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 the Sierra Club Foundation for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the board issue a report that sets absolute contraction targets for the Company's financed greenhouse gas emissions, in accordance with United Nations Environmental Program Finance Initiative (UNEP FI) recommendations to the G20 Sustainable Finance Working Group, for credible net zero commitments.

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

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(11) because it appears the Company will omit the proposal submitted by Charles Armitage from its 2022 proxy materials, and, in our view, the Proposal does not substantially duplicate the proposal submitted by Mercy Investment Services, Inc. et al.

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

Sincerely,

Rule 14a-8 Review Team

cc: Sanford Lewis

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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
the Sierra Club Foundation

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 the Sierra Club Foundation (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 3, 2021, along with a cover letter from the Proponent. On December 8, 2021, the Company sent a letter, via email, to the Proponent requesting a written statement from the record owner of the Proponent's shares verifying that the Proponent had beneficially owned the requisite number of shares of the Company's common stock continuously for at least the requisite period preceding and including the date of submission of the Proposal. On December 16, 2021, the Company received a letter, via email, from Charles Schwab verifying the Proponent'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 request that the Board of Directors issue a report that sets absolute contraction targets for the Company's financed greenhouse gas emissions, in accordance with United Nations Environmental Program Finance Initiative (UNEP FI) recommendations to the G20 Sustainable Finance Working Group, for credible net zero commitments.
>
> Proponents request that, in the discretion of board and management, the report address the lack of need for new fossil fuel development beyond projects already committed as of 2021, as set forth in the UNEP FI recommendations.

Bases 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; and

> Rule 14a-8(i)(11) because the Proposal substantially duplicates two shareholder proposals previously submitted to the Company that it intends to include in its proxy materials for the 2022 Annual Meeting in the event that the Staff does not concur with the exclusion of either of the previously submitted proposals from the Company's proxy materials for the 2022 Annual Meeting.

Analysis

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

Under Rule 14a-8(i)(7), a shareholder proposal may be excluded from a company's proxy materials if the proposal "deals with matters relating to the company's ordinary business operations." In Exchange Act Release No. 34-40018 (May 21, 1998) (the "1998 Release"), the Commission stated that the policy underlying the ordinary business exclusion rests on two central considerations. The first recognizes that certain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight. The second consideration relates to the degree to which the proposal seeks to "micro-manage" the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment. As demonstrated below, the Proposal implicates both of these two central considerations.

1. The Proposal deals with the Company's ordinary business operations.

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. *See, e.g.*, *JPMorgan Chase & Co.* (Mar. 26, 2021) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a study on the costs created by the Company in underwriting multi-class equity offerings); *JPMorgan Chase & Co.* (Mar. 19, 2019) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report examining the "politics, economics and engineering for the construction of a sea-based canal through the Tehuantepec isthmus of Mexico," noting that the proposal "relates to the products and services offered for sale by the Company"); *Wells Fargo & Co.* (Jan. 28, 2013, *recon. denied* Mar. 4, 2013) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company report on the adequacy of the company's policies in addressing the social and financial impacts of its direct deposit advance lending service, noting that the proposal "relates to the products and services offered for sale by the company," and that "[p]roposals concerning the sale of particular products and services are generally excludable under rule 14a-8(i)(7)"); *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)"); *Bank of America Corp*. (Feb. 21, 2007) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on policies against providing financial services that enable capital flight and result in tax avoidance, noting that the proposal "relat[es] to [the company's] ordinary business operations (i.e., sale of particular services)").

In particular, the Staff consistently has permitted exclusion under Rule 14a-8(i)(7) of proposals relating to a company's decisions with regard to financial products and services offered to particular types of customers. In *JPMorgan Chase & Co.* (Mar. 12, 2010), for example, the proposal requested a report assessing the impact of mountain top removal coal mining by the Company's clients on the environment and people of Appalachia and the adoption of a policy barring future financing of companies engaged in mountain top removal coal mining. The Company argued, in part, that the proposal related to its ordinary business matters because it sought "to determine the products and services the Company should offer, as well as those particular customers to whom the Company should provide its products and services." In permitting exclusion under Rule 14a-8(i)(7), the Staff noted 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)." *See also, e.g.*, *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, greater than four times a 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 this instance, the Proposal focuses primarily on the products and services offered for sale by the Company and, specifically, on the Company's decisions with regard to financing offered to particular types of customers, both of which are ordinary business matters. In this respect, the Proposal's resolved clause requests that the Company "set[] absolute contraction targets for the Company's financed greenhouse gas emissions," and "address the lack of need for new fossil fuel development." In addition, the Proposal's supporting statement claims that "[b]y underwriting or lending to projects which are unneeded," the Company is "knowingly loading potentially stranded assets onto its clients' balance sheets, or its own, creating financial and litigation risk." When read together, the Proposal's resolved clause and supporting statement demonstrate a clear focus on the Company's ordinary business matters.

In this regard, the Proposal's supporting statement also claims that by providing financing to particular types of customers, the Company is "creating reputational risk" and that the Company "has no policy to halt financing new oil and gas exploration and development." These statements emphasize the Proposal's focus on particular decisions made by the Company's management regarding the investment, underwriting and lending products and services offered by the Company to particular types of customers, including the particular approach the Company takes for financing certain projects. Decisions with respect to the products offered and the types of companies and industries the Company deals with 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. As a result, the Proposal is precisely the type that companies are permitted to exclude under Rule 14a-8(i)(7).

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. As discussed above, in *JPMorgan Chase & Co.* (Mar. 12, 2010), the proposal requested, among other things, that the Company adopt a policy barring the financing of companies engaged in mountain top removal mining. In permitting exclusion under Rule 14a-8(i)(7), the Staff noted that "the proposal addresses matters beyond the environmental impact of [the Company's] project finance decisions, such as [the Company's] decisions to extend credit or provide other financial services to particular types of customers." *See also, e.g., PetSmart, Inc.* (Mar. 24, 2011) (permitting exclusion under Rule 14a-8(i)(7) when, although the proposal addressed the potential significant policy issue of the humane treatment of animals, the proposal covered a broad scope of laws ranging "from serious violations such as animal abuse to violations of administrative matters such as record keeping"); *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, even if the Proposal were viewed to touch on a potential significant policy issue, the Proposal's overwhelming concern with the particular products and services offered for sale by the Company and, specifically, the Company's decisions with regard to providing financing to particular types of customers, demonstrates that the Proposal's focus is on ordinary business matters. 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 precedent described above, the Proposal may be excluded under Rule 14a-8(i)(7) as relating to the Company's ordinary business operations.

2. The Proposal seeks to micromanage the Company.

The Staff has consistently agreed that shareholder proposals attempting to micromanage a company by probing too deeply into matters of a complex nature upon which shareholders, as a group, are not in a position to make an informed judgment are excludable under Rule 14a-8(i)(7). *See* 1998 Release; *see also, e.g., JPMorgan Chase & Co.* (Mar. 22, 2019); *Royal Caribbean Cruises Ltd.* (Mar. 14, 2019); *Walgreens Boots Alliance, Inc.* (Nov. 20, 2018); *RH* (May 11, 2018); *Amazon.com, Inc.* (Jan. 18, 2018). As the Commission has explained, a proposal may probe too deeply into matters of a complex nature if it "involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies." *See* 1998 Release. Recently, in Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L"), the Staff explained that a proposal can be excluded on the basis of micromanagement based "on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management."

In particular, the Staff has permitted exclusion on the basis of micromanagement of shareholder proposals seeking the production of reports substantially similar to the one sought by the Proposal. *See, e.g.*, *JPMorgan Chase & Co.* (Mar. 30, 2018) (permitting exclusion on the basis of micromanagement of a proposal that requested a report on the reputational, financial and climate risks associated with project and corporate lending, underwriting, advising and investing for tar sands production and transportation, noting that the proposal sought to "impose specific methods for implementing complex policies"); *EOG Resources, Inc.* (Feb. 26, 2018, *recon. denied* Mar. 12, 2018) (permitting exclusion on the basis of micromanagement of a proposal that requested the company adopt company-wide, quantitative, time-bound targets for reducing greenhouse gas emissions and issue a report discussing its plans and progress towards achieving those targets).

In this instance, the Proposal seeks to micromanage the Company by imposing specific methods for implementing complex policies and inappropriately limiting the discretion of the Company's management. It does so by requesting that the Company adopt "absolute contraction targets for the Company's financed greenhouse gas emissions, in accordance with United Nations Environmental Program Finance Initiative (UNEP FI) recommendations." Accordingly, the Proposal seeks to dictate a specific method for how the Company implements its existing commitment to achieving net zero emissions.

Decisions concerning how the Company implements its emissions reduction strategy require complex business judgments by the Company's management. In this respect, and as recognized by the Proposal, the Company is a member of the Net Zero Banking Alliance and has committed to align with the Paris Climate Agreement and set a path for achieving net zero emissions by 2050. Nevertheless, the Proposal takes issue with the particular methods by which the Company has committed to implement this policy, noting that a certain organization, UNEP FI, prefers an "absolute contraction" approach to decarbonization and that the Company should adopt this approach instead. By requesting that the Company alter its current approach to achieving net zero emissions, which was settled upon after significant consideration of a number of factors, the Proposal seeks to impose a very specific method for addressing the complex issue of climate change. Even under the "measured approach" described in SLB 14L, the Proposal would inappropriately limit management's discretion such that it micromanages the Company, as it dictates that the Company choose a particular method for addressing an issue that the Company already is addressing. The Proposal would, therefore, attempt to micromanage the Company by probing too deeply into matters of a complex nature upon which shareholders, as a group, are not in a position to make an informed judgment.

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

B. The Proposal May Be Excluded Pursuant to Rule 14a-8(i)(11) Because the Proposal Substantially Duplicates Proposals Previously Submitted to the Company.

Under Rule 14a-8(i)(11), a company may exclude a shareholder proposal if it substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting. The Commission has stated that the purpose of Rule 14a-8(i)(11) is to eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted by proponents acting independently of each other. *See* Securities Exchange Act Release No. 34-12598 (July 7, 1976).

Two shareholder proposals need not be identical in order to provide a basis for exclusion under Rule 14a-8(i)(11). Proposals are substantially duplicative when the principal thrust or focus is substantially the same, even though the proposals differ in terms of the breadth and scope of the subject matter. In *Danaher Corp.* (Jan. 19, 2017), for example, the Staff granted the company's request to exclude a proposal asking the company to adopt goals for reducing greenhouse gas emissions, with a supporting statement describing four different reasons to do so, including a moral obligation, because the proposal shared the same principal thrust or focus as a previously-submitted proposal with a supporting statement describing the risks and opportunities provided by climate change. *See also, e.g.*, *Exxon Mobil Corp.* (Mar. 13, 2020) (proposal requesting a report on how the company's lobbying activities align with the Paris Climate Agreement's goal may be excluded under Rule 14a-8(i)(11) because the proposal shared the same principal thrust or focus as a previously-submitted proposal seeking disclosure of lobbying expenditures that was broader in scope); *Duke Energy Corp.* (Feb. 19, 2016) (proposal requesting that the company's board initiate a review of the organizations of which the company was a member or otherwise supported that may engage in lobbying activities and to provide a related report to shareholders may be excluded under Rule 14a-8(i)(11) because the proposal shared the same principal thrust or focus as a previously-submitted proposal requesting a report on the company's direct and indirect lobbying activities, even though, unlike the other supporting statement, the previously-submitted proposal's supporting statement described the need for transparency and accountability concerning the company's role in influencing legislation and the use of corporate funds for lobbying activities); *Pfizer Inc.* (Feb. 17, 2012) (proposal requesting a lobbying priorities report, with a supporting statement describing the company's role in the passage of "ObamaCare," may be excluded under Rule 14a-8(i)(11) because the proposal shared the same principal thrust or focus as a previously-submitted proposal with a supporting statement calling for greater transparency of the company's lobbying expenditures).

1. The Proposal Substantially Duplicates the Proposal Received by the Company on October 21, 2021.

The Company received a proposal (the "First Proposal") from Mercy Investment Services, Inc. and certain co-filers on October 21, 2021, which was revised on October 29, 2021. A copy of the First Proposal is attached hereto as Exhibit B. The Company believes that the Proposal substantially duplicates the First Proposal and, as such, the Proposal may be excluded pursuant to Rule 14a-8(i)(11).

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

> **Resolved:** Shareholders request that JPMorgan Chase (JPMC) adopt a policy by the end of 2022 in which the company takes available actions to help ensure that its financing does not contribute to new fossil fuel supplies that would be inconsistent with the IEA's Net Zero Emissions by 2050 Scenario.

The principal thrust and focus of the Proposal and the First Proposal are the same—a request that the Company adopt an alternative approach to reducing greenhouse gas emissions. Specifically, the Proposal requests that the Company "set[] absolute contraction targets for the Company's financed greenhouse gas emissions, in accordance with the [UNEP FI] recommendations . . . for credible net zero commitments." Likewise, the First Proposal asks the Company to "ensure that its financing does not contribute to new fossil fuel supplies that would be inconsistent with the IEA's Net Zero Emissions by 2050 Scenario." Similarly, the Proposal's supporting statement alleges that the Company "has committed to align with pathways consistent with a maximum temperature rise of 1.5 degrees Celsius above pre-industrial levels" but that the Company's "current decarbonization plan is not aligned with a credible net zero pathway." Likewise, the First Proposal's supporting statement focuses on the Company's "2030 targets [to reduce] greenhouse gas emissions per unit of output" and claims that these "targets do not meet the identified need … to cut *absolute* emissions."

Each proposal also demonstrates a concern with eliminating financing of new fossil fuel projects. In this regard, the Proposal's supporting statement claims that "[t]argeting portfolio carbon efficiency by itself, without adopting absolute greenhouse gas emission reduction standards for its financing, allows for an increase in the Company's total fossil fuel financing" and that the Company "has no policy to halt financing new oil and gas exploration and development." Similarly, the First Proposal claims that "[t]he IEA's 1.5 degree scenario does not contemplate new fossil fuel development, but the Company continues to finance it," that the Company's current greenhouse gas emissions targets "are compatible with the *expansion* of fossil fuels" and that the Company should therefore take steps to ensure its financing does not contribute to new fossil fuel supplies.

Although the breadth and scope of the Proposal and the First Proposal, as well as their respective supporting statements, may differ slightly, with one emphasizing the need to set absolute contraction targets in line with the UNEP FI and one emphasizing the need to cut absolute emissions in line with IEA standards and, the Proposal and the First Proposal share the same thrust and focus—adopting an alternative approach to reducing greenhouse gas emissions. Moreover, the policy requested by the First Proposal would, in large measure, overlap with the greenhouse gas emissions targets requested by the Proposal because it would result in a policy prohibiting any further financing related to fossil fuels. Therefore, the inclusion of both proposals in the Company's proxy materials for the 2022 Annual Meeting would be duplicative and would frustrate the policy concerns underlying the adoption of Rule 14a-8(i)(11).

2. The Proposal Substantially Duplicates the Proposal Received by the Company on December 1, 2021.

The Company received a proposal (the "Second Proposal") from Tulipshare Limited on behalf of Charles Armitage, sent via email, on December 1, 2021. A copy of the Second Proposal is attached hereto as Exhibit C. The Company believes that the Proposal substantially duplicates the Second Proposal and, as such, the Proposal may be excluded pursuant to Rule 14a-8(i)(11).

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

> **RESOLVED:** Shareholders request that JPMorgan Chase & Co. ("JPM"), in light of the ongoing climate crisis and to meet the goals of the Paris Agreement, end its investment, underwriting, and lending activities in fossil fuels.

The principal thrust and focus of the Proposal and the Second Proposal are the same—a request that the Company adopt an alternative approach to reducing greenhouse gas emissions. As noted above, the Proposal requests that the Company "set[] absolute contraction targets for the Company's financed greenhouse gas emissions, in accordance with the [UNEP FI] recommendations . . . for credible net zero commitments." Likewise, the Second Proposal asks that, "in light of the ongoing climate crisis and to meet the [emissions] goals of the Paris Agreement," the Company "end its investment, underwriting, and lending activities in fossil fuels."

Each proposal also demonstrates a concern with eliminating financing of new fossil fuel projects. In this regard, the Proposal's supporting statement claims that "[t]argeting portfolio carbon efficiency by itself, without adopting absolute greenhouse gas emission reduction standards for its financing, allows for an increase in the Company's total fossil fuel financing" and that the Company "has no policy to halt financing new oil and gas exploration and development." Similarly, the Second Proposal seeks a total prohibition on financing activities in fossil fuels, noting that the Company "has yet to commit to actually end its fossil fuel-related activities."

Although the breadth and scope of the Proposal and the Second Proposal, as well as their respective supporting statements, may differ slightly, with one emphasizing stricter standards for achieving net zero emissions and one seeking a ban on financing activities in fossil fuels in order to reduce greenhouse gas emissions, the Proposal and the Second Proposal share the same thrust and focus—adopting an alternative approach to limiting greenhouse gas emissions. Moreover, due to the more restrictive nature of the Second Proposal, the policy requested by the Second Proposal would subsume the policy requested by the Proposal. Therefore, the inclusion of both proposals in the Company's proxy materials for the 2022 Annual Meeting would be duplicative and would frustrate the policy concerns underlying the adoption of Rule 14a-8(i)(11).

Accordingly, because the Proposal substantially duplicates the First Proposal and the Second Proposal, which were previously submitted to the Company, the Proposal may be excluded pursuant to Rule 14a-8(i)(11) in the event that the Staff does not concur with the exclusion of the First Proposal or the Second Proposal from the Company's proxy materials for the 2022 Annual Meeting.

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.

Dan Chu
Executive Director
The Sierra Club Foundation

Paul Rissman
Director
The Sierra Club Foundation

EXHIBIT A

(see attached)

SIERRA CLUB
FOUNDATION

THE FOUNDATION FOR A HEALTHY PLANET.

December 3, 2021

Via Courier

JPMorgan Chase & Co.
Office of the Secretary
4 New York Plaza
New York, NY 10004-2413
Attention: John H. Tribolati
Secretary

Re: Shareholder proposal for 2022 Annual Shareholder Meeting

Dear Mr. Tribolati,

The Sierra Club Foundation is submitting the attached proposal (the "Proposal") pursuant to the Securities and Exchange Commission's Rule 14a-8 to be included in the proxy statement of JPMorgan Chase & Co. (the "Company") for its 2022 annual meeting of shareholders. Sierra Club Foundation is the lead filer for the Proposal and may be joined by other shareholders as co-filers.

The Sierra Club Foundation has continuously beneficially owned, for at least three years as of the date hereof, at least $2000 worth of the Company's common stock. Verification of this ownership will be sent under separate cover. The Sierra Club Foundation intends to continue to hold such shares through the date of the Company's 2022 annual meeting of shareholders. In addition, we intend to present the proposal at the 2022 annual meeting.

A Director of the Sierra Club Foundation is available to meet with the Company via teleconference on December 17th, 20th or 21st at 1 PM Eastern Standard Time. Any co-filers will either (a) be available on those dates and times or (b) in their submission letters, authorize us to engage with the Company on their behalf, within the meaning of Rule 14a-8(b)(iii)(B).

Please contact our Director, Paul Rissman on [redacted] or by email at [redacted] to schedule a meeting. Please feel free to contact him with any questions.

Sincerely,

Dan Chu

Dan Chu
Executive Director

[redacted]

SIERRA CLUB FOUNDATION

THE FOUNDATION FOR A HEALTHY PLANET.

Resolved: Shareholders request that the Board of Directors issue a report that sets absolute contraction targets for the Company's financed greenhouse gas emissions, in accordance with United Nations Environmental Program Finance Initiative (UNEP FI) recommendations to the G20 Sustainable Finance Working Group, for credible net zero commitments.

Proponents request that, in the discretion of board and management, the report address the lack of need for new fossil fuel development beyond projects already committed as of 2021, as set forth in the UNEP FI recommendations.

Supporting Statement

Our Company notes that "[c]limate change manifesting as physical or transition risks could have a material adverse impact on JPMorgan Chase's business operations, clients and customers."[1]

JPMorgan is a member of the Net Zero Banking Alliance (NZBA). It has committed to align with pathways consistent with a maximum temperature rise of 1.5 degrees Celsius above pre-industrial levels and to use decarbonization scenarios from "credible and well-recognized sources."[2]

However, JPMorgan's current decarbonization plan is not aligned with a credible net zero pathway. The UNEP FI, which convenes the NZBA, published an Input Paper to the G20 Sustainable Finance Working Group which defines credible net zero commitments of financial institutions.[3] UNEP FI contrasts two decarbonization approaches: "absolute contraction," or "[r]educing the absolute amount of carbon in the portfolio," versus an "[e]conomic intensity-based" approach, or "[a]chieving a greater carbon efficiency per dollar invested." While JPMorgan publishes decarbonization targets based on carbon efficiency, UNEP FI emphasizes "**it is most convincing for investors to use an absolute contraction approach** (original emphasis)..."[4] Targeting portfolio carbon efficiency by itself, without adopting absolute greenhouse gas emission reduction standards for its financing, allows for an increase in the Company's total fossil fuel financing. For example,

[1] JPMorgan Chase 2020 Form 10-K, at 28.

[2] https://www.unepfi.org/wordpress/wp-content/uploads/2021/04/UNEP-FI-NZBA-Commitment-Statement.pdf

[3] https://g20sfwg.org/wp-content/uploads/2021/10/2021-UNEP-FI.-Recommendations-for-Credible-Net-Zero-Commitments.pdf

[4] *Id*. At 14.

focusing on only lower carbon intensity fuels, such as fracked gas, decreases overall portfolio intensity while potentially increasing its overall financed emissions.

This is a red flag for JPMorgan, the world's top financier of companies expanding fossil fuels.[5] The UNEP FI recommendations also admonish: "A financial institution establishing a net-zero commitment should begin aligning with the required assumptions and implications of IPCC 1.5°C no/low overshoot pathways as soon as possible….All no/low overshoot scenarios indicate an immediate reduction in fossil fuels, signaling that investment in new fossil fuel development is not aligned with 1.5°C."[6] JPMorgan has no policy to halt financing new oil and gas exploration and development.

JPMorgan's assertions of climate leadership fly in the face of its actions, creating reputational risk from greenwashing accusations. By underwriting or lending to projects which are unneeded under the UNEP FI recommendations, JPMorgan is also knowingly loading potentially stranded assets onto its clients' balance sheets, or its own, creating financial and litigation risk.[7] In this regard, investors need to know that JPMorgan's emissions reduction targets, and its lending and underwriting policies, are consistent with its own net zero commitment.

[5] https://www.ran.org/wp-content/uploads/2021/03/Banking-on-Climate-Chaos-2021.pdf, at 38.
[6] https://g20sfwg.org/wp-content/uploads/2021/10/2021-UNEP-FI.-Recommendations-for-Credible-Net-Zero-Commitments.pdf, at 15.
[7] https://www.justice.gov/opa/pr/goldman-sachs-agrees-pay-more-5-billion-connection-its-sale-residential-mortgage-backed

[redacted]

EXHIBIT B

(see attached)

Fossil Fuel Financing

Resolved: Shareholders request that JPMorgan Chase (JPMC) adopt a policy by the end of 2022 in which the company takes available actions to help ensure that its financing does not contribute to new fossil fuel supplies that would be inconsistent with the IEA's Net Zero Emissions by 2050 Scenario.

Supporting Statement

While JPMC has asserted that it is taking "comprehensive steps"[1] to align with the climate goals of the Paris Agreement", the company's position as a leading financier of fossil fuels conflicts with a scenario in which global warming does not exceed 1.5° C.

For instance, in May 2021, the International Energy Agency (IEA) found that for the world to limit warming to 1.5 degrees Celsius by 2050, effective immediately "there is no need for investment in new fossil fuel supply."[2] The IEA's 1.5 degree scenario does not contemplate new fossil fuel development, but the Company continues to finance it.

Exceeding a 1.5° scenario jeopardizes the global economy. Under current emission trajectories, 10% of total global economic value has been estimated to be lost by 2050.[3] Limiting warming to 1.5 versus 2 degrees could save $20 trillion globally by 2100; exceeding 2 degrees could lead to climate damages in the hundreds of trillions.

To diversified investors, continued support for fossil fuel development threatens long-term portfolio value; for banks, it means increased credit, market, and operational risks.[4] Even short-term fossil fuel financing contributes to long-term risk: the IPCC's 2021 report confirmed that historic and current emissions have locked in warming for the next two decades.[5]

In May 2021, JPMC released 2030 targets for oil and gas, electric power and autos as part of its "Paris-aligned financing commitment". The bank's 2030 targets specify reductions in carbon intensity — that is, greenhouse gas emissions per unit of output.

1 https://www.businesswire.com/news/home/20210513005492/en/JPMorgan-Chase-Releases-Carbon-Reduction-Targets-for-Paris-Aligned-Financing-Commitment
2 https://www.iea.org/reports/net-zero-by-2050 p 21
3 https://www.swissre.com/institute/research/topics-and-risk-dialogues/climate-and-natural-catastrophe-risk/expertise-publication-economics-of-climate-change.html
4 https://www.accenture.com/us-en/insights/banking/climate-change-risk-banks
5 https://www.nytimes.com/2021/08/09/climate/climate-change-report-ipcc-un.html

These targets are compatible with *expansion* of fossil fuels. The intensity targets do not meet the identified need, over the next decade, to cut global *absolute* emissions by 45%. JPMC has been identified as the largest funder of companies expanding oil and gas production.[6] Some of these oil and gas companies have set intensity reduction targets meeting or exceeding what JPMC is calling for, even as they plan continued oil and gas expansion.

Public calls for an end to fossil fuel finance have grown and threaten JPMC's reputation. For example, in September 2021, JPMC and other large banks were named in an op-ed by youth climate activists calling on the banks to stop financing expansion of fossil fuels.[7]

We urge shareholders to vote in favor of this proposal, to encourage JPMorgan Chase align with global efforts to contain climate change.

6 https://www.bankingonclimatechaos.org/
7 https://www.teenvogue.com/story/banks-fund-fossil-fuels

EXHIBIT C

(see attached)

Shareholder Proposal

RESOLVED: Shareholders request that JPMorgan Chase & Co. ("JPM"), in light of the ongoing climate crisis and to meet the goals of the Paris Agreement, end its investment, underwriting, and lending activities in fossil fuels.

SUPPORTING STATEMENT:
Climate change caused by global warming is a growing threat to humanity and the planet.[1] The Federal Reserve has begun to warn that climate-related financial risk is a threat to the safety and soundness of individual financial institutions and the stability of the overall financial system.[2]

In order to avoid the worst climate impacts and still maintain a livable climate, the global temperature rise needs to be limited to no more than 1.5 degrees Celsius.[3] As set out in the Paris Agreement, this goal requires net zero greenhouse gas ("GHG") emissions by 2050.[4] However, in order to limit global warming to 1.5 degrees, a recent scientific study showed that the use of oil and gas must decrease annually by 3% until 2050 and that many planned and operational fossil fuel projects therefore will be unviable.[5]

Everyone has a role in climate change, and banks in particular play a critical role in helping to meet the goals of the Paris Agreement. Banks can either be enablers for fossil fuel pollution by providing the world's largest GHG emitters with funding to extract more fossil fuels, or they can be powerful levers used to compel these same companies to cut emissions and prepare responsibly for a greener future.[6]

However, since the signing of the Paris Agreement in December 2015, at least $3.8 trillion has been invested in fossil fuels by sixty banks, with JPM emerging shamefully as the largest fossil fuel financier in the world.[7] According to Bloomberg data, JPM earned an estimated $900 million in fees from arranging loans and bond sales since the beginning of 2016 – this is 40% more than Bank of America and 60% more than Wells Fargo.[8]

While JPM recently announced that it would finance and facilitate more than $2.5 trillion to address climate change over the next decade, with $1 trillion earmarked for green initiatives such as clean technologies,[9] JPM has yet to commit to actually end its fossil fuel-related activities. Fossil fuel divestment is a key strategy to combat climate change, as it can reduce new capital

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[1] https://climate.nasa.gov/causes/
[2] https://www.frbsf.org/economic-research/publications/economic-letter/2021/february/climate-change-is-source-of-financial-risk/
[3] https://www.un.org/en/climatechange/what-is-climate-change
[4] https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement
[5] https://www.nature.com/articles/s41586-021-03821-8
[6] https://www.bloomberg.com/news/articles/2021-04-27/banks-produce-700-times-more-emissions-from-loans-than-offices
[7] https://reclaimfinance.org/site/wp-content/uploads/2021/03/BOCC__2021_vF.pdf
[8] https://www.bloomberg.com/news/articles/2021-05-19/jpmorgan-tops-banks-supporting-fossil-fuel-and-signals-green-shift
[9] https://www.sec.gov/ix?doc=/Archives/edgar/data/0000019617/000001961721000292/jpm-20210331.htm

flows into the fossil fuel industry[10] and help reduce global fossil fuel consumption.[11] It also sends a clear signal that companies need to prepare for a greener and more sustainable future. If JPM were to divest, other banks would likely follow – creating a race to move away from dirty fossil fuels and towards more sustainable alternatives.

As the largest fossil fuel financier in the world, JPM enables and encourages fossil fuel pollution, which has a broad societal impact. Its continued fossil fuel activities, including their sheer scale, also place the company and its shareholders at risk.

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[10] https://academic.oup.com/joeg/article/21/1/141/6042790
[11] https://www.smithschool.ox.ac.uk/publications/reports/SAP-divestment-report-final.pdf

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February 15, 2022
Via electronic mail

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

Re: Shareholder Proposal to JPMorgan Chase & Co. Regarding Climate Change on Behalf of the Sierra Club Foundation

Ladies and Gentlemen:

The Sierra Club Foundation (the "Proponent") is beneficial owner of common stock of JPMorgan Chase & Co. (the "Company") and has submitted a shareholder proposal (the "Proposal") to the Company. I have been asked by the Proponent to respond to the letter dated January 11, 2021 ("Company Letter") sent to the Securities and Exchange Commission by Brian Breheny of Skadden Arps. In that letter, the Company contends that the Proposal may be excluded from the Company's 2022 proxy statement. A copy of this letter is being emailed concurrently to Mr. Breheny.

SUMMARY

The Proposal asks the Board of Directors to issue a report that sets absolute contraction targets for the Company's financed greenhouse gas emissions, in accordance with United Nations Environmental Program Finance Initiative (UNEP FI) recommendations to the G20 Sustainable Finance Working Group, for credible net zero commitments.

The Company asserts that the Proposal may be excluded under Rule 14a-8(i)(7) as relating to the Company's ordinary business operations. However, when examining the Proposal against the Commission and Staff's guidance on shareholder proposals, including ordinary business and micromanagement, it is evident that the Proposal addresses a transcendent policy issue and does not micromanage or otherwise inappropriately address the Company's ordinary business.

Although the Company has made various climate commitments including "net zero by 2050" and interim targets for high carbon sectors, the Company is notably the leading financier of fossil fuels.

The Company has established carbon intensity targets for three sectors in its lending portfolio. However, a focus on "absolute contraction targets" is considered by the United Nations Environment Programme to be the most credible approach to fulfilling net zero commitments: "I**t is most convincing for investors to use an absolute contraction approach**."[1]

In contrast, the Company's use of carbon intensity targets, combined with its policies that leave an open door to continued financing of new fossil fuel development, do not instill confidence in investors that the

[1] https://g20sfwg.org/wp-content/uploads/2021/10/2021-UNEP-FI.-Recommendations-for-Credible-Net-Zero-Commitments.pdf

Company is aligning with global goals or its own net zero commitment. Thus, the Proposal is consistent with Staff precedents asking companies to set greenhouse gas (GHG) reduction targets aligned with the Paris Agreement and with the Company's own declared net zero goals, and it does not micromanage by asking the Company to establish GHG targets that demonstrate credible alignment with the Paris Agreement and the Company's net zero goals.

Therefore, because the Proposal does not micromanage, but raises appropriate issues for shareholder deliberation, it is not excludable under Rule 14a-8(i)(7).

The Proponent notes that the Company Letter also claims that the Proposal is duplicative and excludable under Rule 14a-8(i)(11) based on the submission of two other proposals prior to the Proponent's Proposal. Contrary to the Company's argument, the previously filed proposals focused on asking the Company to alter its policies on financing of fossil fuels and fossil fuel development. In contrast, the current Proposal asks the Company to set absolute contraction targets applicable to its entire financing portfolio. The policy endpoints of these proposals are not sufficiently similar to merit exclusion of the current Proposal if either of the two other proposals are included on the proxy. Shareholders would not find it confusing or overlapping to vote on the current Proposal alongside one of the other prior proposals, and in particular might well choose to support the targets suggested by the current proposal without supporting the other proposals which call for policies directly restricting fossil fuel lending. Therefore the Proposal is not excludable under Rule 14a-8(i)(11).

THE PROPOSAL

Resolved: Shareholders request that the Board of Directors issue a report that sets absolute contraction targets for the Company's financed greenhouse gas emissions, in accordance with United Nations Environmental Program Finance Initiative (UNEP FI) recommendations to the G20 Sustainable Finance Working Group, for credible net zero commitments.

Proponents request that, in the discretion of board and management, the report address the lack of need for new fossil fuel development beyond projects already committed as of 2021, as set forth in the UNEP FI recommendations.

Supporting Statement
Our Company notes that "[c]limate change manifesting as physical or transition risks could have a material adverse impact on JPMorgan Chase's business operations, clients and customers."[2]
JPMorgan is a member of the Net Zero Banking Alliance (NZBA). It has committed to align with pathways consistent with a maximum temperature rise of 1.5 degrees Celsius above pre-industrial levels and to use decarbonization scenarios from "credible and well-recognized sources."[3]

However, JPMorgan's current decarbonization plan is not aligned with a credible net zero pathway. The UNEP FI, which convenes the NZBA, published an Input Paper to the G20 Sustainable Finance Working Group which defines credible net zero commitments of financial institutions.[4] UNEP FI contrasts two decarbonization approaches: "absolute contraction," or "[r]educing the absolute amount of carbon in the portfolio," versus an "[e]conomic intensity-based" approach, or "[a]chieving a greater carbon efficiency

[2] JPMorgan Chase 2020 Form 10-K, at 28.
[3] https://www.unepfi.org/wordpress/wp-content/uploads/2021/04/UNEP-FI-NZBA-Commitment-Statement.pdf
[4] https://g20sfwg.org/wp-content/uploads/2021/10/2021-UNEP-FI.-Recommendations-for-Credible-Net-Zero-Commitments.pdf

per dollar invested." While JPMorgan publishes decarbonization targets based on carbon efficiency, UNEP FI emphasizes "**it is most convincing for investors to use an absolute contraction approach** (original emphasis)..."[5] Targeting portfolio carbon efficiency by itself, without adopting absolute greenhouse gas emission reduction standards for its financing, allows for an increase in the Company's total fossil fuel financing. For example focusing on only lower carbon intensity fuels, such as fracked gas, decreases overall portfolio intensity while potentially increasing its overall financed emissions.

This is a red flag for JPMorgan, the world's top financier of companies expanding fossil fuels.[6] The UNEP FI recommendations also admonish: "A financial institution establishing a net-zero commitment should begin aligning with the required assumptions and implications of IPCC 1.5°C no/low overshoot pathways as soon as possible....All no/low overshoot scenarios indicate an immediate reduction in fossil fuels, signaling that investment in new fossil fuel development is not aligned with 1.5°C."[7] JPMorgan has no policy to halt financing new oil and gas exploration and development.

JPMorgan's assertions of climate leadership fly in the face of its actions, creating reputational risk from greenwashing accusations. By underwriting or lending to projects which are unneeded under the UNEP FI recommendations, JPMorgan is also knowingly loading potentially stranded assets onto its clients' balance sheets, or its own, creating financial and litigation risk.[8] In this regard, investors need to know that JPMorgan's emissions reduction targets, and its lending and underwriting policies, are consistent with its own net zero commitment.

BACKGROUND

In May 2021 the Company released 2030 targets as part of its "Paris-aligned financing commitment". These intensity-only targets for oil and gas, power and autos are fully compatible with expansion of fossil fuels and threaten to rubber-stamp increases in absolute emissions, according to a published analysis. The fact that the Company refers to its targets as "Paris-aligned" has been called "a fig leaf for fossil expansion." The bank's 2030 targets specify reductions in carbon intensity — that is, greenhouse gas emissions per unit of output — across each portfolio.

A recent technical analysis determined that JPMorgan Chase's intensity-reduction targets are compatible with *expansion* of fossil fuels and increases in absolute emissions. For example, Shell — JPMorgan Chase's #7 fossil client — appears to have 2030 carbon-intensity reduction targets that broadly match JPMorgan Chase's, and plans to massively expand production, especially of fossil gas.[9] Since the Paris Agreement, JPMorgan Chase has financed 56 of the 75 companies doing the most to expand oil and gas.

Intensity targets alone are simply insufficient during the decade when we must cut global absolute emissions by 45%, at minimum.[10] The Proposal gives shareholders the opportunity to vote on whether

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[5] *Id*. At 14.
[6] https://www.ran.org/wp-content/uploads/2021/03/Banking-on-Climate-Chaos-2021.pdf, at 38.
[7] https://g20sfwg.org/wp-content/uploads/2021/10/2021-UNEP-FI.-Recommendations-for-Credible-Net-Zero-Commitments.pdf, at 15
[8] https://www.justice.gov/opa/pr/goldman-sachs-agrees-pay-more-5-billion-connection-its-sale-residential-mortgage-backed
[9] A fig leaf for fossil expansion, Assessing JPMorgan Chase's 2030 Climate Targets found at https://www.ran.org/wp-content/uploads/2021/05/RAN-Assessing-JPMorgan-Chases-2030-Climate-Targets-May-2021-1.pdf p. 4.
[10] "Summary for Policymakers," in "Global Warming of 1.5°C: An IPCC Special Report on the Impacts of Global Warming of 1.5°C Above Pre-Industrial Levels and Related Global Greenhouse Gas Emission Pathways, in the

the Company should set absolute contraction goals for carbon emissions, thereby coming into alignment with the global objectives.

ANALYSIS
Rule 14a-8(i)(7)

The Company Letter asserts that the Proposal addresses the ordinary business of the Company. However, when examining the Proposal against the Commission and Staff's guidance on shareholder proposals, including ordinary business and micromanagement, it is evident that the proposal addresses a transcendent policy issue and does not micromanage or otherwise inappropriately address the Company's ordinary business.

Ordinary Business According to the Commission

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

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

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

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

Proposals that passed the first prong but for which the wording involved some degree of micromanagement could be subject to a case-by-case analysis of *whether the proposal probes too deeply* for shareholder deliberation. The Staff's interpretation of micromanagement has evolved over the years, most recently articulated in the November 3, 2021 Staff Legal Bulletin 14L.[11]

Micromanagement Analysis Under Staff Legal Bulletin 14L

Thus, the Staff Legal Bulletin's analysis of issues of micromanagement comes down to two basic tests to determine whether a proposal "probes to deeply" for shareholders' consideration:

Context of Strengthening the Global Response to the Threat of Climate Change, Sustainable Development, and Efforts to Eradicate Poverty," edited by Valérie Masson-Delmotte et al., IPCC, 2018, p. 14.
[11] The Staff Bulletin notes an evolution in the staff's thinking. In rescinding prior staff legal bulletins, the bulletin notes that: we believe that the rescinded guidance may have been taken to mean that any limit on company or board discretion constitutes micromanagement.

> Does it leave sufficient flexibility for board and management discretion?
>
> Does the proposal frame the investor deliberation in a manner consistent with market discussions, available guidelines and the state of familiarity/expertise on the issues in the investing marketplace?

We will address each of these questions in turn.

The Proposal is Not Too Directive for Purposes of Rule 14a-8(i)(7)/Micromanagement
How Flexible or Specific Should a Shareholder Proposal Be?

The shareholder proposal rule states that a proposal should "state as clearly as possible the course of action" that the proponent believes "the company should follow"[12] as an advisory "request" for company action. Thus, any claim that the proposal is overly inflexible must be evaluated against this fundamental guidance in the rule itself. Moreover, failure to be specific invites a company challenge based on vagueness, that either the company or its shareholders will not understand the scope of the proposal or how it will be implemented.

It is also possible for a proposal to encroach too far onto the board and management discretion. But as an advisory proposal, the board and management's discretion is seldom encroached by a proposal. Even after a majority of support on an advisory proposal, the board and management are *expected* to exercise discretion to act as fiduciaries in the interests of the corporation. The request of the current Proposal is advisory, not directive.

The Company Letter argues that the Proposal "imposes" specific methods for implementing complex policies and inappropriately limits the discretion of the Company's management. However, as we have stated above, the Proposal does nothing to impose specific requirements on the management. The request of the Proposal is merely advisory, and leaves management wide latitude in accomplishing the general purpose and objective.

The Staff has long determined that proposals addressing climate risk are appropriate for financial services companies. For instance, in *PNC Financial Services Group, Inc.* (February 13, 2013) the Proposal requested that the Board report to shareholders PNC's assessment of the greenhouse gas emissions resulting from its lending portfolio and its exposure to climate change risk in its lending, investing, and financing activities. PNC had argued ordinary business and micromanagement because any proposal involving an evaluation of a wide range of factors associated with its lending, investing, and financing activities are part of its day-to-day lending and investment operations. PNC, in attempting to assert the complexity of the issue, and therefore that the proposal micromanaged, had similarly argued:

> Any assessment of the effects of the greenhouse gas emissions resulting from PNC's lending portfolio and its exposure to climate change risk as a result of its lending, investing and financing activities ("GHG/Climate Exposure") involves an evaluation of a wide range of factors, including the risk that GHG/Climate Exposure will impact the revenues and cash flow of the Company's borrowers, its trading partners and the institutions comprising its investment portfolio. For example, the Company evaluates the risks associated with GHG/Climate Exposure, to the extent that such risks might impact customers, in connection with the Company's underwriting and investing standards, policies and procedures, as well as in establishing loan pricing policies and

[12] *See* Rule 14a-8(a).

> loan loss reserves. In addition, GHG/Climate Exposure is just one of many risks that the Company considers as part of its daily operations in conducting its various lines of business, including its daily lending and investment operations.
>
> *In essence, the Proposal focuses on matters that involve the Company's fundamental day-to-day business activities and the manner, time and expense that the Company allocates or incurs with respect to one particular category of risk,* and would require the Company to allocate significant resources to provide a detailed report that, in effect, summarizes certain aspects of the Company's ordinary business operations.
> *That the risk in question relates to an environmental issue does not change the focus of the Proposal -- PNC's day-to-day choices in extending credit, managing assets, and investing capital, and how PNC measures the totality of the risk associated with doing business with particular customers or making certain investments. . . .* In the end, the problem of balancing of the risks arising from GHG/Climate Exposure relative to other risks and considerations relates to the resolution of ordinary business problems and, in the words of the 1998 Release, it is clearly "impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." (Emphasis added).

The Staff rejected the company's argument and found that the proposal did not intrude on ordinary business or micromanage the bank.[13] This follows the logic of numerous other proposals beyond the financial sector that similarly asked for action to reduce social or environmental impacts, both before and after the PNC decision, and found non-excludable under Rule 14a-8(i)(7).

At issue is whether the Company's focus on carbon intensity targets rather than absolute contraction targets is an appropriate issue for shareholder debate. In particular, the Company Letter asserts that the Proposal "seeks to micromanage the Company" by requesting that the Company adopt "absolute contraction targets for the Company's financed greenhouse gas emissions, in accordance with United Nations Environmental Program Finance Initiative (UNEP FI) recommendations." The Company Letter asserts that this implies **"**a specific method for how the Company implements its existing commitment to achieving net zero emissions."

Carbon intensity targets involve calculating the amount of greenhouse gas emissions per unit of output. The problem with such intensity-based targets is that <u>they can actually have the effect of increasing the Company's overall contribution to climate change</u>.

The Company has simultaneously signed on to the Net Zero Banking Alliance while it continues to forge ahead on financing of new fossil fuel development, in contradiction of the UNEP FI guidance. Thus, undergirding the gap between an absolute contraction approach sought by the Proposal and the intensity approach chosen by the Company is the practical reality that an intensity approach can be implemented in a form that is inconsistent with the global guidelines. It is in this context that the Company's micromanagement argument fails when it asserts:

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

> In this respect, and as recognized by the Proposal, the Company is a member of the Net Zero Banking Alliance and has committed to align with the Paris Climate Agreement and set a path for achieving net zero emissions by 2050. Nevertheless, the Proposal takes issue with the particular methods by which the Company has committed to implement this policy, noting that a certain organization, UNEP FI, prefers an "absolute contraction" approach to decarbonization and that the Company should adopt this approach instead. By requesting that the Company alter its current approach to achieving net zero emissions, which was settled upon after significant consideration of a number of factors, the Proposal seeks to impose a very specific method for addressing the complex issue of climate change.

The Company has not demonstrated that its carbon intensity approach leads to alignment with the global benchmarks or its own net zero commitment. The request for an absolute contraction approach is also consistent with Staff precedents rejecting micromanagement exclusion of proposals. In particular, in *Occidental Petroleum* (March 2, 2021) the proposal asked the company to set interim targets aligned with its long-term commitment to net zero. The Staff rejected micromanagement and ordinary business claims on the proposal which asked the company to include medium-term targets covering the greenhouse gas (GHG) emissions of the Company's energy products (Scope 3) on their pathway to their long-term target, which is net-zero emissions before 2050.[14] This is consistent with the current Proposal. In this instance, the Proponent believes that the Company's long-term target as expressed by its membership in the Net Zero Banking Alliance and its commitment to a "path for achieving net zero emissions by 2050"[15] is not consistent with its intensity-only 2030 targets. As in *Occidental Petroleum,* in this instance the Proposal can be understood as requesting the Company to adopt targets that are actually aligned with its long-term commitment.

Significant Policy Issue Analysis and "Products and Services"

The Company Letter inaccurately asserts that the Staff should allow exclusion of the Proposal under Rule 14a-8(i)(7) as relating to the products and services offered for sale by a company.

Contrary to the Company's assertion, the Staff has made it clear in legal bulletins and in precedents that proposals directed to "nitty-gritty" aspects of the company's business, including products or services offered, are not excludable to the extent they are focused on significant policy issues and do not attempt to micromanage business relationships. Thus, the current Proposal, which does not instruct the Company as to which clients it should serve but only asks the Company to establish GHG reduction targets that demonstrate credible alignment with international guidelines and the Company's own net zero commitment, does not impinge on the ordinary business of the company in a manner that renders it excludable.

The Proposal does not attempt to dictate lending or underwriting services or customers. Although such decisions are "nitty-gritty" for the company, where the focus of the Proposal is entirely on a significant policy issue, the fact that it may touch on issues related to products and services offered does not cause it to be excludable. Staff Legal Bulletin 14H, October 22, 2015, made this clear:

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[14] In *Occidental Petroleum* the proposal asked the company to include medium-term targets covering GHG emissions from the company's energy products (Scope 3) "on their pathway to their long-term target, which is net-zero emissions before 2050". The company had already adopted goals for Scope 1 and 2 emissions before 2040 and for Scope 1, 2 and 3 emissions before 2050.
[15] https://www.jpmorganchase.com/impact/sustainability/es-commitments#paris-aligned

> [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 potential for a proposal to touch on a company's products or services is one such "nitty-gritty" issue that does not lead to exclusion when the proposal clearly focuses on a significant policy issue facing the company. The same type of ordinary business objection was unsuccessfully asserted in *J.P. Morgan Chase (February* 28, 2020) where the proposal requested that the company issue a report outlining if and how it intends to reduce the GHG emissions associated with its lending activities in alignment with the Paris Agreement's goal of maintaining global temperature rise below 1.5 degrees Celsius. The company had argued that the proposal impermissibly addressed the offering of products and services, an ordinary business matter. As in the present case, the company's argument cited the same cases in which the proposal touched on products and services but lacked an overriding significant policy issue,[16] or where the proposal sought to dictate outcomes at the company in the offering of particular products or services.[17] The Staff rejected the ordinary business argument.

The Staff has long determined that proposals addressing climate risk are appropriate for financial services companies so long as such proposals do not delve into the individual application of such policies to customers. For instance, in *PNC Financial Services Group, Inc.* (February 13, 2013) the proposal requested that the Board report to shareholders PNC's assessment of the greenhouse gas emissions resulting from its lending portfolio and its exposure to climate change risk in lending, investing, and financing activities. The Staff determined that the proposal was not excludable because it addressed the significant policy issue of climate change. PNC had argued, as the Company does here, that the proposal micromanaged the business or related to products and services. The Staff rejected the claim.

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

This followed a long line of prior staff decisions. It is well-established that a proposal is not excludable merely because it deals with the sale of a company's products or services where significant social policy issues are implicated--as they are here. The current Proposal is in some ways similar to the proposal in *J.P. Morgan Chase (*March 13, 2020) where the proposal asked JPMorgan Chase to describe how it plans to respond to rising reputational risks for the Company and questions about its role in society related to its

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

[17] S*ee also Bank of America Corp. (Trillium)* (Feb. 24, 2010), where the Staff concurred in the exclusion under Rule 14a-8(i)(7) of a proposal seeking analysis of the company's implementation of its mountain top removal policy "beyond environmental issues", i.e., whether to extend credit to particular customers.

involvement in Canadian oil sands production, oil sands pipeline companies, and Arctic oil and gas exploration and production. This was not excludable as focused on ordinary business despite a similar relationship to products and services as in the current proposal. We see the same logic applied in *Bank of America Corporation* (February 23, 2006) where the proposal requested that the board develop higher standards for the securitization of subprime loans to preclude the securitization of loans involving predatory practices. Despite the focus on establishment of a *particular policy*, the staff nevertheless rejected the ordinary business/products and services argument. If a proposal addresses a transcendent social policy issue, and even if it addresses products and services, shareholders are expected to describe it as clearly as possible in terms of what they would like the company to do, as was done in the precedent and the current Proposal.

Even a proposal that expressly seeks to ban a particular product or service of a company, a more restrictive request than the current Proposal, may transcend ordinary business if it clearly focuses on a significant policy issue relevant to the company. For example, in *Amazon.com Inc*. (March 28, 2019) a proposal that was clearly directed toward a company product was found non-excludable. The proposal requested that the board prohibit sales of facial recognition technology to government agencies unless the board concludes, after an evaluation using independent evidence, that the technology does not cause or contribute to actual or potential violations of civil and human rights. An ordinary business claim similar to the Company Letter on the current Proposal was rejected, and rejected again on request for reconsideration. The proponent in opposition to the request for reconsideration wrote: "The Company's Amazon Web Services (AWS) segment is the leading cloud computing company, and is integrating facial recognition software to its services, which the Proposals assert is being done at risk to civil liberties, privacy and public trust in the Company's products and services."

Similarly, proposals seeking to halt the sale of food containing GMO's have been found not to be excludable as addressing ordinary business because of the transcendent policy issue - public concern about the use of and safety of GMO's. Relevant to the present matter is *Quaker Oats Company* (March 28, 2000), in which the proposal requested that the board (1) adopt a policy of removing genetically engineered crops, organisms, or products thereof from all products sold or manufactured by Quaker, where feasible, until long-term testing has shown that they are not harmful to humans, animals, and the environment, with the interim step of labeling and identifying these products, and (2) report to shareholders by August 2000. The Staff was unable to concur that the company was entitled to exclude the proposal in reliance on Rule 14a-8(i)(7), due to the presence of significant policy issues. The context -- a lack of proven safety -- is relevant in the present instance as well.

Another example was the request of *Yahoo! Inc.* (April 5, 2011) where the company requested permission to omit a shareholder proposal from its 2011 proxy materials, which directed the company to formally adopt human rights principles to guide its business in China and other repressive countries. Despite the potential impact on products and services offered in China and elsewhere, the Staff concluded that the proposal focused on the significant policy issue of human rights and was not excludable under Rule 14a-8(i)(7).

Analogous to the current proposal was the proposal in *Bank of America Corporation* (February 22, 2008) on implementation of the equator principles. Proposal requested a report to "describe and discuss how Bank of America's implementation of the Equator Principles has led to improved environmental and social outcomes in its project finance transactions." Bank of America Corporation argued among other things that the proposal related to the Company's ordinary business operations, namely the extension of credit and credit decisions. The staff was unable to accept these views and concluded that exclusion of the proposal from proxy materials was not appropriate.

Similarly, in *Bank of America (*February 26, 2009) the proposal directly focused on requesting a report to shareholders evaluating with respect to practices commonly deemed to be predatory, the company's credit card marketing, lending and collection practices and the impact these practices have on borrowers. Despite the focus on products and services, the prominence of predatory and subprime lending as an issue of concern transcended the ordinary business concern.

The Staff has long recognized that shareholder proposals may properly address business decisions regarding the sale of products where significant policy issues are at issue. *See e.g., Kimberly-Clark Corp.* (Jan. 12, 1988); *Texaco, Inc.* (February 28, 1984); *American Telephone and Telegraph Company* (December 12, 1985); *Harsco Corporation* (January 4, 1993); *Firstar Corporation* (February 25, 1993). In Staff Legal Bulletin No. 14C, the Division considered proposals related to the environment and public health, which it had previously found to involve significant policy considerations, and advised that "[t]o the extent that a proposal and supporting statement focus on the company minimizing or eliminating operations that may adversely affect the environment or the public's health, we do not concur with the company's view that there is a basis for it to exclude the proposal under rule 14a-8(i)(7)." SEC, Division of Corporation Finance, Staff Legal Bulletin No. 14C.

A Deliberation Appropriate to Shareholders

It is appropriate for shareholders to deliberate on whether the Company should live up to credible global guidelines for credible net zero commitments. Staff Legal Bulletin 14 L notes that in considering ordinary business challenges and micromanagement, the Staff will consider whether the deliberation posed by the proposal in question is consistent with current investor discourse and credible national or international guidelines:

> **We would expect the level of detail included in a shareholder proposal to be consistent with that needed to enable investors to assess an issuer's impacts, progress towards goals, risks or other strategic matters appropriate for shareholder input.**
>
> …in order to assess whether a proposal probes matters "too complex" for shareholders, as a group, to make an informed judgment, we may consider the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic. **The staff may also consider references to well-established national or international frameworks when assessing proposals related to disclosure, target setting, and timeframes as indicative of topics that shareholders are well-equipped to evaluate.** [Emphasis added]

Global Guidelines

The United Nations (UN)[18] is the body that has convened the global climate talks, facilitated the global climate agreements and led the scientific assessments of climate change. **Among UN's climate initiatives, the United Nations Environment Programme Finance Initiative (UNEP FI) is the home for the Net Zero Banking Alliance, of which JPMorgan Chase & Co. is a member.**

The UNEP FI 2021 report entitled "Recommendations for Credible Net-Zero Commitments from Financial Institutions" provides clear guidance and benchmarks for issuers and their investors in assessing whether current company pledges are matched by credible commitments considering the global agreements and goals. The recommendations, as noted in the proposal, include the statement that "it is most convincing for investors to use an absolute contraction approach."

[18] https://www.un.org/en/climatechange

Thus, the Proposal is grounded in and benchmarked against key international frameworks and guidelines. As SLB 14L notes, "The staff may also consider references to well-established national or international frameworks when assessing proposals related to disclosure, target setting, and timeframes as indicative of topics that shareholders are well-equipped to evaluate." This Proposal is not about "investors probing too deeply" into Company management, but rather about asking the Company to come into line with the global benchmarks for proactive responses to climate change.

The introduction of this issue as a topic for the Company's shareholder meeting is appropriate and pitched consistent with shareholder understanding and deliberation. Public debate and analysis regarding the actions required towards a net zero future are robust and ongoing.

A January 7, 2022 opinion piece in the Financial Times highlights the dilemma of banks who are part of the UNEP FI's Net Zero Banking Alliance but have yet to commit to a phase-out of new fossil fuel development titled: ***"Banks risk becoming new fossil fuel villains in 2022: Financing climate change culprits is becoming more visible and troublesome than ever before."***[19]

> Definitions of green financing can be generous, but the direction of greenward travel seems clear — except for one thing. Banks may be turning on the taps for green finance but they are far from closing them for fossil fuels. The world's 60 largest private sector banks have put more than $3.8tn into the oil, gas and coal sectors since the 2015 Paris agreement, according to NGO research. And a lot has gone to oil and gas companies with big expansion plans.
>
> With no sign of rapid change, banks face a double difficulty in exposing their fossil financing to more scrutiny — and charges of climate villainy without showing how they might eventually wind it back.
>
> In theory, the problem should be solved by a group like the Net Zero Banking Alliance, whose 98 members account for more than 40 percent of global banking assets. They have to set out plans for zeroing out emissions. The trouble is the brutal maths. Scientists have established it is much safer to limit global warming to 1.5°C. So human-made carbon emissions, much of which come from burning oil, gas and coal, should nearly halve by 2030 and fall to net zero by around 2050.

Investor Interests in the Subject Matter of the Proposal

The financing of continued fossil fuel development by the Company poses important questions for its shareholders: stranded assets and reputational risk to the company, systemic and portfolio wide risks for diversified investors, and due diligence concerns for ESG investors. It is salient for investors to ask the Company, the largest bank financier of fossil fuels, to come into alignment with the leading global benchmarks for an effective climate change mitigation response. The following discussion addresses each of these in turn:

1) Issuer-specific risks. Reducing the extent to which JPMorgan Chase & Co. places the Company's assets at risk, including risks of stranded assets and reputational damage.

[19] https://www.ft.com/content/73615213-08ce-4786-9b8c-773029552bbc

2) <u>Portfolio-wide and Systemic risks</u>. Reducing the extent to which the Company's targets may be inconsistent with an investor's commitment to manage systemic risk by aligning with global climate goals.

3) <u>ESG Due diligence risks</u>. Ensuring that fiduciaries including investment firms, asset managers, analysts and trustees have necessary information from the Company as a portfolio company, to conduct due diligence on the fiduciaries' ESG related claims.

ISSUER SPECIFIC RISKS

Every year since the adoption of the Paris Agreement, JPMorgan Chase has topped the list of the world's largest bank funders of fossil fuels. **The Company's lending and underwriting activities provided nearly $317 billion to fossil fuel clients and projects from 2016 to 2020.**[20] In order to meet its commitment to align financed emissions with the goals of the Paris Agreement, JPMorgan Chase needs to adopt immediate steps to slash its fossil fuel financing, including financing of new fossil fuel development. The Company's financing of fossil fuels poses many risks including increasing the number of stranded assets in its portfolio and reputational risk associated with a public appearance of greenwashing.

Stranded Asset Risk

JPMorgan Chase is at an increasing risk of asset stranding by financing fossil fuels including new fossil fuel development at a massive scale. Stranded assets are a likely consequence of the approaching energy transition.

The implications from the energy transition for the fossil fuel industry are significant. The Production Gap Report[21], which tracks the discrepancy between planned fossil fuel production and global production levels consistent with 1.5°C warming warned that:

> The limits to future extraction implied by the Paris Agreement… combined with competition from rapidly advancing renewable energy technologies, are changing the market outlook for coal, oil, and gas. In this context, extractive projects, which typically have a 30- or 40-year time horizon, may well leave a legacy of stranded assets and unmet liabilities.

A think tank of financial experts that has for several years evaluated the impact of the energy transition on the fossil fuel industry issued a recent report identifying fossil fuel assets and companies most at risk of stranding in a low-carbon world.[22] The report found that "unconventional" (often high-cost) fossil fuel assets in offshore oil, shale oil, oil sands and the Arctic are at a higher risk of stranding. The companies most exposed to stranding include "the world's largest, including ExxonMobil, ConocoPhillips, Rosneft and Petrobras." The report concluded:

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[20] *See* Banking on Climate Change, Fossil Fuel Finance Report 2020 *found at* https://www.ran.org/wp-content/uploads/2020/03/Banking_on_Climate_Change__2020_vF.pdf
[21] *See* SEI, IISD, ODI, E3G, and UNEP. (2020). The Production Gap Report: 2020 Special Report *found at* http://productiongap.org/2020report
[22] *See* Carbon Tracker. Adapt to Survive. September 2021. Why oil companies must plan for net zero and avoid stranded assets *found at* https://carbontracker.org/reports/adapt-to-survive/

> Regardless, in any low-carbon future, the overarching challenge for the oil and gas industry is that the space for new production narrows over time, while the risk of investing in assets that are not required increases, placing capital at risk.
>
> "If [oil and gas] companies are serious about aligning with the Paris goals and reaching net zero globally by mid-century, they need to be prepared for a rapid wind-down of their traditional business segments. Similarly, investors that want to be 1.5°C ready need to be aware of the serious implications that this has for the oil and gas companies they hold.

Concerns about asset stranding in the oil and gas industry are highly relevant for the financing activities of JPMorgan, especially given the Company's large financing of new fossil fuel development and unconventional fossil fuels.

The Company provided nearly $317 billion in total funding to fossil fuel clients and projects from 2016 to 2020. Almost half of this total went to companies *expanding* fossil fuel extraction and infrastructure, and the Company's financing to such companies increased annually from 2017 to 2020.

JP Morgan has also been among the largest global bank funders of unconventional fossil fuels including fracked, offshore and Arctic oil and gas, and tar sands. From 2016 to 2020, it was the second largest global bank providing financing to fracked oil and gas companies ($52.2 bil) and to offshore oil and gas companies ($29.1 bil). The Company was the third largest global bank providing financing to companies in the tar sands industry ($12.1 bil), and the largest bank financing Arctic oil and gas companies ($2.3 bil).

Some of the Company's largest fossil fuel clients from 2016 to 2020 included ExxonMobil ($14.2 billion in financing from the Company), Occidental ($8.1B), Marathon ($6.4B), Saudi Aramco ($6.3B), Pemex ($6.0B), Shell ($4.7B), and Chevron ($4.7B).[23] These firms are among oil and gas companies with the largest current expansion plans as ranked by their exploration capital expenditures and the amount of resources under development.[24]

Given JPMorgan's large financing activities in new fossil fuel development and unconventional fossil fuels, it is not surprising that, based on the analysis cited above, seven of the top ten global oil and gas companies most exposed to asset stranding are clients of JPMorgan. One of the most exposed companies is ExxonMobil, the Company's second largest fossil fuel client during 2016-20.

Climate change and the transition to a low carbon world pose material risks to banks financing the energy sector. The Proposal is an opportunity for shareholders to protect their investments by asking for actions that have the potential to limit the Company's exposure to stranded asset risk from its lending and underwriting activities.

Reputational Risk

In addition, the Proposal is also aligned with investor interest in reputational risk and ensuring that the Company is not vulnerable to charges of greenwashing given its participation in efforts like UNEP FI's Net Zero Banking Alliance.

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[23] *See* Banking on Climate Chaos 2020 Report and Data *found at* www.bankingonclimatechaos.org
[24] *See* data from Global Oil & Gas Exit List *found at* gogel.org

The Office of the Comptroller of the Currency has recognized this risk in its recent proposal[25] on climate accountability of banks, noting that:

> [W]here banks engage in public communication of their climate-related strategies, boards and management should ensure that any public statements about their banks' climate-related strategies and commitments are consistent with their internal strategies and risk appetite statements.

JPMorgan engages in many such communications, including the Company's commitment to net zero financed emissions by 2050 and its interim 2030 targets. Yet, the Company's actions fall short of what is required to align with international benchmarks for credible net zero commitments from financial institutions, including recommendations from UNEP FI, the convener of the Net Zero Banking Alliance. This gap between the Company's statements and actions exposes it to reputational risk.

For the Company's net zero commitment is to be considered credible, JPMorgan needs to take actions aligned with international benchmarks for credible net zero commitments, including halting financing of new fossil fuel development. While JPMorgan has published interim emission targets based on carbon efficiency, UNEP FI emphasizes "**it is most convincing for investors to use an absolute contraction approach** (original emphasis)..."[26] The Company's carbon intensity-based targets allow for an *increase in its absolute emissions* at a time when emissions need to be drastically cut. Although the Company touts its methodology as being "science-based" and "Paris-aligned", it acknowledges the risk of using an intensity based target when stating "[*W*]*e recognize that the use of target rates of change applied to carbon intensity metrics could, in theory, become quickly disconnected from necessary reductions in absolute emissions*..."[27] Without targets focused on absolute emission reductions, shareholders have no way of knowing whether the Company is aligned with its net zero commitment.

Simply put, JPMorgan's existing actions fall well short of the commitments. This gap between the Company's statements and actions exposes it to reputational risk. The Proposal provides a key opportunity for the Company's investors to inquire more deeply about reputational risk and encourage the Company to sustain the credibility of its net zero commitments, by aligning its approach with international benchmarks and moving beyond its current equivocal approach to new oil and gas development.

PORTFOLIO WIDE AND SYSTEMIC RISKS

Many investors and fiduciaries have undertaken policies and commitments to align their portfolios with global climate goals. To the growing portion of institutional and diversified investors who as part of their fiduciary obligations need to consider and engage on the systemic, economy and portfolio wide implications of their holdings, the Proposal provides a key opportunity to engage with the largest funder of fossil fuels among global banks.

The failure to address concerns about the impacts of climate change poses systemic economic risks. As described in a paper by David Comerford and Alessandro Spignati:

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[25] https://www.occ.treas.gov/news-issuances/news-releases/2021/nr-occ-2021-138a.pdf
[26] https://g20sfwg.org/wp-content/uploads/2021/10/2021-UNEP-FI.-Recommendations-for-Credible-Net-Zero-Commitments.pdf
[27] *See* Carbon Compass: Paris-Aligned Financing Commitment Methodology (May 2021) *found at* https://www.jpmorgan.com/content/dam/jpm/cib/complex/content/investment-banking/carbon-compass/Carbon_Compass_Final.pdf

> [A]nalogously to the subprime mortgage problem that precipitated the 2008-09 Financial Crisis, the global economy is once again mis-pricing assets as markets overlook this 'unburnable carbon' problem. This issue is termed the 'Carbon Bubble' because the imposition of climate policy consistent with the Potsdam Climate Institute's calculations would mean the fundamental value of many fossil fuel assets must be zero as they cannot be used. Their current market value must therefore be made up of a zero fundamental value, and a 'bubble' component: the Carbon Bubble.[28]

The scale of this mispricing problem is significant. According to Carbon Tracker Initiative[29], "**governments and global markets are currently treating as assets reserves equivalent to nearly 5 times the carbon budget for the next 40 years**." Based on some estimates, **the impact of losses from stranded fossil fuel assets may "amount to a discounted global wealth loss of $1-4 trillion**." [Emphasis added]

Thus the continued refusal by companies and financial institutions to adapt their business activity to align with a carbon-constrained future in a timely manner may lead to large losses in value throughout the global financial system. If asset re-pricing occurs abruptly, this inaction will lead to sudden, painful financial and economic shocks that could precipitate a global financial crisis.

This appropriate systemic and portfolio wide concern is connected with fiduciary duties of investors, specifically the fiduciary duty of impartiality which necessitates a balancing of interests of beneficiaries who may draw on the assets in the near term and those for whom retirement or other need for the assets are longer-term and may be undercut by a carbon bubble and related market shocks.[30]

ESG DUE DILIGENCE RISKS
Ensuring that investment firms, asset managers and other fiduciaries have information necessary for due diligence on any ESG related claims

On March 4, 2021, the SEC initiated a new Task Force focused on climate and ESG issues looking primarily at the "veracity of issuers' ESG disclosures as well as those of investment fiduciaries."[31] In the present instance, the current Proposal speaks directly to the credibility of JPMorgan's climate change pledges and claims, and therefore advances the objectives of the Task Force in ensuring that the credibility of issuer claims on climate change are defensible.

Based on the UNEP FI issued recommendations for credible net-zero commitments from financial institutions, the credibility of the Company's climate commitment is questionable without a concurrent commitment to adopt absolute emission targets.

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[28] https://www.bankofengland.co.uk/-/media/boe/files/events/2016/november/the-carbon-bubble-climate-policy-in-a-fire-sale-model-of-deleveraging-speaker-paper.pdf
[29] https://www.banktrack.org/download/unburnable_carbon/unburnablecarbonfullrev2.pdf
[30] A law review article reviewing this duty of impartiality noted in particular that with regard to the potential conflict between long or short term bias: "As a practical matter, such communication is done through stockholders' resolutions, allowing stockholders to express their preferences for certain corporate actions…the fiduciary duty of impartiality provides an analytic framework for the consistent resolution of stockholders' conflicts of interest. It is a balancing test that provides a corporation's board of directors a flexible tool with which to weigh various, and often conflicting, interests of stockholders to reach a resolution that maximizes the value of the enterprise as a whole." Shachar Nir, One Duty to All: The Fiduciary Duty of Impartiality and Stockholders' Conflict of Interest, 16 Hastings Bus. L.J. 1 (2020). *Available at* https://repository.uchastings.edu/hastings_business_law_journal/vol16/iss1/2
[31] *See* SEC Announces Enforcement Task Force Focused on Climate and ESG Issues *found at* https://www.sec.gov/news/press-release/2021-42

The Proposal provides an opportunity for the Company's investors to make clear the need for the Company Board and management to guide company policy in a manner that would address what appears to be a fundamental flaw in current company plans. In addition, the shareholder right to file and vote on this Proposal offers the best available opportunity for ESG investment fiduciaries to act on their due diligence responsibilities, to ensure that their ESG commitments are backed with the data and verification necessary to make any ESG claims. To the extent that investment fiduciaries claim that stock holdings in the Company are net zero aligned, the request of the Proposal provides an opportunity to verify that claim with due diligence and proxy voting.

This investor due diligence that is enabled by the Proposal is responsive to the demands and scrutiny placed on ESG investors according to the report of the SEC Division of Examinations' Review of ESG Investing, April 9, 2021. That review noted that numerous investment products and financial services have incorporated environmental, social, and governance ("ESG") factors to meet demand. The division noted that it will be monitoring the accuracy of disclosures on ESG investing, and that examinations of firms claiming to engage in ESG investing will focus on, among other matters, a review of a firm's policies, procedures, and practices related to ESG and its use of ESG-related terminology; due diligence and other processes for selecting, investing in, and monitoring investments in view of the firm's disclosed ESG investing approaches; and whether proxy voting decision-making processes are consistent with ESG disclosures and marketing materials. The division also noted that 5 Advisers Act Section 206 imposes a fiduciary duty on investment advisers to provide full and fair disclosure of all material facts relating to the advisory relationship and to provide advice that is in the best interest of the client. Investment advisers also have antifraud liability with respect to communications to clients and prospective clients under Advisers Act Section 206. See Commission Interpretation Regarding Standard of Conduct for Investment.[32]

In short, proponents believe that the growing responsibilities of ESG investors to walk their talk necessitates support for the Proposal, to ensure that a large portfolio holding in a financial institution like JPMorgan Chase does not leave an ESG investor vulnerable to enforcement actions on failure to exercise due diligence on portfolio company practices inconsistent with ESG, net zero and similar commitments.

Rule 14a-8(i)(11)

The subject matter of the Proposal is not duplicative with the previously submitted proposals. Shareholders can reasonably vote both on whether the company should set absolute GHG contraction targets as well as establish policies restricting the financing of new fossil fuel development. Contrary to the Company's argument, the previously filed proposals focused on asking the Company to alter its policies on financing of fossil fuels and fossil fuel development. In contrast, the current Proposal asks the Company to set absolute contraction targets applicable to its entire financing portfolio. The policy endpoints of these proposals are not sufficiently similar to merit exclusion of the current Proposal if either of the two other proposals are included on the proxy. Shareholders would not find it confusing or overlapping to vote on the current Proposal alongside one of the other prior proposals, and in particular might well choose to support the targets suggested by the current proposal without supporting the other

[32] The Review also noted, despite claims to have formal processes in place for ESG investing, a lack of policies and procedures related to ESG investing; policies and procedures that did not appear to be reasonably designed to prevent violations of law, or that were not implemented; documentation of ESG-related investment decisions that was weak or unclear; and compliance programs that did not appear to be reasonably designed to guard against inaccurate ESG-related disclosures and marketing materials.

proposals which call for policies directly restricting fossil fuel lending. Therefore the Proposal is not excludable under Rule 14a-8(i)(11).

CONCLUSION

As demonstrated above, the Proposal does not violate Rule 14a-8(i)(7) or Rule 14a-8(i)(11). Accordingly, we urge the Staff to notify the Company that it is denying the no action request.

Sincerely,

Sanford Lewis

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TORONTO

February 25, 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 the Sierra Club Foundation

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 the Sierra Club Foundation (the "Proponent") may be excluded from its proxy materials for the Company's 2022 Annual Meeting of Shareholders (the "2022 Annual Meeting").

This letter is in response to the letter to the Staff, dated February 15, 2022, submitted by Sanford Lewis 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 mischaracterizes the Company's argument. It details at length why the Proposal "addresses a transcendent policy issue," however, the Company did not represent that climate change is not a significant policy issue. The Company unequivocally recognizes the importance of climate change and has implemented and supported numerous initiatives to promote sustainability and action on climate change. Indeed, the Company's website states that the Company has "made significant investments in our climate-related investment capabilities and enhanced our efforts to help clients consider the material implications of climate change within their portfolios. We became a signatory to the Net Zero Asset Managers initiative in 2021, and are committed to working with our industry to promote action on climate change."

As explained in the No-Action Request, the Company believes that despite any implication of issues related to climate change, the Proposal nonetheless focuses on the Company's ordinary business because it focuses on the financial risks, litigation risks and reputational risks presented by the products and services offered for sale by the Company and, specifically, the Company's decisions with regard to providing financing to particular types of customers. This view is supported by the Proponent's Letter, which references, among other things, that the Company is "knowingly loading potentially stranded assets onto its clients' balances sheets, or its own, creating financial and litigation risk" and that the Company faces "reputational risk associated with a public appearance of greenwashing," and discusses systemic risk and portfolio risk. Accordingly, even though the Proposal may raise significant policy issues relating to climate change, its focus is on ordinary business matters.

In addition, the Proponent's Letter appears to argue that the Proposal does not attempt to micromanage the Company because it is advisory in nature. The test for determining whether a proposal micromanages a company, however, is not whether the proposal is "advisory" or not—it is whether and to what extent the proposal inappropriately limits the discretion of the board or management. *See* Staff Legal Bulletin No. 14L (Nov. 3, 2021). The Proponent's Letter asserts that the Company has not demonstrated that its approach to achieving net zero is consistent with certain global benchmarks, and therefore requests that the Company adopt an alternative approach. However, this on its face constitutes micromanagement, as the Proposal requests the Company set absolute contraction targets. As explained in the No-Action Request, this would result in micromanagement because it seeks to impose a specific method for implementing a complex policy—it dictates a specific method for how the Company implements its existing commitment to achieving net zero emissions.

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

The Proponent's Letter also contends that the Proposal is not duplicative of the First Proposal (as defined in the No-Action Request) and the Second Proposal (as defined in the No-Action Request) because the "policy endpoints of these proposals are not sufficiently similar." This, however, is not standard for exclusion under Rule 14a-8(i)(11). Instead, proposals are substantially duplicative when the principal thrust or focus is substantially the same, even though the proposals differ in terms of the breadth and scope of the subject matter. Here, the principal thrust and focus of the Proposal and the First Proposal are the same—a request that the Company adopt an alternative approach to reducing greenhouse gas emissions, and the principal thrust and focus of the Proposal and the Second Proposal also are the same—a request that the Company adopt an alternative approach to reducing greenhouse gas emissions.

Accordingly, because the Proposal substantially duplicates the First Proposal and the Second Proposal, which were previously submitted to the Company, the Proposal may be excluded pursuant to Rule 14a-8(i)(11) in the event that the Staff does not concur with the exclusion of the First Proposal or the Second Proposal from the Company's proxy materials for the 2022 Annual Meeting.

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.

Dan Chu
Executive Director
The Sierra Club Foundation

Paul Rissman
Director
The Sierra Club Foundation

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March 2, 2022
Via electronic mail

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

Re: Shareholder Proposal to J.P. Morgan Chase regarding fossil fuel financing on behalf of the Sierra Club Foundation – Supplemental Response

Ladies and Gentlemen:
The Sierra Club Foundation (the "Proponent") is beneficial owner of common stock of J.P. Morgan Chase & Co. (the "Company") and has submitted a shareholder proposal (the "Proposal") to the Company. We previously responded to the Company's no action request. I have been asked by the Proponent to respond to the supplemental letter dated February 25, 2022 ("Supplemental Letter") sent to the Securities and Exchange Commission by Brian Breheny of Skadden Arps. A copy of this response letter is being emailed concurrently to Mr. Breheny.

The Supplemental Letter mischaracterizes the Proponent's response. The principal focus of the response is on the propriety of the Proposal as a topic that is well within the grasp and stewardship of today's investors, and in a context in which investor concerns regarding climate change necessarily embrace the global and systemic economic impacts associated with the current crisis, as well as the financial impact on the Company and its shareholders. Drafting of a shareholder proposal in this arena that encompasses those issues does not render the proposal excludable under the ordinary business rule. To the contrary, a shareholder proposal that fails to raise those issues arguably is neglecting to address fundamental issues of advocacy and shareholder education. It is not only appropriate but also *necessary* from an advocacy perspective to address those issues.

The Supplemental Letter also asserts that the proposal is overly focused on the economic impact of climate change on the global economy, investors and the Company. It should be obvious to the Company as a financial services company that has given some focus to climate change that the issues raised by the proposal are part of the *fundamental* challenges posed by climate change.

Again, in consideration of the evidence presented in our prior letter, there is no doubt that the questions presented by the Proposal are well within the scope of appropriate investor deliberation. Indeed, the very essence of the Proposal's ask is at the forefront of public conversations around investing, as reflected in a report published since our initial letter. As noted in our prior correspondence, the Office of the Comptroller of the Currency has proposed new rules on banks' climate change related disclosures and communications. The Financial

Services Forum, an organization of eight of the largest us banks **including J.P. Morgan Chase & Co.,** wrote to the OCC on February 14[1] with recommendations to revise the OCC requirements on public communications by banks. The forum wrote:

> The Proposal calls for banks to "ensure that any public statements about their banks' climate-related strategies and commitments are consistent with their internal strategies and risk appetite statements." …[W]e believe it would be more appropriate for each bank to ensure that public communication of its climate-related strategies is consistent with *the actions the bank is actually taking*.

Although the Forum argues that this requested change is in line with the U.S. securities disclosure regime, it also appears that this change may undercut banks' accountability for rhetoric around net zero targets. Notably, in line with this concern, the Forum's comments also sought to relieve boards of directors of responsibility for ensuring that corporate public communications are aligned with internal strategies. This legalistic push of the banks themselves, including the Company, away from accountability for consistency between policy and climate communications, with its implications for assessing whether long-term net zero targets are aligned with other policies and commitments, is the core focus of the current Proposal. This issue appears central to a continuing debate that we can anticipate for some time to come. Investors surely must maintain the right to engage through the shareholder proposal process to avoid a risk of marketwide greenwashing.

Given such a context, where the credibility and accountability of banks' climate commitments appears to be a policy arena in flux, the method suggested in the Proposal with regard to setting *absolute contraction targets* is not too specific for shareholders to request given that it represents, according to the United Nations Environment Programme, the most convincing way of persuading investors that a firm's climate effort is credible.[2]

In terms of the question of the duplication, the Proponent asserts that the proper assessment is whether it would be confusing for shareholders to vote on both proposals on the same proxy statement. In this instance, they are not confusing. As we stated in our initial response, investors could easily cast differential votes on the proposal for absolute contraction targets as opposed to other proposals asking for the company to clarify its policies on fossil fuel financing.

We stand by our original correspondence, and our conclusion that the Proposal is not eligible for exclusion under Rule 14a-8(i)(7) or Rule 14a-8(i)(11). We urge the Staff to notify the Company that it is denying the no action request.

Sincerely,

Sanford Lewis

[1] https://fsforum.com/a/media/fsf---occ-climate-principles-comment-letter.pdf

[2] We disagree with the Company's interpretation of advisory proposals as micromanaging. In our experience, it is actually quite unusual for an *advisory proposal* to constrain the discretion of board or management. It may happen in some technical circumstances that are at the outer reaches of Delaware procedural requirements related to shareholder meetings, but proposals with an advisory request do not otherwise constrain board or management discretion. Nevertheless, it is not necessary for the Staff to conclude broadly that an advisory disposal does not micromanage in order to rule in favor of the current proposal given the UN's reference to the Proposal's benchmark.