Proposal Process,* Harvard Law School Forum on Corporate Governance (December 23, 2021).

B. Significant policy issue: multi-class IPO proliferation raises major public controversy

An examination of the history of unequal shareholder voting in the United States demonstrates that underwriting stock issues for corporations with multi-class voting structures raises a significant policy issue that transcends the Company's ordinary business. More than a century of debate has made it clear that the question of whether the Company should contribute to a practice that makes corporations less accountable to shareholders is a significant policy issue on its own, as well as part of the larger issue of when companies should follow the doctrine of shareholder primacy by maximizing their own returns with practices that externalize significant costs.

Whether to mandate OSOV has been a policy issue for almost as long as there have been commercial corporations.[10] Policymakers, academics, and interested parties in the United States in the nineteenth, twentieth, and twenty-first centuries have addressed the significant policy question of multi-class voting.

At the beginning of the nineteenth century, corporate charters were granted one at a time, by action of state legislatures.[11] In connection with granting charters, legislatures carefully measured out voting rights, often restricting the rights of significant owners and insiders to protect small shareholders, consumers, and other stakeholders.[12] But as the century progressed, states began to create general incorporation statutes that allowed individuals to form corporations simply by filing a complying corporate charter with the Secretary of State.[13]

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

> *This is intended to provide simply that those holding a majority of the stock shall control the corporation, and that is the reason I offered it.*[14]

Thus, efficacy of an OSOV rule was debated at the very beginning of the discussion over the form[15] of the general incorporation statute that would eventually become the leading corporation law in the United

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

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

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

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

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

[15] Although Delaware had adopted a general incorporation law in 1875, it was little used, as incorporators continued to seek charters through a legislative process until the 1897 Constitution ended the practice. *See* Joel Seligman, *A Brief History of Delaware's General Corporation Law of 1899* 1 Del. J. Corporate Law 249, 250 (1976).

States.[16] But the strict rule against varying from OSOV did not last, as the Delaware Constitution was amended soon thereafter to remove the limitation.[17] By the 1920s, large corporations were varying voting rights to separate control of the corporations from their ownership.[18]

But while states competing for corporate charters may have loosened the statutory rule, the policy issue implicated by using multi-class voting structures came to the fore and there was a "public outcry."[19] This outcry reached the White House itself, as one commentator described the level of public controversy:

> *The appeals of Professor William Z. Ripley—a political economist at Harvard who had made the ideal of one share, one vote a personal crusade—led President Calvin Coolidge and the Congress to make "threatening noises" about the emerging dual class capital structures. The Justice Department announced an inquiry into the matter as well, and the entire issue could be read about on the front page of the New York Times. Because of this maelstrom, the New York Stock Exchange (NYSE) announced in January, 1926 that as a general matter, it would no longer list disparate voting common shares. The historic NYSE one share, one vote listing rule remained undisturbed for nearly sixty years.*[20]

The American Stock Exchange (then called the New York Curb) followed suit.[21] A question of corporate structure that reaches the President and Congress and engenders a Justice Department investigation and front-page newspaper stories is indeed a "maelstrom," and certainly transcends the ordinary business of any single company.

In the 1980s, public companies traded on markets that did not have a rule against unequal voting began to recapitalize with multi-class structures.[22] This increasing competition among stock exchanges (reminiscent of the early-century competition among incorporating jurisdictions) led the NYSE to consider changing its longstanding rule. The intense public reaction belies the Company's claim that unequal voting rights do not create a policy issue sufficient to transcend its ordinary business:

> *Once again, an economic trend toward dual class recapitalizations emerged. In 1984, the NYSE announced that it was putting a moratorium*

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[16] *See, e.g.,* Kevin LaCroix, *So Why Should Delaware Corporate Law Predominate? (*2015) ("Over half of the U.S. listed companies are incorporated in Delaware. Nearly two thirds of Fortune 500 companies are organized under the laws of Delaware.") available at https://www.dandodiary.com/2015/08/articles/securities-laws/so-why-should-delaware-corporate-law-predominate/.
[17] For the general trend, see Berle and Means, *supra,* n. 13 at 71 ("…only recently have statutory changes made it possible to issue common stock that has no voting rights.")
[18] Id. at 71-72.
[19] Lucian Bebchuck and Kobi Kastiel, *The Untenable Case for Perpetual Class Stock,* 103 Va. L. Rev. 585, 596 (2017) ("This decision came in response to a public outcry, initially inspired by Harvard economist William Ripley, against the issuance of non-voting common stock by several prominent companies, including Dodge Brothers.")
[20] Peter Flocos, *Toward a Liability Rule Approach to the "One Share, One Vote" Controversy: An Epitaph for the SEC's Rule 19c-4,*138 Univ. Penn. L. Rev. 1761, 1762 (1990) (footnotes omitted).
[21] Id.: Berle and Means, *supra* n. 13 at 72.
[22] Flocos, *supra* n. 20 at 1762-1763 (1990).

> *on enforcement of its longstanding general rule of one share, one vote pending further investigation of the rule. Subsequently, amidst a media fanfare reminiscent of the 1920s, the NYSE's directors in July, 1986 approved a resolution allowing the listing of securities created in a dual class transaction provided that the transaction was approved by a majority of the company's independent directors and publicly held outside shares. Once again, as in the 1920s, threatening noises emanated from Washington. A number of bills, all of them hostile to the Exchange's revisionism, sprang up in Congress soon thereafter. For the second time this century, scholarly commentary critical of the NYSE's actions and calling for restrictions upon dual class capital structures appeared. The Securities and Exchange Commission--a creature of the New Deal era that did not exist during the previous imbroglio over the one share, one vote issue-stepped into the breach in July, 1988 with the promulgation of Rule 19c-4.*[23]

Thus, the re-emergent threat to OSOV again raised objections from Congress, academics, and regulators, demonstrating the policy question's significance. The resulting Rule 19c-4 limited listed companies' adoption of unequal voting structures.[24] The rule, however, was invalidated for exceeding the SEC's authority,[25] but the stock exchanges have nevertheless adopted rules that prohibit already-listed companies from recapitalizing into unequal voting regimes.[26] While a firm can effectuate an IPO with a multi-class voting structure, the exchanges currently prohibit conversion into such a structure once listed.

As the use of multi-class structures for IPOs has increased over the last 15 years (principally in the tech sector), experience has borne out the concerns about unaccountability, mismanagement, inefficiency, and self-dealing by insiders who permanently control voting power at the companies. Beginning with Google's issuance of low-vote stock in 2004, an increasing number of IPOs have taken advantage of this opportunity, reaching a crescendo in 2017 when Snap, Inc. offered non-voting shares to the public. Investor concerns based on experience with multi-class companies over recent years led to concerted efforts by investors[27] and a 2018 Council of Institutional Investors (CII)[28] petition to Nasdaq, the NYSE, and the SEC to prohibit such structures and institute a OSOV policy for public companies. CII explained that multi-class voting was in violation of "bedrock" principles:

> *[T]his "founder knows best" approach challenges the bedrock corporate governance principle of "one share, one vote": Providers of capital should have a right to vote in proportion to the size of their ownership. A single*

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[23] *Id.* (footnotes omitted).
[24] *Id.*
[25] *Business Roundtable v. SEC,* 905 F.2d 406 (D.C. Circuit 1990).
[26] *See* Bebchuck and Kastiel, *supra* n. 2 at 597.
[27] *See generally*, Andrew Winden and Andrew Baker, *Dual Class Exclusion*, Rock Center for Corporate Governance (2018), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3201578; Bebchuck and Kastiel, *supra* n. 19.
[28] The CII is a nonprofit association of institutional investors including asset owners with over $4 trillion in assets under management and asset managers with over $25 trillion in assets under management.

> *class of common stock with equal voting rights makes the board of directors accountable to all of the shareholders—and more likely to respond when management stumbles. Multi-class structures deprive public shareholders of a meaningful voice in how the company is run because the public shareholders lack the votes to influence the board or management.*[29]

At least one U.S. senator joined in urging action by the exchanges,[30] clearly articulating the policy concern as one of the basic rights of American investors:

> *If a company goes to the public markets to raise money, long-term ordinary common stock investors - a category that includes directly or indirectly millions of retirees and workers - should be entitled to certain basic rights. One of the most basic of those rights is one-share-one vote.*[31]

Once again, this letter from a U.S. Senator to the leading stock exchanges seeking to protect "[o]ne of the most basic rights" signifies that the underwriting of offerings featuring multi-class structures implicates significant policy questions.

C. Widespread investor opposition to multi-class structures and index modification

Institutional investors have lodged continuing objections to multi-class voting proliferation. In addition to CII's efforts, commentators have described asset owners and managers' objections:

> *Leading public pension funds, such as CalPERS and CalSTRS, asset managers, such as Fidelity, State Street, T. Rowe Price and Vanguard, and proxy advisory services, such as Institutional Shareholder Services, have stated their opposition to dual-class structures in their proxy voting guidelines, threatening to vote against the directors of companies that have such structures. In January 2017, the Investor Stewardship Group, a new organization of influential institutional investors and asset managers holding an aggregate of $17 trillion in assets under management, announced its Corporate Governance Principles, which state that shareholders should be entitled to voting rights in proportion to their economic interest, newly public companies should adopt one-share/one-vote structures and directors of existing dual-class companies should phase out their controlling structures.*[32]

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[29] CII press release (October 24, 2018) available at https://www.prnewswire.com/news-releases/investors-petition-nyse-nasdaq-to-curb-listings-of-ipo-dual-class-share-companies-300737019.html
[30] Letter from Elizabeth Warren, U.S. Senator, to John Carey, Vice President-Legal, NYSE Regulation, Inc. and NYSE Euronext & Edward Knight, Executive Vice President and General Counsel, NASDAQ OMX (June 5, 2013), https://www.warren.senate.gov/files/documents/Senator%20Warren%20letter%20to%20NYSE,%20Nasdaq%20-%206-5-2013.pdf.
[31] *Id.*
[32] Winden and Baker, *supra* n.27 at 10-11.

Stymied at the regulators, investors sought protection from index providers, arguing that because many investors chose to diversify their holdings by investing in funds or asset pools that followed established indexes, they were forced to buy into governance structures they did not want to own if those corporations were included in indices.[33]

The three largest index providers began consultations on this question in the spring of 2017.[34] The exchanges responded in different manners, with one provider excluding new issuances of multi-class shares, another requiring a minimum public float of all classes of stock, and the third adjusting index weighting according to voting inequality.[35]

D. Research supports policy concerns

A 2004 National Bureau of Economic Research study provided evidence for the validity of these concerns, indicating that insider voting control can lead to management entrenchment that can negatively affect firm investment:[36]

> *Dual-class common stock allows for the separation of voting rights and cash flow rights across the different classes of equity. We construct a large sample of dual-class firms in the United States and analyze the relationships of insider's cash flow rights and voting rights with firm value, performance, and investment behavior. We find that relationship of firm value to cash flow rights is positive and concave and the relationship to voting rights is negative and convex. Identical quadratic relationships are found for the respective ownership variables with sales growth, capital expenditures, and the combination of R&D and advertising. Our evidence is consistent with an entrenchment effect of voting control that leads managers to underinvest and an incentive effect of cash flow ownership that induces managers to pursue more aggressive strategies.*[37]

The authors noted that “some firms adopt dual-class structures when their original owners are reluctant to cede control.” These firms are less likely to tap the capital markets, typically invest less, grow more slowly, and have lower valuations.[38] Similarly, in a paper published in 2017, “The Untenable Case for Perpetual Dual Class Stock,” Lucian Bebchuk and Kobi Kastiel noted:

> *Our analysis demonstrates that the potential advantages of dual-class structures (such as those resulting from founders’ superior leadership skills) tend to recede, and the potential costs tend to rise, as time passes*

[33] *See generally id.*
[34] *Id.* at 20.
[35] *Id.* at 20-27.
[36] Gompers, Ishii and Metrick, *Incentives vs. Control: An Analysis of U.S. Dual-class Companies* (Jan. 2004), available at https://www.nber.org/papers/w10240.
[37] *Id.* (abstract).
[38] *Id.* at 20.

> *from the IPO. Furthermore, we show that controllers have perverse incentives to retain dual-class structures even when those structures become inefficient over time. Accordingly, even those who believe that dual-class structures are in many cases efficient at the time of the IPO should recognize the substantial risk that their efficiency may decline and disappear over time. Going forward, the debate should focus on the permissibility of finite-term dual-class structures — that is, structures that sunset after a fixed period of time (such as ten or fifteen years) unless their extension is approved by shareholders unaffiliated with the controller.*[39]

In 2020, the Committee on Capital Markets Regulation, whose membership includes forty leaders drawn from across the financial sector, including banks, broker-dealers, asset managers, private funds, and insurance companies, issued a report surveying multi-class structures around the world and recommending new disclosure requirements in the United States.[40] An international comparative legal guide published a study addressing the "controversy" and a "reignite[d] . . . debate":

> *For some time, dual-class share structures have been a major source of controversy amongst corporate governance professionals. However, the recent IPO filings of prominent technology companies featuring dual-class share structures have served to reignite the debate.*[41]

This issue is not going away. The increasing trend of IPOs using these control-preserving devices threatens our economy's viability. The continued willingness of market leaders such as the Company to participate in the multi-class stock structure trend—against their own best judgment of what is good for shareholders[42]—is a looming threat and implicates a critical policy issue.

E. Commission-level discussion

SEC commissioners' focus on multi-class equity offerings provides further proof of the issue's significance. Two SEC commissioners have spoken out against multi-class structures. In a 2018 speech, Commissioner Kara Stein addressed the broad social policy concerns dual-class structures create:

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

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[39] *Supra,* n. 19. See also Bebchuk, Lucian A. and Kastiel, Kobi, The Perils of Small-Minority Controllers (March 1, 2019). Georgetown Law Journal, Vol. 107, 2019, pp.1453-1514, European Corporate Governance Institute (ECGI) - Law Working Paper No. 434/2018, Harvard Law School John M. Olin Center Discussion Paper No. 985, Available at https://ssrn.com/abstract=3128375.

[40] *Supra,* n. 2.

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

[42] *See supra,* n.**Error! Bookmark not defined.** (recommending votes FOR conversion to one-share, one vote structures and AGAINST conversion to or maintenance of multi-class voting structures) available at https://www.gsam.com/content/dam/gsam/pdfs/us/en/miscellaneous/voting_proxy_policy.pdf?sa=n&rd=n.

> *<u>employees, but for the economy as a whole</u>.*[43]

That same year, Commissioner Robert Jackson gave a speech titled "Perpetual Dual-Class Stock: The Case against Corporate Royalty,"[44] in which he criticized not simply multi-class structures, but those without definite endpoints:

> *Many have argued forcefully, however, that one-share, one-vote should be the rule for all public corporations. Whatever the benefits may be of permitting dual-class in a few well-known cases, these advocates argue, the costs for investors—who are left with no way to hold management's feet to the fire while dual-class is in place—outweigh those benefits.*
>
> *But the question I want to ask today is not whether dual-class ownership is always good or bad. It's whether dual-class structures, once adopted, should last forever. Do Main Street investors in our public markets benefit when corporate insiders maintain outsized control in perpetuity?*
>
> *This is not an academic exercise. You see, nearly half of the companies who went public with dual-class over the last 15 years gave corporate insiders outsized voting rights in perpetuity. Those companies are asking shareholders to trust management's business judgment—not just for five years, or 10 years, or even 50 years.* Forever.[45]

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

> *The public/private hinge becomes relevant in addressing these questions. Mismatches between control rights and cash flow rights give rise not only to private agency costs, the focus of much corporate governance theorizing, but what might be called "public" agency costs. <u>These refer to our concerns about unaccountable power in the socio-political realm</u>. A match between cash flow rights and control rights naturally constrains these public agency costs.*[46]

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

[43] (Emphasis added), available at https://www.sec.gov/news/speech/speech-stein-021318#_ednref45.
[44] Available at https://www.sec.gov/news/speech/perpetual-dual-class-stock-case-against-corporate-royalty.
[45] *Id.* To be clear, the Company underwrites the very type of perpetual-control structures Commissioner Jackson described and about which he asked critical policy questions.
[46] Jeffrey Gordon, *Dual Class Common Stock: An Issue of Public and Private Law*, CLS Blue Sky Blog (January 2, 2019) (emphasis added) available at https://clsbluesky.law.columbia.edu/2019/01/02/dual-class-common-stock-an-issue-of-public-and-private-law/.

> *Today I would like to discuss a troubling trend—the increased use of dual-class shares by companies that seek to go public. …*
>
> *It is true that a few well-known companies have thrived with long-term founders. But less noticeable are the hundreds of public companies that now have entrenched management. A growing body of research suggests that, over the long term, entrenchment of founders produces lower returns for investors. Specifically, companies with dual-class structures tend to underperform companies with dispersed voting power.*
>
> *And there is an even larger danger, from my perspective. Namely, without an appropriate level of accountability to shareholders, it is easy to predict that this trend will not end well. Investors will be hurt, and badly, if we continue down this path. …*
>
> *In my view, what we now have in our public markets is a festering wound that, if left untreated, could metastasize unchecked and affect the entire system of our public markets. The question, then, is what can be done to avoid the inevitable reckoning.*[47]

F. The significant policy issue writ large: shareholder primacy and cost externalization

The OSOV question represents a highly contentious and contemporary public policy issue that transcends the Company's ordinary business and is therefore not excludable under Rule 14a-8(i)(7). While the particular issue in question—restraining unchecked power created by high-vote shares—is a significant policy issue on its own, its facilitation by the Company embeds the question within the policy issue raised by shareholder primacy, which encourages business practices that enhance corporate financial returns to shareholders but harm social and environmental systems. Below, we explain how this issue has become a central feature of the policy landscape in the United States and beyond.

i. Corporate law and shareholder primacy

The directors of U.S. corporations have long focused their efforts on improving their corporation's financial return to its shareholders. While there has been a fierce ongoing debate as to whether corporations should in fact be managed for the benefit of only shareholders or for a broader group of stakeholders,[48] the shareholder primacy concept has dominated corporate law. This doctrine eschews consideration of a business's external costs unless those costs affect the corporation's own financial return to its shareholders. A series of decisions by the Delaware courts cemented shareholder primacy's place in the United States.[49]

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[47] Rick Fleming, *Dual-Class Shares: A Recipe for Disaster* (October 15, 2019) (emphasis added).

[48] Frederick Alexander, BENEFIT CORPORATION LAW AND GOVERNANCE: PURSUING PROFIT WITH PURPOSE (2018) at 21-26.

[49] *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

eBay Domestic Holdings, Inc. v. Newmark[50] 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****.*[51]

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."[52] Toward the end of the twentieth century, many jurisdictions in the United States adopted "constituency statutes," fully or partially opting out of shareholder primacy.[53] None of those states mandates stakeholder interest consideration, however.[54] Delaware, the jurisdiction in which the Company is incorporated, has not adopted such a statute.

Delaware's common law commitment to shareholder primacy has led to a reaction regarding the risk it poses to stakeholders and the public.[55] 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 39 U.S. jurisdictions (including Delaware), the Canadian province of British Columbia, and the countries of Italy, Colombia, and Ecuador over the last decade to make this new form available. In addition, legislation was

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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.")

[50] 16 A.3d 1 (Del. Ch. 2010) (emphasis added).

[51] *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).

[52] 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).

[53] Alexander, *supra n.* 3, at 135–148.

[54] *Id.*

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

introduced in the U.S. Congress in both houses that would have imposed benefit corporation duties on the directors of all billion-dollar companies.[56] The issue even surfaced in the most recent U.S. presidential election, as one candidate decried "the era of shareholder capitalism."[57] 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.*[58]

ii. 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."[59]

Specifically, because most shareholders hold diversified investment portfolios, the maximization of value of any individual company in their portfolio may be detrimental to their interests when that maximization has a wider social cost:

> *[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.*[60]

This recognition that diversified shareholders' interests converge with broad social interests when it comes to corporate cost externalization explains the need for the report requested in the Proposal. As detailed in the next subsection, policymakers have begun to incorporate this convergence into the rules that govern investment fiduciaries.

[56] 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)
[57] *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.
[58] 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.
[59] *See* n.55 at 59.
[60] 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).

iii. 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 gives trustees the ability to address corporate activity that imposes the type of social costs described in the Proposal when the trustees believed that those costs would affect their diversified portfolios—exactly the type costs of that the Proposal seeks a report on:

> *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).*[61]

Moreover, 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 that 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; …*[62]

While the bill related to costs to the financial system, rather than macroeconomic effects of multi-class share offerings, it was clearly focused on the same policy concern: costs that a company's profit-seeking activities impose on stakeholders.[63]

iv. The Business Roundtable (BRT) Statement

In addition to the activity noted in the prior sections regarding political and legislative activity around the issue of external costs to stakeholders, the business community, including the Company itself, has noted the importance of considering stakeholder interests beyond those of shareholders. In August of 2019, the CEOs of 181 of the largest corporations in the United States signed onto the Statement of the Purpose of

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[61] 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.

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

[63] *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).

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****.*[64]

Thus, the Statement, *which the Company's own CEO signed,* emphasizes the policy question embedded in the Proposal, which asks the Company to report on the social costs of its continuing to underwrite multi-class offerings, 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."[65] Others noted the importance of the change, but also that it was meaningless without ending 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*

[64] *Supra,* n. 1 (emphasis added).
[65] Andrew Winston, *Is the Business Roundtable Statement Just Empty Rhetoric?* HARVARD BUSINESS REVIEW (August 30, 2019).

> *take action to upend the self-defeating doctrine of shareholder primacy.*[66]

Other commentators were worried not that the Statement did not go far enough, but rather that it 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.*[67]

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.*[68]

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 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.*[69]

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[66] 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).
[67] Karl Smith *Corporations Can Shun Shareholders, But Not Profits,* BLOOMBERG OPINION (August 27, 2019).
68 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/.
[69] Milton Friedman, *The Social Responsibility of Business Is to Increase Its Profits* N.Y. TIMES, Sept. 13, 1970 (magazine).

Showing the controversy is long-lived, the 50th anniversary of the essay in 2020 set off another round of commentary.[70]

v. 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 raise a critical policy issue: 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 by identifying the costs it externalizes through its choice to continue underwriting multi-class IPOs. An understanding of the nature of these costs, even if imperfect, can begin the process of addressing whether and where excessive external costs are being generated, and whether there are remedies the Company could apply unilaterally, through industry coalitions, or perhaps through public/private partnerships. Moreover, by linking the external costs to harm to the Company's diversified shareholder base, the proposal also raises the possibility that there are remedies in which Company shareholders' and other stakeholders' interests converge, which may lead to decisions not to optimize financial return at the Company.

Such reports are not unprecedented. In the 2021 proxy season, YUM! Brands ("YUM") received a similar proposal regarding the presence of excessive antibiotics in its supply chain, and agreed to prepare a report regarding costs it externalized in the form of increased antimicrobial resistance of pathogens that threaten human and animal health.[71] YUM agreed to prepare a report that, when ultimately issued, explained the areas where competitive pressures limited its ability to reduce the social costs the continued use of antibiotics in its supply chain creates. In other words, the report identified areas where financial return was being prioritized over public health and economic growth. The report went on to suggest the need for greater public/private cooperation:

> *The challenge of individual costs and widely distributed societal benefits, a situation common in many sustainability issues, plays a key role in antimicrobial resistance. This may make it difficult to pursue AMR mitigation while remaining competitive on costs and highlights the need for strong collaboration between both the public and private sectors*

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[70] 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).

[71] https://www.prnewswire.com/news-releases/the-shareholder-commons-announces-withdrawal-of-shareholder-proposal-after-yum-brands-commits-to-disclose-systemic-costs-of-antibiotic-use-301239878.html. The withdrawn proposal read as follows:

> *RESOLVED, shareholders ask that the board commission and disclose a study on the external environmental and public health costs created by the use of antibiotics in the supply chain of our company (the "Company") and the manner in which such costs affect the vast majority of its shareholders who rely on a healthy stock market.*

This was a tremendously important statement for a restaurant company to put on the public record as a step toward addressing the problem of companies feeling pressure to prioritize their own finances over the public good.

While the YUM report did not put specific numbers on the costs it externalizes, financial analysts have begun to quantify the broad societal impact of various forms of externalized social costs. In a recent study (the "Schroders Report"), a leading asset manager 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.[72] 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 social costs arising from macroeconomic effects of multi-class share offerings fall directly within this problematic paradigm.

The Proposal seeks to address the issue by leveraging areas in which the interests of the Company's diversified shareholders converge with broad social interests in reducing cost externalization by the Company. As described above in subparagraph ii, the convergence arises from the fact that when a corporation prioritizes its financial return above all stakeholder concerns, it can harm its own diversified shareholders, who often constitute the vast majority of a public company's shareholders.[73] Such shareholders and their beneficial owners suffer when companies follow the shareholder primacy model and impose costs on the economy that lower GDP, which reduces overall equity value.[74] Accordingly, Company shareholders (along with the world's population and economy) could benefit from a better understanding of whether the Company's financial interests are prioritized over the social costs generated by the increased insider control of public corporations multi-class IPOs create.

The Proposal will address this issue by asking the Company to describe the external costs certain of its underwriting practices create, providing context to its shareholders and permitting them to understand whether the value proposition of the Company is truly sustainable, or whether its profits rely on the exploitation of common resources and vulnerable populations.

Thus, the Proposal's request for a report on how the Company externalizes certain social costs and risks addresses the significant policy issue of whether corporations should account for stakeholder interests and is therefore not excludable for purposes of Rule 14a-8(i)(7).

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[72] https://www.schroders.com/en/sysglobalassets/digital/insights/2019/pdfs/sustainability/sustainex/sustainex-short.pdf
[73] Indeed, the top three holders of Company shares are mutual fund companies Vanguard, State Street and BlackRock, whose clients are generally indexed or otherwise broadly diversified investors. https://finance.yahoo.com/quote/TSCO/holders?p=TSCO
[74] See Richard Mattison et el., *Universal Ownership: Why environmental externalities matter to institutional investors*, UNEP Finance Initiative and PRI (2011), available at https://www.unepfi.org/fileadmin/documents/universal_ownership_full.pdf; https://money.cnn.com/magazines/fortune/fortune_archive/2001/12/10/314691/ (total market capitalization to GDP "is probably the best single measure of where valuations stand at any given moment") (quoting Warren Buffet).

G. The Proposal concerns a significant policy issue and should not be excluded because it implicates products and services

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

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

The Company letter cites prior Staff decisions where, generally, the proposal focused on products and services and lacked an appropriate relationship to an overriding significant policy issue. Here, in contrast, there is a significant public policy issue at stake: the threat to OSOV, and consequently to the economy, created by the Company's decision to continue to profit by underwriting multi-class offerings.

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

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

Other significant policy issues have been at the core of proposals addressing lending policies, including proposals that may have led to criteria that changed with whom the company chose to do business, and under what conditions—far more prescriptively than the current proposal. For instance, in *Citicorp*

(January 23, 1991) the proposal sought a report on the Company's lending policies in the developing world. The staff noted in rejecting the ordinary business challenge, "[i]n reaching a position, the staff particularly notes that the proposal appears to involve questions of substantial economic importance that go beyond the Company's ordinary business operations."

In short, there is no basis for an assertion that a proposal is excludable simply because it touches upon lending or underwriting criteria. Prior Staff decisions demonstrate that the key question is whether the subject matter requiring a focus on lending or investment criteria is related to a significant policy issue. Regarding the level of detail, "the granularity of the proposal" is certainly "consistent with shareholders' capacity to understand and deliberate."[75] The Proposal is compliant and not excludable under Rule 14a-8(i)(7).

3. The Staff action concurring in the exclusion of prior similar proposals was based on the nexus requirement, which has been eliminated

In *JPMorgan 2021*, the Staff permitted exclusion of a very similar proposal under Rule 14a-8(i)(7). However, at the time *JPMorgan 2021* was issued, Staff policy was to concur in the exclusion of a proposal that did not have sufficient nexus to the company, even if the proposal addressed a significant policy issue. Staff relied on a lack of nexus in excluding the proposal, stating it could be excluded "because it was not a **significant policy issue for the Company."** *JPMorgan 2021 (emphasis added).* As the language above shows, *SLB L* explicitly establishes that this will no longer be a reason for exclusion. A recent essay on the changes *SLB L* made explains that the exclusion in *JPMorgan 2021* was precisely the type of exclusion the Staff meant to end, because it was counter to the Rule's purpose:

> *Instead, the Staff exclusion appears to have focused only on the direct economic importance to JP Morgan, rather than other issues of proper concern to shareholders, namely the systemic impact of the company on its industry, society, and capitalism at large.*[76]

Even before such realignment, the Staff recognized that the issue of corporate externalized costs that damage diversified portfolios satisfies the significant policy exception under Rule 14a-8(i)(7). *See PepsiCo, Inc* (March 12, 2021) (Staff declined to concur in exclusion under Rule 14a-8(i)(7) when proposal requested a study of public-health costs associated with the company's business and the manner in which such costs affect diversified shareholders who rely on overall market returns); *CVS Health Corp.*, recon. denied (Mar.30, 2021) ("a proposal related to the external public health costs… may raise a significant policy issue that transcends a company's ordinary business operations.") These responses indicate that proposals concerning the externalization of costs and the effect of such costs on diversified shareholders relate to significant policy issues, which will no longer be excluded for lacking sufficient nexus to the company.

[75] *See* n.9 and accompanying text.
[76] *See supra* n.9.

CONCLUSION

The Proposal addresses a significant policy issue: the cost of the Company's continuing to underwrite a type of security offering that has been controversial for more than a century and that continues to be subject to vigorous public debate, all to maximize financial returns, even if doing so harms the economy.

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,

Rick Alexander
CEO

cc: Brian Beheny
James McRitchie
Ryan J. Adams

THE PROPOSAL

RESOLVED*, shareholders ask that the board commission and disclose a study on how the Company can consider the financial position of the Company's diversified owners in establishing its underwriting practices in order to address the share price concerns that lead the Company to underwrite economically detrimental multi-class share offerings.*

Supporting Statement:

To optimize its own financial returns, our Company underwrites initial public offerings providing perpetual control to insiders with high-vote stock,[77] contributing to poor governance that harms investors as a class.[78]

These structures give unchecked power to insiders, whose concentrated interests are not aligned with diversified shareholder interests. As one Nobel laureate notes, "initial entrepreneurs are not well-diversified and so they want to maximize the value of their own company, not the joint value of all companies."[79] The SEC's Investor Advocate underscored the economic risk of multi-class structures recently:

> *[W]hat we now have in our public markets is a festering wound that, if left untreated, could metastasize unchecked and affect the entire system of our public markets. The question, then, is what can be done to avoid the inevitable reckoning.*[80]

Similarly, an SEC Commissioner said:

> *Structures where a minority of insiders lock out the interests and rights of the majority may… be harmful for the economy as a whole.*[81]

By lending its reputation and expertise to these structures, the Company jeopardizes the viability of the governance model that created significant economic wealth. By continuing to underwrite such offerings, the Company prioritizes its own financial returns over the health of the global economy, in keeping with the Chairman's description of the Company's "stock price [as] a measure of the progress we have made over the years."[82]

But improving Company share price by practices that threaten "the economy as a whole" is a bad trade for most of the Company's shareholders, who are diversified, relying on broad economic growth to achieve their financial objectives. A Company strategy that increases its own share price but threatens

[77] See, e.g., https://www.sec.gov/Archives/edgar/data/0001650164/000119312521279379/d166297d424b4.htm (Toast, Inc.); https://www.sec.gov/Archives/edgar/data/0001822250/000119312520319302/d82777d424b4.htm (Wish).
[78] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=987488; https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2954630
[79] https://ssrn.com/abstract=3680815 or http://dx.doi.org/10.2139/ssrn.3680815
[80] Rick Fleming, *Dual-Class Shares: A Recipe for Disaster* (October 15, 2019) (emphasis added).
[81] Available at https://www.sec.gov/news/speech/speech-stein-021318#_ednref45.
[82] https://reports.jpmorganchase.com/investor-relations/2020/ar-ceo-letters.htm

global GDP is a threat to these owners: a drag on GDP created by facilitating poor governance will directly reduce their long-term returns.[83]

To address the reduced returns that would come from foregoing multi-class underwriting revenues, the Proposal would encourage the Company to study how it could (1) participate in public and private collaborations to end poor governance and (2) explicitly account for performance improvements in its shareholders' diversified portfolios. Such a report would help diversified shareholders determine whether to seek a change in corporate direction so that the Company can better serve their interests.

Please vote for: Report on Strategies to Address Governance Costs – Proposal 4*

[83] https://www.unepfi.org/fileadmin/documents/universal_ownership_full.pdf

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February 15, 2022

BY EMAIL (shareholderproposals@sec.gov)

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

Re: JPMorgan Chase & Co. – 2022 Annual Meeting
Supplement to Letter dated January 11, 2022
Relating to Shareholder Proposal Submitted by James McRitchie

Ladies and Gentlemen:

We refer to our letter dated January 11, 2022 (the "No-Action Request"), submitted on behalf of JPMorgan Chase & Co., a Delaware corporation (the "Company"), 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 the Company's view that the shareholder proposal and supporting statement (the "Proposal") submitted by James McRitchie with The Shareholder Commons authorized to act as Mr. McRitchie's agent may be excluded from its proxy materials for the Company's 2022 Annual Meeting of Shareholders (the "2022 Annual Meeting"). Mr. McRitchie and The Shareholder Commons are sometimes referred to collectively as the "Proponent."

This letter is in response to the letter to the Staff, dated January 27, 2022, submitted by The Shareholder Commons on behalf of the Proponent (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 Proponent's Letter presents an uncompelling attempt to rebut the No-Action Request. In particular, it argues that the Proposal should not be excluded as relating to the Company's ordinary business because it focuses on a significant policy issue. The Proponent's Letter also claims that the Staff's determination in *JPMorgan Chase & Co.* (Mar. 26, 2021) to permit the exclusion of a substantially similar proposal under Rule 14a-8(i)(7) should be disregarded due to the recent Staff guidance in Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L"). Neither argument is persuasive.

Notably, in arguing that the Proposal focuses on a significant policy issue, the Proponent's Letter concedes that the Company's underwriting of equity offerings is an ordinary business matter. Given that, to our knowledge, the Staff has never recognized a significant policy issue relating to multi-class equity offerings, this should be the end of the analysis. Nevertheless, the Proponent's Letter asserts that the Staff should recognize a new significant policy issue for various reasons. In doing so, the Proponent's Letter cites a number of overly broad and distinct issues that do not individually or collectively relate to a significant policy issue – "the significant policy issue posed by multi-class share structures, especially those designed to be perpetual," "the erosion of [one-share, one-vote]," "shareholder primacy," "shareholder primacy and cost externalization," "whether corporations should account for stakeholder interests," and "the threat multi-class offerings present to corporate accountability and the question of whether the Company should be amplifying that threat to increase its share price." These varied and amorphous concepts demonstrate that the Proposal is not focused on any particular significant policy issue.

The Proponent's Letter also attempts to demonstrate that the Proposal relates to a significant policy issue through lengthy discussions of the history of voting practices in Delaware corporations, stock exchange rules, institutional studies and legislation. These citations, however, fail to establish a broad societal focus on the issue of multi-class share structures. In this regard, the Proponent points to an "outpouring of legislative activity around benefit corporations, regulatory and legislative activity around trustee obligations to consider external corporate costs, and commentary around the [Business Roundtable's Statement of the Purpose of a Corporation]," yet these observations are irrelevant to the Proposal, which does not deal with public benefit corporations or trustee obligations. In addition, the Proponent's Letter largely addresses these issues from the perspective of interested parties, such as corporate governance scholars. The test for whether a significant policy issue exists is not whether a narrow subsection of the population finds the issue significant, however, it is whether the issue holds broad societal significance. In this regard, we note that the Proponent's Letter does not address this issue's relevance from the perspective of society as a whole. Therefore, the Proponent has not demonstrated and we see no reason why this issue should be recognized as one with broad societal impact.

Moreover, as discussed in the No-Action Request, the Staff already evaluated a similar proposal in *JPMorgan Chase & Co.* (Mar. 26, 2021) and determined that the proposal related to the Company's ordinary business. While the Proponent's Letter correctly notes that since then the Staff has rescinded some of its previous guidance on the ordinary business exclusion through SLB 14L, the Proponent's Letter makes an incorrect assertion that *JPMorgan Chase & Co.* (Mar. 26, 2021) can no longer be relied upon. While the Staff's response letter in that instance was phrased in accordance with Staff guidance in effect at the time, indicating that the proposal "was not a significant issue for the Company," this does not lead to a conclusion that the proposal otherwise related to a significant policy issue. As discussed in the No-Action Request, and as was the case in *JPMorgan Chase & Co.* (Mar. 26, 2021), the Proposal does not touch on any recognized significant policy issue and the Proposal's overwhelming concern with the Company's underwriting of multi-class share offerings demonstrates that the Proposal's focus is on an ordinary business matter.

Accordingly, the Proposal may be excluded pursuant to Rule 14a-8(i)(7) as relating to the Company's ordinary business operations.

For the reasons stated above and in the No-Action Request, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its proxy materials for the 2022 Annual Meeting. Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of the Company'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) 371-7180.

Very truly yours,

Brian V. Breheny

cc: John H. Tribolati
Corporate Secretary
JPMorgan Chase & Co.

James McRitchie

Sara E. Murphy
Chief Strategy Officer
The Shareholder Commons

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February 18, 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 of James McRitchie to JPMorgan Chase & Co. regarding underwriting multi-class stock*

Division of Corporate Finance Staff Members:

James McRitchie (the "Proponent") is the beneficial owner of JPMorgan Chase & Co. (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 February 15, 2022 (the "Company Reply") that Brian Breheny sent to the Securities and Exchange Commission (the "SEC"). The Company Reply responds to the undersigned's letter to the SEC dated January 27, 2022 (the "Proponent's Response"), which was sent in response to the Company's original no-action request (the "Company Letter.") This letter makes used of terms defined in the Proponent's Response. A copy is being emailed to Mr. Breheny.

I am writing to respond to certain assertions included in the Company Reply, each of which distracts from the actual arguments made in the Proponent's Response, which makes a straightforward argument and relies on past guidance from the Commission and Staff as well as the public record, none of which is in dispute.

Incorrect Assertion 1: Because Staff has never recognized multi-class offerings as a public policy issue previously, "this should be the end of the analysis."

There is no fixed list of policies that transcend ordinary business for the purposes of Rule 14a-8(i)(7). If there were, there would be no need for the standards the Staff has established (and recently updated) for what constitutes a significant policy issue; the Staff would simply consult the list and determine whether the cited issue was included. But of course, that is not how it works. The Commission and Staff establish standards, and issues that meet those standards are deemed to transcend the ordinary business to which they relate and are thus deemed appropriate for shareholder action. As the Proponent's Response clearly demonstrates, both the multi-class offerings issue and the shareholder primacy issue satisfy those standards.

Incorrect Assertion 2: The policy issues described in the Proponent's Response are "varied and amorphous."

Sections 2.B-E of the Proponent's Response describe the long and continuing story of the debate over whether shareholders should have one vote per share. Section 2.F describes the equally important debate over shareholder primacy. These are two issues, each of which satisfies the standard for the significant policy exception described in the Proponent's Response. The Company Reply tries to create the impression of something less clear by quoting multiple descriptions of the two issues contained in the explanations of the two issues.

Incorrect Assertion 3: Observations that the "'outpouring of legislative activity around benefit corporations, regulatory and legislative activity around trustee obligations to consider external corporate costs, and commentary around the [Business Roundtable's Statement of the Purpose of a Corporation],' … are irrelevant to the Proposal" because the Proposal does not involve such legislation or regulation.

This is a non sequitur. The Proponent's Response cites these matters because they show that the issue is one with significant policy implications. As we said there:

> *The Staff has also indicated that shareholder proposals involve significant social policy issues if said issues engender widespread debate, media attention, and legislative and regulatory initiatives*

If such matters are used to show the presence of a policy issue, there is (of course) no corresponding obligation that the Proposal involve the same policy responses; indeed, that would be a ridiculous requirement, since the Company is not a regulator, a legislature, or the media. The point, of course, is that the Proposal addresses the same significant policy concerns as do the observed regulation, legislation, and public debate.

Incorrect Assertion 4: "[T]he Proponent's Letter largely addresses these issues from the perspective of interested parties, such as corporate governance scholars. … In this regard, we note that the Proponent's Letter does not address this issue's relevance from the perspective of society as a whole."

This assertion does not reflect the content of the Proponent's Response, as a few quotes from the Proponent's Response demonstrate:

a. A U.S. Senator citing the rights of investors, workers, and retirees:

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

b. An SEC Commissioner on the proposition that the multi-class share debate implicated the entire economy:

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

c. A law professor's concern that the unaccountable power associated with multi-class offerings creates costs not only to shareholders, but to the public at large:

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

d. The SEC's own Investor's Advocate expressing concern that multi-class voting could bring down our system of public markets:

> *In my view, what we now have in our public markets is a festering wound that, if left untreated,* ***could metastasize unchecked and affect the entire system of our public markets****. The question, then, is what can be done to avoid the inevitable reckoning.*

e. The very first constituency mentioned in the quote from the BRT Statement is "Americans," and other broad communities are mentioned thereafter:

> ***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****.*

f. A quote from an activist noting the importance of addressing shareholder primacy to the entire community:

> *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.*

Contrary to the bare assertion of the Company Reply, these quotes reflect concern with the broadest of societal impact.

Incorrect Assertion 5: **JPMorgan Chase & Co.** ***(Mar. 26, 2021) is good precedent for excluding the Proposal.***

As discussed in the Proponent's Response, the wording of *JPMorgan 2021* showed that it was excluded because the Staff believed there was not sufficient nexus between the multi-class proposal and the Company. The nexus rule is no longer in effect. Accordingly, a no-action concurrence that relied on a conclusion that the policy issues the Proposal raised did not have broad societal impact would be a new decision for which there is no precedent. In addition, it would be contrary to previous Staff decisions permitting proposals asking for reports on the effect that externalized costs have on diversified shareholders. *See PepsiCo, Inc,* (March 12, 2021) (Staff declined to concur in exclusion under Rule 14a-8(i)(7) when proposal requested a study of public-health costs associated with the company's business and the manner in which such costs affect diversified shareholders who rely on overall market returns); *CVS Health Corp.*, recon. denied (March 30, 2021) ("a proposal related to the external public health costs… may raise a significant policy issue that transcends a company's ordinary business operations."); *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.")

CONCLUSION

We respectfully renew our request that the Staff inform the Company that it does not concur in the Company's 14a-8 analysis. If you have any questions, please contact me at rick@theshareholdercommons.com or 302-485-0497.

We note the Company's request for the opportunity to confer prior to the issuance of any decision not to concur with the Company's view that the Proposal can be excluded. We do not agree that such a conference is necessary, particularly in light of the Staff's recent decision to provide letters in support of its decisions regarding 14a-8 no-action requests, but would ask to be included in any such conversations.

Sincerely,

Rick Alexander
CEO

cc: Brian Beheny
James McRitchie
Ryan J. Adams

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March 16, 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 of James McRitchie to JPMorgan Chase & Co. regarding underwriting multi-class stock

Division of Corporate Finance Staff Members:

James McRitchie (the "Proponent") is the beneficial owner of JPMorgan Chase & Co. (the "Company") common stock and has submitted a shareholder proposal (the "Proposal") to the Company. At the Proponent's request, I responded on February 18 (the "Proponent's Sur-Reply") to the letter dated February 15, 2022 (the "Company Reply") that Brian Breheny sent to the Securities and Exchange Commission (the "SEC"). The Company Reply responds to the undersigned's letter to the SEC dated January 27, 2022 (the "Proponent's Response"), which was sent in response to the Company's original no-action request (the "Company Letter.") This letter makes use of terms defined in the Proponent's Response. A copy is being emailed to Mr. Breheny.

We hereby submit the following additional matters for the Staff's consideration, as they hinge on developments that transpired after we filed the Proponent's Sur-Reply.

1. *Denial of the no-action request is necessary given the new Staff guidance on broad societal impact transcending ordinary business.*

Last year, when faced with an almost identical request, the Staff granted relief under 14a-8(i)(7), but declined to find that the proposal did not raise a policy issue significant enough to transcend ordinary business. *JPMorgan Chase & Co.* (March 26, 2021). The proponent in *JPM 2021* had proffered two significant policy issues in arguing that the proposal should not be excluded under 14a-8(i)(7), and the Staff did not indicate that either policy concern failed to transcend ordinary business, and instead explicitly relied on a lack of nexus to the company, stating, "it was not a significant policy issue *for the Company*." [emphasis added] Following that grant of relief, the Staff announced *in Staff Legal Bulletin 14L* that it would no longer apply the nexus requirement:

> *[S]taff 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.*

Recent developments confirm that the Proposal addresses an issue with broad societal impact. The no-action request presents an opportunity for the Staff to apply its new guidance.

2. *Following submission of the Opposition Letter, the Congressional Joint Economic Committee (JEC) reiterated the transcendent character of the policy issue of shareholder primacy by calling a hearing on the subject.*

Shareholder primacy was one of two significant policy issues that were raised in the Opposition Letter. The Proposal requested that the Company compare the benefit it received from underwriting multi-class IPOs with the external costs imposed on social and environmental systems by doing so. The Opposition letter traced the debate over shareholder primacy that the Proposal raised. During the week of March 7, 2022, the JEC announced it would hold an in-person hearing on March 16, 2022, to address this very issue. *See* Joint Economic Committee, *Examining the Impact of Shareholder Primacy: What It Means to Put Stock Prices First*.

Given the high-level, contemporaneous interest in this issue to the JEC, we believe it appropriate for the Staff to consider the significance of the issue of shareholder primacy.

3. *Following submission of the Proponent's Sur-Reply, a new paper was published with a breakthrough analysis that demonstrates the systemic and society-wide impacts caused by the interaction of multi-class stock offerings and shareholder primacy.*

The second policy question raised in the Proponent's Response was the economic impact of corporate departure from the one share, one vote rule (OSOV). Following the submission of the Proponent's Sur-Reply, an important new paper was published that sheds new light on the systemic and societal impacts of departing from OSOV.[1] This new scholarship ties together the two policy issues raised in the Proponent's Response and explains how the risks of one exacerbate the risks of the other.

In particular, the paper argues that in situations where companies are likely to externalize costs to maximize company returns (i.e., to practice shareholder primacy in a manner that has harmful societal impact), the right to adopt multi-class structures should be limited:

> *However, our reason for imposing limitations on firms' ability to adopt dual class shares is very different from the one traditionally suggested in the literature. Instead of looking at intra-firm dynamics, and in particular at*

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[1] Vittoria Battocletti, Luca Enriques and Alessandro Romano, Dual Class Shares in the Age of Common Ownership, ECGI Law Working Paper N° 628/2022 (March 2022), available at https://bit.ly/3t3rt8J.

> *the agency costs between shareholders and controllers,* ***we focus on firms' ability to impose externalities****…*
>
> *We start by noting that the unfolding climate crisis and the macroeconomics literature have shown that a specific subset of firms* ***can impose gigantic externalities on the planet and the economy. Allowing these companies to have dual class shares without any limitation implies that [concentrated] shareholders oblivious to these externalities have an unfettered ability to inflict systemic harm****. A clear example is Buffett's Berkshire Hathaway, which was the fourth main source of carbon dioxide emissions (CO2) in the U.S. in 2019. However, empirical evidence suggests that [diversified] shareholders have relatively strong incentives to mitigate these negative externalities, since [diversified] shareholders suffer from them to some extent via their other portfolio holdings.* ***Thus, to prevent [concentrated] shareholders from having disproportionate power at these key firms, we suggest some limits on dual class shares for systemically relevant firms.***[2]

The paper emphasizes the broad societal impact of the combination of issues presented by the Proposal by explaining that risks created by multi-class shares multiply the risk that shareholder primacy will lead individual companies to externalize significant costs that threaten critical social and environmental systems.

The perspective provided by this new scholarship provides an important reason for the Staff to determine that multi-class shares and shareholder primacy have broad societal impact.

*   *   *   *   *

We respectfully renew our request that the Staff inform the Company that it does not 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,

Rick Alexander
CEO

cc: Brian Breheny
James McRitchie

[2] Id. at 5 (emphasis added).