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

DIVISION OF
CORPORATION FINANCE

March 29, 2024

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

Re: JPMorgan Chase & Co. (the "Company")
Incoming letter dated January 19, 2024

Dear Brian V. Breheny:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the Brian Patrick Kariger Revocable Trust and co-filers for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that, for each of its sectors with a 2030 target, the Company annually disclose the proportion of sector emissions attributable to clients that are not aligned with a credible Net Zero pathway, whether this proportion of unaligned clients will prevent the Company from meeting its 2030 targets, and the actions it proposes to address any such emissions reduction shortfalls.

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). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which the Company relies.

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: Luke Morgan
As You Sow

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January 19, 2024

VIA STAFF ONLINE FORM

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

Re: Shareholder Proposal Submitted by As You Sow
on behalf of Brian Patrick Kariger Revocable Trust and co-filers[1]

Ladies and Gentlemen:

This letter is submitted on behalf of JPMorgan Chase & Co., a Delaware corporation (the "Company"), pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). The Company requests that the staff of the Division of Corporation Finance (the "Staff") of the U.S. Securities and Exchange Commission (the "Commission") not recommend enforcement action if the Company omits from its proxy materials for the Company's 2024 Annual Meeting of Shareholders (the "2024 Annual Meeting") the shareholder proposal and supporting statement (the "Proposal") submitted by As You Sow on behalf of Brian Patrick Kariger Revocable Trust (the "Trust") and the co-filers. The Trust and the co-filers are sometimes referred to collectively as the "Proponents."

This letter provides an explanation of why the Company believes it may exclude the Proposal and includes the attachments required by Rule 14a-8(j). In accordance with relevant Staff guidance, we are submitting this letter and its attachments to the

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[1] The following shareholders have co-filed the Proposal: Arjuna Capital on behalf of Anmol Mehra; As You Sow on behalf of Intervis Partners LLC; Boston Trust Walden; and the Presbyterian Church (U.S.A.). The co-filers' submissions and related correspondence are not relevant to this no-action request and have been omitted from the exhibits hereto but may be supplementally provided upon the Staff's request.

Staff through the Staff's online Shareholder Proposal Form. A copy of this letter also is being sent to the Proponents as notice of the Company's intent to omit the Proposal from the Company's proxy materials for the 2024 Annual Meeting.

Rule 14a-8(k) and Section E of Staff Legal Bulletin No. 14D (Nov. 7, 2008) provide that shareholder proponents are required to send companies a copy of any correspondence that the shareholder proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to remind the Proponents that if they submit correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the Company.

Background

The Company received the Proposal via email on December 4, 2023, along with a cover letter from As You Sow on behalf of the Trust. On December 12, 2023, the Company sent a letter, via email, to As You Sow requesting a written statement verifying that the Trust owned the requisite number of shares of the Company's common stock continuously for at least the requisite period preceding and including the date of submission of the Proposal. On December 19, 2023, the Company received an email from As You Sow with a copy of a letter from Morgan Stanley Wealth Management verifying the Trust's stock ownership in the Company. The Company also subsequently received copies of the Proposal submitted by the co-filers. Copies of the Proposal, cover letter and related correspondence are attached hereto as Exhibit A.[2]

Summary of the Proposal

The text of the resolution contained in the Proposal follows:

> **RESOLVED:** Shareholders request that, for each of its sectors with a 2030 target, JPMorgan Chase annually disclose the proportion of sector emissions attributable to clients that are not aligned with a credible Net Zero pathway, whether this proportion of unaligned clients will prevent JPMorgan from meeting its 2030 targets, and the actions it proposes to address any such emissions reduction shortfalls.

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[2] Exhibit A omits correspondence between the Company and As You Sow that is irrelevant to this request, such as the aforementioned deficiency letter and subsequent response, along with correspondence between the Company and the co-filers. *See* the Staff's "Announcement Regarding Personally Identifiable and Other Sensitive Information in Rule 14a-8 Submissions and Related Materials" (Dec. 17, 2021), available at https://www.sec.gov/corpfin/announcement/announcement-14a-8-submissions-pii-20211217.

Bases for Exclusion

We hereby respectfully request that the Staff concur in the Company's view that it may exclude the Proposal from the proxy materials for the 2024 Annual Meeting pursuant to:

- Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company's ordinary business operations; and
- Rule 14a-8(i)(3) because the Proposal is impermissibly vague and indefinite.

Analysis

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

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

The Staff has consistently agreed that shareholder proposals attempting to micromanage a company by probing too deeply into matters of a complex nature upon which shareholders, as a group, are not in a position to make an informed judgment are excludable under Rule 14a-8(i)(7). *See* 1998 Release; *see also, e.g.*, *JPMorgan Chase & Co.* (Mar. 22, 2019); *Royal Caribbean Cruises Ltd.* (Mar. 14, 2019); *Walgreens Boots Alliance, Inc.* (Nov. 20, 2018); *RH* (May 11, 2018); *Amazon.com, Inc.* (Jan. 18, 2018). As the Commission has explained, a proposal may probe too deeply into matters of a complex nature if it "involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies." *See* 1998 Release*; see also, e.g., Amazon.com, Inc.* (Apr. 7, 2023, *recon. denied* Apr. 20, 2023). In Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L"), the Staff explained that a proposal can be excluded on the basis of micromanagement based "on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management."

In particular, the Staff has permitted exclusion on the basis of micromanagement of shareholder proposals urging the adoption of policies that impose specific methods for implementing complex policies. For example, in *Amazon.com, Inc.* (Apr. 7, 2023, *recon. denied* Apr. 20, 2023), the Staff permitted exclusion under Rule 14a-8(i)(7) of a proposal that would have required the company to adopt a particular methodology for scope 3 greenhouse gas emissions measuring and reporting that was inconsistent with the company's existing approach. In its response, the Staff noted that "the [p]roposal seeks to micromanage the [c]ompany by imposing a specific method for implementing a complex policy disclosure without affording discretion to management." *See also The Coca-Cola Co.* (Feb. 16, 2022) (permitting exclusion on the basis of micromanagement of a proposal requesting that the company submit any proposed political statement to shareholders at the next shareholder meeting for approval prior to issuing the subject statement publicly); *Rite Aid Corp.* (Apr. 23, 2021, *recon. denied* May 10, 2021) (permitting exclusion on the basis of micromanagement of a proposal requesting the board adopt a policy that would prohibit equity compensation grants to senior executives when the company common stock had a market price lower than the grant date market price of any prior equity compensation grants to such executives); *JPMorgan Chase & Co.* (Mar. 30, 2018) (permitting exclusion on the basis of micromanagement of a proposal that requested a report on the reputational, financial and climate risks associated with project and corporate lending, underwriting, advising and investing for tar sands production and transportation, noting that the proposal sought to "impose specific methods for implementing complex policies").

The Staff also has permitted exclusion on the basis of micromanagement of proposals that sought excessive and overly granular detail. For example, in *Deere & Co.* (Jan. 3, 2022), the Staff permitted exclusion under Rule 14a-8(i)(7) of a proposal that requested the annual publication of the "written and oral content of any employee-training materials" offered to the company's employees, noting that the proposal probed "too deeply into matters of a complex nature by seeking disclosure of intricate details regarding the [c]ompany's employment and training practices" and thus constituted micromanagement. *See also American Express Co.* (Mar. 11, 2022) (same); *Verizon Communications Inc.* (Mar. 17, 2022) (same). Similarly, in *GameStop Corp.* (Apr. 25, 2023), the Staff permitted exclusion under Rule 14a-8(i)(7) of a proposal that requested the company provide detailed and current information regarding shareholder ownership of the company to the public and also provide a searchable history of this information, noting that the proposal "seeks to micromanage the [c]ompany."

In this instance, the Proposal seeks to micromanage the Company by imposing specific methods for implementing complex policies and by requesting overly granular detail. Although couched as a request for disclosure, the Proposal would require the Company to analyze and report on sector net zero aligned targets within its lending portfolio in a particular way that is different from its current approach. Specifically, the Proposal requests that "for each of its sectors with a 2030 target," the Company

annually disclose (i) the proportion of sector emissions attributable to clients that are "not aligned with a credible Net Zero pathway," (ii) whether such unaligned clients will prevent the Company from meeting its 2030 emissions reduction targets, (iii) and any actions to address any such emissions reduction shortfalls.

The Proposal goes beyond a mere request because to address it, the Company would need to modify the way in which it pursues its environmental sustainability strategy. In this regard, the Company currently engages with clients who operate in carbon-intensive industries with the goal of advancing low-carbon transition and encouraging near-term actions to set a path for global net zero emissions by 2050. As disclosed in the "Net Zero Aligned Targets" section of the Company's sustainability initiatives webpage, the Company is "aligning key sectors of our financing portfolio with net zero emissions by 2050" and has "set net zero aligned targets for eight sectors — Oil & Gas, Electric Power, Auto Manufacturing, Iron & Steel, Cement and Aviation — and new for 2023, Shipping and Aluminum."[3] The Company published a particular methodology for this approach and, from time to time, revises baselines and targets for certain sectors when appropriate, as it did in 2023 for the Oil & Gas Operational, Electric Power, Auto Manufacturing, Iron & Steel, and Cement sectors. The Company also disclosed that its "net zero aligned targets are currently constructed for 2030 as portfolio-level targets by sector, using an emissions intensity reduction metric" and provides detailed information on scope reporting, scenario methodologies, units of measurement, baseline, targets and progress for each sector.

The Company's most recent Climate Report, issued in November 2023 (the "Report"), describes in detail the strategy and methodology behind the Company's disclosures.[4] For example, page 11 discusses the Company's Carbon Assessment Framework:

> To bring a climate lens to the way we make financing decisions, we have developed an assessment methodology, the Carbon Assessment Framework ("CAF"). Our CAF aims to provide a consistent, comprehensive, and data-driven approach to assess our client's emissions and decarbonization plans. We use the CAF to assess how new in-scope transactions may affect progress toward our net zero aligned targets. Within the framework, we assess two key scores for each client: a CAF quantitative score and a CAF qualitative score (collectively known as the CAF scores). The quantitative score for each client is comprised of three pillars: (i) their historical emissions reductions; (ii) their current carbon

[3] *See Our Initiatives – Net Zero Aligned Targets*, available at https://www.jpmorganchase.com/impact/sustainability/es-initiatives#net-zero-aligned-targets.

[4] *See 2023 Climate Report*, available at https://www.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/documents/Climate-Report-2023.pdf.

> intensity; and (iii) their projected carbon intensity based on their decarbonization targets. The qualitative score considers a variety of factors, including corporate structures for governance and oversight, which enable us to take a holistic view of how the client plans to advance their decarbonization goals. The client-level CAF quantitative and qualitative scores are sourced from our Climate Risk infrastructure. Our Risk teams also use these client-level scores for internal risk analysis purposes.

Page 14 discusses the Company's approach to public reporting:

> We recognize stakeholders' interest in timely information concerning our climate-related strategies and activities. We plan to continue to provide information through a number of channels including our Annual Report and Proxy Statement, ESG and Climate reporting, regulatory filings, website, press releases, direct conversations with stakeholders, and various other reports and presentations. We intend to continue to leverage market-leading and investor-focused climate reporting initiatives to inform the development of our climate-related disclosures. We are also closely monitoring regulatory developments related to mandatory climate reporting requirements in several jurisdictions around the world.

The Report's "Metrics and Targets" section describes several components of the Company's climate-related disclosures, including net zero aligned targets on page 24:

> To date, we have set net zero aligned targets for eight sectors — Oil & Gas, Electric Power, Auto Manufacturing, Iron & Steel, Cement, Aviation, and — new for 2023 — Shipping and Aluminum. Our net zero aligned targets are currently constructed for 2030 as portfolio-level targets by sector, using an emissions intensity reduction metric. Below we provide updates to our targets, an updated approach to address Oil & Gas Scope 3 emissions, details of our new targets for Shipping and Aluminum, and performance to date toward our existing targets. In this report, we also disclose our financed emissions on an absolute basis (i.e., absolute financed emissions) for the eight sectors above, and discuss how we are managing data challenges we face in constructing baselines and monitoring progress toward our targets.

The Report describes the process and logic behind updates to the Company's targets on page 24:

> We aim for our climate strategy to be science-based, reliant on data-driven insights, and designed to adapt as data quality and availability progress. In 2021, we set 2030 interim emissions intensity reduction targets for three

> sectors — Oil & Gas, Electric Power and Auto Manufacturing. As the first large U.S. bank to do so, we aligned these targets with the then available IEA SDS scenario. Since the publication of the IEA NZE scenario, which aims to limit temperature rise to 1.5 degrees Celsius and achieve net zero emissions by 2050, we have aimed to align all new targets — Iron & Steel, Cement and Aviation in 2022, as well as Shipping and Aluminum for 2023 — with this scenario. To maintain this consistent approach across all of our targets, we are now updating our targets for the Oil & Gas, Electric Power and Auto Manufacturing sectors to align to the more ambitious IEA NZE scenario. Details on updates for each of the targets are provided in the following sections.

It offers information on metrics, targets, and baseline for the Company's new sector targets in Aluminum and Shipping on page 26:

> We continue to advance our efforts to set emissions intensity reduction targets for additional carbon-intensive sectors in our financing portfolio. In this report, we are releasing details of the initial baselines and net zero aligned targets we have set for two new sectors: Shipping and Aluminum. We have chosen to prioritize these sectors given their contribution to total global emissions, and the technical and economic maturity of their available decarbonization pathways. Our work reflects our dedication to engage with and support our clients as they navigate the low-carbon transition and our resolve to help address global needs, such as climate change and energy security.

It also includes an overview of progress toward existing targets on page 26, quoted below, which is followed in the Report by sector-specific descriptions for each of the seven existing targets:

> The below table summarizes our progress toward our net zero aligned targets as of December 31, 2022. More detail on our progress in each of these sectors is provided below. We expect that progress in our portfolios will benefit from our continued engagement with clients, as well as from the maturity of our CAF in assessing new in-scope transactions over time. To learn more about how we are working to guide our financing portfolios toward net zero emissions by 2050, please see pages 11–12 in the Strategy section. We believe the actions we are taking today will position us well to drive progress toward our targets in the years ahead — understanding that such progress will not be linear and knowing it will take time to implement effective solutions while also continuing to promote energy security and meet important economic and societal needs around the world. Global policy action that drives the adoption of clean energy, promotes the development of clean technology supply chains and attracts private

> sector investment, coupled with market behavioral changes are key enablers of our progress. We remain focused on responding to this challenge over the long term, continuing to support our clients through their decarbonization journey, and seeking opportunities to create long-term value for our shareholders.

In addition to the information provided in these select passages, the Report also details greenhouse gas footprint data from 2019 through 2022, renewable energy use from 2019 through 2022, progress toward the Company's target to finance and facilitate $1 trillion to support climate action and sustainable resource management, and the Company's Climate Risk Framework. The practices reported on in these disclosures reflect a management approach that has been created and refined over several years to best enable the Company to advance its business and sustainability goals.

The Proposal, however, takes issue with this robust disclosure and seeks to force the adoption of an entirely new approach. While the Proposal acknowledges that the Company "has established a Net Zero by 2050 goal and aligned 2030 emission reduction targets for financing activity in nine sectors," the Proposal claims that the Company's "annual disclosures fail to disclose the impact that high-emitting sectors will have on its ability to meet its 2030 targets," alleging that "most companies in these sectors are failing to align with a Net Zero-aligned 2030 pathway." The Proposal then asserts that although the Company "provides a heatmap of carbon intensity for its lending portfolio, which shows significant credit exposure to high carbon assets," the Company "does not disclose information on client progress in transitioning in alignment with Net Zero by 2050 goals or provide sufficient information to assess the potential for misalignment between JPMorgan's 2030 targets and its clients' transition progress." Thus, the Proposal seeks disclosure of this alleged "misalignment" by asking the Company to make judgments and report on clients that are "not aligned with a credible Net Zero pathway."

In doing so, the Proposal would require the Company to adopt a wholly different system of measuring, analyzing and reporting on sector targets for its lending portfolio and would require a specific method for implementing a complex policy. Like in *Amazon.com, Inc.* (Apr. 7, 2023, *recon. denied* Apr. 20, 2023), where the Staff determined that a proposal sought to micromanage the company because it would have required the company to adopt a particular methodology for scope 3 greenhouse gas emissions measuring and reporting that was different from the company's existing approach, the Proposal here would require the Company to modify the way in which it assesses clients' progress relative to Net Zero goals. In contrast to the binary determination on whether a client is aligned with a "credible" Net Zero pathway that is requested by the Proposal, the Company assesses clients with in-scope transactions on a scale of 1-5 using the Company's Carbon Assessment Framework ("CAF"). The CAF allows the Company to bring a climate lens to the way it makes financing decisions

using a robust, data-driven approach. Further, the Company assesses progress toward its targets at the portfolio level based on overall emission intensity reduction rather than on a calculation of the proportion of emissions from a class of clients. In other words, the Company uses a more nuanced approach than what the Proposal is seeking.

Decisions concerning the Company's climate-related targets, efforts to pursue those targets and related disclosures require complex business judgments and distinct assessments by the Company's teams across various functions regarding what the Company considers to be reasonable and achievable and will serve the best interest of its business and serving its clients. Moreover, in pursuing its goal of a transition to a low-carbon economy, the Company must consider other factors both within and outside of its control, including, among other things, the necessity of technological advancements, the evolution of consumer behavior and demand, the need for thoughtful climate polices, the potential impact of legal and regulatory obligations and the challenge of balancing short-term targets with the need to facilitate an orderly transition and energy security. How the Company addresses the complex issue of climate change, after considering numerous factors described above, involves exactly the type of day-to-day operational decisions that the 1998 Release and SLB 14L recognized as appropriate for exclusion under Rule 14a-8(i)(7). By mandating that the Company focus on one aspect of its climate-related efforts and provide related disclosure, the Proposal seeks to impose specific methods for implementing complex policies and, therefore, probes too deeply into matters of a complex nature upon which shareholders, as a group, are not in a position to make an informed judgment.

In addition, the Proposal would micromanage the Company because it would undermine management's discretion in determining how best to inform and engage with the Company's stakeholders. The Company currently reports on progress for sector emission targets and plans to continue to disclose information concerning its climate-related strategies and activities through a number of channels — including its Annual Report and Proxy Statement, ESG and Climate Reports, regulatory filings, website, press releases and various other reports and presentations. In its 2023 Climate Report, for example, the Company discloses both absolute emissions and emissions intensity metrics on nine targets across eight sectors for both financed and facilitated emissions, as well as a breakdown of progress against the Company's $2.5 trillion sustainable development target. Obtaining and analyzing the Proposal's requested data would require tremendous time and resources and remove management's discretion in determining how best to inform the Company's investors and other stakeholders. As in *Amazon.com, Inc.* (Apr. 7, 2023, *recon. denied* Apr. 20, 2023), this Proposal seeks to "micromanage the [c]ompany by imposing a specific method for implementing a complex policy disclosure without affording discretion to management." Further, this could potentially undermine the Company's efforts to monitor, analyze and disclose information on its climate-related strategies and engage with clients in advancing climate transition plans.

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

B. The Proposal Should Be Excluded Pursuant to Rule 14a-8(i)(3) Because It Is Impermissibly Vague and Indefinite.

Under Rule 14a-8(i)(3), a shareholder proposal may be excluded from a company's proxy materials if the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in a company's proxy materials. *See* Staff Legal Bulletin No. 14B (Sept. 15, 2004) ("SLB 14B"). The Staff has recognized that exclusion is permitted pursuant to Rule 14a-8(i)(3) if "the resolution contained in the proposal is so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." *See* SLB 14B; *see also Dyer v. SEC*, 287 F.2d 773, 781 (8th Cir. 1961) ("[I]t appears to us that the proposal, as drafted and submitted to the company, is so vague and indefinite as to make it impossible for either the board of directors or the stockholders at large to comprehend precisely what the proposal would entail.").

In accordance with SLB 14B, the Staff consistently has permitted exclusion of shareholder proposals under Rule 14a-8(i)(3) as impermissibly vague and indefinite where the proposal contained an essential term or phrase that, in applying the particular proposal to the company, was unclear, such that neither the company nor shareholders would be able to determine with any reasonable certainty what actions or measures the proposal requires. *See, e.g.*, *Philip Morris Int'l, Inc.* (Jan. 8, 2021)* (permitting exclusion under Rule 14a-8(i)(3) of a proposal requesting that the company's "balance sheet be strengthened significantly," where it was unclear how the essential terms "strengthened" and "significantly" would apply to the company's balance sheet); *Cisco Systems, Inc.* (Oct. 7, 2016) (permitting exclusion under Rule 14a-8(i)(3) of a proposal requesting that the board "not take any action whose primary purpose is to prevent the effectiveness of shareholder vote without a compelling justification for such action," where it was unclear what board actions would "prevent the effectiveness of [a] shareholder vote" and how the essential terms "primary purpose" and "compelling justification" would apply to board actions); *Pfizer Inc.* (Dec. 22, 2014, *recon. denied* Mar. 10, 2015) (permitting exclusion under Rule 14a-8(i)(3) of a proposal requesting that the board adopt a policy that "the Chair of the Board of Directors shall be an independent director who is not a current or former employee of the company, and whose only nontrivial professional, familial or financial connection to the company or its CEO is the directorship," where it was unclear whether the proposal intended to restrict or not restrict stock ownership of directors and any action taken by the company

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

to implement the proposal, such as prohibiting directors from owning nontrivial amounts of company stock, could be significantly different from the actions envisioned by shareholders); *AT&T Inc.* (Feb. 21, 2014) (permitting exclusion under Rule 14a-8(i)(3) of a proposal requesting that the board review the company's policies and procedures relating to "directors' moral, ethical and legal fiduciary duties and opportunities" to ensure the protection of privacy rights, where it was unclear how the essential term "moral, ethical and legal fiduciary" applied to the directors' duties and opportunities); *General Dynamics Corp.* (Jan. 10, 2013) (permitting exclusion under Rule 14a-8(i)(3) of a proposal requesting a policy that, in the event of a change of control, there would be no acceleration in the vesting of future equity pay to senior executives, "provided that any unvested award may vest on a pro rata basis," where it was unclear how the essential term "pro rata" applied to the company's unvested awards); *The Boeing Co.* (Jan. 28, 2011, *recon. granted* Mar. 2, 2011) (permitting exclusion under Rule 14a-8(i)(3) of a proposal requesting that senior executives relinquish preexisting "executive pay rights," where it was unclear how to apply the essential term "executive pay rights").

In this instance, the Proposal is impermissibly vague and indefinite. The Proposal asks that the Company disclose, among other things, "the proportion of sector emissions attributable to clients that are not aligned with a credible Net Zero pathway." The essential term in this request — "credible" — is vague and indefinite, such that neither the Company nor shareholders would be able to determine with any reasonable certainty what actions or measures the Proposal requires. This renders the entire resolution of the Proposal vague and indefinite, since any Company action or measure in response would require determining which of the Company's clients are not aligned with a "credible" Net Zero pathway. In this regard, there are no qualifying words or phrases that precede or follow the word "credible" that could help determine the scope of the requested disclosure. For instance, it is unclear exactly what it means for a company to have a "credible" Net Zero pathway such that the Company can determine, as the Proposal requests, whether certain of its clients are aligned with a "credible" Net Zero pathway. At its crux, the Proposal relies on an inherently subjective determination. What is or is not "credible" may vary in its meaning to each individual who reads the Proposal. While the Proposal indicates that alignment with a Net Zero pathway requires having certain emissions reduction targets, such as "2030 targets aligned with a 1.5°C scenario" or "Net Zero by 2050 goals," it is unclear how the Company or anyone should assess the credibility of any such alignment, as the Proposal provides no guidance on the method for such analysis. Moreover, the complexity, depth and breadth of the requested disclosure would vary drastically depending on how the Company should assess the credibility of any particular client's alignment with a Net Zero pathway, which the Proposal, again, provides no guidance to the Company on how to measure.

The Proposal's supporting statement also does not provide any guidance on this matter and simply states that "the assessment should take into account all material financing mechanisms and asset classes that contribute to [the Company's] emissions, including direct lending, underwriting, and investments" and that "[e]missions attributable to unaligned clients can be measured using estimates or other appropriate methods." The Proposal thus leaves unclear what it means for a company to be aligned with a "credible" Net Zero pathway. Given this ambiguity, the resolution contained in the Proposal is so inherently vague and indefinite that neither shareholders voting on the Proposal, nor the Company implementing the Proposal (if adopted), would be able to determine with any reasonable certainty what actions or measures the Proposal requires.

Accordingly, the Proposal should be excluded pursuant to Rule 14a-8(i)(3) because the Proposal is impermissibly vague and indefinite.

Conclusion

On the basis of the foregoing, the Company respectfully requests the concurrence of the Staff that the Proposal may be excluded from the Company's proxy materials for the 2024 Annual Meeting. If you have any questions or would like any additional information regarding the foregoing, please do not hesitate to contact me at (202) 371-7180. Thank you for your prompt attention to this matter.

Very truly yours,

Brian V. Breheny

Enclosures

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

Danielle Fugere
As You Sow

Natasha Lamb
Arjuna Capital

Laura Devenney
Boston Trust Walden

Katie Carter
Presbyterian Church (U.S.A.)

EXHIBIT A

(see attached)

AS YOU SOW

2020 Milvia St. Suite 500
Berkeley, CA 94704

www.asyousow.org
BUILDING A SAFE, JUST, AND SUSTAINABLE WORLD SINCE 1992

VIA FEDEX & EMAIL

December 4, 2023

John H. Tribolati
Secretary
JPMorgan Chase & Co.,
Office of the Secretary,
383 Madison Avenue,
39th Floor,
New York, NY 10179

corporate.secretary@jpmchase.com

Dear Mr. Tribolati,

As You Sow® is filing a shareholder proposal on behalf of Brian Patrick Kariger Rev Tr ("Proponent"), a shareholder of JP Morgan Chase & Company for inclusion in JP Morgan's 2024 proxy statement and for consideration by shareholders in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.

A letter from the Proponent authorizing *As You Sow* to act on its behalf is enclosed. The Proponent is available for a meeting with the Company regarding this shareholder proposal at the following days/times: December 18 at 1:00pm Eastern Time or December 22 at 1:00pm Eastern Time.

The Proponent is designating *As You Sow* as a representative for all issues in this matter. I, Danielle Fugere at , am the contact person on behalf of *As You Sow.* **Please also send all correspondence regarding this proposal to shareholderengagement@asyousow.org**.

A representative of the Proponent will attend the stockholder meeting to move the resolution as required.

We are available to discuss this issue and are optimistic that such a discussion could result in resolution of the Proponent's concerns.

Sincerely,

Danielle Fugere
President and Chief Counsel

Enclosures

- Shareholder Proposal
- Shareholder Authorization

cc: JPMCinvestorrelations@jpmchase.com

WHEREAS: JPMorgan Chase has established a Net Zero by 2050 goal and aligned 2030 emission reduction targets for financing activity in nine sectors, including electric power, oil and gas, and auto manufacturing. Despite investor demand for clearer disclosure of banks' transition planning,[1] shareholders lack information as to whether JPMorgan is on a path to meet its 2030 targets.

Critically, JPMorgan's annual disclosures fail to disclose the impact that high-emitting sectors will have on its ability to meet its 2030 targets. Independent assessments show that most companies in these sectors are failing to align with a Net Zero-aligned 2030 pathway. The Transition Pathway Initiative has assessed that no public companies in the oil and gas sector have 2030 targets aligned with a 1.5°C scenario;[2] and no public auto manufacturers, besides dedicated electric vehicle manufacturers, are on a Net Zero aligned 2030 pathway.[3] Similarly, the cement and steel sectors are not on track with a Net Zero by 2050 Scenario.[4,5]

As the Institutional Investors Group on Climate Change explains, to deliver on their targets, banks should disclose protocols and strategies specific to each business activity, including "phasing out financing of inconsistent activities which present particular risks… while pivoting financing towards climate solutions."[6]

JPMorgan is the largest global funder of fossil fuels, with nearly $39 billion in fossil fuel financing in 2022 and $434 billion between 2016 and 2022.[7] JPMorgan provides a heatmap of carbon intensity for its lending portfolio, which shows significant credit exposure to high carbon assets.[8] It further states that it uses a Carbon Assessment Framework to assess its clients' emissions and decarbonization plans. Yet, JPMorgan does not disclose information on client progress in transitioning in alignment with Net Zero by 2050 goals or provide sufficient information to assess the potential for misalignment between JPMorgan's 2030 targets and its clients' transition progress.

The potential for misalignment carries significant risk. If JPMorgan fails to meet its targets, it faces the possibility of reputational harm, litigation risk (including greenwashing), and financial costs.[9] Failure to meet targets also contributes to systemic climate risk that harms JPMC and investors' portfolios.

RESOLVED: Shareholders request that, for each of its sectors with a 2030 target, JPMorgan Chase annually disclose the proportion of sector emissions attributable to clients that are not aligned with a credible Net Zero pathway, whether this proportion of unaligned clients will prevent JPMorgan from meeting its 2030 targets, and the actions it proposes to address any such emissions reduction shortfalls.

SUPPORTING STATEMENT: At management's discretion, the assessment should take into account all material financing mechanisms and asset classes that contribute to JPMorgan's emissions, including

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[1] https://www.asyousow.org/press-releases/2023/5/16/shareholders-jpmorgan-chase-disclose-climate-transition-plan
[2] https://www.transitionpathwayinitiative.org/sectors/oil-gas
[3] https://www.transitionpathwayinitiative.org/sectors/autos
[4] https://www.iea.org/energy-system/industry/cement#tracking
[5] https://www.iea.org/energy-system/industry/steel
[6] https://139838633.fs1.hubspotusercontent-eu1.net/hubfs/139838633/Past%20resource%20uploads/IIGCC-Net-Zero-Standard-for-Banks-June-2023.pdf, p.9
[7] https://www.bankingonclimatechaos.org/
[8] https://www.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/documents/Climate-Report-2023.pdf, p.21
[9] https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/banks-face-mounting-risk-of-fines-regulatory-probes-over-sustainability-claims-74385257

direct lending, underwriting, and investments. Emissions attributable to unaligned clients can be measured using estimates or other appropriate methods.

February 20, 2024

VIA ONLINE SUBMISSION

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

Email: shareholderproposals@sec.gov

Re: Shareholder Proposal to JPMorgan Chase & Co. Regarding Climate Transition Disclosures on Behalf of Brian Patrick Kariger Revocable Trust

Ladies and Gentlemen:

Brian Patrick Kariger Revocable Trust (the "Proponent"), a beneficial owner of common stock of JPMorgan Chase & Co. (the "Company" or "JPM"), has submitted a shareholder proposal (the "Proposal") seeking a report from the Company on the transition readiness of its clients and the likelihood of the Company meeting its 2030 greenhouse gas reduction targets. The Proponent has designated *As You Sow* to act as its representative with respect to the Proposal, including responding to the Company's January 19, 2024 "No Action" letter (the "Company Letter").

The Company Letter contends that the Proposal may be excluded from the Company's 2024 proxy statement because, JPM argues, the Proposal micromanages the Company and is impermissibly vague and indefinite. Proponent's response demonstrates that the Company has no basis under Rule 14a-8 for exclusion of the Proposal. As such, the Proponent respectfully requests that the Staff inform the Company that it cannot concur with the Company's request.

A copy of this letter is being emailed concurrently to the Company and its counsel.

SUMMARY

In response to growing climate risk and climate-related opportunity, JPM has committed to achieve net zero greenhouse gas (GHG) emissions by 2050 for its financing activities in eight key, high-emitting sectors. Those targets are constructed as 2030 "portfolio-level targets by sector."[1] The Company's ability to meet its interim and long-term targets will be affected in significant part by the credible transition plans of its clients in these sectors — or the lack thereof.

The Company's public climate reporting demonstrates that it is assessing its clients' transition progress. As the Company's disclosures acknowledge, assessing its clients' progress is a means to evaluate its own progress, because "support[ing] clients in advancing their low-carbon transition goals, . . . in turn, advance[es] progress toward our own net zero aligned targets."[2] The

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[1] *2023 Climate Report* at 10, JPMorgan Chase & Co. (Nov. 2023), https://www.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/documents/Climate-Report-2023.pdf.
[2] *Id.*

Proposal therefore requests that JPM report to its investors on: the outcome of this assessment, *i.e.*, are clients aligning with a credible 1.5°C net zero pathway; whether the proportion of unaligned clients will prevent the Company from meeting its 2030 emissions targets; and, if so, what actions JPM proposes to take to address any associated emissions shortfalls. This information is necessary to inform investors of the credibility of the Company's climate targets, its ability to meet its commitments, and associated climate risk to the Company and investors' portfolios.

JPM argues that the Proposal may be excluded under Rule 14a-8(i)(7) because the Proposal seeks to micromanage the Company by "imposing specific methods for implementing complex policies" and "by requesting overly granular detail." Company Letter at 4. To the contrary, the Proposal requests disclosure of basic information about its clients' transition progress based on data the Company is already gathering and assessments it is already making. Rather than dictate *how* JPM should meet its emissions reduction goals, the Proposal asks for information about *whether* it is likely to meet its goals, and, if not, what responsive measures the Company will take. The Company's micromanagement argument boils down to a complaint that the Proposal will require it to "analyze and report . . . in a particular way that is different from its current approach." Company Letter at 4. Requesting that a company report information it is already gathering on an issue critical to investors, even where such reporting is "different from its current approach," does not constitute micromanagement. The Company fails to establish that the Proposal meaningfully denies management or board discretion or is too granular for shareholder consideration.

The Company Letter also argues that the Proposal may be excluded under Rule 14a-8(i)(3) because it is impermissibly vague, insofar as it does not dictate to the Company what it may consider a "credible" net zero pathway. Despite the Company's objections, the term has a self-evident meaning while allowing for the Company to define the term's contours at its discretion.

Disclosure of the information requested in the Proposal is important to investors. The requested information bears directly on the Company's likelihood of meeting its interim and long-term emissions reduction goals. It also provides valuable information to investors on the Company's climate risk and climate contribution. As climate transition risk becomes an increasingly salient issue, the Company's success in helping its clients decarbonize will bear directly on its own financial performance. It is therefore an appropriate subject for investor consideration.

THE PROPOSAL

WHEREAS: JPMorgan Chase has established a Net Zero by 2050 goal and aligned 2030 emission reduction targets for financing activity in nine sectors, including electric power, oil and gas, and auto manufacturing. Despite investor demand for clearer disclosure of banks' transition planning,[1] shareholders lack information as to whether JPMorgan is on a path to meet its 2030 targets.

Critically, JPMorgan's annual disclosures fail to disclose the impact that high-emitting sectors will have on its ability to meet its 2030 targets. Independent assessments show that most

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companies in these sectors are failing to align with a Net Zero-aligned 2030 pathway. The Transition Pathway Initiative has assessed that no public companies in the oil and gas sector have 2030 targets aligned with a 1.5°C scenario;[2] and no public auto manufacturers, besides dedicated electric vehicle manufacturers, are on a Net Zero aligned 2030 pathway.[3] Similarly, the cement and steel sectors are not on track with a Net Zero by 2050 Scenario.[4,5]

As the Institutional Investors Group on Climate Change explains, to deliver on their targets, banks should disclose protocols and strategies specific to each business activity, including "phasing out financing of inconsistent activities which present particular risks… while pivoting financing towards climate solutions."[6]

JPMorgan is the largest global funder of fossil fuels, with nearly $39 billion in fossil fuel financing in 2022 and $434 billion between 2016 and 2022.[7] JPMorgan provides a heatmap of carbon intensity for its lending portfolio, which shows significant credit exposure to high carbon assets.[8] It further states that it uses a Carbon Assessment Framework to assess its clients' emissions and decarbonization plans. Yet, JPMorgan does not disclose information on client progress in transitioning in alignment with Net Zero by 2050 goals or provide sufficient information to assess the potential for misalignment between JPMorgan's 2030 targets and its clients' transition progress.

The potential for misalignment carries significant risk. If JPMorgan fails to meet its targets, it faces the possibility of reputational harm, litigation risk (including greenwashing), and financial costs.[9] Failure to meet targets also contributes to systemic climate risk that harms JPMC and investors' portfolios.

RESOLVED: Shareholders request that, for each of its sectors with a 2030 target, JPMorgan Chase annually disclose the proportion of sector emissions attributable to clients that are not aligned with a credible Net Zero pathway, whether this proportion of unaligned clients will prevent JPMorgan from meeting its 2030 targets, and the actions it proposes to address any such emissions reduction shortfalls.

SUPPORTING STATEMENT: At management's discretion, the assessment should take into account all material financing mechanisms and asset classes that contribute to JPMorgan's

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[2] https://www.transitionpathwayinitiative.org/sectors/oil-gas
[3] https://www.transitionpathwayinitiative.org/sectors/autos
[4] https://www.iea.org/energy-system/industry/cement#tracking
[5] https://www.iea.org/energy-system/industry/steel
[6] https://139838633.fs1.hubspotusercontent-eu1.net/hubfs/139838633/Past%20resource%20uploads/IIGCC-Net-Zero-Standard-for-Banks-June-2023.pdf, p.9
[7] https://www.bankingonclimatechaos.org/
[8] https://www.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/documents/Climate-Report-2023.pdf, p.21
[9] https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/banks-face-mounting-risk-of-fines-regulatory-probes-over-sustainability-claims-74385257

emissions, including direct lending, underwriting, and investments. Emissions attributable to unaligned clients can be measured using estimates or other appropriate methods.

BACKGROUND

JPM states that "a key aspect" of [its] climate strategy is to take action to help "set a path for global net zero emissions by 2050."[1] "In support of [that] strategy," the Company has committed to "aligning key sectors of our financing portfolio with net zero emissions by 2050."[2] To accomplish that goal, JPM has "set net zero aligned targets for eight sectors — Oil & Gas, Electric Power, Auto Manufacturing, Iron & Steel, Cement, Aviation and . . . Shipping and Aluminum."[3] Those targets "are currently constructed for 2030 as portfolio-level targets by sector," that is, JPM currently has net-zero aligned, 2030 financed emissions targets in eight sectors.[4]

The core component of JPM's 2030 target policy is its "Carbon Assessment Framework," which "aims to provide a consistent, comprehensive, and data-driven approach to assess [its] client's [sic] emissions and decarbonization plans."[5] This "CAF" is composed of two separate assessments: a quantitative analysis and a qualitative analysis. Quantitatively, the Company looks to "each client" and determines their current carbon intensity, forecasted carbon intensity, and historical carbon intensity reduction, scoring the client in a range of 1-5 points.[6] Qualitatively, JPM takes a "[h]olistic view of the client's plans and actions to achieve its decarbonization plans," again scoring the client 1-5.[7] This assessment serves two ultimate purposes. The scores are used for "internal risk analysis purposes" and to consider "new in-scope transactions in [the] targeted sectors."[8] The Company also uses the scores "to support clients in navigating the low-carbon transition — helping them think through and act on their decarbonization plans — while also aiming to achieve emissions reductions across our financing portfolio."[9]

While the Company's 2030 financed emissions targets are based on emissions intensity, JPM has also "taken steps to quantify and disclose absolute financed emissions for sectors of [its] financing portfolio for which [it] ha[s] set net zero aligned targets."[10] Included in these disclosures are both JPM's financed emissions and its facilitated emissions (those associated with capital markets activity).[11] The Company's disclosures indicate that its financed and facilitated emissions within the eight target sectors total 239.7 million tons of CO2 equivalent in

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[1] *2023 Climate Report*, *supra*, at 10.
[2] *Id.*
[3] *Id.*
[4] *Id.*
[5] *Id.* at 11.
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] *Id.* at 29.
[11] *Id.* at 30.

2022, which is nearly *one thousand times* the combined total of JPM's Scope 1 and 2 emissions plus its business travel emissions.[12]

ANALYSIS

JPM has pledged to achieve net zero financed emissions by 2050 in eight high-emitting sectors. To meet that goal, it has constructed and announced net zero-aligned 2030 interim targets for those sectors. And to meet those targets, the Company discloses that it engages in an extensive qualitative and quantitative analysis of its clients' transition pathways.

As the Company acknowledges, its success in meeting its own climate commitments will depend in large part on the success of its clients' decarbonization plans. The Proposal therefore seeks related disclosure: the Company's assessment of what proportion of its financed emissions in these sectors are attributable to clients *not* aligned with a credible net zero pathway; whether this will prevent the Company from meeting its 2030 targets; and the actions JPM proposes to take to address any such emissions reduction shortfalls in order to meet its targets.

The Company Letter focuses on the first part of this request — what proportion of its clients are not aligned with a net zero pathway — claiming that the request micromanages the Company. The Company makes this claim despite the fact that it already assesses each clients' transition readiness. The Proposal's request that the Company disclose the proportion of emissions associated with that are not net-zero aligned is a modest extension of the Company's existing climate disclosures.

The Company asserts that the Proposal micromanages it because it would "modify the way in which [JPM] pursues its environmental sustainability strategy." Company Letter at 5. The request does not affect how it pursues its environmental strategy. It does not dictate how or what steps the company takes to achieve its goals; it simply asks for information that shareholders can use to judge the effectiveness of the Company's climate strategy. In fact, if a large proportion of clients do not have transition plans aligned with net zero, the Proposal asks the Company *to disclose to shareholders how* it will address that gap. It does not dictate how the Company should pursue its net zero strategy.

Further, even if the Proposal in some way affected the Company's strategy, this is not the standard for micromanagement. The Company Letter fails to meet its burden of demonstrating that the Proposal would inappropriately limit management or Board discretion or that it is too granular for investor consideration. As noted, the Proposal does not seek to alter JPM's climate strategy in any way or limit the Company's discretion to act. The Proposal does not dictate the scope of the Company's targets, the actions it takes to meet those targets, the methodology it uses to measure and assess client progress, what determination it makes about clients' alignment, or what responsive action it plans, if any.

Without the ability to claim micromanagement along any of these dimensions, the Company Letter boils down to an argument that the Proposal micromanages JPM because it requests a disclosure "that is different from [the Company's] current approach." Company Letter at 4. Requesting that a company report something "different" from current disclosures is a

[12] *Id.* at 30, 31.

prerequisite of any shareholder proposal. The Company's position that investors are required to be satisfied with whatever disclosure a company elects to make — no matter if those disclosures fail to provide consistent, comparable, and decision-useful information to shareholders — is at odds with the SEC's longstanding position that investors should be provided with reliable information to make informed investment decisions about material risk, consistent with the SEC's core mandate to protect investors and support well-informed capital allocation decisions.

The Company Letter additionally argues that the Proposal is inherently vague and misleading because it does not define what constitutes a "credible" transition pathway. This argument, too, is unpersuasive. The term "credible" is both commonly used with regard to net zero pathways and self-explanatory. As detailed below, JPM itself has described climate transition plans as "credible" without further definition. Moreover, the term's exact details are intentionally left to management discretion. The Company's disclosures, as detailed above and in the Company Letter, set forth what appears to be a robust framework for assessing and "scoring" climate transition plans. The Proposal is perfectly consistent with that methodology, and the Company can easily incorporate it into the Proposal's requested disclosure.

I. THE PROPOSAL DOES NOT MICROMANAGE THE COMPANY

As described above, it is uncontested that: (1) the Company has set net zero-aligned 2030 sectoral financed emissions targets; (2) the progress of the Company's clients will impact its ability to meet those targets; and (3) the Company can and is measuring and assessing its clients' transition progress. The Proposal requests that the Company disclose its assessment of its clients' — and therefore its own — interim progress.

This request falls well within the established boundaries of permissible proposals. The Company Letter nonetheless argues that the Proposal micromanages JPM by interfering with management discretion.[13] The Company does not meet its burden of persuasion on the issue.

A. Micromanagement standard

Rule 14a-8(i)(7) broadly permits the exclusion of proposals that relate to the company's ordinary business operations. As the Commission has recognized, however, proposals focused on a *significant social policy issue* like climate change are generally are not excludable even if they relate to the company's day-to-day business. *See* SEC, Exchange Act Release No. 34-40018 (May 21, 1998) ("1998 Release"). This is true even when the proposal "relates to the 'nitty-gritty of [a company's] core business." Staff Legal Bulletin No. 14H (Oct. 22, 2015).

Even where a significant social policy issue is at stake, the Commission has recognized an exclusion under Rule 14a-8(i)(7) for proposals seeking to "micromanage" companies 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." 1998 Release. In Staff Legal

[13] The Company Letter also says that the Proposal micromanages it "by requesting overly granular detail." Company Letter at 4. But apart from this statement in the Company Letter's umbrella paragraph and a description of the legal standards for granularity, the Company Letter does not actually make any specific argument that the detail requested by the Proposal is too granular. Nor could it, as it asserts that its own reporting is "more nuanced" than the Proposal. *See* Company Letter at 9. The Proposal's disclosure request is not too granular for investor understanding or interest.

Bulletin No. 14L, the Staff provided additional guidance about the scope of the micromanagement exclusion. There, the Staff noted that "proposals *seeking detail* or *seeking to promote* timeframes or *methods* do not per se constitute micromanagement." (emphasis added). Rather, the Staff looks at:

> [T]he 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.

Staff Legal Bulletin No. 14L.

Finally, the Staff has also provided guidance on the standards it uses to judge the appropriate level of granularity in a proposal, noting that the Staff "may consider the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic" as well as "references to well-established national or international frameworks when assessing proposals related to disclosure . . . as indicative of topics that shareholders are well-equipped to evaluate." *Id.*

B. The Proposal does not unduly interfere with management or board discretion

The Company's first objection to the proposal is that it limits management or board discretion "by imposing specific methods for implementing complex policies." Company Letter at 4. On this point, JPM argues that the Proposal "would require the Company to analyze and report on sector net zero aligned targets within its lending portfolio in a particular way *that is different from* its current approach." Company Letter at 4 (emphasis added). This statement makes clear that the Company's arguments are based on a fundamentally flawed premise — that proponents cannot request action that is "different from [companies'] current approach." That is: because management has decided to disclose X, it is micromanagement for shareholders to suggest it disclose Y. But that is *not* the micromanagement standard.

The relevant question under Rule 14a-8(i)(7) is whether the Proposal's request is appropriately made by shareholders based on the discretion it leaves to the company's management. *See* Staff Legal Bulletin No. 14L. It is not persuasive to argue that the proposal runs afoul of this principle simply because it requires additional action or different action from what a company is already doing. The appropriate question is "*to what extent* [a proposal] *inappropriately* limits discretion of the board or management" (emphasis added)); Staff Legal Bulletin No. 14E (noting that Rule 14a-8(i)(7) determinations are made on "a case-by-case basis"). The Company Letter does not meet its burden of demonstrating that, judged by these standards, the Proposal goes too far in inappropriately limiting the discretion of management or the Board.

Much of the Company Letter is devoted to laying out the Company's current climate policies and disclosures, particularly with regard to how it is assessing its clients ability to transition to net zero. *See* Company Letter at 5-8. The Company then concludes that the Proposal "takes issue with this robust disclosure and seeks to force the adoption of an entirely new approach." Company Letter at 8. The Proposal does not, however, require the Company to abandon anything it is doing; it requests only that the Company use information (client transition readiness) that it

is already collecting to supplement its disclosures with information important to investors (proportion of financed emissions associated with clients transitioning aligned with net zero). The Company's attempts to find differences between the Proposal's request and its current practices — while irrelevant for the reasons discussed above — fall flat.

First, the Company suggests that the Proposal would require it "to adopt a wholly different system of measuring, analyzing, and reporting on sector targets for its lending portfolio." Company Letter at 8. The basis of this argument is that the Proposal requests the Company to determine whether its clients are aligned with a "credible" net zero pathway, while the Company's CAF framework (described *supra*) is not "binary."[14] First, the question is whether the company's discretion is inappropriately limited by the request. Staff Legal Bulletin No. 14L. It is not. The request asks for an additional disclosure based on the information the company is already collecting, without prescribing new or different methodologies for deciding whether a client is net zero aligned. JPM is already collecting data and making quantitative and qualitative assessments of client transition plans in the context of judging progress toward its net zero goals; it is already assessing whether those plans are credibly aligned with net zero goals using its own judgment and by its own standards. Asking that JPM disclose this information through the broad lens of what proportion it deems unaligned, does not inappropriately limit management or board discretion.

Investors are routinely permitted to request the disclosure of additional information beyond that provided by the Company. *Eli Lilly & Co.* (Mar. 10, 2023) is directly on point. There, the proposal requested that the company disclose quantitative data about recruitment, retention, and promotion demonstrating the effectiveness of the companies' diversity, equity, and inclusion efforts. The company argued that it already provided extensive quantitative data regarding the racial, ethnic, and gender breakdown of its employees in certain positions. But the proponent successfully argued that the data provided constituted only a "snapshot" of diversity at a single point of time, which was not sufficient to demonstrate the *effectiveness* of the company's DEI programs in achieving diversity, promotion, and retention using quantitative data tracking. The company's micromanagement arguments did not persuade the Staff to permit the exclusion of the proposal. Here, the Proposal is significantly less limiting of management discretion; while implementation of the proposal in *Eli Lilly* may have required additional implementation and data-gathering steps, this Proposal merely requires the Company to determine what score on its preexisting CAF scale constitutes credible alignment with net zero.

Nor does the Proposal require the Company to abandon its allegedly "more nuanced approach" of "assessing progress toward its targets at the portfolio level based on overall emission intensity reduction rather than on a calculation of the proportion of emissions from a class of clients." Company Letter at 9. Nothing in the Proposal demands that the Company stop anything it is doing or stop any reporting or disclosures it currently makes, and Proponent urges the Staff to continue to reject attempts by issuers to read a "stop everything else the company is doing and *only* do the proposal" clause into every shareholder proposal. More to the point, as described

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[14] Left unstated is how the Company can be so confident that the Proposal's request for information on clients' credible net zero progress is incompatible with its current approach, given its other argument that the Proposal's use of the term "credible" is unknowable in meaning. *See infra*.

above, the information requested by the Proposal is independently valuable to investors. It provides information on whether, based on client transition alone, the Company is likely to meet its targets. While JPM's intensity reporting undoubtedly has value, and the Proposal does not ask the Company to cease disclosing sectoral emissions intensity figures, information about the proportion of the Company's emissions associated with clients not currently aligned with a credible net zero pathway provides *more* information to investors about the Company's progress toward its 2030 goals. That is true even before considering the remaining portions of the Proposal about which the Company makes no specific arguments.

The Company also argues that the Proposal "would undermine management's discretion in determining how to best inform and engage with the Company's stakeholders." Company Letter at 9. In other words: the Proposal micromanages the Company because it limits the Company's discretion to only disclose the information it decides to disclose. This objection is true of every disclosure proposal, and the Staff should reject the argument. The question is not whether additional information is requested, but whether the action requested by the Proposal inappropriately limits management discretion. The Company Letter makes no credible and specific objection on this basis. The Company Letter asserts that "[o]btaining and analyzing the Proposal's requested data would require tremendous time and resources." Company Letter at 9. This assertion is belied by the Company's existing disclosures, which assert that the Company's current policy is to undertake a quantitative and qualitative analysis of its clients' transition strategies. *See supra*. The Proposal's request that the Company determine, using its own criteria, if those strategies are credibly aligned with net zero and then report to shareholders on the proportion of sector emissions attributable to clients not so aligned[15] does not unduly limit its discretion, particularly when compared to the disclosures requested in *Eli Lilly*, which required additional analysis of information collected, *supra*.

The Company also asserts, without explanation, that the Proposal "could potentially undermine the Company's efforts to monitor, analyze, and disclose information on its climate-related strategies and engage with clients in advancing climate transition plans." Company Letter at 9. Since the Proposal does not require *any* client specific data be disclosed (it seeks a sector wide proportion of emissions) or seek disclosure of *any* information on client engagement or strategies, this argument is not credible.

The Company Letter's micromanagement argument rests entirely on a single precedent: *Amazon.com, Inc.* (Apr. 7, 2023).[16] There, the proposal requested that the company "measure and disclose Scope 3 greenhouse gas 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 Staff said that the proposal sought "to micromanage the Company by imposing a specific method for implementing a complex policy disclosure without affording discretion to management." *Amazon.com* has no bearing on this Proposal. First, the arguments

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[15] The Company either measures or estimates client emissions in order to report on its absolute and intensity emissions.

[16] The Staff denied reconsideration in *Amazon.com, Inc.* because the company began to print its proxy statement immediately after the Staff's decision, thereby functionally mooting the request for reconsideration. *See Amazon.com, Inc.* (recon. denied Apr. 20, 2023).

made by the proponent and company in that case focused almost exclusively on the specific instructions of the Greenhouse Gas Protocol, which is the "complex policy disclosure" referred to in the Staff's decision. That consideration is not implicated here. Second, here, the Proposal requests the disclosure of a simple data point — a proportion — based on assessments the Company is already making. By contrast, in *Amazon.com*, the Company was not measuring the Scope 3 emissions associated with the use of products it sold on its platforms or in its stores, and the request that it do so — while permissible and necessary in the view of most shareholders to understand the true extent of the company's Scope 3 emissions — was undeniably *more* limiting of company discretion than the request here. As discussed above, micromanagement is a question of degree. The Company has failed to demonstrate that the Proposal here is comparable to the *Amazon.com* proposal in any meaningful way.

II. THE PROPOSAL IS NOT IMPERMISSIBLY VAGUE OR INDEFINITE

The Company Letter also argues that the Proposal is excludable under Rule 14a-8(i)(3) because it is "impermissibly vague and indefinite." Company Letter at 10. The gravamen of this argument is that the Proposal does not define the term "credible Net Zero pathway," with particular emphasis on the word "credible." Company Letter at 11-12. Once more, the Company does not meet its burden of demonstrating a basis for exclusion.

The Company correctly identifies the standard for Rule 14a-8(i)(3): a Proposal must be so vague that "neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." Staff Legal Bulletin No. 14B (Sept. 15, 2004). In making this assessment, the Staff does not lightly assume shareholders are incapable of grasping the complex problems with which they are faced. Staff Legal Bulletin No. 14B itself is dedicated in large part to limiting the "unintended and unwarranted extension of rule 14a-8(i)(3)" by companies. Thus, the emphasis must be on whether a proposal is "***so*** inherently vague or indefinite" that it cannot be determined with "***reasonable*** certainty" what it requires. The standard is not whether a lawyer could identify some tortured reading that renders the proposal minorly ambiguous.

Many of the precedents cited by the Company involve proposals so self-evidently vague as to provide basically no guidance for decision-making, and which certainly bear no resemblance to the Proposal here. For example, it should come as little surprise that a proposal requesting that the company's "balance sheet be strengthened significantly" was too vague for implementation, *see Philip Morris Int'l, Inc.* (Jan. 8, 2021). That case provides little guidance for how to analyze this Proposal, where the term in question is in common usage, including by the Company itself. *See also AT&T Inc.* (Feb. 21, 2014) (proposal demanded review of "directors' moral, ethical and legal fiduciary duties and opportunities," without defining, for example, what a "moral opportunity" might be). Rule 14a-8(i)(3)'s anti-vagueness rule is also generally applied to proposals that require substantive action, not disclosure, and virtually all of the precedents cited by the Company fall into this category. *See* Company Letter at 10-11 (citations, none of which involved disclosure proposal).

The Company's objection to the term "credible Net Zero pathway" does not meet this high standard or bear any resemblance to the precedents cited by the Company. First, despite the Company's objections otherwise, the term *does* have an ordinary, commonly understood meaning. One need look no further on that point than the Company itself. Its 2023 Climate Report, upon which the Company Letter relies extensively, describes as a "key element" of its climate approach its "sector-specific . . . focus on . . . ***credible pathways toward decarbonization***."[17]

Moreover, despite the Company's assertion that "it is unclear exactly what it means for a company to have a 'credible' Net Zero pathway such that the Company can determine . . . whether certain of its clients are aligned with a 'credible' Net Zero pathway," Company Letter at 11, JPM's 2023 Climate Report **assertsthat the Company is, in fact, doing exactly that**:

> Market risk is the risk associated with the effect of changes in market factors, such as interest and foreign exchange rates, equity and commodity prices, credit spreads or implied volatilities, on the value of assets and liabilities held for both the short and long term. Climate risk drivers may lead to sharp volatility or persistent changes in the prices of commodities and financial assets; for example, **companies in carbon intensive industry sectors without *credible transition plans*** may have assets which are viewed as stranded, resulting in materially depressed equity prices. The Firm has established a stress framework to quantify the impact of the transition risk stress scenarios to vulnerable asset classes. We have also analyzed a series of physical drivers to estimate the potential impacts of various acute and chronic physical risk events to markets exposures.[18]

The Company's 2022 Climate Report contains the same statements.[19] In a press release announcing its 2030 targets, JPM featured prominently a quote asserting that "[JPM has] embraced the enormous opportunity for the banking industry to finance the transition to a low-carbon economy and provided clarity to their corporate clients on ***credible decarbonization trajectories***."[20] And in its 2020 ESG Report, the Company noted its "client level . . . qualitative analysis of the company's transition aptitude based on the ***credibility of its low-carbon transition strategy***."[21] In none of these cases did the Company feel the need to further define the word "credible."

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[17] *2023 Climate Report*, *supra*, at 10 (emphasis added).
[18] *Id.* at 22 (emphasis added).
[19] *2022 Climate Report* at 26, 53, JPMorgan Chase & Co. (2022), https://www.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/documents/Climate-Report-2022.pdf.
[20] Press Release, *JPMorgan Chase Releases Carbon Reduction Targets for Paris-Aligned Financing Commitment*, JPMorgan Chase & Co. (May 13, 2021), https://www.jpmorganchase.com/news-stories/jpmorgan-chase-releases-carbon-reduction-targets-for-paris-aligned-financing-commitment (emphasis added).
[21] *Environmental Social & Governance Report*, JPMorgan Chase & Co. (2020), https://www.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/documents/jpmc-esg-report-2020.pdf.

As this demonstrates, the Company has frequently used the term “credible” to describe its own actions and individual companies’ energy transition pathways *even within the context of its own financed emissions targets*. The Company has never before felt the need to define what it means by “credible” in this context for the simple reason that the term’s use in this context is common and its application is obvious and intuitive. The Company’s argument that it is “unclear how the Company . . . should assess the credibility of any such alignment [with net zero by its clients],” Company Letter at 11, is divorced from reality, where the term “credible” in relation to transition plans is in common usage, including by the Company itself. This is not a basis to exclude the Proposal.

Moreover, what the Company identifies as a bug is actually a feature — the Proposal intentionally leaves the implementation methodology, including the precise mechanism of determining whether a client’s transition plan is credibly aligned with net zero, up to the Company. Its extensive five-point quantitative and qualitative assessment of its clients’ transition plans, described *supra*, demonstrates that the Company is more than capable of making such a methodological choice and communicating it to shareholders. Nothing in the Proposal interferes with management’s discretion to make those decisions, and there can be little doubt that the Company would have raised a micromanagement objection if the Proposal had sought to define the standards by which client transition plans should be assessed.

The Staff routinely rejects attempts by issuers to manufacture ambiguity where none exists. For example, in *United Natural Foods, Inc.* (Oct. 2, 2014), the proposal requested that the company determine and report “the CEO-to-employee pay ratio.” The company argued that the proposal “fail[ed] to define the key term, ‘CEO to employee pay ratio,’ and the Company and its stockholders will be unable to determine with any reasonable certainty exactly what actions or measures the Proposal requires.” The Staff rejected this attempt to suggest that an extremely common and obvious term needed definition. Similarly, in *Abbott Laboratories* (Feb. 8, 2012), the company unsuccessfully attempted to argue that the term “lobbying” in a lobbying disclosure proposal was ambiguous. And in *Mattel, Inc.* (Mar. 10, 2009), the Staff rejected a company’s attempt to claim that “safety and quality” of its toys and the “working conditions” of its employees were ambiguous terms. Similarly, the Staff did not find that the well understood term “human rights” was impermissibly vague in *Chubb Limited* (Mar. 27, 2023). The proposal there requested that the company report on how “human rights risks and impacts are evaluated and incorporated in the underwriting process.” In a direct mirror of the Company’s argument here, Chubb argued that the proposal violated Rule 14a-8(i)(3) because it “fail[ed] to define what is meant by the key term ‘human rights,’ which is very broad and subject to multiple and at times conflicting interpretation.” The Staff rejected this argument.

Finally, if the Company thinks the term ‘credible net zero plan’ is ambiguous, it is welcome to provide the definition it has used alongside the requested disclosures, which would seem to best preserve management discretion while also eliminating any ambiguity. In the alternative, for the sake of consistency, the Company could always default to whatever definition of the term “credible” it was using when it repeatedly used the term without definition in its past climate disclosures.

CONCLUSION

The Company has set net zero-aligned 2030 financed emissions targets in high-emitting sectors. To judge its progress in meeting those targets, it engages in an in-depth quantitative and qualitative analysis of its clients' transition plans. The Proposal requests a simple disclosure: that the Company provide an aggregated sectoral snapshot of those assessments, disclosing to investors what proportion of its emissions in each sector are attributed to clients not aligned to a credible net zero transition pathway. As demonstrated above, the Proposal does not micromanage the Company, nor is it ambiguous.

Based on the foregoing, we believe that the Company has provided no basis for the conclusion that the Proposal is excludable from the 2024 proxy statement pursuant to Rule 14a-8. We urge the Staff to deny the no action request.

Sincerely,

Luke Morgan
Staff Attorney, *As You Sow*

cc:

Brian V. Breheny, Skadden, Arps, Slate, Meagher & Flom LLP
John H. Tribolati, JPMorgan Chase & Co.
Natasha Lamb, Arjuna Capital
Laura Devenney, Boston Walden Trust
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TORONTO

March 6, 2024

VIA STAFF ONLINE FORM

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

Re: JPMorgan Chase & Co. – 2024 Annual Meeting
Supplement to Letter dated January 19, 2024
Relating to Shareholder Proposal Submitted by As You Sow
on behalf of Brian Patrick Kariger Revocable Trust and co-filers[1]

Ladies and Gentlemen:

We refer to our letter dated January 19, 2024 (the "No-Action Request"), submitted on behalf of JPMorgan Chase & Co., a Delaware corporation (the "Company"), pursuant to which we requested that the Staff of the Division of Corporation Finance (the "Staff") of the U.S. Securities and Exchange Commission (the "Commission") concur with the Company's view that the shareholder proposal and supporting statement (the "Proposal"), submitted by As You Sow on behalf of Brian Patrick Kariger Revocable Trust (the "Trust") and co-filers, may be excluded from its proxy materials for the Company's 2024 Annual Meeting of Shareholders (the "2024 Annual Meeting"). The Trust and the co-filers are referred to collectively as the "Proponents."

This letter is in response to the letter to the Staff, dated February 20, 2024, submitted by As You Sow on behalf of the Trust (the "Proponent's Letter"), and supplements the No-Action Request. In accordance with Rule 14a-8(j), a copy of this letter also is being sent to the Proponents.

[1] The following shareholders have co-filed the Proposal: Arjuna Capital on behalf of Anmol Mehra; As You Sow on behalf of Intervis Partners LLC; Boston Trust Walden; and the Presbyterian Church (U.S.A.).

The Proponent's Letter attempts to rebut the No-Action Request by arguing that the Proposal should not be excluded because it does not micromanage the Company and is not impermissibly vague and indefinite. As explained below, these arguments are unpersuasive.

The Proponent's Letter fundamentally misconstrues the basis for the Company's micromanagement argument. It claims that because "the Proposal requests disclosure of basic information about [the Company's] clients' transition progress based on data the Company is *already* gathering and assessments it is *already* making" (emphasis added), the Proposal does not prescribe new or different methodologies for the Company to decide whether a client is net zero aligned and, therefore, does not seek to micromanage the Company.

As explained in the No-Action Request, however, the Proposal would micromanage the Company by forcing the Company adopt a different system of measuring, analyzing and reporting on sector targets for its lending portfolio. Notably, the Staff recently permitted a company to exclude a similar proposal on the basis of micromanagement for the same reasons articulated in the No-Action Request. In *Bank of America Corp.* (Feb. 29, 2024), the Staff determined that a proposal requesting an "assessment of the proportion of the bank's auto manufacturing, energy, and power sectors' emissions that are attributed to clients that the bank assesses are not aligned with a credible 1.5° pathway by 2030" impermissibly sought to micromanage the company. Among other things, the company argued that the proposal would

- require additional financing activities to be addressed that are currently outside the scope of the company's existing financed emissions goals, which were already disclosed;

- require the company to alter the way it works with its clients in gathering data for purposes of evaluating the company's pathway to net zero and reporting on its progress, and

- require a different model for reporting goals and progress toward those goals than the approach the company had adopted.

The same issues are present here. As described in the No-Action Request, the Company has developed an assessment methodology, the Carbon Assessment Framework ("CAF"), to make financing decisions for in-scope transactions. The CAF aims to provide a consistent, comprehensive, and data-driven approach to assess the Company's client emissions and decarbonization plans. Within the CAF, the Company assesses two key scores for each client: a CAF quantitative score and a CAF qualitative score. The quantitative score for each client is comprised of three pillars: (i) their historical emissions reductions; (ii) their current carbon intensity; and (iii) their projected carbon intensity based on their decarbonization targets. The qualitative score considers a variety of factors, including corporate structures for governance and oversight, which enables the Company to take a holistic view of how the client plans to advance their decarbonization goals. The CAF uses quantitative and qualitative scores ranging from one to five for each client.

While the Proponent's Letter asserts that the Proposal "does not dictate … the methodology [the Company] uses to measure and assess client progress," this is not true, because the Proposal would require the Company to adopt a new approach to assessing clients' decarbonization plans that differs from its existing CAF approach both in methodology and in terms of business strategy. In contrast to the Company's use of the granular CAF with its 1-5 scoring rubric, the Proposal requests that the Company divide clients into merely two categories: those that are aligned with a "credible Net Zero pathway," and those that are not. This approach conflicts with the Company's business strategy of using nuanced assessments as a tool in supporting clients at different stages through their decarbonization journeys. This would inappropriately limit the discretion of the Company's management in pursuing its net zero aligned targets. As was the case in *Bank of America Corp.* (Feb. 29, 2024), the Proposal seeks to impose a new methodology for reporting goals and progress on the Company's net zero goals that would also require the Company to alter the way it works with its clients in reporting on its progress.

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

The Proponent's Letter also contends that the Proposal is not impermissibly vague or indefinite because the term "credible" has an "ordinary, commonly understood meaning" and certain of the Company's public disclosures have used that term without further defining it. In other words, the Proponent's Letter asserts that the application of the term "credible" in the context of financed emissions targets is "obvious and intuitive."

This fails to demonstrate that the Proposal is sufficiently clear. As discussed in the No-Action Request, the Staff consistently has permitted exclusion of shareholder proposals under Rule 14a-8(i)(3) as impermissibly vague and indefinite where the proposal contained an essential term or phrase that, in applying the particular proposal to the company, was unclear, such that neither the company nor shareholders would be able to determine with any reasonable certainty what actions or measures the proposal requires. The Proponent's Letter argues at length that the Company's own use of the phrase "credible" in various statements demonstrates that the term is clear to the Company, but this fails to demonstrate how *shareholders* might view this term. What is or is not "credible" may vary in its meaning to each individual who reads the Proposal. The Proponents appear to acknowledge this shortcoming, stating in the Proponent's Letter that this vagueness is "a feature" of the Proposal and that the Company can "provide the definition it has used" or to use "whatever definition of the term 'credible' it was using" in its public disclosures. This, however, only demonstrates that the Proposal is inherently unclear. The challenges presented by the Proposal are further compounded by the Proposal's request for disclosure of "actions [the Company] proposes to address any such emissions reduction shortfalls," as this too hinges entirely on a vague concept of "credibility."

Accordingly, the Proposal may be excluded pursuant to Rule 14a-8(i)(3) as impermissibly vague and indefinite.

For the reasons stated above and in the No-Action Request, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its proxy materials for the 2024 Annual Meeting. Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of the Company's position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response. Please do not hesitate to contact the undersigned at (202) 371-7180.

Very truly yours,

Brian V. Breheny

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

Danielle Fugere
As You Sow

Natasha Lamb
Arjuna Capital

Laura Devenney
Boston Trust Walden

Katie Carter
Presbyterian Church (U.S.A.)

March 15, 2024

VIA ONLINE SUBMISSION

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

Email: shareholderproposals@sec.gov

Re: Supplemental Submission Concerning Shareholder Proposal to JPMorgan Chase & Co. Regarding Climate Transition Disclosures on Behalf of Brian Patrick Kariger Revocable Trust

Ladies and Gentlemen:

Brian Patrick Kariger Revocable Trust (the "Proponent") has submitted a shareholder proposal (the "Proposal") to JPMorgan Chase & Co. (the "Company" or "JPM") requesting information concerning its climate transition planning. The Company has requested that the staff concur in its intent to exclude the proposal from its proxy. The Proponent and Company have each submitted letters to the Staff concerning the no-action request, including a March 6, 2024 Supplemental Letter submitted by the Company. As the Company notes in the Supplemental Letter, the Staff has granted the no-action requests of other companies this season who have, like the Company, argued for the exclusion of substantially identical proposals on micromanagement grounds.[1]

However, in light of the Commission's subsequently released Final Rule for "The Enhancement and Standardization of Climate-Related Disclosures for Investors,"[2] the Staff should revisit its decision to concur in companies' exclusion of this proposal and reject JPM's no-action request.

As explained in the Proposal and in Proponent's no-action response letter, JPM has adopted certain climate goals and commitments, including a commitment to achieve net zero greenhouse gas emissions by 2050 in its financing activities in high-emitting sectors. To meet that commitment, the Company has implemented a transition plan involving sectoral 2030 interim targets. The Proposal requests basic information concerning the Company's likelihood of meeting those targets, based on the Company's own disclosures that it gathers such data. The requested information seeks a basic statement of the proportion of financed emissions associated with clients aligned with a 1.5^{o} pathway, *i.e.*, based on client transition readiness, is it likely that JPM can meet its 2030 goals? The Company has argued that this simple disclosure request constitutes micromanagement, and the Staff has elsewhere agreed with this argument.

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[1] *See* JPM March 6, 2024 Supplemental Letter at 2 (citing *Bank of America Corp.* (Feb. 29, 2024)).
[2] *See* Final Rule, *The Enhancement and Standardization of Climate-Related Disclosures for Investors*, Securities and Exchange Commission (Mar. 6, 2024), https://www.sec.gov/files/rules/final/2024/33-11275.pdf (hereinafter the "Climate Disclosure Rule").

However, on March 6, 2024, the Commission adopted the Climate Disclosure Rule. That Rule recognized the necessity of full and complete disclosure by issuers concerning any climate transition plans they adopt:

> As noted in the Proposing Release, registrants may adopt transition plans to mitigate or adapt to climate-related risks as an important part of their climate-related risk management strategy, particularly if the registrant has made commitments, or operates in a jurisdiction that has made commitments, to reduce its GHG emissions. We recognize that not every registrant has a transition plan and, as noted above, this rulemaking does not seek to prescribe any particular tools, strategies, or practices with respect to climate-related risks. If, however, a registrant has adopted such a plan, information regarding the plan is important to help investors evaluate a registrant's management of its identified climate-related risks and assess the potential impacts of a registrant's strategy to achieve its short- or long-term climate-related targets or goals on its business, results of operations, and/or its financial condition. Moreover, a registrant's transition plan may have a significant impact on its overall business strategy, for example, where companies operate in jurisdictions with laws or regulations in place designed to move them away from high emissions products and services. Because the steps a registrant plans to take pursuant to its transition plan may have a material impact on its business, results of operations, or financial condition, investors have sought more detailed disclosure about transition plans.[3]

As such, the Commission adopted a rule requiring the disclosure of information about issuers' climate transition plans, specifically noting that "many registrants are not providing decision-useful information about their transition plans."[4] *Compare with* Proponent's No-Action Response Letter at p. 6 (noting necessity of requested information for investors' decision-making).

The final rule defines a "transition plan" as "a registrant's strategy and implementation plan to reduce climate-related risks, which may include a plan to reduce its GHG emissions in line with its own commitments."[5] It then makes, as relevant here, two essential disclosure requirements:

- First, "[i]f a registrant has adopted a transition plan to manage a material transition risk, describe the plan." The registrant must further "update its annual report disclosure about the transition plan each fiscal year by describing any actions taken during the year under the plan, including how such actions have impacted the registrant's business, results of operations, or financial condition." And the registrant must include "quantitative and qualitative disclosure of material expenditures incurred and material impacts on financial estimates and assumptions as a direct result of the transition plan disclosed."[6]

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[3] Climate Disclosure Rule at 132 (emphasis added).
[4] *Id.* at 133 (emphasis added).
[5] *Id.* at 852.
[6] *Id.* at 855.

- Second, registrants "must disclose any climate-related target or goal if such target or goal has materially affected or is reasonably likely to materially affect the registrant's business, results of operations, or financial condition." Moreover, critically, the "registrant **must provide any additional information or explanation necessary to an understanding of the material impact or reasonably likely material impact of the target or goal**," including "but not limited to" (a) "qualitative description of how the registrant intends to meet its climate-related targets or goals," (b) **"any progress made toward meeting the target or goal and how any such progress has been achieved," to be updated annually,** including a qualitative discussion of impacts to the registrant's business.[7]

For the reasons described in Proponent's No-Action Response Letter, the disclosures sought by the Proposal fall directly within the scope of the Climate Disclosure Rule. Thus, it is impossible to argue that the Proposal "micromanages" the Company, either by seeking information that is "too granular" or, as the Company argued, by limiting the Company's discretion not to disclose the requested information. The Climate Disclosure Rule firmly establishes that the information sought in the Proposal is properly of interest to investors, the information is *less granular* than much of the information required to be disclosed by the Climate Disclosure Rule, and the Climate Disclosure Rule puts to rest any argument that the Company has unfettered discretion to decide the nature of its climate disclosures.

The Company is collecting this data, the data is critical to investor understanding of the likelihood of success of the Company's data, and the Company is refusing to disclose this dispositive information, even in a broad and undifferentiated manner. As the Proponent's No-Action Response Letter explained, the information sought in the Proposal is *necessary* for investors to understand the progress the Company is making towards its overall 2050 Net Zero financed emissions goal, as well as in the implementation of its 2030 interim target transition plan. The Company's current disclosures concede as much by acknowledging that assessing its clients' transition progress is essential to its own transition progress because "support[ing] clients in advancing their low-carbon transition goals . . . in turn, advance[s] progress toward our own net zero aligned targets."[8]

In light of acknowledgment from the Company of the importance of a "[h]olistic view of [its] clients' plans and actions to achieve [their] decarbonization plans," and its acknowledgment that it uses assessment of clients' and potential clients' transition progress when evaluating business opportunities and risk,[9] there can be no question that its clients' transition progress is a material component of the Company's climate transition planning and its climate-related goals — and that its transition planning and its climate-related goals are material to the Company's business. The Proposal simply asks the Company to disclose aggregate information about its clients' transition progress. The information requested by the Proposal is therefore arguably *required* by the Climate Disclosure Rule, as that Rule is intended, as the Commission states, to help investors

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[7] *Id.* at 858 (emphasis added).
[8] *2023 Climate Report* at 10, JPMorgan Chase & Co. (Nov. 2023), https://www.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/documents/Climate-Report-2023.pdf.
[9] *Id.* at 11.

"evaluate a registrant's management of its identified climate-related risks and assess the potential impacts of a registrant's strategy to achieve its short- or long-term climate-related targets or goals on its business, results of operations, and/or its financial condition."[10]

Finally, as Proponent noted in its initial response, the information requested by the Proposal, when compared to the Company's existing disclosures, is necessary to evaluate the potential "significant impact" that the Company's "transition plan may have . . . on its overall business strategy."[11] This is true in part because if the Company's clients' transition progress is not in-line with its goals, the Company may need to adopt additional measures to meet its emission reduction goals. For example, if JPM's clients in a certain sector are not transitioning at the pace required for the Company to meet its 2030 or 2050 goals, it follows logically that the Company will have to consider additional actions. The information provided by the Proposal — which the Company is already collecting — can provide investors with full disclosure as to this fact.

As such, if there was any question whether the Proposal fell into either the "granularity" or "company discretion" prongs of the micromanagement standard, the Climate Disclosure Rule puts it firmly to rest and arguably compels the disclosure of the information requested in the Proposal.[12]

Sincerely,

Luke Morgan
Staff Attorney, *As You Sow*

cc:

Brian V. Breheny, Skadden, Arps, Slate, Meagher & Flom LLP
John H. Tribolati, JPMorgan Chase & Co.
Natasha Lamb, Arjuna Capital
Laura Devenney, Boston Walden Trust
Katie Carter, Presbyterian Church (U.S.A.)

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[10] *See* Climate Disclosure Rule at 132.
[11] *See id.*
[12] It goes without saying that agencies are required, first and foremost, to follow their own rules. To contravene the Commission's Climate Disclosure Rule therefore would constitute arbitrary and capricious agency action. *See Achernar Broadcasting Co. v. FCC*, 62 F.3d 1441 (D.C. Cir. 1995) (acknowledging "rudimentary principle that agencies are bound to adhere to their own rules and procedures").