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

DIVISION OF
CORPORATION FINANCE

February 22, 2024

Scott Lesmes
Morrison & Foerster LLP

Re: The Chemours Company (the "Company")
Incoming letter dated December 20, 2023

Dear Scott Lesmes:

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

The Proposal requests that the board of directors issue a public report assessing the benefits and drawbacks of permanently committing not to engage in titanium mining, nor to purchase titanium mined by others, on the Okefenokee's hydrologic boundary, and assessing risks to the Company associated with same.

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

Copies of all of the correspondence on which this response is based will be made available on our website at https://www.sec.gov/corpfin/2023-2024-shareholder-proposals-no-action.

Sincerely,

Rule 14a-8 Review Team

cc: Annie Sanders
Green Century Capital Management, Inc.

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December 20, 2023

VIA STAFF ONLINE FORM

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *The Chemours Company*
Shareholder Proposal of the Felician Sisters of North America Endowment Trust
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

We submit this letter on behalf of our client, The Chemours Company, a Delaware corporation (the "Company"), which requests confirmation that the staff (the "Staff") of the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the "Commission") will not recommend enforcement action to the Commission if, in reliance on Rule 14a-8 under the Securities Exchange Act of 1934 (the "Exchange Act"), the Company omits the enclosed shareholder proposal (the "Proposal") submitted by Green Century Capital Management, Inc. (the "Proponent's Representative") on behalf of the Felician Sisters of North America Endowment Trust (the "Proponent") from the Company's proxy materials for its 2024 Annual Meeting of Shareholders (the "2024 Proxy Materials").

Pursuant to Rule 14a-8(j) under the Exchange Act, we have:

- submitted this letter to the Staff no later than eighty (80) calendar days before the Company intends to file its definitive 2024 Proxy Materials with the Commission; and

- concurrently sent copies of this correspondence to the Proponent's Representative.

Copies of the Proposal, the Proponent's and Proponent's Representative's cover letters submitting the Proposal, and other correspondence relating to the Proposal are attached hereto as Exhibit A.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D") provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the Staff. Accordingly, if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

I. THE PROPOSAL

On November 10, 2023, the Company received a letter from the Proponent containing the Proposal for inclusion in the Company's 2024 Proxy Materials. The Proposal reads as follows:

> **Whereas**: Mining next to ecologically sensitive protected areas poses material climate, regulatory, and reputational risks.
>
> At 438,000 acres, the Okefenokee Swamp is one of the world's largest freshwater wetlands. Over 402,000 acres are protected in the Okefenokee National Wildlife Refuge, the largest refuge in the eastern United States and home to hundreds of plant and animal species. The Okefenokee also stores over 400M tons of CO2 equivalent, making it one of the largest natural carbon sinks in North America.
>
> Twin Pines Minerals, LLC (TPM) has applied for permits to mine titanium on Trail Ridge, the swamp's eastern hydrologic boundary. In 2022, Chemours stated its lack of plans for doing business with TPM or conducting mining on Trail Ridge itself, but left open future possibilities for both. Since then, TPM's northern neighbor (with which Chemours, as DuPont, did business previously) has publicly called for mining on its land and TPM's new western neighbor has leased its land to Chemours for titanium mining elsewhere in Georgia.
>
> Mining, or purchasing materials mined, on Trail Ridge could expose Chemours to considerable financial risk:
>
> - **Climate and Biodiversity**: Overwhelming scientific consensus emerged since Chemours' 2022 commitment that TPM's project would significantly damage the Okefenokee by drawing down its water level and increasing risk of drought and landscape-level fires. Such events would destroy swamp wildlife habitat, damage thousands of acres of adjacent private timberland and release significant carbon emissions. Involvement in titanium mining at the Okefenokee would conflict with Chemours'

aspiration to reduce Scope 3 emissions while also exacerbating operational risks associated with climate change cited in its 2022 10-K.

- **Regulatory and Legal**: The 2023 Okefenokee Protection Act, which would prohibit mining on Trail Ridge, garnered 96 bipartisan cosponsors in Georgia's House of Representatives and will return in 2024, presenting regulatory risk. Furthermore, potential litigation from timber companies suffering fire damage to their assets presents legal risk.

- **Reputational**: In early 2023, over 100,000 comments were submitted to Georgia's Environmental Protection Division opposing TPM's draft Mining Land Use Plan and approximately 70% of Georgians want Governor Kemp to deny TPM's permits. Okefenokee is being nominated for inclusion on UNESCO's World Heritage Site List, and the issue has received significant media coverage in the New York Times, Wall Street Journal, AP and Bloomberg.

Furthermore, Chemours' agreement to purchase titanium from Hyperion in Tennessee, combined with expansion of its Florida operations, render unnecessary securing supply from Okefenokee.

A permanent commitment to protect the Okefenokee would enable Chemours to fortify its environmental image and help fulfill the aspiration articulated in its 2022 Sustainability Report "to be the most sustainable TiO2 enterprise in the world."

Resolved: Shareholders request the Board of Directors issue a public report, within six months, assessing the benefits and drawbacks of *permanently* committing not to engage in titanium mining, nor to purchase titanium mined by others, on the Okefenokee's hydrologic boundary, and assessing risks to the company associated with same.

(Emphasis added.)

II. BACKGROUND

Chemours is a leading, global provider of performance chemicals that are key inputs in end-products and processes in a variety of industries. Chemours' Titanium Technologies segment is a preeminent, global manufacturer of high-quality titanium dioxide ("TiO2") pigment. This premium white pigment is used to deliver whiteness, brightness, opacity, durability, efficiency and protection in applications, including architectural and industrial coatings, flexible and rigid plastic packaging, polyvinylchloride, laminate papers used for furniture and building materials, coated paper and coated paperboard used for packaging. Chemours' Titanium Technologies business also includes the sale of certain co-products of its Titanium mining operations, such as zircon (zirconium silicate), monazite and staurolite minerals. Chemours is a major supplier of high-

quality calcined zircon in North America, primarily focused on the precision investment casting industry, foundry, specialty applications and ceramics. Some of the Company's zirconium sand is employed in precision investment casting of aircraft engine parts. Chemours' monazite contains several rare earth minerals and is all sold domestically.

The primary raw material used in the manufacture of TiO2 pigment is titanium-bearing ores, such as ilmenite. High quality mineral sands that contain zircon and ilmenite ore are found in areas where a rare combination of geologic factors have concentrated these minerals in beach sand deposits. In the U.S., this combination of factors exists primarily in the Coastal Plain of the southeastern U.S., particularly in southeast Georgia and northeast Florida, in the same region where the Okefenokee Swamp is located. In sourcing the raw materials necessary to produce TiO2, Chemours sources ore both internally through its mineral sands mining and/or separation operations in Starke, Florida; Lawtey, Florida; Macclenney, Florida; Nahunta, Georgia; Jesup, Georgia and Offerman, Georgia and externally through third-party suppliers. Chemours' mines provide the Company with low-cost, high-quality domestic ilmenite ore feedstock that currently supply approximately 10% of its ore feedstock needs. Third-party suppliers, including foreign suppliers in Australia and Africa, cover the remaining feedstock needs.

Given the application of these materials and the paucity of the mineral sands in the U.S., Executive Order 13817 (the "Executive Order") designated titanium, zirconium and other rare earths as "Critical Minerals." The Executive Order further states that it shall be the policy of the Federal Government to reduce the U.S.'s vulnerability to disruptions in the supply of Critical Minerals that are crucial to the nation's economy and security by increasing exploration, mining and processing of critical minerals.

III. EXCLUSION OF THE PROPOSAL

a. Basis for Excluding the Proposal

As discussed more fully below, the Company believes it may properly omit the Proposal from its 2024 Proxy Materials in reliance on Rule 14a-8(i)(7) of the Exchange Act ("Rule 14a-8(i)(7)"), as the Proposal deals with matters related to the Company's ordinary business operations.

b. The Proposal May Be Omitted in Reliance on Rule 14a-8(i)(7) Because The Proposal Deals With Matters Relating to the Company's Ordinary Business Operations

Rule 14a-8(i)(7) permits the omission of a shareholder proposal dealing with matters relating to a company's "ordinary business operations." According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." Release No. 34-40018 (May 21, 1998) (the "1998 Release").

In the 1998 Release, the Commission identified the two central considerations underlying the general policy for the ordinary business exclusion. The first consideration relates to the subject matter of the proposal. The Commission stated that, "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." 1998 Release. Examples of the tasks cited by the Commission include "the management of the workforce, such as the hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers." *Id*. The term "ordinary business" is rooted in the fundamental "corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." *Id.* (citing Release No. 12999 (Nov. 22, 1976)). 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." *Id*.; *see also* Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L").

As the Commission noted in the 1998 Release, proposals relating to ordinary business matters are distinguishable from those "focusing on sufficiently significant social policy issues," which generally are not excludable under Rule 14a-8(i)(7) 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." The ordinary business exception therefore "recognize[s] the board's authority over most day-to-day business matters," while at the same time "preserving shareholders' right to bring important issues before other shareholders by means of the company's proxy statement." *See* SLB 14L, Part B.2. However, it is well established that a proposal that seeks to micromanage a company's business operations is excludable under Rule 14a-8(i)(7) regardless of whether the proposal raises a "significant social policy issue." *See* Staff Legal Bulletin No. 14E (Oct. 27, 2009) ("SLB 14E"), at note 8, citing the 1998 Release for the standard that "a proposal [that raises a significant policy issue] could be excluded under Rule 14a-8(i)(7), however, if it 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."

Framing a shareholder proposal in the form of a request for a report does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the issuer. *See* Exchange Act Release No. 20091 (Aug. 16, 1983) (the "1983 Release"); *see also Johnson Controls, Inc.* (Oct. 26, 1999) ("[Where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business… it may be excluded under [R]ule 14a-8(i)(7)") and *Netflix, Inc.* (Mar. 14, 2016) (concurring with the exclusion of a proposal for a public report describing risks related to offensive and inaccurate portrayals of Native Americans, American Indians and other Indigenous Peoples, noting that the underlying subject matter of the requested report related to "the nature, presentation and content of programming and film production").

Moreover, in SLB 14E, the Staff explained how it evaluates shareholder proposals relating to risk:

> [R]ather than focusing on whether a proposal and supporting statement relate to the company engaging in an evaluation of risk, we will instead focus on the subject matter to which the risk pertains or that gives rise to the risk . . . . [S]imilar to the way in which we analyze proposals asking for the preparation of a report, the formation of a committee or the inclusion of disclosure in a Commission-prescribed document—where we look to the underlying subject matter of the report, committee or disclosure to determine whether the proposal relates to ordinary business—we will consider whether the underlying subject matter of the risk evaluation involves a matter of ordinary business to the company.

Consistent with its position in SLB 14E, the Staff has repeatedly concurred in the exclusion of shareholder proposals seeking risk assessments when the subject matter concerns ordinary business operations. *See The Kroger Co.* (Apr. 12, 2023) ("Kroger 1") (concurring with the exclusion of a proposal requesting a report detailing the potential risks associated with omitting "viewpoint" and "ideology" from its written equal employment opportunity policy). *See also Dollar Tree, Inc.* (May 2, 2022) (concurring with the exclusion of a proposal requesting a report on risks to the company's business strategy from increasing labor market pressure) and *BlackRock, Inc.* (Apr. 4, 2022) (concurring with the exclusion of a proposal substantially similar to that in Kroger 1*, supra*).

i. The Proposal May Be Omitted Because it Seeks to Micromanage the Company

It is the Company's view that the Proposal may be properly omitted in reliance on Rule 14a-8(i)(7) because the Staff has repeatedly recognized that a proposal that seeks to micromanage the determinations of a company's management regarding day-to-day decisions is excludable under Rule 14a-8(i)(7) as a component of "ordinary business."

The Proposal requests that the Company "issue a public report, within six months, assessing the benefits and drawbacks of ***permanently*** committing not to engage in titanium mining, nor to purchase titanium mined by others, on the Okefenokee's hydrologic boundary, and assessing risks to the company associated with the same." (Emphasis added.) As noted above, the Commission has long held that proposals requesting a report or assessment of risks are evaluated by the Staff by considering the underlying subject matter of the proposal when applying Rule 14a-8(i)(7). *See* the 1983 Release; *see also* SLB 14E. The underlying purpose of the report sought in the Proposal is a permanent commitment with respect to the Company's suppliers and mineral sand sourcing decisions. The fact that the Proposal calls for a report assessing the benefits and drawbacks does not change the underlying subject matter of the Proposal. A permanent commitment that limits something as core to the Company's business as sourcing and mining decisions, especially in areas deemed critical to the U.S. under the Executive Order, is by definition micromanagement in areas best left to management in the ordinary course.

Explaining the standard, the Commission noted in the 1998 Release that consideration of complex matters upon which shareholders could not make an informed judgment "may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies" (footnote omitted). Here, the Proposal intends for shareholders to step into the shoes of management and oversee the reputational, legal and financial risks to the Company associated with complex sourcing decisions. It does not merely request that sustainability and conservation concerns be considered when sourcing raw materials; instead, the underlying subject matter calls for a permanent commitment to forego titanium mining, and the purchase of titanium mined by others, near the Okefenokee's hydrologic boundary. The Proposal implicates precisely the circumstances contemplated by the Commission in determining when a proposal may be omitted — it involves both "intricate detail" (the complex evaluation of whether to source product near the Okefenokee hydrologic boundary) and the imposition of "specific … methods for implementing complex policies" (a permanent commitment not to engage in titanium mining, nor to purchase titanium mined by others, near the Okefenokee's hydrologic boundary).

In this case, the Proposal involves exactly the type of day-to-day business operations that the 1998 Release indicated are too impractical and complex to subject to direct shareholder oversight. The implementation of the Proposal would involve substituting shareholders' views on the Company's sourcing policies for management's decision-making practices, a complex issue upon which shareholders, as a group, are not in a position to make an informed judgment. Chemours' sourcing of materials necessary for production of TiO2 is a complicated matter that is integrally entwined with its ordinary business operations and fundamental to management's ability to run the Company's Titanium Technologies operations on a day-to-day basis. Evaluating and weighing these matters involves the expertise of professionals in various disciplines who carefully evaluate complex and competing considerations that relate to sourcing the materials necessary for TiO2, including, but not limited to, overall availability and processing requirements of the raw materials, quality standards, business operations and expenditures, regulatory requirements and compliance including implications of the Critical Minerals Executive Order and corporate policies and sustainability matters, among others.

As an example, when determining where to source the raw materials and whether to source such materials internally or from a third-party supplier, management may weigh, amongst other considerations, the following: quality considerations, including the grade of various ores and their differing physical and chemical characteristics, Chemours' internal processing capacities in the face of growing demand and increasingly precise customer specifications, the need for flexibility to ensure proper supply volume and to minimize pricing volatility, costs and other variables associated with transporting the raw materials to the Company's production facilities, the capabilities of the various mines that may impact recovery rates, the possibility of sanctions and import restrictions, the Company's sustainability goals, potential labor shortages, weather-related events and civil unrest or conflict in the countries where Chemours' foreign suppliers are located. Shareholders cannot make an informed judgment on these complex sourcing matters for which they do not have access to complete information. As such, these matters are more appropriately resolved by management as part of the Company's day-to-day business operations.

The Staff's reasoning in concurring with the exclusion of the proposal in *The Kroger Co.* (Apr. 25, 2023) ("Kroger 2"), applies equally to the circumstances here. In Kroger 2, the company received a proposal that would have required the company to give purchase preference within their supply chain to certain suppliers and to suspend purchases from suppliers not complying with the Fair Food code of conduct. Kroger argued that the selection of suppliers and management of supplier relationships was a complex process that shareholders were not in a position to make an informed judgment about and that the proposal sought to substitute shareholders' judgment for management's existing practices and processes. The Staff concurred with the exclusion of the proposal, noting the proposal sought "to micromanage the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *See also The Wendy's Company* (Mar. 2, 2017) (concurring with the exclusion of a proposal substantially similar to that in Kroger 2, *supra*, on the same basis); *Deere & Company* (Jan. 3, 2022) (concurring with the exclusion of a proposal for the company to publish employee training materials as probing too deeply into matters of a complex nature given the fact that decisions concerning internal diversity equity and inclusion decisions are multi-faceted); *EOG Resources, Inc.* (Feb. 26, 2018, recon. denied Mar. 12, 2018) (concurring with the exclusion of a proposal as micromanagement where the proposal requested the company adopt company-wide, quantitative, time-bound targets for reducing greenhouse gasses despite the company having already balanced multiple factors in making drilling decisions); *SeaWorld Entertainment, Inc.* (Apr. 20, 2021) (concurring with the exclusion of a proposal seeking a report on specific changes to the company's business to address animal welfare concerns); and *SeaWorld Entertainment, Inc.* (Mar. 30, 2017, recon. denied Apr. 17, 2017) (concurring with the exclusion of a proposal requesting the replacement of live orca exhibits with virtual reality experiences as "seek[ing] to micromanage the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.") As with the letters cited above, the Proposal addresses complex matters upon which shareholders, as a group, are not in a position to make an informed judgment.

Additionally, in applying the micromanagement prong of Rule 14a-8(i)(7), the Staff consistently has concurred that shareholder proposals attempting to micromanage a company by providing a specific method for implementing a proposal as a substitute for the judgment and discretion of management are excludable under Rule 14a-8(i)(7). For example, in *Amazon.com, Inc.* (Apr. 7, 2023, recon. denied Apr. 20, 2023), the Staff concurred with the exclusion of a proposal for the company to measure and disclose scope 3 GHG emissions from its full value chain. In its reply, the Staff stated that the proposal sought to micromanage the company by "imposing a specific method for implementing a complex policy disclosure without affording discretion to management." *See also Amazon.com Inc.* (Apr. 3, 2019) (concurring with the exclusion of a proposal requesting human rights impact assessments for food products sold as micromanagement for "seeking to impose specific methods for implementing complex policies in place of the ongoing judgments of management as overseen by its board of directors") and *JPMorgan Chase & Co.* (Mar. 30, 2018) (concurring with the exclusion of a proposal that requested a report on the reputational, financial and climate risks associated with project and

corporate lending, underwriting, advising and investing of tar sands projects as micromanagement for "seeking to impose specific methods for implementing complex policies").

Here, too, while the Proposal purports to raise concerns with climate and biodiversity, regulatory and legal and reputational risks associated with mining near the Okefenokee's hydrologic boundary, at its core, the Proposal seeks to micromanage the Company by requiring compliance with a permanent and specific mandate method of achieving its goal—a commitment not to mine on or source titanium mined near the Okefenokee's hydrologic boundary. The Company has a robust governance structure with active board of director and executive oversight and dedicated management committees and other subject matter experts analyzing the Company's sourcing policies, developing and implementing strategies and ultimately making decisions in a manner that is appropriate for Chemours, its customers and its shareholders. Yet, the Proposal does not afford any "discretion to management as to how to achieve such goals." SLB 14L.

If not excluded from the 2024 Proxy Materials, shareholders would be asked to vote upon a proposal that would displace the Company's judgments on business and operations with a mandate that effectively disregards the complexity of the Company's sourcing decisions. Accordingly, the Proposal should be excluded pursuant to Rule 14a-8(i)(7) as it seeks to micromanage the Company.

ii. The Proposal May be Omitted Because The Proposal Seeks to Direct The Company's Supply Chain Decisions, which Would Hinder Management's Fundamental Ability to Run the Company's Day-to-Day Operations

It is the Company's view that the Proposal may be properly omitted in reliance on Rule 14a-8(i)(7) because the Staff has repeatedly recognized that proposals concerning decisions relating to supplier and vendor relationships are generally excludable as a component of "ordinary business." As described above, the underlying subject matter of the report requested in the Proposal relates directly to the ordinary business of the Company in its ability to source the raw materials necessary to produce one of its crucial products.

The Company has invested significant time and resources in identifying and maintaining relationships with suppliers that meet Chemours' quality standards and exemplify the Company's core values. The Company's supplier relationships have been developed over an extensive period of time and Chemours maintains comprehensive processes for vetting, contracting with and monitoring its suppliers. Given the fact that Chemours' domestic mines supply approximately 10% of its ore feedstock needs, the management of Chemours' supply chain, supplier relationships and contracting practices is fundamental to the Company's day-to-day business operations. The Proposal, if adopted, would therefore hinder management's fundamental ability to run Chemours' day-to-day Titanium Technologies operations as it seeks to direct with whom Chemours may or may not do business.

In the 1998 Release, the Commission cited "the retention of suppliers" as an example of a task that is fundamental to management's ability to run a company on a daily basis. The Staff has

consistently concurred with the exclusion under Rule 14a-8(i)(7) of proposals relating to a company's supplier relationships. Notably, in *The TJX Companies, Inc.* (Apr. 9, 2021) ("TJX 2021"), the Staff permitted exclusion under Rule 14a-8(i)(7) of a proposal which requested a report "evaluating whether the company is supporting systemic racism through undetected supply chain prison labor." The proposal's supporting statements requested, among other things, metrics regarding the number of supplier audits completed by TJX or third-party auditors regarding the presence of prison labor in TJX's supply chain and an evaluation of risks to TJX's finances, operations and reputation related to prison labor in its supply chain. TJX argued that the proposal was excludable as ordinary business because, among other reasons, it related to decisions regarding the company's suppliers and enforcement of its existing standards of supplier conduct. The Staff concurred with exclusion under Rule 14a-8(i)(7).

The Staff's decision in TJX 2021 is consistent with a long line of precedent where the Staff has concurred with Rule 14a-8(i)(7) exclusion of proposals related to a company's supplier relationships and supply chain. *See The Home Depot, Inc.* (Mar. 20, 2020) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal calling for a report substantially similar to that in TJX (2021), *supra*). *See also The TJX Companies* (Mar. 20, 2020) (concurring with the exclusion of a proposal calling for a report substantially similar to that in TJX (2021), *supra*); *Walmart Inc.* (Mar. 8, 2018) (concurring with the exclusion of a proposal seeking a report outlining the requirements suppliers must follow regarding engineering ownership and liability as relating to the company's ordinary business matters); *Foot Locker, Inc.* (Mar. 3, 2017) (concurring with the exclusion of a proposal requesting a report on the company's use of subcontractors by its overseas apparel suppliers, and more specifically, "[t]he extent to which company codes of conduct are applied to apparel suppliers and sub-contractors"); *Kraft Foods Inc.* (Jan. 6, 2012) (concurring with the exclusion of a proposal calling for a report assessing water risk to the company's agricultural supply chain as relating to ordinary business operations); *The Southern Company* (Jan. 19, 2011) (concurring with the exclusion of a proposal requesting that the company "strive to purchase a very high percentage" of "Made in the USA" goods and services because the proposal related to "decisions relating to supplier relationships"); *Spectra Energy Corp.* (Oct. 7, 2010, recon. denied Oct. 25, 2010) (concurring with the exclusion of a proposal the same as that in *The Southern Company*, *supra*, on the same basis); *Alaska Air Group, Inc.* (Mar. 8, 2010) (concurring with the exclusion of a proposal requesting a report on contract repair facilities because the proposal related to "decisions relating to vendor relationships"); and *Continental Airlines, Inc.* (Mar. 25, 2009) (concurring with the exclusion of a proposal requesting a policy on contract repair stations because the proposal related to "decisions relating to vendor relationships").

As discussed above, the underlying subject of the Proposal is focused on the Company's sourcing policies and practices regarding its supply chain, including how and where the Company sources its necessary raw materials, which are integral to the Company's Titanium Technologies business. Similar to the foregoing precedent, the subject matter of the Proposal focuses on the Company's potential supplier relationships, including policies and standards relating thereto. Limiting the Company's ability to source the materials necessary to produce its products would hinder management's fundamental ability to run the Company's day-to-day operations. Given the Staff's consistent approach with respect to proposals seeking to influence a company's supply

chain decisions, the Company believes the Proposal may be properly excluded under Rule 14a-8(i)(7).

iii. The Proposal Does Not Focus on a Significant Social Policy Issue that Transcends the Company's Ordinary Business Operations.

While the 1998 Release indicated that proposals that "focus on" significant social policy issues may not be excludable under Rule 14a-8(i)(7), in contrast, proposals that touch upon topics that might raise significant social policy issues—but that do not focus on or have only tangential implications for such issues—are not transformed from an otherwise ordinary business proposal into one that transcends ordinary business, and as such, remain excludable under Rule 14a-8(i)(7).

In SLB 14L, the Staff outlined its present approach to evaluating ordinary business proposals, noting a plan to "realign" with the Commission's standard in the 1998 Release, first articulated in 1976, by focusing on "the social policy significance of the issue that is the subject of the shareholder proposal" rather than "the nexus between a policy issue and the company." The explanation provided in SLB 14L confirms the Staff's intent to preserve the Commission's policy objectives behind the ordinary business exclusion, namely "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." 1998 Release.

The Staff's intent was evidenced in *American Express Company* (Mar. 9, 2023). There, the proposal at issue requested that the company's board of directors conduct an evaluation and issue a report regarding collecting information on the processing of payments for the sale and purchase of firearms. American Express argued that the proposal merely touched on issues related to firearms and mass shootings and that its main request focused primarily on the ordinary business matter of the company's particular products and services. The Staff concurred with the exclusion, noting that the proposal related to, and did not transcend, ordinary business matters. *Id*.

Similarly, in *Amazon.com, Inc.* (Apr. 8, 2022) ("Amazon 2022"), the proposal at issue requested that the company report on the effect of the COVID-19 pandemic on workforce turnover rates and include an assessment of the impact on the company's diversity, equity and inclusion. Amazon argued that passing references to diversity, equity and inclusion did not transcend the primary focus on the ordinary business matter of the company's human capital management practices. The Staff concurred with the exclusion, agreeing that the proposal did "not focus on significant social policy issues." *Id. See also Dollar Tree*, *supra*, (concurring with the exclusion of a proposal requesting a report on risks to the company's business strategy from increasing labor market pressure, stating the proposal did not transcend ordinary business matters); *Amazon.com, Inc.* (Apr. 7, 2022) (concurring with the exclusion of a proposal requesting a report on the risks to the company related to ensuring adequate staffing of its business and operations on the basis that the proposal related to, and did not transcend, ordinary business matters); TJX (2021), *supra*; *Exxon Mobil Corp.* (Mar. 6, 2012) (concurring with the exclusion of a proposal requesting that the company prepare a report discussing risks to the company posed by the environmental, social and

economic challenges associated with oil sands, noting the proposal's lack of focus on a significant policy issue); and *Dominion Resources, Inc.* (Feb. 3, 2011) (concurring with the exclusion of a proposal requesting the company provide financing to home and small business owners for installation of rooftop solar or renewable wind power generation as the proposal ultimately related to "the products and services offered for sale by the company").

The Staff's no-action determinations under Rule 14a-8(i)(7) and guidance in SLB 14L reconfirm several key principles underlying the ordinary business exclusion. First, as demonstrated in *American Express Company, supra*, the Staff will not recast matters that are inherently operational as social policy issues. Second, as demonstrated in Amazon 2022*, supra*, citing potential social policy implications in a proposal does not equate with "focusing" on such issues.

As discussed above, the underlying subject of the Proposal is focused on the Company's sourcing policies and practices regarding its supply chain, and thus inherently implicates ordinary business matters integral to the Company's Titanium Technologies business. While the Proponents frame the Proposal as a concern over ecologically sensitive areas, the ultimate requested action remains an ordinary business matter: the sourcing of materials and management of Chemours' supply chain. References to protecting the Okefenokee and unsupported speculation about hypothetical carbon emissions neither shift the underlying request of the Proposal nor do they transcend the Company's ordinary business operations.

The Company agrees that striving to be the most sustainable TiO2 enterprise in the world and protecting natural resources are important. Indeed, the Company is committed to taking purposeful action to support sustainable solutions, as outlined in the Company's most recent Chemours Sustainability Report, which aligns with the United Nations Sustainable Development Goals. Nevertheless, the Proposal remains squarely focused on the Company's policies relating to the sourcing of materials for its products. Such issues are inherently ordinary business matters integral to the Company's business.

For these reasons, the significant social policy issue exception does not support inclusion of the Proposal in the Company's 2024 Proxy Materials.

IV. CONCLUSION

For the reasons discussed above, the Company believes that it may properly omit the Proposal from its 2024 Proxy Materials in reliance on Rule 14a-8. As such, we respectfully request that the Staff concur with the Company's view and not recommend enforcement action to the Commission if the Company omits the Proposal from its 2024 Proxy Materials.

Pursuant to the guidance provided in Section F of Staff Legal Bulletin 14F (Oct. 18, 2011), we ask that the Staff provide its response to this request to Scott Lesmes, on behalf of the Company, via email at SLesmes@mofo.com, and to the Proponent's Representative via email at asanders@greencentury.com. If we can be of further assistance in this matter, please do not hesitate to contact me at (202) 887-1585.

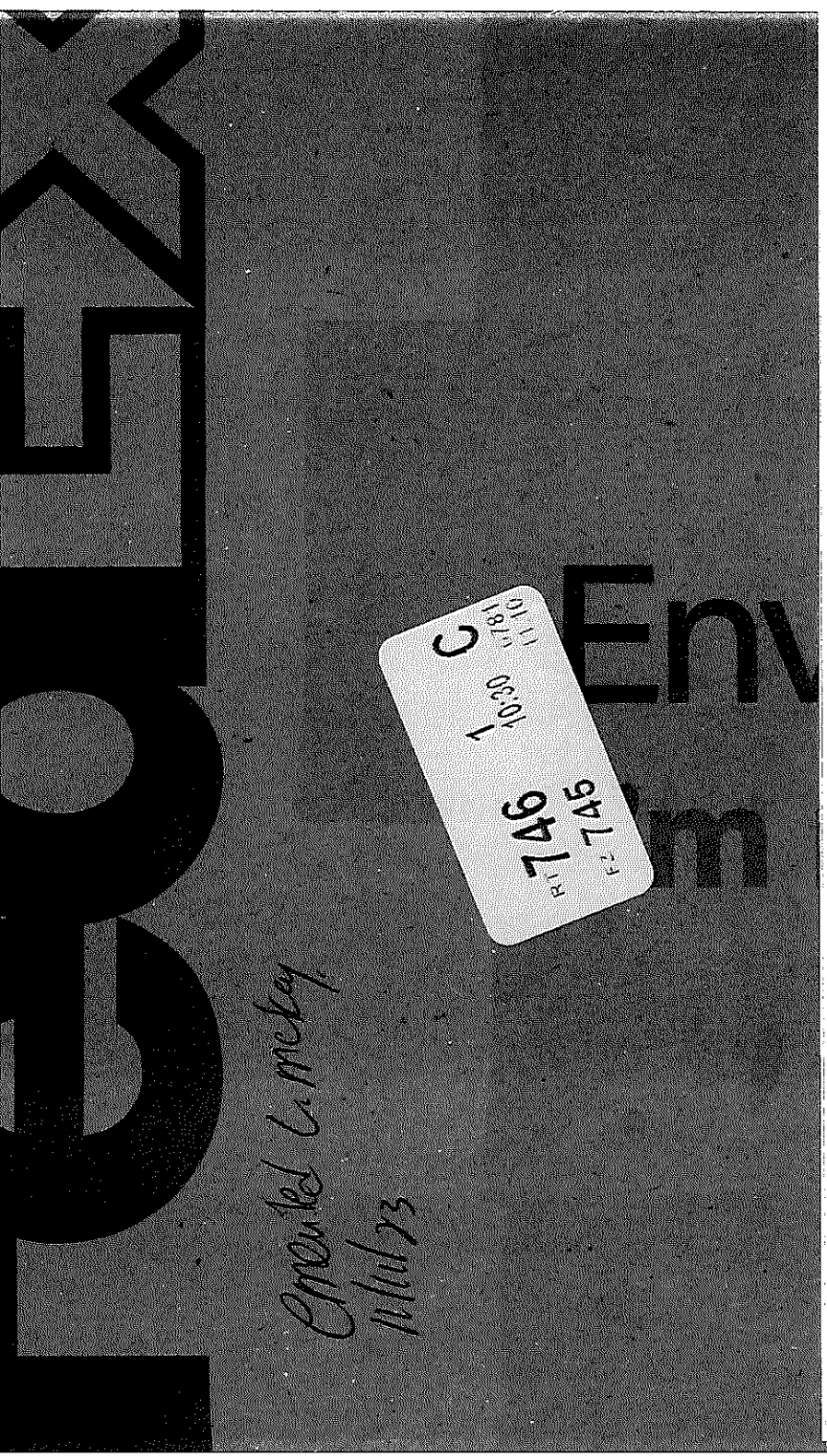
Sincerely,

Scott Lesmes

Attachments

cc: Annie Sanders, Director of Shareholder Advocacy
Green Century Capital Management, Inc.
Kristine Wellman, Senior Vice President, General Counsel and Corporate Secretary
The Chemours Company

EXHIBIT A



ORIGIN ID:LWMA (617) 482-0800
LESLIE SAMUELRICH

114 STATE ST.
STE. 200
BOSTON, MA 02109
UNITED STATES US

SHIP DATE: 08NOV23
ACTWGT: 1.00 LB
CAD: 8008103/INET4535

BILL SENDER

TO **ATTENTION: CORPORATE SECRETARY**
THE CHEMOURS COMPANY
1007 MARKET STREET

WILMINGTON DE 19801
(302) 773-2263 REF:
INV:
PO: DEPT:

583J5/F0B2/9AE3

FedEx Express

FedEx
TRK# 0201 **7740 4025 0781**

FRI – 10 NOV AA
MORNING 2DAY
ASR
19801
DE – US **PHL**

SS ZWIA

EXP 09/24

#5751862 11/08 583J5/F0B2/9AE3

November 8, 2023

Via Fedex and email to investor@chemours.com

The Chemours Company

1007 Market St. Wilmington, DE 19801

Attn: Corporate Secretary

Re: Shareholder proposal for 2024 Annual Shareholder Meeting

Dear Ms. Wellman,

Green Century Capital Management, Inc. is filing a shareholder proposal on behalf of the Felician Sisters of North America Endowment Trust ("Proponent"), a shareholder of The Chemours Company, for action at the next annual meeting of The Chemours Company. The Proponent submits the enclosed shareholder proposal for inclusion in The Chemours Company 2024 proxy statement, for consideration by shareholders, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.

Felician Sisters of North America Endowment Trust has continuously beneficially owned, for at least three years as of the date hereof, at least $2,000 worth of the Company's common stock. The Felician Sisters of North America Endowment Trust can be contacted at sjeans@feliciansisters.org

A letter from the Proponent authorizing Green Century Capital Management, Inc. to act on its behalf is enclosed. A representative of the Proponent will attend the stockholders' meeting to move the resolution as required.

The Felician Sisters of North America Endowment Trust and Green Century Capital Management, Inc. are available to meet with the Company via teleconference on Monday November 20 between 1-5pm ET, Tuesday November 28 between 12-5pm ET, or Thursday November 30 between 11am-2pm ET.

We are available to discuss this issue and appreciate the opportunity to engage and seek to resolve the Proponent's concerns. Please direct all correspondence to Annie Sanders, Director of Shareholder Advocacy at Green Century Capital Management, Inc. She may be reached at 773-272-6691 or asanders@greencentury.com. We would appreciate confirmation of receipt of this letter. Thank you.

Sincerely,

Leslie Samuelrich

Leslie Samuelrich

President, Green Century Capital Management

Encl: Authorization letter

FELICIAN SISTERS

Our Lady of Hope Province

November 8th, 2023

Kristine Wellman
Senior Vice President, General Counsel and Corporate Secretary
The Chemours Company
1007 Market St.
Wilmington, DE 19801

Dear Ms. Wellman,

The Felician Sisters of North America Endowment Trust hereby authorizes Green Century Capital Management, Inc. to file a shareholder resolution on its behalf for The Chemours Company 2024 annual shareholder meeting. The proposal requests that the company assess the benefits and drawbacks of permanently committing not to engage in titanium mining, nor to purchase titanium mined by others, on the Okefenokee swamp's hydrologic boundary.

The Felician Sisters of North America Endowment Trust supports this proposal and gives Green Century Capital Management, Inc. full authority to engage with the company on our behalf regarding the proposal and the underlying issues, and to negotiate a withdrawal of the proposal to the extent the representative views the company's actions as responsive. We intend to hold the requisite number of shares required by Rule 14a-8 through the 2024 annual meeting.

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

Sincerely,

Sister Mary Jean Sliwinski, CSSF

Sister Mary Jean Sliwinski
Provincial Sustainability Coordinator
Felician Sisters of North America, Inc.
55 Westfield Ave.
Depew, NY 14043
sjeans@feliciansisters.org

Graystone Consulting
from Morgan Stanley

SVLO Chicago Group
227 West Monroe Street, Suite 3400
Chicago, Illinois 60606

November 8, 2023

The Chemours Company
1007 Market Street
Wilmington, DE 19801
Attention: Mr. David C. Shelton

Re: Shareholder proposal submitted by Felician Sisters of North America Endowment Trust

Dear Mr. David C. Shelton,

I write concerning a shareholder proposal (the "Proposal") submitted to The Chemours Company by Felician Sisters of North America Endowment Trust.

As of November 8, 2023, Felician Sisters of North America Endowment Trust beneficially owned, and had beneficially owned continuously for at least three years, shares of the Company's common stock worth at least $2,000 (the "Shares").

Morgan Stanley has acted as record holder of the Shares and is a DTC participant. If you require any additional information, please do not hesitate to contact me at 312-648-3033 or Iftikhar.Khan@msgraystone.com.

Sincerely,

Iftikhar Khan
Senior Vice President
Director of Business Strategy

Graystone Consulting is a business of Morgan Stanley Smith Barney LLC, Member SIPC.

Whereas: Mining next to ecologically sensitive protected areas poses material climate, regulatory, and reputational risks.

At 438,000 acres, the Okefenokee Swamp is one of the world's largest freshwater wetlands. Over 402,000 acres are protected in the Okefenokee National Wildlife Refuge, the largest refuge in the eastern United States and home to hundreds of plant and animal species. The Okefenokee also stores over 400M tons of CO2 equivalent, making it one of the largest natural carbon sinks in North America.

Twin Pines Minerals, LLC (TPM) has applied for permits to mine titanium on Trail Ridge, the swamp's eastern hydrologic boundary. In 2022, Chemours stated its lack of plans for doing business with TPM or conducting mining on Trail Ridge itself, but left open future possibilities for both. Since then, TPM's northern neighbor (with which Chemours, as DuPont, did business previously) has publicly called for mining on its land and TPM's new western neighbor has leased its land to Chemours for titanium mining elsewhere in Georgia.

Mining, or purchasing materials mined, on Trail Ridge could expose Chemours to considerable financial risk:

- **Climate and Biodiversity:** Overwhelming scientific consensus emerged since Chemours' 2022 commitment that TPM's project would significantly damage the Okefenokee by drawing down its water level and increasing risk of drought and landscape-level fires. Such events would destroy swamp wildlife habitat, damage thousands of acres of adjacent private timberland and release significant carbon emissions. Involvement in titanium mining at the Okefenokee would conflict with Chemours' aspiration to reduce Scope 3 emissions while also exacerbating operational risks associated with climate change cited in its 2022 10-K.
- **Regulatory and Legal**: The 2023 Okefenokee Protection Act, which would prohibit mining on Trail Ridge, garnered 96 bipartisan cosponsors in Georgia's House of Representatives and will return in 2024, presenting regulatory risk. Furthermore, potential litigation from timber companies suffering fire damage to their assets presents legal risk.
- **Reputational**: In early 2023, over 100,000 comments were submitted to Georgia's Environmental Protection Division opposing TPM's draft Mining Land Use Plan and approximately 70% of Georgians want Governor Kemp to deny TPM's permits. Okefenokee is being nominated for inclusion on UNESCO's World Heritage Site List, and the issue has received significant media coverage in the *New York Times, Wall Street Journal, AP* and *Bloomberg*.

Furthermore, Chemours' agreement to purchase titanium from Hyperion in Tennessee, combined with expansion of its Florida operations, render unnecessary securing supply from Okefenokee.

A permanent commitment to protect the Okefenokee would enable Chemours to fortify its environmental image and help fulfill the aspiration articulated in its 2022 Sustainability Report "to be the most sustainable TiO2 enterprise in the world."

Resolved: Shareholders request the Board of Directors issue a public report, within six months, assessing the benefits and drawbacks of permanently committing not to engage in titanium mining, nor to purchase titanium mined by others, on the Okefenokee's hydrologic boundary, and assessing risks to the company associated with same.

Ontjes, Brandon

From: Ontjes, Brandon
Sent: Thursday, November 30, 2023 11:42 PM
To: 'Annie Sanders'
Cc: Investor Relations; Ursomarso, Lori R; sjeans@feliciansisters.org
Subject: RE: [EXT] Re: Shareholder proposal for The Chemours Company 2024 Annual Meeting

Thank you for your email and on behalf of The Chemours Company I confirm receipt.

Regards,

Brandon Ontjes
Vice President – FP&A and Investor Relations
The Chemours Company
(610) 888-7709

From: Annie Sanders <asanders@greencentury.com>
Sent: Thursday, November 30, 2023 7:18 PM
To: Investor Relations <investor@chemours.com>; Ontjes, Brandon <BRANDON.ONTJES@chemours.com>; Ursomarso, Lori R <Lori.Ursomarso@chemours.com>; sjeans@feliciansisters.org
Subject: [EXT] Re: Shareholder proposal for The Chemours Company 2024 Annual Meeting

External email. Confirm links and attachments before opening.

Hello,

We are writing to request confirmation of receipt of this email and the corresponding filing mailed to Chemours' headquarters that was confirmed by Fedex as having arrived on Friday November 10th.

We would be glad to provide additional times to connect for a call in December, as the call times laid out in our original email have since passed.

Thank you in advance for your response and all the best,

Annie Sanders
Director of Shareholder Advocacy
Green Century Capital Management
114 State St. Suite 200 Boston, MA 02109
www.greencentury.com
773-272-6691/1-800-934-7736
asanders@greencentury.com

For updates on Green Century, register for our e-newsletter or follow us on Twitter and LinkedIn.

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Stocks will fluctuate in response to factors that may affect a single company, industry, sector, country, region or the market as a whole and may perform worse than the market. Foreign securities are subject to additional risks such as currency fluctuations, regional economic and political conditions, differences in accounting methods, and other unique risks compared to investing in securities of U.S. issuers. Bonds are subject to a variety of risks including interest rate, credit, and inflation risk. An investment strategy that incorporates environmental, social and governance criteria may result in lower or higher returns than an investment strategy that does not include such criteria.

From: Annie Sanders <asanders@greencentury.com>
Sent: Wednesday, November 8, 2023 1:51 PM
To: investor@chemours.com <investor@chemours.com>; Ontjes, Brandon <BRANDON.ONTJES@chemours.com>; Ursomarso, Lori R <Lori.Ursomarso@chemours.com>
Subject: Shareholder proposal for The Chemours Company 2024 Annual Meeting

November 8, 2023

Via Fedex and email to investor@chemours.com

The Chemours Company

1007 Market St. Wilmington, DE 19801

Attn: Corporate Secretary

Re: Shareholder proposal for 2024 Annual Shareholder Meeting

Dear Ms. Wellman,

Green Century Capital Management, Inc. is filing a shareholder proposal on behalf of the Felician Sisters of North America Endowment Trust ("Proponent"), a shareholder of The Chemours Company, for action at the next annual meeting of The Chemours Company. The Proponent submits the enclosed shareholder proposal for inclusion in The Chemours Company 2024 proxy statement, for consideration by shareholders, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.

Felician Sisters of North America Endowment Trust has continuously beneficially owned, for at least three years as of the date hereof, at least $2,000 worth of the Company's common stock. The Felician Sisters of North America Endowment Trust can be contacted at sjeans@feliciansisters.org.

A letter from the Proponent authorizing Green Century Capital Management, Inc. to act on its behalf is enclosed. A representative of the Proponent will attend the stockholders' meeting to move the resolution as required.

The Felician Sisters of North America Endowment Trust and Green Century Capital Management, Inc. are available to meet with the Company via teleconference on Monday November 20 between 1-5pm ET, Tuesday November 28 between 12-5pm ET, or Thursday November 30 between 11am-2pm ET.

We are available to discuss this issue and appreciate the opportunity to engage and seek to resolve the Proponent's concerns. Please direct all correspondence to Annie Sanders, Director of Shareholder Advocacy at Green Century Capital Management, Inc. She may be reached at 773-272-6691 or asanders@greencentury.com. We would appreciate confirmation of receipt of this letter. Thank you.

Sincerely,

Leslie Samuelrich

President, Green Century Capital Management

Encl: Authorization letter

Annie Sanders
Director of Shareholder Advocacy
Green Century Capital Management
114 State St. Suite 200 Boston, MA 02109
www.greencentury.com
773-272-6691/1-800-934-7736
asanders@greencentury.com

For updates on Green Century, register for our e-newsletter or follow us on Twitter and LinkedIn.

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Stocks will fluctuate in response to factors that may affect a single company, industry, sector, country, region or the market as a whole and may perform worse than the market. Foreign securities are subject to additional risks such as

currency fluctuations, regional economic and political conditions, differences in accounting methods, and other unique risks compared to investing in securities of U.S. issuers. Bonds are subject to a variety of risks including interest rate, credit, and inflation risk. An investment strategy that incorporates environmental, social and governance criteria may result in lower or higher returns than an investment strategy that does not include such criteria.

VIA ELECTRONIC SUBMISSION (www.sec.gov/forms/shareholder-proposal) and to slesmes@mofo.com

U.S. Securities and Exchange Commission
The Division of Corporation Finance Office of Chief Counsel
100 F Street, NE
Washington, DC 20549

Re: Shareholder Proposal to the Chemours Company Regarding Mining at the Okefenokee on Behalf of The Felician Sisters of North America Endowment Trust
Rule 14a-8 under the Securities Exchange Act of 1934, as amended

Ladies and Gentlemen,

Green Century Capital Management, Inc. on behalf of The Felician Sisters of North America Endowment Trust (the "Proponent"), the beneficial owner of common stock of The Chemours Company (the "Company"), submitted a shareholder proposal (the "Proposal") to the Company on November 8, 2023. Green Century is writing to respond to the letter dated December 20, 2023 ("Company Letter") sent to the Securities and Exchange Commission by Scott Lesmes. In that letter, the Company contends that the Proposal may be excluded from the Company's 2024 proxy statement. A copy of this letter is being mailed concurrently to Scott Lesmes.

SUMMARY

The Proposal requests that the Board of Directors issue a public report, within six months, assessing the benefits and drawbacks of permanently committing not to engage in titanium mining, nor to purchase titanium mined by others, on the Okefenokee's hydrologic boundary, and assessing risks to the company associated with same.

The Company argues in its no action challenge that the Proposal is excludable under 14a-8(I)(7) because it relates to the Company's ordinary business operations. However, the Proposal transcends the Company's ordinary business because it focuses on a significant social policy issue of widespread public concern: titanium mining on the Okefenokee's hydrologic boundary. The Proposal is also not excludable for micromanagement because it maintains Board discretion and does impose specific methods for implementation.

BACKGROUND

The Okefenokee is one of the world's largest freshwater wetlands. Much of the swamp is a protected National Wildlife Refuge that spans over 400,000 acres across Georgia and represents one of the biggest natural carbon sinks in North America. Despite this, mining company Twin Pines Minerals, LLC (TPM) has applied for a permit to mine the component minerals used to manufacture titanium dioxide, the predominant pigment used for whitening paint, along the eastern hydrologic boundary of the Okefenokee in a sensitive ecological area called Trail Ridge.[1]

In the last two years, overwhelming scientific consensus has emerged that TPM's mine, if allowed to proceed, would significantly damage the Okefenokee[2] by drawing down the water level, making the southeastern portion of swamp three times more likely to suffer drought conditions and increasing the risk of landscape-level fires.[3] Such events would destroy wildlife and habitat within the swamp, damage tens of thousands of acres of surrounding private timberland and release significant carbon emissions. A recently updated scientific analysis shows that the Okefenokee contains over 400M tons of CO2 equivalent, making it a critical hedge against climate change.

Mining on the Okefenokee's edge is a distinctive and very controversial, highly publicized potential option that is totally plausible, given the prior attempt by DuPont, from which Chemours spun off in 2015, to mine in the area, Chemours' current mining operations elsewhere in the County where the Okefenokee is located, and Chemours' prior lease of land to TPM at a mine in Florida which demonstrates the companies have a preexisting operational relationship. It raises issues of global concern that are not implicated at its other mining operations in Florida or elsewhere in Georgia.

Furthermore, the carbon emissions are not hypothetical: scores of scientists have opined that mining will lower the water level of the swamp, leading to increased landscape level fires that will release enormous quantities of CO2 emissions. Carbon within the Okefenokee's southeastern water basin peat, equal to 28 million metric tons of CO2, is at risk of release into the atmosphere due to TPM's proposed mine – which is 1/4 of the amount of CO2 emissions the State of Georgia releases annually.[4]

ANALYSIS

The Proposal is not excludable under Rule 14a-8(I)(7) because it concerns a significant social policy issue that transcends the Company's ordinary business and does not micromanage.

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[1] https://onehundredmiles.org/okefenokee/
[2] https://www.wabe.org/scientists-say-mine-plan-claiming-no-swamp-harm-has-errors/
[3] https://www.theguardian.com/us-news/2023/apr/01/georgia-okefenokee-swamp-twin-pines-mining
[4] https://saportareport.com/okefenokee-swamp-mining-plans-could-release-carbon-bomb/columnists/hannah-jones/hannah/

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

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

Second, proposals 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. 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.

1. The Proposal deals with a significant social policy issue.

The Company Letter asserts that the proposal deals with matters relating to the company's ordinary business operations and does not focus on a significant social policy issue that transcends them. To the contrary, the Proposal deals with the significant social policy issue of titanium mining along the hydrologic boundary of the Okefenokee.

The company itself has acknowledged the protection of the Okefenokee as a significant social policy issue in a public statement issued in January 2022 in response to a similar proposal from Green Century regarding risks from mining at the Okefenokee. Rather than seeking no-action relief in response to that proposal, the company instead issued a public statement[5] in January 2022 that highlighted the ecological importance of the Okefenokee, articulated the company's commitment to protecting it, and clarified the company's lack of plans or intent to mine or purchase materials mined at the Okefenokee. Crucially, the Company stated:

> *"We are committed to ensure the value of the Okefenokee is maintained. With respect to future mining next to the Okefenokee, Chemours has no plans to open new mining locations on Trail Ridge in Georgia next to the Okefenokee. We believe that we can optimize our existing mining locations in Georgia and Florida to sustain operations well into the 2030s.*

[5] https://www.chemours.com/en/-/media/files/corporate/chemours-position-statement-responsible-mining

With respect to mining activities of others, particularly Twin Pines, Chemours has no role in the proposed Twin Pines project in Charlton County, Georgia. We have no previous, existing, or future interest in acquiring, and no plans or intent to acquire, the project or the company. We have no intention or plans, now and for the foreseeable future (the next five to ten years), of doing business with Twin Pines, including buying from the project or any titanium the project produces."

In publicly acknowledging the importance of the Okefenokee and its lack of plans to mine or purchase materials mined there, the Company inherently recognizes it as an issue that transcends ordinary business operations. Furthermore, the statement makes clear that Chemours actively encourages participation by stakeholders in matters of this nature, contradicting assertions in its no-action request that these are matters of ordinary business on which shareholders should not be allowed to weigh in. The company states explicitly:

"When planning new mines or significant modifications we reach out to stakeholders early in the process ***so that they can meaningfully participate in shaping our operations****. [Emphasis added.] Our facilities are routinely showcased to groups interested in learning more or providing input regarding our activities."*

It is incongruous at best for the Company to solicit stakeholder participation in one breath only to deny it in the next when it becomes inconvenient. At the very least, Chemours' own statement on this issue indicates that the company itself believes that this is a transcendent enough social issue to merit stakeholder engagement and input.

Moreover, in the last two years, new developments have heightened the relevance of this issue such that if Chemours felt it significant in 2022, it can only be more so now.

- First, since 2022, overwhelming scientific consensus has emerged that the currently proposed TPM mine, if allowed to proceed, would significantly damage the Okefenokee by drawing down the water level, making the southeastern portion of swamp three times more likely to suffer drought conditions and increasing the risk of landscape-level fires. Such events would destroy wildlife and habitat within the swamp, damage tens of thousands of acres of surrounding private timberland and release significant climate emissions. A recently updated scientific analysis shows that the Okefenokee contains over 400M tons of CO2 equivalent, making it a critical hedge against climate change.

- Furthermore, since Green Century's 2022 proposal, overwhelming public opposition has emerged to the proposition of a mine along Trail Ridge, which presents reputational risk to companies involved now and in the future in such activity. Between January and March of 2023, over 100,000 comments were submitted to the Georgia Environmental Protection Division opposing the draft Mining Land Use Plan, and a Mason Dixon poll from fall 2022 revealed that approximately 70% of the public wants Georgia Governor Brian Kemp to deny permits.

- In addition, the Okefenokee Swamp been nominated for inclusion on UNESCO's World Heritage Site List and the issue has received recent media coverage in outlets such as the New York Times, Wall Street Journal, AP, Bloomberg, The Guardian, Atlanta Journal-Constitution, and more.

- Finally, regulatory risk has only increased since 2022. The Okefenokee Protection Act, which would prohibit issuance of mining permits along Trail Ridge, garnered a majority 94 bipartisan cosponsors in the Georgia House of Representatives during the 2023 session, and has returned in 2024 for passage.

The Company's cited precedent regarding ordinary business is inapplicable.

In arguing that the Proposal implicates ordinary business matters, the Company cites three previous proposals that were excluded under 14a-8(I)(7). However, those proposals are inapplicable because they do not focus on a significant social policy issue and are distinguishable from the current Proposal.

In contrast, the Proposal at hand deals with a significant social policy issue which transcends the Company's ordinary business operations. The Proposal is consistent with the numerous SEC precedents that found transcendent social policy issues justify shareholder engagement, even where the proposal related to the company's products and services. See, i.e., *Morgan Stanley* (March 25, 2022) (climate change issue transcends focus on lending and underwriting); *The Travelers Companies, Inc.* (April 1, 2022) (racial justice issue transcends focus on insurance offerings); *Johnson & Johnson* (March 2, 2023) ("the role IP protections play in access to medicines" transcends the focus on company decision making regarding applying for patents); *Mastercard Incorporated* (April 25, 2023) ("the twin epidemics of mass shootings and the diversion of legally purchased firearms into illegal markets" transcends focus on establishing a merchant category code for standalone gun and ammunition stores); *Amazon.com, Inc.* (April 3, 2023) ("impact of climate change on employees' retirement accounts" transcends focus on company's default retirement options). Similarly, here the Proposal deals with the significant social policy issue of titanium mining along the hydrologic boundary of the Okefenokee, which transcends the Company's ordinary business.

The Company's cited precedents are inapplicable. One of the cited precedents, *Dollar Tree, Inc.* (May 2, 2022), was focused on general compensation matters, which are generally excludable as ordinary business. Here, the Proposal is not related in any way to employee compensation and instead requests that the Company issue a report outlining the benefits and drawbacks of a Company policy change.

In the other two cited precedents, *The Kroger Co.* (April 12, 2023) and *BlackRock, Inc.* (April 4, 2022), the apparent goal was to prevent "discrimination" based on viewpoint and ideology, which would force corporate board and management to hire and retain employees with views contrary to the business purpose and operations. This issue is best left to company management. Viewpoint and ideology are not protected identities and company boards are

allowed to make hiring and retention decisions based on a person's viewpoint alignment with the company's operations.

2. The Proposal does not micromanage.

According to the Commission and the Staff, proposals which address a societal impact but which are written in a manner that seeks to micromanage the business of the company could still be excludable if they are found to probe 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 14 L. To assess micromanagement going forward, the bulletin notes that the Staff:

> "will focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management. We would expect the level of detail included in a shareholder proposal to be consistent with that needed to enable investors to assess an issuer's impacts, progress towards goals, risks or other strategic matters appropriate for shareholder input.
>
> …
>
> Additionally, in order to assess whether a proposal probes matters 'too complex' for shareholders, as a group, to make an informed judgment, we may consider the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic."

The Proposal does not micromanage the Company because it does not "seek to impose specific . . . methods for implementing complex policies." The Proposal does not require the Company to adopt a specific policy or limit Board discretion, but rather maintains Board discretion and asks that the Company assess the benefits and drawbacks of permanently committing not to mine or purchase titanium from mining along the Okefenokee's hydrologic boundary.

The Company alleges that the Proposal "would displace the Company's judgments on business and operations with a mandate that effectively disregards the complexity of the Company's sourcing decisions." However, the Proposal does not displace the Company's judgment, nor does it mandate that the Company take any specific action, and instead requests a report based on the Board's own assessment. This is distinguishable from the SEC Staff decisions cited by the Company that requested, or even directly ordered, specific action by the company. See Company citations such as *The Kroger Co.* (April 25, 2023) (where the proposal directly requests that the board "take the necessary steps to pilot participation in the Fair Food Program"); *The Wendy's Company* (Mar. 2, 2017) (where the resolved clause states that "shareholders urge the Board of Directors to take all necessary steps to join the Fair Food Program as promptly as feasible"); *Deere & Company* (Jan. 3, 2022) (where the resolved clause states: "The Board of Directors will publish annually, without incurring excessive costs or disclosing genuinely confidential or proprietary information, the written and oral content of any

employee-training materials offered to any subset of the company's employees"). The Proposal here requests a report and does not displace Company judgment or order the Company to take a specific action.

The Company further argues that the Proposal micromanages because shareholders "cannot make an informed judgment on these complex sourcing matters for which they do not have access to complete information." However, that is precisely the request of the Proposal - to provide information to investors on the benefits and drawbacks, and related risks, of a Company policy regarding sourcing from this area. Further, the Staff noted in Staff Legal Bulletin 14L (above) that the robustness of public discussion and analysis on the topic plays into the Staff's determination of whether the proposal "probes into matters 'too complex' for shareholders, as a group, to make an informed judgment." There has been robust public discussion and attention on this issue, including: voluminous public comments filed against TPM,[6] 94 bipartisan cosponsors of the Okefenokee Protection Act in Georgia's House of Representatives,[7] widespread national media coverage in outlets such as The New York Times, Wall Street Journal and AP, a prayer vigil by Georgia's faith community to urge the Governor to deny mining permits, [8] and the Okefenokee's nomination to the UNESCO World Heritage Site List.[9]

The Proposal is appropriate for investor deliberation because the Company's current statement indicates only a lack of plans or intent for the 5 to 10 years beginning in 2022, meaning the Company could decide to break ground or begin purchasing titanium mined at the Okefenokee three years from now, in 2027, and maintain alignment with its 2022 statement. Therefore, the question of a permanent commitment is a reasonable one to assess and bring before shareholders. There is a significant difference between a short-term equivocal commitment and a permanent, organizational commitment. This difference is clear from the fact that the Company did not argue that the Proposal was already substantially implemented. The Proposal requests that the Company analyze the benefits and drawbacks of such a commitment, and again, does not force the Company to adopt said commitment.

3. The Company's cited precedents regarding supply chain no-action decisions are inapplicable.

The Company argues that the Proposal relates to the Company's supplier and vendor relationships. However, the Proposal does not direct the Company to work with, or not work with, any particular supplier. The Proposal requests a report assessing the benefits and drawbacks of permanently committing not to engage in titanium mining, nor to purchase titanium mined by others in a specific area, and related risks. This does not affect the Company's

[6] https://www.wabe.org/scientists-say-mine-plan-claiming-no-swamp-harm-has-errors/

[7] https://capitol-beat.org/2023/06/opponents-of-titanium-mine-near-okefenokee-focusing-on-mining-companys-qualifications/

[8] https://thecurrentga.org/2023/12/08/pastors-pray-for-swamps-protection/

[9] https://apnews.com/article/okefenokee-wildlife-refuge-unesco-world-heritage-site-499cd975a576658966f7abef26dbba1c

relationship with its vendors, but instead asks for insight into the Company's analysis of the effects of making a permanent commitment not to mine titanium or purchase mined titanium from a specific region. The Company maintains its discretion and has full control of its relationship with vendors.

The Company primarily relies on *The TJX Companies, Inc.* (April 9, 2021) and "substantially similar" proposals. However, the language in the Staff decision is notable: "There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(7) as the Proposal does not transcend the Company's ordinary business operations. In this regard, we note that although the Proposal refers to systemic racism through undetected supply chain prison labor, the Proposal acknowledges that the Company already prohibits prison labor and does not otherwise explain how its compliance program raises a significant issue for the Company."

Notably, the Company does not allege in *TJX Companies* that the proposal micromanages the Company. Therefore, the SEC did not make this decision on micromanagement grounds, and instead focused on ordinary business generally. As explained above, unlike the proposal in *TJX Companies*, the Proposal at hand *does* focus on a significant social policy issue that transcends the Company's ordinary business operations. Further, in *TJX Companies*, the Company already prohibits use of prison labor, which presumably is not a time-bound commitment like the statement made by Chemours. The Proposal here is distinguishable because it maintains Company discretion in its relationship with its suppliers.

CONCLUSION

We believe it is clear that the Company has not met its burden of proving that the Proposal should be excludable from the 2024 proxy statement pursuant to Rule 14a-8. The matters at hand are of appropriate interest for investor deliberation, and are advisory to the board and management, and as such, should appear on the proxy to allow a robust debate through the shareholder proposal process. We respectfully request that the Staff inform the Company that it is denying the no action letter request.

Best,

Annie Sanders

Director of Shareholder Advocacy

Green Century Capital Management

asanders@greencentury.com

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February 5, 2024

VIA STAFF ONLINE FORM

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *The Chemours Company*
Shareholder Proposal of the Felician Sisters of North America Endowment Trust
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter concerns the request, dated December 20, 2023 (the "Initial Request Letter"), that we submitted on behalf of our client The Chemours Company, a Delaware corporation ("Chemours" or the "Company"), seeking confirmation that the staff (the "Staff") of the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the "Commission") will not recommend enforcement action to the Commission if, in reliance on Rule 14a-8 under the Securities Exchange Act of 1934 (the "Exchange Act"), the Company omits the shareholder proposal (the "Proposal") submitted by Green Century Capital Management, Inc. (the "Proponent's Representative") on behalf of the Felician Sisters of North America Endowment Trust (the "Proponent") from the Company's proxy materials for its 2024 Annual Meeting of Shareholders (the "2024 Proxy Materials"). The Proponent's Representative submitted a letter to the Staff, dated January 24, 2024 (the "Proponent Letter") on behalf of the Proponent asserting their view that the Proposal is required to be included in the 2024 Proxy Materials. The Proponent Letter is attached as Exhibit A to this letter.

We submit this letter on behalf of the Company to supplement the Initial Request Letter and respond to the assertions made in the Proponent Letter. We also renew our request for confirmation that the Staff will not recommend enforcement action to the Commission if the Company omits the Proposal from its 2024 Proxy Materials in reliance on Rule 14a-8.

We have concurrently sent copies of this correspondence to the Proponent's Representative.

I. THE PROPOSAL

On November 8, 2023, the Company received a letter from the Proponent containing the Proposal for inclusion in the Company's 2024 Proxy Materials. We provided the letter and Proposal as attachments to the Initial Request Letter. As discussed in the Initial Request Letter, the Company believes that it may properly omit the Proposal from its 2024 Proxy Materials in reliance on Rule 14a-8(i)(7), as it deals with the Company's ordinary business operations.

The Proponent Letter expresses the view that the Proposal may not be excluded from the 2024 Proxy Materials under Rule 14a-8 because (1) the Proposal does not "micromanage" the Company and (2) the Proposal relates to a "significant policy issue."

As discussed below, the Proponent Letter does not alter the analysis of the application of Rule 14a-8(i)(7) to the Proposal. Specifically, the Proponent Letter further demonstrates that the Proposal seeks to micromanage the Company's ordinary business decisions and fails to transcend the ordinary business of the Company.

II. EXCLUSION OF THE PROPOSAL

a. Basis for Excluding the Proposal

As discussed more fully below, the Company believes it may properly omit the Proposal from its 2024 Proxy Materials in reliance on Rule 14a-8(i)(7), as the Proposal deals with matters related to the Company's ordinary business operations.

i. The Proposal May Be Omitted Because it Seeks to Micromanage the Company

It is the Company's view that the Proposal may be properly omitted in reliance on Rule 14a-8(i)(7) because the Staff has repeatedly recognized that a proposal that seeks to micromanage the determinations of a company's management regarding day-to-day decisions is excludable under Rule 14a-8(i)(7) as a component of "ordinary business."

The Proposal requests that the Company "issue a public report, within six months, assessing the benefits and drawbacks of *permanently* committing not to engage in titanium mining, nor to purchase titanium mined by others, on the Okefenokee's hydrologic boundary, and assessing risks to the company associated with the same." (Emphasis added.) The Commission has long held that proposals requesting a report are evaluated by the Staff by considering the underlying subject matter of the proposal when applying Rule 14a-8(i)(7). *See* Exchange Act Release No. 20091 (Aug. 16, 1983) (the "1983 Release"); *see also Johnson Controls, Inc.* (Oct. 26, 1999) ("[Where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of

ordinary business… it may be excluded under [R]ule 14a-8(i)(7)") and *Netflix, Inc.* (Mar. 14, 2016) (concurring with the exclusion of a proposal for a public report describing risks related to offensive and inaccurate portrayals of Native Americans, American Indians and other Indigenous Peoples, noting that the underlying subject matter of the requested report related to "the nature, presentation and content of programming and film production"). Similarly, the Staff has held that proposals requesting an assessment or evaluation of risk of a particular action or policy will be analyzed in the same way that requests for reports are evaluated: by looking to the underlying subject matter of the risk assessment. *See* Staff Legal Bulletin No. 14E (Oct. 27, 2009) ("SLB 14E").

In its response, the Proponent seeks to draw a distinction between a proposal requesting a permanent commitment and a proposal that "requests that the Company analyze the benefits and drawbacks of such a commitment, [but] does not force the Company to adopt said commitment." The Proponent argues that because the Proposal does not "order the Company to take a specific action," the Proposal does not micromanage. Similarly, in the Proponent Letter, the Proponent seeks to distinguish *The Kroger Co.* (Apr. 25, 2023), *The Wendy's Company* (Mar. 2, 2017) and *Deere & Company* (Jan. 3, 2022), letters cited by the Company in the Initial Request Letter, as the proponents in those letters requested, or even directly ordered, specific action by the companies rather than requesting a report or an assessment of those actions. As discussed above, the 1983 Release makes clear that such distinction is misplaced. When a proposal requests a report, the Staff will evaluate the proposal on the basis of the underlying subject matter. The fact that the Proposal calls for a report and assessment of the risks associated with the proposed permanent commitment does not change the underlying subject matter of the Proposal.

The underlying subject matter of the requested report and assessment is a permanent commitment not to engage in titanium mining, nor to purchase titanium mined by others, near the Okefenokee's hydrologic boundary. This is further made clear from the Supporting Statement which focuses almost exclusively on the Proponent's view of the risks of mining, or purchasing materials mined, on Trail Ridge and why it is unnecessary for the Company to source minerals near the Okefenokee hydrologic boundary. In Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L"), the Staff reaffirmed the guidance in Release No. 34-40018 (May 21, 1998) (the "1998 Release") and reiterated that they would not concur in exclusion of "proposals that suggest targets or timelines <u>*so long as the proposals afford discretion to management as to how to achieve such goals*</u>." (Emphasis added.) A permanent commitment strips management of its discretion and inherently seeks to impose a specific "method[] for implementing complex policies." 1998 Release. As such, the Proposal squarely falls within the category of proposals excludable under 14a-8(i)(7) on micromanagement grounds.

The Proponent also argues that sourcing matters are not "too complex" for shareholders to make an informed judgment on given the public discussion and attention on the issue of mining near the Okefenokee hydrologic boundary. The Proponent mistakenly equates public discussion and data with respect to Twin Pines Minerals, LLC's initial mining land use submission to the Georgia Environmental Protection Division with the information necessary for an evaluation of the Company's specific sourcing policies. While there is information available regarding Twin Pine's mining permit application, there is no readily available information regarding the specific

competing considerations that Chemours faces when making Company specific sourcing decisions. The Proponent suggests that the report sought by the Proposal should itself be the method of delivering relevant information to shareholders on the benefits and drawbacks, and related risks, of the Company sourcing near the Okefenokee hydrologic boundary. The Proponent fails to recognize that publishing such Company specific competing considerations would result in the sharing of confidential information that would provide the Company's competitors with knowledge which could cause substantial harm to the competitive position of the Company. As the information currently available is not sufficient to allow shareholders, as a group, to make an informed judgment, and making such information available to the public would result in competitive harm to the Company, the Company believes the proposal clearly probes into matters "too complex" for the shareholders to make an informed decision.

Moreover, the Proponent argues that investor deliberation regarding a permanent ban on sourcing titanium near the Okefenokee is appropriate because the Company made a public statement in 2022 indicating its lack of plans and intent to break ground or begin purchasing titanium mined near Okefenokee for at least five to ten years. The Proponent believes that this public statement on a temporary lack of intent entitles investors to decide on the permanent elimination of one of the Company's possible titanium sources. As the Proponent itself mentions, "[t]here is a significant difference between a short-term equivocal commitment and a permanent, organizational commitment." Making investors and the public aware of the Company's prior statement of intention, however, does not negate the Company's argument that a proposed permanent ban on certain sourcing arrangements is the type of decision regarding day-to-day business operations that the 1998 Release indicated is too impractical and complex to subject to direct shareholder oversight. The Proponent also alludes to the fact that such prior statements suggest that the Company capitulated that sourcing near the Okefenokee is a significant social policy. As discussed below, the Company does not believe the social policy transcends the ordinary business of the Company. Regardless, it is well established that a proposal that seeks to micromanage a company's business operations is excludable under Rule 14a-8(i)(7) regardless of whether the proposal raises a significant social policy issue. *See* SLB 14E, at note 8, citing the 1998 Release for the standard that "a proposal [that raises a significant policy issue] could be excluded under Rule 14a-8(i)(7), however, if it 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."

Lastly, the Proponent fails to acknowledge the complexities of the Company's mineral sourcing decisions. As noted in the Initial Letter, sourcing of materials necessary for production of TiO2 is a complicated matter that is integrally entwined with its ordinary business operations and fundamental to management's ability to run the Company's Titanium Technologies operations on a day-to-day basis. Evaluating and weighing these matters involves the expertise of professionals in various disciplines who carefully evaluate complex and competing considerations that relate to sourcing the materials necessary for TiO2, including, but not limited to, overall availability and processing requirements of the raw materials, quality standards, business operations and expenditures, regulatory requirements and compliance including implications of the Critical Minerals Executive Order and corporate policies and sustainability matters, among

others. Shareholders, as a group, are not in a position to make an informed judgment on sourcing matters such as those sought by the Proposal given such complexities.

Accordingly, the Company remains of the view that it may exclude the Proposal pursuant to Rule 14a-8(i)(7) as the Proposal seeks to micromanage the Company's decisions with respect to sourcing decisions.

ii. The Proposal May be Omitted Because The Proposal Would Hinder Management's Fundamental Ability to Run the Company's Day-to-Day Operations and Because the Proposal Does Not Focus on a Significant Policy Issue that Transcends the Company's Ordinary Business Operations.

If the Staff were to disagree with the Company's view that the Proposal attempts to micromanage the Company, the Company continues to be of the view that the Proposal may be excluded under 14a-8(i)(7) as the Staff has repeatedly recognized that proposals concerning "ordinary business" that do not focus on significant social policy issues shall be excludable. *See* 1998 Release; *see also* SLB 14L.

As demonstrated in the Initial Request Letter, the Staff has consistently concurred with the exclusion of proposals concerning decisions relating to supplier and vendor relationships as a component of "ordinary business." In recognition of this precedent, the Proponent attempts to draw a distinction between proposals directing the company to "work with, or not work with, any particular supplier" and a proposal requesting a report assessing the benefits and drawbacks of a permanent ban on sourcing from certain suppliers. As described above, the 1983 Release and the Staff's interpretations since the 1983 Release make clear that the Staff considers the underling subject matter of a proposal in its evaluation of Rule 14a-8(i)(7). Here, the underlying subject matter of the report requested in the Proposal is a permanent commitment to forego titanium mining, and the purchase of titanium mined by others, near the Okefenokee's hydrologic boundary. As the underlying subject matter would inherently affect the Company's relationship with suppliers by dictating which vendors the Company is prohibited from doing business with, the Proposal involves exactly the decisions that the 1998 Release cited as being fundamental to management's ability to run a company on a daily basis.

The Proponent further argues that the long line of precedent regarding the exclusion of proposals related to suppliers is inapplicable as the Proposal at hand does focus on a significant social policy. The Company continues to believe that the significant social policy issue exception is inapplicable to the Proposal as the Proposal fails to focus on a significant social policy that "transcend[s] the ordinary business of the [Company]." SLB 14L.

Similar to the proposals cited in the Initial Request Letter that referenced topics that may raise significant social policy issues, the Proposal does not focus on a significant social policy issue that has a broad societal impact, such as environmental protection, but instead focuses on the Company's supply chain by seeking to control sourcing decisions. The environmental, climate and

reputational risk aspects of the Proposal are, at best, secondary to the Proposal's central objective to control the Company's ability to source Critical Minerals from southeast Georgia. Decisions regarding requirements with respect to geographic sourcing do not transcend the Company's day-to-day operations. By referring to alleged climate, regulatory and legal and reputational risks to the Company, the Proposal attempts to suggest that any future sales of Titanium Technologies products containing titanium dioxide sourced from near the Okefenokee hydrologic boundary implicate significant social policy issues. Notwithstanding these assertions, the Proposal itself is squarely focused on the Company's ability to source materials from a particular place or supplier.

The Proponent asserts that because the Company acknowledged in January 2022 that the Okefenokee had value and indicated a temporary lack of intent to mine or purchase materials mined there, that the Company "inherently recognizes [mining near the Okefenokee] as an issue that transcends ordinary business operations." Even if Chemours' prior statement was a relevant factor in determining if the Proposal raises issues with a broad societal impact, the mere act of seeking stakeholder input does not demonstrate that a permanent commitment with respect to the Company's suppliers and mineral sand sourcing decisions involves a social policy that transcends Chemours' ordinary business. Indeed, management frequently considers stakeholder input in the course of running the day-to-day operations of the Company. Therefore, Chemours' prior statement on the matter is not dispositive when evaluating whether an issue with broad societal impact has been raised.

Finally, the Company notes that the subject matter of the Proposal is entirely hypothetical as neither Twin Pines Minerals, LLC nor any other company currently has mining permit approval from the appropriate regulatory authorities to mine titanium on Trail Ridge near the Okefenokee hydrologic boundary. The requested report in the Proposal would, thus, be based on purely hypothetical facts that, at least at this point, do not involve a significant social policy. Therefore, the Proposal fails to focus on any relevant social policy issue, let alone a social policy issue so significant as to transcend the ordinary business of the Company.

III. CONCLUSION

For the reasons set forth in the Initial Request Letter and discussed further above, the Company believes that it may properly omit the Proposal from its 2024 Proxy Materials in reliance on Rule 14a-8. As such, we respectfully request that the Staff concur with the Company's view and not recommend enforcement action to the Commission if the Company omits the Proposal from its 2024 Proxy Materials.

Pursuant to the guidance provided in Section F of Staff Legal Bulletin 14F (Oct. 18, 2011), we ask that the Staff provide its response to this request to Scott Lesmes, on behalf of the Company, via email at SLesmes@mofo.com, and to the Proponent's Representative via email at asanders@greencentury.com. If we can be of further assistance in this matter, please do not hesitate to contact me at (202) 887-1585.

Sincerely,

Scott Lesmes

Attachments

cc: Annie Sanders, Director of Shareholder Advocacy
Green Century Capital Management, Inc.
Kristine Wellman, Senior Vice President, General Counsel and Corporate Secretary
The Chemours Company

EXHIBIT A

VIA ELECTRONIC SUBMISSION (www.sec.gov/forms/shareholder-proposal) and to slesmes@mofo.com

U.S. Securities and Exchange Commission
The Division of Corporation Finance Office of Chief Counsel
100 F Street, NE
Washington, DC 20549

Re: Shareholder Proposal to the Chemours Company Regarding Mining at the Okefenokee on Behalf of The Felician Sisters of North America Endowment Trust
Rule 14a-8 under the Securities Exchange Act of 1934, as amended

Ladies and Gentlemen,

Green Century Capital Management, Inc. on behalf of The Felician Sisters of North America Endowment Trust (the "Proponent"), the beneficial owner of common stock of The Chemours Company (the "Company"), submitted a shareholder proposal (the "Proposal") to the Company on November 8, 2023. Green Century is writing to respond to the letter dated December 20, 2023 ("Company Letter") sent to the Securities and Exchange Commission by Scott Lesmes. In that letter, the Company contends that the Proposal may be excluded from the Company's 2024 proxy statement. A copy of this letter is being mailed concurrently to Scott Lesmes.

SUMMARY

The Proposal requests that the Board of Directors issue a public report, within six months, assessing the benefits and drawbacks of permanently committing not to engage in titanium mining, nor to purchase titanium mined by others, on the Okefenokee's hydrologic boundary, and assessing risks to the company associated with same.

The Company argues in its no action challenge that the Proposal is excludable under 14a-8(I)(7) because it relates to the Company's ordinary business operations. However, the Proposal transcends the Company's ordinary business because it focuses on a significant social policy issue of widespread public concern: titanium mining on the Okefenokee's hydrologic boundary. The Proposal is also not excludable for micromanagement because it maintains Board discretion and does impose specific methods for implementation.

BACKGROUND

The Okefenokee is one of the world's largest freshwater wetlands. Much of the swamp is a protected National Wildlife Refuge that spans over 400,000 acres across Georgia and represents one of the biggest natural carbon sinks in North America. Despite this, mining company Twin Pines Minerals, LLC (TPM) has applied for a permit to mine the component minerals used to manufacture titanium dioxide, the predominant pigment used for whitening paint, along the eastern hydrologic boundary of the Okefenokee in a sensitive ecological area called Trail Ridge.[1]

In the last two years, overwhelming scientific consensus has emerged that TPM's mine, if allowed to proceed, would significantly damage the Okefenokee[2] by drawing down the water level, making the southeastern portion of swamp three times more likely to suffer drought conditions and increasing the risk of landscape-level fires.[3] Such events would destroy wildlife and habitat within the swamp, damage tens of thousands of acres of surrounding private timberland and release significant carbon emissions. A recently updated scientific analysis shows that the Okefenokee contains over 400M tons of CO2 equivalent, making it a critical hedge against climate change.

Mining on the Okefenokee's edge is a distinctive and very controversial, highly publicized potential option that is totally plausible, given the prior attempt by DuPont, from which Chemours spun off in 2015, to mine in the area, Chemours' current mining operations elsewhere in the County where the Okefenokee is located, and Chemours' prior lease of land to TPM at a mine in Florida which demonstrates the companies have a preexisting operational relationship. It raises issues of global concern that are not implicated at its other mining operations in Florida or elsewhere in Georgia.

Furthermore, the carbon emissions are not hypothetical: scores of scientists have opined that mining will lower the water level of the swamp, leading to increased landscape level fires that will release enormous quantities of CO2 emissions. Carbon within the Okefenokee's southeastern water basin peat, equal to 28 million metric tons of CO2, is at risk of release into the atmosphere due to TPM's proposed mine – which is 1/4 of the amount of CO2 emissions the State of Georgia releases annually.[4]

ANALYSIS

The Proposal is not excludable under Rule 14a-8(I)(7) because it concerns a significant social policy issue that transcends the Company's ordinary business and does not micromanage.

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[1] https://onehundredmiles.org/okefenokee/
[2] https://www.wabe.org/scientists-say-mine-plan-claiming-no-swamp-harm-has-errors/
[3] https://www.theguardian.com/us-news/2023/apr/01/georgia-okefenokee-swamp-twin-pines-mining
[4] https://saportareport.com/okefenokee-swamp-mining-plans-could-release-carbon-bomb/columnists/hannah-jones/hannah/

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

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

Second, proposals 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. 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.

1. The Proposal deals with a significant social policy issue.

The Company Letter asserts that the proposal deals with matters relating to the company's ordinary business operations and does not focus on a significant social policy issue that transcends them. To the contrary, the Proposal deals with the significant social policy issue of titanium mining along the hydrologic boundary of the Okefenokee.

The company itself has acknowledged the protection of the Okefenokee as a significant social policy issue in a public statement issued in January 2022 in response to a similar proposal from Green Century regarding risks from mining at the Okefenokee. Rather than seeking no-action relief in response to that proposal, the company instead issued a public statement[5] in January 2022 that highlighted the ecological importance of the Okefenokee, articulated the company's commitment to protecting it, and clarified the company's lack of plans or intent to mine or purchase materials mined at the Okefenokee. Crucially, the Company stated:

> *"We are committed to ensure the value of the Okefenokee is maintained. With respect to future mining next to the Okefenokee, Chemours has no plans to open new mining locations on Trail Ridge in Georgia next to the Okefenokee. We believe that we can optimize our existing mining locations in Georgia and Florida to sustain operations well into the 2030s.*

[5] https://www.chemours.com/en/-/media/files/corporate/chemours-position-statement-responsible-mining

With respect to mining activities of others, particularly Twin Pines, Chemours has no role in the proposed Twin Pines project in Charlton County, Georgia. We have no previous, existing, or future interest in acquiring, and no plans or intent to acquire, the project or the company. We have no intention or plans, now and for the foreseeable future (the next five to ten years), of doing business with Twin Pines, including buying from the project or any titanium the project produces."

In publicly acknowledging the importance of the Okefenokee and its lack of plans to mine or purchase materials mined there, the Company inherently recognizes it as an issue that transcends ordinary business operations. Furthermore, the statement makes clear that Chemours actively encourages participation by stakeholders in matters of this nature, contradicting assertions in its no-action request that these are matters of ordinary business on which shareholders should not be allowed to weigh in. The company states explicitly:

"When planning new mines or significant modifications we reach out to stakeholders early in the process ***so that they can meaningfully participate in shaping our operations****. [Emphasis added.] Our facilities are routinely showcased to groups interested in learning more or providing input regarding our activities."*

It is incongruous at best for the Company to solicit stakeholder participation in one breath only to deny it in the next when it becomes inconvenient. At the very least, Chemours' own statement on this issue indicates that the company itself believes that this is a transcendent enough social issue to merit stakeholder engagement and input.

Moreover, in the last two years, new developments have heightened the relevance of this issue such that if Chemours felt it significant in 2022, it can only be more so now.

- First, since 2022, overwhelming scientific consensus has emerged that the currently proposed TPM mine, if allowed to proceed, would significantly damage the Okefenokee by drawing down the water level, making the southeastern portion of swamp three times more likely to suffer drought conditions and increasing the risk of landscape-level fires. Such events would destroy wildlife and habitat within the swamp, damage tens of thousands of acres of surrounding private timberland and release significant climate emissions. A recently updated scientific analysis shows that the Okefenokee contains over 400M tons of CO2 equivalent, making it a critical hedge against climate change.

- Furthermore, since Green Century's 2022 proposal, overwhelming public opposition has emerged to the proposition of a mine along Trail Ridge, which presents reputational risk to companies involved now and in the future in such activity. Between January and March of 2023, over 100,000 comments were submitted to the Georgia Environmental Protection Division opposing the draft Mining Land Use Plan, and a Mason Dixon poll from fall 2022 revealed that approximately 70% of the public wants Georgia Governor Brian Kemp to deny permits.

- In addition, the Okefenokee Swamp been nominated for inclusion on UNESCO's World Heritage Site List and the issue has received recent media coverage in outlets such as the New York Times, Wall Street Journal, AP, Bloomberg, The Guardian, Atlanta Journal-Constitution, and more.

- Finally, regulatory risk has only increased since 2022. The Okefenokee Protection Act, which would prohibit issuance of mining permits along Trail Ridge, garnered a majority 94 bipartisan cosponsors in the Georgia House of Representatives during the 2023 session, and has returned in 2024 for passage.

The Company's cited precedent regarding ordinary business is inapplicable.

In arguing that the Proposal implicates ordinary business matters, the Company cites three previous proposals that were excluded under 14a-8(I)(7). However, those proposals are inapplicable because they do not focus on a significant social policy issue and are distinguishable from the current Proposal.

In contrast, the Proposal at hand deals with a significant social policy issue which transcends the Company's ordinary business operations. The Proposal is consistent with the numerous SEC precedents that found transcendent social policy issues justify shareholder engagement, even where the proposal related to the company's products and services. See, i.e., *Morgan Stanley* (March 25, 2022) (climate change issue transcends focus on lending and underwriting); *The Travelers Companies, Inc.* (April 1, 2022) (racial justice issue transcends focus on insurance offerings); *Johnson & Johnson* (March 2, 2023) ("the role IP protections play in access to medicines" transcends the focus on company decision making regarding applying for patents); *Mastercard Incorporated* (April 25, 2023) ("the twin epidemics of mass shootings and the diversion of legally purchased firearms into illegal markets" transcends focus on establishing a merchant category code for standalone gun and ammunition stores); *Amazon.com, Inc.* (April 3, 2023) ("impact of climate change on employees' retirement accounts" transcends focus on company's default retirement options). Similarly, here the Proposal deals with the significant social policy issue of titanium mining along the hydrologic boundary of the Okefenokee, which transcends the Company's ordinary business.

The Company's cited precedents are inapplicable. One of the cited precedents, *Dollar Tree, Inc.* (May 2, 2022), was focused on general compensation matters, which are generally excludable as ordinary business. Here, the Proposal is not related in any way to employee compensation and instead requests that the Company issue a report outlining the benefits and drawbacks of a Company policy change.

In the other two cited precedents, *The Kroger Co.* (April 12, 2023) and *BlackRock, Inc.* (April 4, 2022), the apparent goal was to prevent "discrimination" based on viewpoint and ideology, which would force corporate board and management to hire and retain employees with views contrary to the business purpose and operations. This issue is best left to company management. Viewpoint and ideology are not protected identities and company boards are

allowed to make hiring and retention decisions based on a person's viewpoint alignment with the company's operations.

2. The Proposal does not micromanage.

According to the Commission and the Staff, proposals which address a societal impact but which are written in a manner that seeks to micromanage the business of the company could still be excludable if they are found to probe 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 14 L. To assess micromanagement going forward, the bulletin notes that the Staff:

> "will focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management. We would expect the level of detail included in a shareholder proposal to be consistent with that needed to enable investors to assess an issuer's impacts, progress towards goals, risks or other strategic matters appropriate for shareholder input.
>
> …
>
> Additionally, in order to assess whether a proposal probes matters 'too complex' for shareholders, as a group, to make an informed judgment, we may consider the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic."

The Proposal does not micromanage the Company because it does not "seek to impose specific . . . methods for implementing complex policies." The Proposal does not require the Company to adopt a specific policy or limit Board discretion, but rather maintains Board discretion and asks that the Company assess the benefits and drawbacks of permanently committing not to mine or purchase titanium from mining along the Okefenokee's hydrologic boundary.

The Company alleges that the Proposal "would displace the Company's judgments on business and operations with a mandate that effectively disregards the complexity of the Company's sourcing decisions." However, the Proposal does not displace the Company's judgment, nor does it mandate that the Company take any specific action, and instead requests a report based on the Board's own assessment. This is distinguishable from the SEC Staff decisions cited by the Company that requested, or even directly ordered, specific action by the company. See Company citations such as *The Kroger Co.* (April 25, 2023) (where the proposal directly requests that the board "take the necessary steps to pilot participation in the Fair Food Program"); *The Wendy's Company* (Mar. 2, 2017) (where the resolved clause states that "shareholders urge the Board of Directors to take all necessary steps to join the Fair Food Program as promptly as feasible"); *Deere & Company* (Jan. 3, 2022) (where the resolved clause states: "The Board of Directors will publish annually, without incurring excessive costs or disclosing genuinely confidential or proprietary information, the written and oral content of any

employee-training materials offered to any subset of the company's employees"). The Proposal here requests a report and does not displace Company judgment or order the Company to take a specific action.

The Company further argues that the Proposal micromanages because shareholders "cannot make an informed judgment on these complex sourcing matters for which they do not have access to complete information." However, that is precisely the request of the Proposal - to provide information to investors on the benefits and drawbacks, and related risks, of a Company policy regarding sourcing from this area. Further, the Staff noted in Staff Legal Bulletin 14L (above) that the robustness of public discussion and analysis on the topic plays into the Staff's determination of whether the proposal "probes into matters 'too complex' for shareholders, as a group, to make an informed judgment." There has been robust public discussion and attention on this issue, including: voluminous public comments filed against TPM,[6] 94 bipartisan cosponsors of the Okefenokee Protection Act in Georgia's House of Representatives,[7] widespread national media coverage in outlets such as The New York Times, Wall Street Journal and AP, a prayer vigil by Georgia's faith community to urge the Governor to deny mining permits, [8] and the Okefenokee's nomination to the UNESCO World Heritage Site List.[9]

The Proposal is appropriate for investor deliberation because the Company's current statement indicates only a lack of plans or intent for the 5 to 10 years beginning in 2022, meaning the Company could decide to break ground or begin purchasing titanium mined at the Okefenokee three years from now, in 2027, and maintain alignment with its 2022 statement. Therefore, the question of a permanent commitment is a reasonable one to assess and bring before shareholders. There is a significant difference between a short-term equivocal commitment and a permanent, organizational commitment. This difference is clear from the fact that the Company did not argue that the Proposal was already substantially implemented. The Proposal requests that the Company analyze the benefits and drawbacks of such a commitment, and again, does not force the Company to adopt said commitment.

3. The Company's cited precedents regarding supply chain no-action decisions are inapplicable.

The Company argues that the Proposal relates to the Company's supplier and vendor relationships. However, the Proposal does not direct the Company to work with, or not work with, any particular supplier. The Proposal requests a report assessing the benefits and drawbacks of permanently committing not to engage in titanium mining, nor to purchase titanium mined by others in a specific area, and related risks. This does not affect the Company's

[6] https://www.wabe.org/scientists-say-mine-plan-claiming-no-swamp-harm-has-errors/

[7] https://capitol-beat.org/2023/06/opponents-of-titanium-mine-near-okefenokee-focusing-on-mining-companys-qualifications/

[8] https://thecurrentga.org/2023/12/08/pastors-pray-for-swamps-protection/

[9] https://apnews.com/article/okefenokee-wildlife-refuge-unesco-world-heritage-site-499cd975a576658966f7abef26dbba1c

relationship with its vendors, but instead asks for insight into the Company's analysis of the effects of making a permanent commitment not to mine titanium or purchase mined titanium from a specific region. The Company maintains its discretion and has full control of its relationship with vendors.

The Company primarily relies on *The TJX Companies, Inc.* (April 9, 2021) and "substantially similar" proposals. However, the language in the Staff decision is notable: "There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(7) as the Proposal does not transcend the Company's ordinary business operations. In this regard, we note that although the Proposal refers to systemic racism through undetected supply chain prison labor, the Proposal acknowledges that the Company already prohibits prison labor and does not otherwise explain how its compliance program raises a significant issue for the Company."

Notably, the Company does not allege in *TJX Companies* that the proposal micromanages the Company. Therefore, the SEC did not make this decision on micromanagement grounds, and instead focused on ordinary business generally. As explained above, unlike the proposal in *TJX Companies*, the Proposal at hand *does* focus on a significant social policy issue that transcends the Company's ordinary business operations. Further, in *TJX Companies*, the Company already prohibits use of prison labor, which presumably is not a time-bound commitment like the statement made by Chemours. The Proposal here is distinguishable because it maintains Company discretion in its relationship with its suppliers.

CONCLUSION

We believe it is clear that the Company has not met its burden of proving that the Proposal should be excludable from the 2024 proxy statement pursuant to Rule 14a-8. The matters at hand are of appropriate interest for investor deliberation, and are advisory to the board and management, and as such, should appear on the proxy to allow a robust debate through the shareholder proposal process. We respectfully request that the Staff inform the Company that it is denying the no action letter request.

Best,

Annie Sanders

Director of Shareholder Advocacy

Green Century Capital Management

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February 9, 2024
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 Chemours Regarding Sourcing of Titanium from Okefenokee on Behalf of Green Century Capital Management, Inc.

Ladies and Gentlemen:

Green Century Capital Management, Inc. (the "Proponent") has submitted a shareholder proposal (the "Proposal") to the Company on behalf of the Felician Sisters of North America Endowment. In previous correspondence, the company filed a no action request on December 20, 2023, and the proponent responded on January 24, 2024. I have been asked by the Proponent to respond to a supplemental letter from the Company dated February 5, 2024 ("Supplemental Letter") sent to the Securities and Exchange Commission by Scott Lesmes. A copy of this response letter is being emailed concurrently to Scott Lesmes.

A fatal flaw in company argument: the Proposal transcends ordinary business and does not micromanage.

The Proposal requests that the Board of Directors issue a public report, within six months, assessing the benefits and drawbacks of permanently committing not to engage in titanium mining, nor to purchase titanium mined by others, on the Okefenokee's hydrologic boundary, and assessing risks to the company associated with same.

The Company in its latest correspondence emphasizes the idea that just because this requests a report doesn't mean that it is not addressing excludable ordinary business. The fatal flaw in this Company argument is that the Supplemental Letter asks the Staff to ignore the language and specific request of the proposal to reach an ordinary business determination. The request of the Proposal is deliberative rather than determinative of company action. The Proposal does not demand that the company make a permanent commitment to avoid purchasing titanium from the Okefenokee, it just asks for an assessment from the company of the pros and cons of such a commitment – seeking transparency of the board and management's thinking, rather than demanding a specific outcome.

The Proposal addresses a significant policy issue (pollution) and does not micromanage the company, and therefore, regardless of whether the proposal requests a report, it is not excludable under the rule.

Reporting and Ordinary Business

The 1983 release extending ordinary business exclusions to requests for reports[1] has elicited a range of staff determinations, including sometimes highly subjective determinations. In my opinion as a representative of proponents, I believe more clarity can be provided to issuers and proponents in the present determination as to whether this proposal is excludable under Rule 14a-8(i)(7). And my conclusion is that this should not be excludable, for consistency with prior Staff decisions and clarity of the functioning of the rule.

There are really only two ordinary business determinations that matter. First, is the subject matter one that transcends ordinary business? In this instance, it relates to substantial environmental impacts and therefore transcends ordinary business. Secondly, does the language of the proposal micromanage the company? In this instance the proposal does not.

The Company letter conflates the subject matter of the proposal and in order to assert that it is excludable. For instance, the supplemental letter states that:

> "The underlying subject matter of the requested report and assessment is a permanent commitment not to engage in titanium mining…"

This is amplified later in the letter when it asserts that the company public statement regarding lack of intent to source titanium from the Okefenokee:

> "entitles investors to decide on the permanent elimination of one of the Company's possible titanium sources."

But what is clear from the proposal is that the Request cannot be interpreted as determinative of such an outcome. Instead, it requests information for investors regarding the pros and cons and transparency of the management position on this issue. This does not

[1] 1983 Release: Release No. 34-20091, August 16, 1983

The Commission did not propose any change to existing Rule 14a-8(c)(7), but did propose a significant change in the staff's interpretation of that rule. In the past, the staff has taken the position that proposals requesting issuers to prepare reports on specific aspects of their business or to form special committees to study a segment of their business would not be excludable under Rule 14a-8(c)(7). Because this interpretation raises form over substance and renders the provisions of paragraph (c)(7) largely a nullity, the Commission has determined to adopt the interpretative change set forth in the Proposing Release. Henceforth, the 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).

micromanage and therefore it is an appropriate request from investors.

A common format for report requests that **do not** micromanage, and therefore are not excludable, is the "if and how" approach, very similar to the current proposal. this was exemplified by the proposal found not to be excludable as ordinary business at *JB Hunt Transport Services* (February 7, 2020):

> **Resolved**: Shareholders request J.B. Hunt Transport Services issue a report, at reasonable cost and omitting proprietary information, describing if, and how, it plans to reduce its total contribution to climate change and align its operations with the Paris Agreement's goal of maintaining global temperature increases well below 2 degrees Celsius.

As in the current proposal, the Supporting Statement listed a few different pieces of information proponents believe would be useful to include in such a report, but makes clear that what could ultimately be reported on is at the discretion of J.B. Hunt's Board and Management. It suggests the Company include information on the relative benefits and drawbacks of integrating the following actions:

• Developing a low-carbon transition plan;

• Adopting short- and long-term greenhouse gas emissions reduction targets for the Company's full carbon footprint aligned with the Paris Agreement;

• Increasing the scale, pace, and rigor of existing initiatives aimed at reducing the carbon intensity of J.B. Hunt's services and operations;

• Investing in renewable energy resources.

The staff had previously found a separate proposal filed for 2019 to be excludable in *J.B Hunt Transport Services, Inc.* (February 14, 2019). That proposal had requested:

> **Resolved**: Shareholders request J.B. Hunt Transport Services (JBHT) adopt company-wide, quantitative targets to reduce total greenhouse gas (GHG) emissions, taking into account the goals of the Paris Climate Agreement, and issue a report, prepared at reasonable cost and omitting proprietary information, discussing its plan and progress towards achieving these targets.

Although the company tried to argue that the **proposal addressed the same subject matter** as the 2019 proposal, in point of fact, the change to an "if and how" approach shifted toward providing information for investors rather than determining the outcome. As the proponent noted in defense of the 2020 proposal:

> **The 2020 Proposal is clearly not requesting J.B. Hunt adopt company-wide, quantitative targets to reduce GHG emissions.** J.B. Hunt's characterization of the 2020 Proposal completely ignores the Resolved Clause…

Recent staff decisions excluding numerous proposals as micromanaging have gone further than prior eras in defining the lines that a proposal should not cross.[2] The current proposal does not cross any of these lines.

Proposals that prescribe intricate details of requested reporting can constitute micromanagement. The current proposal does not do so.

In the last couple of years, the staff considered been proposals regarding requests for disclosure of training materials to assess diversity training. The staff concluded that such proposals "prob[ed] too deeply into matters of a complex nature by seeking disclosure of intricate details regarding the Company's employment and training practices." *See Deere & Company* (January 3, 2022) where the Proposal seeks "the annual publication of the written and oral content of any employee-training materials offered to any subset of the Company's employees by the Company or with its consent, as well as any such materials which the Company sponsored in the creation in whole or part.".

A proposal was determined to micromanage oil and gas companies where it requested an audited report on the undiscounted value to settle asset retirement obligations.[3] (*Valero Energy Corporation* (March 20, 2023) and *Phillips 66* (March 20, 2023)). The proposals were very specific about methods of accounting and reporting that would be appropriate: shareholders request that the Board of Directors issue an audited report that describes the undiscounted expected value to settle obligations for AROs with indeterminate settlement dates. Moreover, the supporting statement got even more aggressive in defining the type of accounting practices the company should use in disclosing such asset retirement obligations with indeterminate settlement dates. In response Valero argued successfully that such reporting would be inconsistent with the accounting rules it follows:

> "When we have a legal obligation to incur costs to retire an asset, we record a liability in the period in which the obligation was incurred provided that a reasonable estimate of fair value can be made. If a reasonable estimate of fair value cannot be made at the time the obligation

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[2] The staff has previously found numerous proposals non-excludable where the report request addressed a significant policy issue and the request did not micromanage. An example is *Brinker International, Inc.* (September 15, 2022) where the proposal asked for a compliance related report which would have been seen as addressing ordinary business but for the fact that it addressed a transcendent policy issue and did not micromanage the company's compliance program. The Proposal requested that the Company disclose an analysis of the practices in its supply chain which violate its supplier code of conduct, including how each practice violates the code, how prevalent each practice is in the Company's supply chain, and what steps, if any, the Company is taking to eliminate each area of misalignment.

[3] *See,* Phillips 66 (March 20, 2023) https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2023/njcpfphillips032023-14a8.pdf ; *see also,* Valero (March 20, 2023) https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2023/njcpfvalero032023-14a8.pdf

arises, we record the liability when sufficient information is available to estimate its fair value. . . .

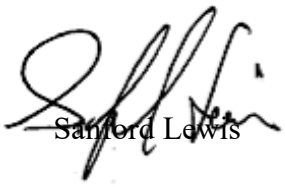
Our practice is to keep our refining and other processing assets in good operating condition through routine repair and maintenance of component parts in the ordinary course of business and by continuing to make improvements based on technological advances. As a result, we believe that generally these assets have no expected retirement dates for purposes of estimating asset retirement obligations since the dates or ranges of dates upon which we would retire these assets cannot be reasonably estimated at this time. We will recognize liabilities for these obligations in the period when sufficient information becomes available to estimate a date or range of potential retirement dates."

Another excluded proposal submitted to Merck & Co. requested a list of recipients of corporate charitable contributions of $5,000 or more, **along with the material limitations and monitoring of the contributions.**[4] The company argued this disclosure required "an intricately detailed study or report."

Other instances of exclusion occurred where proposals involved shareholders too deeply in management decisions, **such as the decision whether to measure or only estimate Scope 3 emissions in a value chain**. *Amazon.com, Inc.* (April 7, 2023). The staff allowed exclusion of a proposal filed at Amazon, concluding that it micromanaged "by imposing a specific method for implementing a complex policy disclosure without affording discretion to management."[5] While the proposal could be seen as a reporting request, the specifics went beyond that to ask the company to "measure" its scope 3 emissions from its full value chain "inclusive of its physical stores and e-commerce operations and all products that it sells directly and those sold by third party vendors."

The current reporting request is unlike the recent contexts in which proposals were allowed to be excluded. It falls on the "non-excludable" side of the line of the Staff interpretations of report requests.

Sincerely,



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[4] *See, Merck & Co.* (March 29, 2023) https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2023/bahnsenmerck032923-14a8.pdf

[5] *See, Amazon.com, Inc.* (April 7, 2023) https://www.sec.gov/files/corpfin/no-action/14a-8/gccmamazon040723-14a8.pdf