



DIVISION OF
CORPORATION FINANCE

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

March 4, 2024

Jamie Greenberg
The Goldman Sachs Group, Inc.

Re: The Goldman Sachs Group, Inc. (the "Company")
Incoming letter dated December 22, 2023

Dear Jamie Greenberg:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the Mack Street 2016 Trust (S) and co-filer 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 Net Zero-aligned 2030 target, the Company annually disclose the proportion of section 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 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

December 22, 2023

VIA ELECTRONIC SUBMISSION

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

Re: *The Goldman Sachs Group, Inc.*
Shareholder Proposal of Mack Street 2016 Trust (S) and James C. Manolis (S)
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that The Goldman Sachs Group, Inc. (the “Company”) intends to omit from its proxy statement and form of proxy for its 2024 Annual Meeting of Shareholders (collectively, the “2024 Proxy Materials”) a shareholder proposal (the “Proposal”) and statement in support thereof (the “Supporting Statement”) received from As You Sow (“As You Sow”) on behalf of Mack Street 2016 Trust (S) and James C Manolis (S) (collectively, the “Proponents”).

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 2024 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponents.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”) provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the “Staff”). Accordingly, we are taking this opportunity to inform the Proponents that if the Proponents elect to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of such correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

THE PROPOSAL

The Proposal states:

RESOLVED: Shareholders request that, for each of its sectors with a Net Zero-aligned 2030 target, Goldman Sachs 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 Goldman from meeting its 2030 targets, and actions it proposes to address any such emissions reduction shortfalls.

The Supporting Statement states:

SUPPORTING STATEMENT: Emissions attributable to unaligned clients can be measured using estimates or other appropriate method. At management discretion, the assessment should take into account all material financing mechanisms and asset classes that contribute to Goldman's emissions, including direct lending, underwriting, and investments.

Copies of the Proposal, the Supporting Statement, and correspondence with the Proponents directly relevant to this no-action request are attached to this letter in Exhibit A.

BASES FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2024 Proxy Materials pursuant to:

- Rule 14a-8(i)(7) because the Proposal seeks to micromanage the Company; specifically, the Proposal impermissibly seeks to eliminate management's discretion by dictating specific methods for how the Company assesses and reports on its progress and pathway to achieving certain 2030 sector physical greenhouse gas ("GHG") emissions intensity goals; and
- Rule 14a-8(i)(3) because the Proposal is impermissibly vague and indefinite so as to be inherently misleading.

OVERVIEW

As noted in the Proposal, in March 2021 the Company announced a goal to align its financing activities to a net-zero greenhouse gas emissions by 2050 pathway, and in December 2021 announced that the Company had established a set of interim 2030 targets for several key high-emitting sectors (Energy, Power, and Auto Manufacturing).¹ The Company

¹ See Goldman Sachs Publishes Decarbonization Targets in 2021 TCFD Report (December 2021), available at <https://www.goldmansachs.com/media-relations/press-releases/2021/2021-tcfde-carbonization-targets.html>.

calculates its GHG emissions in accordance with the Greenhouse Gas Protocol and reports these emissions through the publication of its reports aligned with the Task Force on Climate-related Financial Disclosures (“TCFD”) framework (the “TCFD Reports”).² These TCFD Reports disclose the Company’s specific interim 2030 physical emissions intensity-based targets for clients in the Energy, Power and Auto Manufacturing sectors (collectively, the “2030 Physical Emissions Intensity Goals”). As set forth in the TCFD Reports, the Company believes the greatest contribution it can make to the climate transition is to help its clients achieve their own sustainability goals; as the TCFD Reports state, the path to shared climate objectives will not be linear, and it remains important that financial institutions, including the Company, continue to work with critical sectors to help ensure affordable and reliable energy while new, cleaner technologies continue to develop and scale.

The Company’s 2030 Physical Emissions Intensity Goals consist of a range of emissions intensity reductions, with the lower limit of each target aligned with a 1.5°C pathway and the upper bound of each target below the level prescribed by the below 2°C scenario. In all three sectors, the Company’s proposed target ranges are aligned with the goals of the Paris Agreement to limit the increase in global average temperature to well below 2°C above pre-industrial levels. The 1.5°C and 2°C pathways are based on the Company’s *Carbonomics* research, conducted by the Company’s independent investment research division, which starts with the same science-based carbon budgets from IPCC as other research scenarios and builds out pathways based on the costs of different technologies and approaches to decarbonization as well as a set of industry and regional assumptions specific to the Company’s current and forward-looking portfolio. While the underlying scenario methodologies are differentiated for the Company’s *Carbonomics* 1.5°C net zero path, the resulting carbon intensity levels for 2030 are close to, and in some cases more ambitious than, scenarios provided by other providers.

The Company has provided extensive detail on its goals and processes in the TCFD Reports, which together:

- identify what Company activities are covered by each of the 2030 Physical Emissions Intensity Goals;
- describe the process the Company uses in gathering data and assessing progress toward its goals; and
- describe the formula the Company uses in reporting its physical emissions intensity.

Notwithstanding the Company’s existing and detailed disclosures, the Proposal seeks to alter virtually every aspect of the 2030 Physical Emissions Intensity Goals, including by requiring

² See *Accelerating Transition*, Task Force on Climate-related Financial Disclosures Report 2021, available at <https://www.goldmansachs.com/tcfd-report-2021/accelerating-transition-report.pdf> (“2021 TCFD Report”); Task Force on Climate-related Financial Disclosures: Goldman Sachs 2023 TCFD Report, available at <https://www.goldmansachs.com/our-commitments/sustainability/tcfd-report-2023/report.pdf> (“2023 TCFD Report”).

additional activities to be addressed that are currently outside the scope of the 2030 Physical Emissions Intensity Goals, rejecting management’s previously established and disclosed standards and other industry reporting standards in favor of new “independently establish[ed] . . . protocols and strategies,” altering the way the Company works with its clients (including by substituting the Company’s strategy of supporting clients in their own sustainability goals, which may vary across the Company’s diverse client base, with the need to assess clients’ “credibility”, as well as in gathering data for purposes of evaluating the Company’s pathway to net zero), and requiring a different model for reporting goals and progress toward those goals. As such, the Proposal inappropriately seeks to interfere with the Company’s ordinary business operations and micromanages the Company by limiting management’s discretion in developing, calculating, reporting on, and achieving the 2030 Physical Emissions Intensity Goals.

ANALYSIS

I. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because The Proposal Relates To The Company’s Ordinary Business Operations.

A. Background On The Ordinary Business Standard.

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company’s “ordinary business” operations. According to the Commission’s release accompanying the 1998 amendments to Rule 14a-8, the term “ordinary business” “refers to matters that are not necessarily ‘ordinary’ in the common meaning of the word,” but instead the term “is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company’s business and operations.” Exchange Act Release No. 40018 (May 21, 1998) (the “1998 Release”). In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting,” and identified two central considerations that underlie this policy. The first is that “[c]ertain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.” The second consideration is related to “the degree to which the proposal seeks to ‘micro-manage’ the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)).

The 1998 Release further states that “[t]his consideration may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific . . . methods for implementing complex policies.” In Staff Legal Bulletin No. 14L (Nov. 3, 2021) (“SLB 14L”), the Staff clarified that not all “proposals seeking detail or seeking to promote timeframes” constitute micromanagement, and that going forward the Staff “will focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management.” To that end, the Staff

stated that this “approach is consistent with the Commission’s views on the ordinary business exclusion, *which is designed to preserve management’s discretion on ordinary business matters* but not prevent shareholders from providing *high-level direction* on large strategic corporate matters.” SLB 14L (emphasis added).

In SLB 14L, the Staff also stated that in order to assess whether a proposal probes matters “too complex” for shareholders, as a group, to make an informed judgment, it may consider “the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic.” The Staff stated that it would also consider “references to well-established national or international frameworks when assessing proposals related to disclosure” as examples of topics that shareholders are well-equipped to evaluate. *Id.*

When proposals request the adoption of specific approaches to address climate change matters, the extent to which a proposal permits the board or management to retain discretion is particularly relevant. In SLB 14L, the Staff indicated that when reviewing such proposals, it “would not concur in the exclusion of . . . proposals that *suggest* targets or timelines so long as the proposals *afford discretion to management as to how to achieve such goals*” (emphasis added). SLB 14L cites *ConocoPhillips Co.* (avail. Mar. 19, 2021) as an example of its application of the micromanagement standard, noting that the proposal at issue did not micromanage the company in the Staff’s view because it requested that the company address a particular issue but “did not *impose a specific method* for doing so.” (Emphasis added).

In assessing whether a proposal micromanages by seeking to impose specific methods for implementing complex policies, the Staff evaluates not just the wording of the proposal but also the action called for by the proposal and the manner in which the action called for under a proposal would affect a company’s activities and management discretion. *See, e.g., The Coca-Cola Co.* (avail. Feb. 16, 2022) and *Deere & Co.* (avail. Jan. 3, 2022) (each of which involved a broadly phrased request but required detailed and intrusive actions to implement). Moreover, “granularity” is only one factor evaluated by the Staff. As stated in SLB 14L, the Staff focuses “on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management.” (Emphasis added).

As with the shareholder proposals in *Deere*, *Coca-Cola*, and other precedents discussed below, the Proposal is excludable under Rule 14a-8(i)(7) because it seeks to micromanage the Company.

B. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Seeks To Micromanage The Company.

The Proposal requests that “for each of its sectors with a Net Zero aligned 2030 target,” the Company “annually disclose the proportion of sector emissions attributable to clients not aligned with a credible Net Zero pathway.” The Supporting Statement further provides that such assessment, “[a]t management discretion, . . . 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 method." In this regard, the Proposal does not provide the Company "high-level direction on large strategic corporate matters." *See* SLB 14L. Instead, while the Supporting Statement purports to permit management discretion in a limited manner, the Proposal and Supporting Statement together seek to eliminate management's discretion by "impos[ing] a specific method" and "granularity" for how the Company develops, measures, reports on, and achieves the 2030 Physical Emissions Intensity Goals, going so far as to alter what activities and asset classes are included within the Company's targets. Moreover, the Proposal's prescriptive approach for how the Company must assess aspects of its physical emissions does not operate within a well-established disclosure framework and is inconsistent with the established measurement and reporting frameworks.

1. The Proposal Does Not Appear To Follow Well-Established National Or International Frameworks.

In addressing the 2030 Physical Emissions Intensity Goals, the Company utilizes standards and methodologies in line with the Greenhouse Gas Protocol's Scope 3 reporting standard for financed emissions.³ The Greenhouse Gas Protocol Initiative is a multi-stakeholder partnership of businesses, non-governmental organizations, governments, and others, convened by the World Resources Institute and the World Business Council for Sustainable Development, whose mission is to "develop internationally accepted [GHG] accounting and reporting standards for business and to promote their broad adoption."⁴ In furtherance of this goal, the group published the GHG Protocol Corporate Accounting and Reporting Standard (as revised, the "Corporate Standard")⁵ in order to, among other things, guide companies on preparing "a GHG inventory that represents a true and fair account of their emissions, through the use of standardized approaches and principles" and "provide business with information that can be used to build an effective strategy to manage and reduce GHG emissions."⁶ For those companies that choose to report Scope 3 emissions, the Corporate Value Chain (Scope 3) Accounting and Reporting Standard⁷ (the "Scope 3 Reporting Standard") and Technical Guidance for Calculating Scope 3 Emissions⁸ (the "Technical Guidance," and together with the Corporate Standard and Scope 3 Reporting Standard, the "GHG Protocol") provides a standardized framework for assessing, categorizing, and measuring their value chain emissions.

³ *See* https://ghgprotocol.org/sites/default/files/2023-03/Scope3_Calculation_Guidance_0%5B1%5D.pdf.

⁴ *See* <https://ghgprotocol.org/sites/default/files/standards/ghg-protocol-revised.pdf> at 2.

⁵ *See id.*

⁶ Corporate Standard at 3.

⁷ *Available at* https://ghgprotocol.org/sites/default/files/standards/Corporate-Value-Chain-Accounting-Reporting-Standard_041613_2.pdf.

⁸ *Available at* <https://ghgprotocol.org/scope-3-calculation-guidance-2>.

The GHG Protocol’s reporting framework has been widely adopted and endorsed. In its comment letter on the Commission’s proposed climate reporting rules, the Proponents’ representative, As You Sow, stated, “[w]e suggest that in order to assist in quickly ensuring standardized reporting, the SEC mandate that reporting be conducted in line with the GHG Protocol, at least initially.... Alternatively, we urge the agency to require that companies provide a rationale for how and why they depart from the GHG Protocol.”⁹ In its recent report, *Road to Zero Emissions; 100 Companies Ranked on Net Zero Emissions*, As You Sow acknowledges both the complexities of Scope 3 reporting under the GHG Protocol and that the GHG Protocol encourages companies to take a phased approach to reporting when necessary, stating:

The GHG Protocol has already set the stage for how necessary Scope 3 emissions reporting is and, due to the complexity of Scope 3 reporting, even recommends companies approach disclosing Scope 3 in a “phased approach” and improve the quality of emissions data over time. With investors already identifying Scope 3 emissions as critical information to disclose for businesses across industries, companies have much to gain from leading the development of these potential standards *that take time to accurately report on*.¹⁰

While the Proposal is vague and indefinite (as discussed further below), given the Company already is reporting in a manner that conforms to the GHG Protocol (which the Proponents’ representative acknowledges is highly complex), the Proposal would thus necessitate that the Company depart from its practices and well-established reporting frameworks to implement it in the manner the Proposal dictates, outside of any other established framework shareholders could reference to evaluate it. For example, in contrast to the prescriptive dictates outlined in the Proposal, the GHG Protocol firmly recognizes the complexities faced by a company when determining which activities and categories of Scope 3 emissions to include within the company’s Scope 3 inventory. It also affirms that such determinations should rest with a company’s management, since inventories should be established taking into account company-specific circumstances. For example, the Scope 3 Reporting Standard recognizes that the process of determining which activities and categories of emissions are included within a company’s Scope 3 inventory is inherently tied to the day-to-day management of a company and the company’s business goals, stating, “[b]efore accounting for scope 3 emissions, companies should consider which business goal or goals they intend to achieve.”¹¹ The process of developing a Scope 3 inventory is principles-based, with the Scope 3 Reporting Standard stating, “GHG accounting and reporting of a scope 3

⁹ Comment letter submitted on June 21, 2022 by As You Sow, File Number S7-10-22, The Enhancement and Standardization of Climate-Related Disclosures for Investors, *available at* <https://www.sec.gov/comments/s7-10-22/s71022-20132601-303123.pdf>.

¹⁰ As You Sow, *Road to Zero Emissions: 100 Companies Ranked on Net Zero Emissions* (Nov. 1, 2023), at page 20 (emphasis added), *available at* https://static1.squarespace.com/static/59a706d4f5e2319b70240ef9/t/654173fbfb360c7445aa3d0c/1698788352229/AsYouSow2023_RoadToZero_v5_FIN_20231031.pdf.

¹¹ Scope 3 Reporting Standard, Chap. 2, *Business Goals*, at 11.

inventory shall be based on the following principles: relevance, completeness, consistency, transparency, and accuracy.” The Scope 3 Reporting Standard recognizes that “[i]n practice, companies may encounter tradeoffs between principles when completing a scope 3 inventory” and states, “[c]ompanies should balance tradeoffs between principles depending on their individual business goals.”¹² Summarizing these considerations, the Corporate Standard states, “[c]ompanies may want to focus on accounting for and reporting those activities that are relevant to their business and goals, and for which they have reliable information.”¹³

2. The Proposal Dictates Specific Methods For Implementing Sector Emissions Reporting That Limit Management’s Discretion And Are Inconsistent With The Company’s Path To Implementing The 2030 Physical Emissions Intensity Goals.

The Proposal, through its request for specific disclosure, seeks to impose a specific method for implementing the Company’s 2030 Physical Emissions Intensity Goals that would inappropriately limit management’s discretion in developing, addressing and implementing the complex issue of managing and reporting on Scope 3 emissions. In numerous respects, the approach dictated by the Proposal’s request conflicts with methodologies that the Company has already adopted and disclosed, seeking to replace management’s judgment on these complex matters:

- *The Proposal would require the Company to address additional Company activities that are currently outside the scope of the 2030 Physical Emissions Intensity Goals.* The Supporting Statement notes that the assessment of client alignment called for in the Proposal “should take into account all material financing mechanisms and asset classes that contribute to [the Company’s] emissions, including direct lending, underwriting, and investments.” In contrast, as discussed in the TCFD Reports, the Company’s methodology includes corporate lending commitments, capital markets financing, and on-balance sheet investments (including tax-equity investments). For example, for corporate lending commitments specifically, the Company measures exposure to clients based on the full lending commitment, including undrawn balances, since this approach “is both a more meaningful measure of [the Company’s] commitment to [its] clients, and a more stable metric to track, measure and manage.” These activities represent areas where the Company has “the data and approaches available to measure and manage [its] financed emissions.”¹⁴ The recommendations of the Institute of International Finance support this tailored approach, noting that “[t]he specific set

¹² *Id.*, Chap. 4, *Accounting and Reporting Principles*, at 23-24.

¹³ Corporate Standard, Chap. 4, *Setting Operational Boundaries; Scope 3: Other Indirect GHG Emissions*, at 29.

¹⁴ 2021 TCFD Report at p. 42.

of financial services that are relevant for transition activities will vary by sector, in different parts of the value chain, and in different markets.”¹⁵

- *To prepare the requested disclosure, the Proposal would require the Company to alter the way it works with its clients by replacing its strategy of supporting its clients in their own goals with the need to assess their “credibility” as well as altering the way it gathers data for purposes of evaluating the Company’s pathway to net zero and reporting on its progress. The Proposal would require the Company to develop a new “independently establish[ed]” methodology in which it first assesses whether each of its clients is or is not “aligned with a credible Net Zero pathway.” The Company would then have to calculate and report on a ratio and how that ratio reflects on the Company’s progress to meeting its 2030 Physical Emissions Intensity Goals. In contrast, the Company has already developed proprietary pathways to set the 2030 Physical Emissions Intensity Goals, utilizing well-established reporting frameworks, which take into account its strategy of supporting its clients in their own goals, and to measure each financial portfolio’s progress toward net zero. As described above, the pathways are built out “based on the costs of different technologies and approaches to decarbonization, which [the Company] view[s] as more relevant for a financial institution that does not control the pace or direction of global public policy, but can finance and invest in new technology solutions alongside [its] clients” and the pathway representing the upper bounds of the Company’s 2030 Physical Emissions Intensity Goals incorporates industry assumptions specific to the Company’s current and forward-looking portfolio.¹⁶ In addition, the use of the GHG Protocol reporting framework reflects the Company’s judgment regarding how to accurately measure progress in the face of difficulties collecting reliable and up-to-date emissions and production data, which is “a key enabler for accurately reflecting [its] financing portfolios’ physical emissions intensity.” The Company has identified numerous data challenges affecting its physical emissions intensity baseline calculations and will continue to work to enhance its methodology to improve accuracy across sectors, including through its internal engineering efforts to develop tools “that make it easier to compare and investigate vendor data, enabling [the Company] to better understand how financing positions impact portfolio intensity as [it] handle[s] larger volumes of data.”¹⁷*

¹⁵ The Role of The Financial Sector in the Net Zero Transition: Assessing Implications for Policy, Supervision and Market Frameworks, Institute of International Finance, at p. 15 (Oct. 10, 2023), *available at* https://www.iif.com/portals/0/Files/content/32370132_iif_transition_planning_report_2023_final_for_publication.pdf (the “IIF Recommendations”).

¹⁶ 2021 TCFD Report at p. 41.

¹⁷ 2023 TCFD Report at p. 48-50. The Company has identified the following four broad data challenges, which are discussed in detail in the 2023 TCFD Report: (i) significant gaps exist in the availability of company reported data, especially in the Energy sector, (ii) wide variance of intensities calculated from vendor data often differ from company reporting and production-based intensity estimates are typically more reliable, (iii) year-on-year intensity changes based on vendor data may not reflect shifts in actual

- *The Proposal would require a different model for reporting goals and progress toward those goals than the approach the Company has adopted.* The Proposal’s preamble asserts that, in order to have a “realistic transition plan in place to meet its goals,” the Company must “assess[] its clients’ likelihood of meeting Net Zero-aligned 2030 goals.” However, there are many ways to have a realistic transition plan, and the specific method that would be imposed under the Proposal to address this complex issue is not the path that the Company (or, indeed, most companies) have chosen. For example, in the financial context, the Institute of International Finance has recommended against a one-size-fits-all approach, such as the Proposal’s, because “financial institutions have different business models and comparative advantages in supporting a net-zero economy, and given that transition planning is ultimately an idiosyncratic strategic exercise, transition planning approaches must be adaptable to the specific needs and priorities of individual firms.”¹⁸ The Proposal’s preamble asserts that “banks should independently establish and disclose . . . protocols and strategies specific to each business activity.” In contrast, as described in the TCFD Reports, the Company “present[s] ranged interim targets that are consistent with the ambition of the Paris Agreement” but recognizes that “there are substantial gaps between the benchmark 1.5°C aligned scenarios and the current state of policies, commitments, and technologies” and that “[a]s the data and methodology landscape evolves, [the Company] will continue to evaluate data quality, improve [its] methodology, and, if necessary, make adjustments to [its] reporting and approach to ensure the accuracy and relevance of [its] metrics.”¹⁹ Moreover, the Company’s 2030 Physical Emissions Intensity Goals are established for each sector’s financing portfolio overall, rather than specifically for any individual client. Therefore, assessment of individual client pathway alignment would substitute management’s judgment on how it has developed and reported its goals in a manner consistent with supporting the Company’s clients in achieving their own sustainability goals, including because even clients that are not aligned with a 1.5°C pathway can contribute to the achievement of the overall portfolio goals by reducing their emissions intensity.
- *The Proposal would require other changes to how the Company works with its clients.* As the TCFD Reports state, the Company believes the greatest contribution the Company can make to the climate transition is to help its clients achieve their sustainability goals, and the reports further detail the elements of the

company performance, and (iv) fallback methodologies used in the absence of data have substantial limitations.

¹⁸ IIF Recommendations at p. 1 (noting further that “[t]he strategic nature of transition planning, and relevance of transition plans to business strategy, is currently reflected in market-based frameworks, emerging jurisdictional frameworks (such as the one being developed by the UK Transition Plan Taskforce, TPT), and global standards for disclosure of climate-related risks and opportunities, including the ISSB’s IFRS S2 standard”).

¹⁹ 2021 TCFD Report at p. 41; 2023 TCFD Report at p. 46, 50.

Company’s transition plan to meet its goals. The sectors represented in the Company’s 2030 Physical Emissions Intensity Goals reflect where the Company “saw the greatest opportunity to proactively engage with [its] clients, deploy capital required for the transition, and invest in new commercial solutions to support transition to the low-carbon economy.” For example, for the energy sector, the Company recognizes that near-term shifts for many corporate clients toward low-emission fuel sources and reduced Scope 3 end-use emissions “have proved challenging given fossil fuel demand has not materially decreased.” However, the Company continues to “help facilitate [its] clients’ transition to more sustainable practices and a greener future” by for example, “offering insights on operational efficiencies, low-emission fuels, and carbon capture utilization and storage” and “assisting companies involved in the development of tools and resources to understand and mitigate methane emissions through [the Company’s] core business segments.”²⁰ This type of dynamic and multi-faceted process would not be reflected in the snapshot assessment and ratio reporting approach required by the Proposal, and in fact would require different processes and dynamics for working with the Company’s clients, including the need to assess their “credibility” rather than supporting them in their goals.

The GHG Protocol clearly illustrates the “complex nature” of and “tradeoffs” involved in determining what activities and categories are included in a company’s Scope 3 GHG emissions inventory, including what is included within Scope 3 emissions goals, as well as the need to balance trade-offs such as completeness and transparency with consistency and accuracy, and that such determinations are inherently tied to a company’s business goals. As such, whereas a proposal that suggests targets and timelines for Scope 3 emission goals might not rise to the level of implicating micromanagement, the Proposal—which seeks, through the requested disclosure, to prescribe what activities are included within the Company’s emissions goals, dictates a specific means for assessing progress towards those goals, and mandates a specific means for reporting on progress towards those goals—inappropriately limits management’s discretion and in fact wholly seeks to replace management’s judgments as to how to support its clients and set, achieve, and report on its goals. Thus, the Proposal is the type of proposal upon which “shareholders, as a group, would not be in a position to make an informed judgment.”²¹

3. Staff Precedent Supports Exclusion Of The Proposal Under The Micromanagement Standard In Rule 14a-8(i)(7).

As applied to the Company, the Proposal addresses a complex, multifaceted issue by imposing a prescriptive standard that differs both from the approach the Company believes is best suited to the Company’s financing activities when measuring GHG emissions (in alignment with well-established frameworks, such as the GHG Protocol) and from any other

²⁰ 2023 TCFD Report at p. 45-47.

²¹ 1998 Release, as reaffirmed in SLB 14L.

established framework shareholders could reference to evaluate it. The Proposal thus falls clearly within the scope of the 1998 Release and SLB 14L by addressing intricate, granular details and prescribing a specific method for implementing complex policies.

In applying the micromanagement prong of Rule 14a-8(i)(7), the Staff consistently has concurred with the exclusion of shareholder proposals attempting to micromanage a company by delving too deeply into a company's Scope 3 goal-setting and reporting processes. Most recently, in *Amazon.com, Inc.* (avail. Apr. 7, 2023, *recon. denied* Apr. 20, 2023) ("*Amazon*"), the Staff concurred with the exclusion of proposal that, like the Proposal, sought to dictate how the company assessed, measured and reported on aspects of its Scope 3 GHG emissions. In *Amazon*, the proposal requested that the company measure and disclose Scope 3 GHG 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 company argued that the request would replace management's judgments by dictating the content of its Scope 3 emissions inventory outside the standards of the GHG Protocol. Similarly, in *Apple Inc.* (avail. Dec. 21, 2017), the Staff concurred that a proposal micromanaged the company when it requested an evaluation and report on the potential for the company to achieve, by a fixed date, net-zero GHG emissions across operations directly owned by the Company and its major suppliers. The company argued that the proposal "prob[ed] 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" since the requested evaluation would necessarily require the company to evaluate and prioritize particular courses of actions and changes to its operations and business, and then to replace its own judgments about the best course of action with a course of action directed solely at meeting the specific emissions level selected by the proponent by one of the arbitrary dates selected by the proponent. *See also Apple Inc.* (avail. Dec. 5, 2016) (concurring with the exclusion of a similar proposal that sought to define the scope of operations that would be included in a Scope 3 net-zero GHG emission plan).

Similarly, in *The Coca-Cola Co.* (avail. Feb. 16, 2022), the proposal requested that the company submit any proposed political statement to shareholders at the next shareholder meeting for approval prior to publicly issuing the subject statement. The company argued that the proposal thereby "dictates the content of and process by which the [c]ompany may make certain public statements by interfering with and impermissibly limiting the fundamental discretion of management to decide upon and exercise the corporate right to speech, and instead imposes a time-consuming and unnecessary process." The Staff concurred with the proposal's exclusion, as it "micromanages the [c]ompany." In *Texas Pacific Land Corp. (Recon.)* (avail. Oct. 5, 2021), the Staff concurred with the exclusion of a proposal that would have required that the company "establish a goal of achieving a 95% profit margin." Although the Staff did not issue an explanation, the company had argued that "the profit margin strategy of the [c]ompany" was a "matter fundamental to management's choices relevant to its revenues and expenditures in the context of the broader strategy of the [c]ompany," and that the proposal, by "mandating a very specific strategic goal," that was not informed by a "deep understanding of the [c]ompany's operations, growth opportunities and the industry as a

whole” would “circumvent[] management’s expertise and fiduciary duties,” ultimately micromanaging the company. *See also SeaWorld Entertainment, Inc.* (avail. April 20, 2021) (“*SeaWorld 2021*”) (concurring with the exclusion of a proposal seeking a report on specific changes to the company’s business to address animal welfare concerns); *SeaWorld Entertainment, Inc.* (avail. Mar. 30, 2017, *recon. denied* Apr. 17, 2017) (concurring with the exclusion of a proposal requesting the replacement of live orca exhibits with virtual reality experiences as “seek[ing] to micromanage the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment”).

Like the precedents discussed above, implementation of the Proposal would involve replacing management’s judgments on complex reporting principles and business decisions that are intimately tied to the Company’s business goals and operations with a prescriptive approach that deprives management of its discretion. The provision that the Company’s assessment “should take into account all material financing mechanisms and asset classes contributing to [its] emissions, including direct lending, underwriting, and investments” is directly comparable to the situation in *Amazon*, where the proposal likewise sought to dictate the operational boundaries of the company’s Scope 3 assessment and reporting to include activities that differed from the company’s GHG Protocol-aligned approach to Scope 3 reporting. Given the scope and nature of the Company’s operations, changing its 2030 Physical Emissions Intensity Goals or other GHG emissions reporting to report the requested information (including to “take into account all material financing mechanisms and asset classes that contribute to [its] emissions, including direct lending, underwriting, and investments” and implementing the other methodology and reporting changes prescribed in the Proposal) would alter the carefully and holistically-developed strategies and alignment with business goals reflected in the 2030 Physical Emissions Intensity Goals. These changes would have significant implications for numerous aspects of the Company’s climate change activities reflecting the many complex and detailed decisions and considerations related thereto, based on established disclosure protocols as described above. The prescriptive nature of the Proposal is not lessened by the discretion provided in the Supporting Statement, which notes that “[e]missions attributable to unaligned clients can be measured using estimates or other appropriate method.” As such, the Proposal’s attempt to prescribe what is and is not counted in the Company’s 2030 Physical Emissions Intensity Goals or other GHG emissions reporting and how it assesses and reports its progress on those goals raises complex and nuanced issues that are not appropriate for direct shareholder oversight, and the Proposal is exactly the type that the 1998 Release and SLB 14L recognized as appropriate for exclusion under Rule 14a-8(i)(7).

C. Regardless Of Whether The Proposal Touches Upon A Significant Policy Issue, The Proposal Is Excludable Under Rule 14a-8(i)(7) Because It Seeks To Micromanage The Company.

As discussed in the “Overview” section above, a proposal may be excluded under Rule 14a-8(i)(7) if it seeks to micromanage a company by specifying in detail the manner in

which the company should address an issue, regardless of whether the proposal touches upon a significant policy issue. Here, the Company does not dispute that the Proposal's reference to "systemic climate risk" touches upon a significant social policy matter. However, the focus of the Proposal is not on a broad policy issue relating to GHG emissions and climate change. Instead, the Proposal is an attempt to limit the Company's discretion in how it manages the complex and granular task of establishing, assessing and reporting on certain aspects of the Company's Scope 3 emissions and how it works with its broad and diverse client base in doing so.

In this respect, it is well established that a proposal that seeks to micromanage a company's business operations is excludable under Rule 14a-8(i)(7) regardless of whether or not the proposal raises issues with a broad societal impact. *See* Staff Legal Bulletin No. 14E (Oct. 27, 2009), at note 8, citing the 1998 Release for the standard that "a proposal [that raises a significant policy issue] could be excluded under Rule 14a-8(i)(7), however, if it seeks to micro-manage the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." For example, since the issuance of SLB 14L, the Staff concurred with the exclusion of proposals addressing how companies interact with their shareholders on significant social policy issues because the proposals sought to micromanage how the companies addressed those policy issues. *See Amazon* (concurring that a proposal requesting the company report Scope 3 emissions from "its full value chain" was excludable for attempting to micro-manage the company); *Verizon Communications, Inc. (National Center for Public Policy Research)* (avail. March 17, 2022) (concurring that a proposal requesting the company publish annually the written and oral content of diversity, inclusion, equity, or related employee-training materials probed too deeply into matters of a complex nature); *The Coca-Cola Co.* (avail. Feb. 16, 2022) (concurring that a proposal addressing the company's political activities was excludable for attempting to micromanage the issue); and *SeaWorld 2021* (concurring that a proposal addressing animal rights was excludable for attempting to micromanage the issue). Thus, the fact that the Proposal references climate change and climate risk does not preclude its exclusion under Rule 14a-8(i)(7).

II. The Proposal May Be Excluded Under Rule 14a-8(i)(3) Because It Is Impermissibly Vague And Indefinite So As To Be Inherently Misleading.

Rule 14a-8(i)(3) permits the exclusion of a shareholder proposal 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 proxy soliciting materials. The Staff consistently has taken the position that vague and indefinite shareholder proposals are inherently misleading and therefore excludable under Rule 14a-8(i)(3) because "neither the 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) ("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.”); *Capital One Financial Corp.* (avail. Feb. 7, 2003) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal where the company argued that its shareholders “would not know with any certainty what they are voting either for or against”). As further described below, the Proposal is so vague and indefinite that neither the Company nor the Company’s shareholders can comprehend with any level of certainty what the Proposal would entail and, therefore, is excludable under Rule 14a-8(i)(3).

The Staff has routinely concurred with the exclusion of proposals that fail to define key terms or otherwise fail to provide sufficient clarity or guidance to enable either shareholders or the company to understand how the proposal would be implemented. For example, in *Apple Inc. (Zhao)* (avail. Dec. 6, 2019), the Staff concurred that a company could exclude, as vague and indefinite, a proposal that recommended that the company “improve guiding principles of executive compensation,” but failed to define or explain what improvements the proponent sought to the “guiding principles.” The Staff noted that the proposal “lack[ed] sufficient description about the changes, actions or ideas for the [c]ompany and its shareholders to consider that would potentially improve the guiding principles” and concurred with exclusion of the proposal as “vague and indefinite.” *See also The Walt Disney Co. (Grau)* (avail. Jan. 19, 2022) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal that requests a prohibition on communications by or to cast members, contractors, management or other supervisory groups within the company of “politically charged biases regardless of content or purpose”, where the Staff stated that “in applying this proposal to the [c]ompany, neither shareholders nor the [c]ompany would be able to determine with reasonable certainty exactly what actions or measures the [p]roposal requests”); *The Boeing Co.* (avail. Feb. 23, 2021) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal requiring that 60% of the company’s directors “must have an aerospace/aviation/engineering executive background” where such phrase was undefined); *The Home Depot, Inc.* (avail. Mar. 12, 2014, *recon. denied* Mar. 27, 2014) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal requesting a sustainability report where the company argued that the meaning of “benchmark objective footprint information” was unclear); *AT&T Inc.* (avail. Feb. 21, 2014) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal requesting a review of policies and procedures related to the “directors’ moral, ethical and legal fiduciary duties and opportunities,” where such phrase was undefined); *Berkshire Hathaway Inc.* (avail. Jan. 31, 2012) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal that specified company personnel “sign off [by] means of an electronic key . . . that they . . . approve or disapprove of [certain] figures and policies” because it did not “sufficiently explain the meaning of ‘electronic key’ or ‘figures and policies’”); *International Paper Co.* (avail. Feb. 3, 2011) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal that requested the adoption of a particular executive stock ownership policy because it did not sufficiently define “executive pay rights”); *Puget Energy, Inc.* (avail. Mar. 7, 2002) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal requesting that the company’s board of

directors implement “a policy of improved corporate governance” where it also included a broad array of unrelated topics that could be covered by such a policy); .

The Proposal requests “that, for each of its sectors with a Net Zero aligned 2030 target, [the Company] annually disclose the proportion of sector emissions attributable to clients not aligned with a credible Net Zero pathway.” Understanding the meaning of the term “a credible Net Zero pathway” is essential to the Company’s efforts to implement the Proposal if adopted and essential to shareholders’ understanding of the Proposal as they consider how to vote on the Proposal. First, the term “a credible Net Zero pathway” is a key term because it defines the standard against which the Company would be required to assess its broad and diverse set of clients before it could identify and calculate the impacts of the requested emissions. Second, the scope of the term “a credible Net Zero pathway” is critical because the Proposal further asks for reporting on “whether this proportion of unaligned clients will prevent [the Company] from meeting its 2030 targets.” However, similar to the proposals in the precedents cited above, this key term does not have an ordinary, commonly understood meaning, and the Proposal does not define the term or explain its meaning. There is significant debate regarding what constitutes a “credible” pathway to net zero,²² and such pathway can vary based on the net zero timeline (*e.g.*, by 2030, 2040, or 2050) or industry selected. This varied approach is reflected in the Company’s own reporting, which as described above, details how, for its 2030 Physical Emissions Intensity Goals, the Company has developed its own range of scenarios to determine each sector’s goal. Given that the Company has employed varied standards in its target-setting, and the Proposal fails to specify any definition for a “credible Net Zero pathway,” the Proposal is like the proposal in *Apple Inc. (Zhao)* as it “lacks sufficient description about the changes . . . for the [c]ompany and its shareholders to consider.” Thus, the Proposal’s vague and indefinite use of this key term makes it impossible for shareholders and the Company to know with any clarity the scope of the requested disclosure, including the potential gaps (if any) to be assessed.

Moreover, neither the preamble to the Proposal nor the Supporting Statement clarify what “credible Net Zero pathway” the Company is expected to use when assessing its clients for the requested disclosure. The preamble to the Proposal generally asserts that “[i]ndependent assessments show that many companies in [certain] sectors lack a 2030 Net Zero aligned pathway” (emphasis added). The subsequent sentences cite purported failures in different industries to “have 2030 targets aligned with a 1.5° C scenario,” being “on a 2030-aligned Net Zero pathway,” and being able to “reach a Net Zero aligned 2030 milestone” (emphasis added). The preamble also asserts that for the Company to “have a fully informed, realistic transition plan,” it must “assess[] its clients’ likelihood of meeting Net Zero-aligned 2030 goals.” Moreover, the preamble does not discuss the pathways that the Company has developed as part of its 2030 Physical Emissions Intensity Goals and thus provides no guidance on whether the Company’s current pathways would be deemed “credible” by the

²² See, *e.g.*, For a Livable Climate: Net-Zero Commitments Must Be Backed by Credible Action, United Nations (last visited Dec. 18, 2023), *available at* <https://www.un.org/en/climatechange/net-zero-coalition> (noting that “[t]he growth in net-zero pledges has been accompanied by a proliferation of criteria with varying levels of robustness”).

Proponent. No clarification is provided in the Supporting Statement. Further ambiguity is caused in light of the fact that even clients who may not be deemed to be aligned with a 1.5°C pathway can contribute to the achievement of the overall portfolio goals by reducing their emissions intensity. As a result, the language across the full body of Proposal does nothing to allay the inherent ambiguity and creates confusion over the meaning of the term “credible Net Zero pathway,” which could refer to, among other things: (i) the Company’s particular target for each sector (which, as described above, constitute a target range consisting of multiple pathways that are each aligned with the Paris Agreement’s goals), (ii) net zero pathways aligned to 2050, 2030, or any other year, (iii) the scenario for each sector to the extent cited by the Proponent, (iv) any net zero pathway deemed “credible,” or (v) some other net-zero pathway.

As a result of the Proposal’s lack of guidance or clarity in its use of the term “credible Net Zero pathway,” shareholders would be unable to determine the scope and nature of the credibility assessment they are being asked to support and the type of new disclosures to be made, and the Company would be unable to determine how to implement the Proposal. In order to implement the Proposal, including to undertake an assessment of the credibility of the client alignment, the Company must have a clear understanding about which of the numerous potential standards each of its 2030 target sectors are to be assessed against, and yet the Proposal provides no guidance on that point.

Without knowing what standard constitutes “a credible Net Zero pathway,” it is impossible for the Company or stockholders to determine the scope of the “proportion of unaligned client[]” emissions and the “emissions reduction shortfalls” it is supposed to address under the Proposal. *See Bank of America Corp.* (avail. Feb. 25, 2008) (concurring with the exclusion of a proposal requesting that the company’s board of directors revise its policies on greenhouse gas emissions to cease operations including “further involvement in activities that support MTR coal mining,” as such term invited too much speculation as to what actions the proposal would proscribe if implemented). Accordingly, the Proposal’s failure to define the meaning of the term “a credible Net Zero pathway” causes the Proposal to be impermissibly vague and indefinite and renders it excludable under Rule 14a-8(i)(3).

* * *

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from our 2024 Proxy Materials.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@gs.com. Should you have any questions or if you would like any additional information regarding the foregoing, please do not hesitate to contact me (212-902-0254; Jamie.Greenberg@gs.com). Thank you for your attention to this matter.

Sincerely,



Jamie Greenberg

Enclosures

cc: Danielle Fugere, As You Sow
Jennifer Monteiro, Mack Street 2016 Trust
James C Manolis

From: Shareholder Engagement [REDACTED]
Sent: Thursday, November 16, 2023 4:31 PM
To: Rogers, John F.W. [EO]; Shareholder Proposals_GS; Goldman Sachs Investor Relations
Cc: Danielle Fugere; Elizabeth Levy; Alexandra Ferry; Gail Follansbee; Sophia Wilson; Rachel Lowy
Subject: Goldman Sachs - Shareholder Proposal Filing Documents
Attachments: 24.GS.1 Goldman Sachs Climate LEAD Filing Packet.pdf; 24.GS.1 Goldman Sachs Climate CO-FILERS Packet.pdf

Dear Mr. Rogers,

Attached please find the lead filing document packet submitting a shareholder proposal for inclusion in the company's 2024 proxy statement. A printed copy of these documents has been sent to your offices via FedEx and it will be delivered tomorrow, November 17, 2023 before 10:30am.

It would be much appreciated if you could please confirm receipt of this email.

Thank you and kind regards,

Rachel Lowy

Rachel Lowy (she/her/hers)

Shareholder Relations Sr. Coordinator

As You Sow[®]



| www.asyousow.org



~Empowering Shareholders to Change Corporations for Good~



VIA FEDEX & EMAIL

November 16, 2023

John F.W. Rogers
Secretary to the Board of Directors
The Goldman Sachs Group Inc
200 West Street
New York, NY 10282
[REDACTED]

Dear Mr. Rogers,

As You Sow is filing a shareholder proposal on behalf of Mack Street 2016 Trust (“Proponent”), a shareholder of Goldman Sachs, for inclusion in Goldman Sachs’ 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 5, 2023 at 4:00pm Eastern Time or December 8, 2023 at 2:00pm Eastern Time.

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

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: [REDACTED]

WHEREAS: Goldman Sachs has established a Net Zero by 2050 goal and aligned 2030 emission reduction targets for its financing activity in the oil and gas, power, and auto manufacturing sectors. It is also a Net Zero Banking Alliance member.¹ Despite investor demand for disclosure of its transition plan, shareholders lack sufficient information as to whether Goldman is on a path to meet its 2030 targets.²

Critically, Goldman's annual disclosures lack clear information on whether portfolio companies with no or slow transition plans in these sectors are likely to impair its ability to meet its 2030 targets. Independent assessments show that many companies in these sectors lack a 2030 Net Zero aligned pathway. The Transition Pathway Initiative finds no public companies in the oil and gas sector have 2030 targets aligned with a 1.5°C scenario;³ and no public auto manufacturers, besides dedicated electric vehicle manufacturers, are on a 2030-aligned Net Zero pathway.⁴ In order for the electricity generation sector to reach a Net Zero aligned 2030 milestone, the rate of electrification needs to double.⁵

This omission leaves investors unable to assess the potential for misalignment between Goldman's 2030 targets and its clients' transition progress, and what actions, if any, Goldman is proactively taking to address such misalignment.

The potential for misalignment carries significant risk. If Goldman fails to meet its targets, it faces the possibility of reputational harm, litigation risk, and financial costs.⁶ Failure to meet targets also contributes to systemic climate risk that harms Goldman and investors' portfolios.

Goldman must have a fully informed, realistic transition plan in place to meet its goals. This requires assessing its clients' likelihood of meeting Net Zero-aligned 2030 goals. As the Institutional Investors Group on Climate Change explains, "[t]o deliver on their targets and commitments, banks should independently establish and disclose... protocols and strategies specific to each business activity," which will require "phasing out financing of inconsistent activities which present particular risks... while pivoting financing towards climate solutions."⁷ Other actions may include developing criteria related to financing misaligned clients and setting firm-wide targets to increase the share of financing, facilitation, and revenue derived from 1.5°C-aligned companies and activities.

RESOLVED: Shareholders request that, for each of its sectors with a Net Zero-aligned 2030 target, Goldman Sachs 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 Goldman from meeting its 2030 targets, and actions it proposes to address any such emissions reduction shortfalls.

SUPPORTING STATEMENT: Emissions attributable to unaligned clients can be measured using estimates or other appropriate method. At management discretion, the assessment should take into account all

¹ <https://www.goldmansachs.com/media-relations/press-releases/2021/2021-tcfdecarbonization-targets.html>;
<https://www.unepfi.org/net-zero-banking/members/>

² <https://www.asyouow.org/press-releases/2023/4/26/shareholders-call-on-goldman-sachs-to-disclose-a-climate-transition-plan>

³ <https://www.transitionpathwayinitiative.org/sectors/oil-gas>

⁴ <https://www.transitionpathwayinitiative.org/sectors/autos>

⁵ <https://www.iea.org/energy-system/electricity/electrification>

⁶ <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/banks-face-mounting-risk-of-fines-regulatory-probes-over-sustainability-claims-74385257>

⁷ <https://139838633.fs1.hubspotusercontent-eu1.net/hubfs/139838633/Past%20resource%20uploads/IIGCC-Net-Zero-Standard-for-Banks-June-2023.pdf>, p.7,9

material financing mechanisms and asset classes that contribute to Goldman's emissions, including direct lending, underwriting, and investments.

11/5/2023

Andrew Behar
CEO
As You Sow
2020 Milvia St, Suite #500
Berkeley, CA 94704

Re: Authorization to File Shareholder Resolution

Dear Andrew Behar,

The undersigned (“Stockholder”) authorizes As You Sow to file a shareholder resolution on Stockholder’s behalf with the named Company for inclusion in the Company’s 2024 proxy statement, in accordance with Rule 14a-8 under the Securities and Exchange Act of 1934, as amended. The resolution at issue relates to the below described subject.

Stockholder: Mack Street 2016 Trust (S)
Company: Goldman Sachs Group Inc
Subject: Report on climate transition planning

The Stockholder has continuously owned an amount of Company stock, with voting rights, for the requisite duration of time that enables the Stockholder to file a shareholder resolution for inclusion in the Company’s proxy statement. The Stockholder intends to hold the required amount of stock through the date of the Company’s annual meeting in 2024.

The Stockholder gives As You Sow the authority to address, on the Stockholder’s behalf, any and all aspects of the shareholder resolution, including drafting and editing the proposal, representing the Stockholder in engagements with the Company, entering into any agreement with the Company, designating another entity as lead filer and representative of the shareholder resolution, presenting the proposal at the Company’s annual general meeting, and all other forms of representation necessary in moving the resolution. The Stockholder understands that the Stockholder’s name and contact information will be disclosed in the proposal. The Stockholder acknowledges that their name may appear on the company’s proxy statement as the filer of the aforementioned resolution, and that the media may mention the Stockholder’s name in relation to the resolution. The Stockholder supports this proposal.

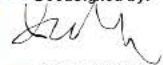
The Stockholder is available to meet with the Company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal within the regular business hours of Company’s principal executive offices. The Stockholder authorizes its representative, As You Sow, to provide specific dates and times of availability.

The Stockholder can be contacted at the following email address to schedule a dialogue: [REDACTED]. Any correspondence regarding meeting dates must **also be sent to the**

Stockholder's representative: [REDACTED]

The Stockholder also authorizes As You Sow to send a letter of support of the resolution on Stockholder's behalf.

Sincerely,

DocuSigned by:

DD675FA2F2F543F...

Name: Jennifer Monteiro

Title: Trustee



VIA FEDEX & EMAIL

November 16, 2023

John F.W. Rogers
Secretary to the Board of Directors
The Goldman Sachs Group Inc
200 West Street
New York, NY 10282
[REDACTED]

Dear Mr. Rogers,

As You Sow® is co-filing a shareholder proposal on behalf of the following Goldman Sachs shareholders for action at the next annual meeting of Goldman Sachs:

- Corning 2 E W 5A
- James C Manolis

Shareholders are co-filers of the enclosed proposal with Mack Street 2016 Trust, who is the Proponent of the proposal. *As You Sow* has submitted the enclosed shareholder proposal on behalf of Proponent for inclusion in the 2024 proxy statement in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934. Co-filers will either: (a) be available on the dates and times offered by the Proponent for an initial meeting, or (b) authorize *As You Sow* to engage with the Company on their behalf, within the meaning of Rule 14a-8(b)(iii)(B).

As You Sow is authorized to act on Corning 2 E W 5A's or James C Manolis' behalf with regard to withdrawal of the proposal. A representative of the lead filer will attend the stockholders' meeting to move the resolution as required.

Letters authorizing *As You Sow* to act on co-filers' behalf are enclosed.

We are hopeful that the issue raised in this proposal can be resolved. To schedule a dialogue, please contact me, Danielle Fugere at [REDACTED]. **Please also send all correspondence regarding this proposal to [REDACTED].**

Sincerely,

Danielle Fugere
President and Chief Counsel

Enclosures

- Shareholder Proposal
- Shareholder Authorization

cc: [REDACTED]

WHEREAS: Goldman Sachs has established a Net Zero by 2050 goal and aligned 2030 emission reduction targets for its financing activity in the oil and gas, power, and auto manufacturing sectors. It is also a Net Zero Banking Alliance member.¹ Despite investor demand for disclosure of its transition plan, shareholders lack sufficient information as to whether Goldman is on a path to meet its 2030 targets.²

Critically, Goldman's annual disclosures lack clear information on whether portfolio companies with no or slow transition plans in these sectors are likely to impair its ability to meet its 2030 targets. Independent assessments show that many companies in these sectors lack a 2030 Net Zero aligned pathway. The Transition Pathway Initiative finds no public companies in the oil and gas sector have 2030 targets aligned with a 1.5°C scenario;³ and no public auto manufacturers, besides dedicated electric vehicle manufacturers, are on a 2030-aligned Net Zero pathway.⁴ In order for the electricity generation sector to reach a Net Zero aligned 2030 milestone, the rate of electrification needs to double.⁵

This omission leaves investors unable to assess the potential for misalignment between Goldman's 2030 targets and its clients' transition progress, and what actions, if any, Goldman is proactively taking to address such misalignment.

The potential for misalignment carries significant risk. If Goldman fails to meet its targets, it faces the possibility of reputational harm, litigation risk, and financial costs.⁶ Failure to meet targets also contributes to systemic climate risk that harms Goldman and investors' portfolios.

Goldman must have a fully informed, realistic transition plan in place to meet its goals. This requires assessing its clients' likelihood of meeting Net Zero-aligned 2030 goals. As the Institutional Investors Group on Climate Change explains, "[t]o deliver on their targets and commitments, banks should independently establish and disclose... protocols and strategies specific to each business activity," which will require "phasing out financing of inconsistent activities which present particular risks... while pivoting financing towards climate solutions."⁷ Other actions may include developing criteria related to financing misaligned clients and setting firm-wide targets to increase the share of financing, facilitation, and revenue derived from 1.5°C-aligned companies and activities.

RESOLVED: Shareholders request that, for each of its sectors with a Net Zero-aligned 2030 target, Goldman Sachs 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 Goldman from meeting its 2030 targets, and actions it proposes to address any such emissions reduction shortfalls.

SUPPORTING STATEMENT: Emissions attributable to unaligned clients can be measured using estimates or other appropriate method. At management discretion, the assessment should take into account all

¹ <https://www.goldmansachs.com/media-relations/press-releases/2021/2021-tcfdecarbonization-targets.html>;
<https://www.unepfi.org/net-zero-banking/members/>

² <https://www.asyouow.org/press-releases/2023/4/26/shareholders-call-on-goldman-sachs-to-disclose-a-climate-transition-plan>

³ <https://www.transitionpathwayinitiative.org/sectors/oil-gas>

⁴ <https://www.transitionpathwayinitiative.org/sectors/autos>

⁵ <https://www.iea.org/energy-system/electricity/electrification>

⁶ <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/banks-face-mounting-risk-of-fines-regulatory-probes-over-sustainability-claims-74385257>

⁷ <https://139838633.fs1.hubspotusercontent-eu1.net/hubfs/139838633/Past%20resource%20uploads/IIGCC-Net-Zero-Standard-for-Banks-June-2023.pdf>, p.7,9

material financing mechanisms and asset classes that contribute to Goldman's emissions, including direct lending, underwriting, and investments.

11/7/2023

Andrew Behar
CEO
As You Sow
2020 Milvia St, Suite #500
Berkeley, CA 94704

Re: Authorization to File Shareholder Resolution

Dear Andrew Behar,

The undersigned (“Stockholder”) authorizes As You Sow to file a shareholder resolution on Stockholder’s behalf with the named Company for inclusion in the Company’s 2024 proxy statement, in accordance with Rule 14a-8 under the Securities and Exchange Act of 1934, as amended. The resolution at issue relates to the below described subject.

Stockholder: James C Manolis (S)
Company: Goldman Sachs Group Inc
Subject: Report on climate transition planning

The Stockholder has continuously owned an amount of Company stock, with voting rights, for the requisite duration of time that enables the Stockholder to file a shareholder resolution for inclusion in the Company’s proxy statement. The Stockholder intends to hold the required amount of stock through the date of the Company’s annual meeting in 2024.

The Stockholder gives As You Sow the authority to address, on the Stockholder’s behalf, any and all aspects of the shareholder resolution, including drafting and editing the proposal, representing the Stockholder in engagements with the Company, entering into any agreement with the Company, designating another entity as lead filer and representative of the shareholder resolution, presenting the proposal at the Company’s annual general meeting, and all other forms of representation necessary in moving the resolution. The Stockholder understands that the Stockholder’s name and contact information will be disclosed in the proposal. The Stockholder acknowledges that their name may appear on the company’s proxy statement as the filer of the aforementioned resolution, and that the media may mention the Stockholder’s name in relation to the resolution. The Stockholder supports this proposal.

The Stockholder is available to meet with the Company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal within the regular business hours of Company’s principal executive offices. The Stockholder authorizes its representative, As You Sow, to provide specific dates and times of availability.

The Stockholder can be contacted at the following email address to schedule a dialogue:
[REDACTED]. Any correspondence regarding meeting dates must **also be sent to the**

Stockholder's representative: [REDACTED]

The Stockholder also authorizes As You Sow to send a letter of support of the resolution on Stockholder's behalf.

Sincerely,

DocuSigned by:
James Manolis
95B11E83295144E...

Name: James Manolis

Title:

January 26, 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 The Goldman Sachs Group, Inc. Regarding Climate Transition Planning on Behalf of Mack Street 2016 Trust (S)

Ladies and Gentlemen:

Mack Street 2016 Trust (S) (the “Proponent”), a beneficial owner of common stock of The Goldman Sachs Group, Inc. (the “Company” or “Goldman”), has submitted a shareholder proposal (the “Proposal”) seeking information from the Company related to its ability to meet 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 December 22, 2023 “No Action” letter (the “Company Letter”).

The Company Letter contends that the Proposal may be excluded from the Company’s 2024 proxy statement on the basis of micromanagement and vagueness. 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.

SUMMARY

Goldman has committed to aligning its financing activities with a net zero by 2050 pathway. To meet that commitment, Goldman has set interim 2030 emissions intensity reduction targets for the high-carbon oil & gas, power, and auto manufacturing sectors of its portfolio. Whether the Company meets its 2050 commitments will be significantly affected by the credible climate transition plans of its clients in these sectors — or the lack of such plans. Where client action appears to be insufficient, Goldman may need to adopt additional measures to meet its emission reduction goals.

The Company’s public reporting shows that it has net zero-aligned 2030 transition goals for its clients in high-carbon sectors and that it is measuring their progress toward those goals. The Proposal requests that Goldman report to investors on three issues related to this information: what proportion of clients are aligning with a credible 1.5°C net zero pathway; whether the proportion of unaligned clients will prevent Goldman from meeting its 2030 net zero targets; and actions the Company proposes to address any such emissions reduction shortfalls. This information is

necessary to inform investors about the credibility of Goldman’s GHG reduction targets, its ability to meet its targets, and the associated climate risk in its portfolio.

Goldman argues that the Proposal may be excluded under Rule 14a-8(i)(7) because it allegedly seeks to micromanage the Company by dictating specific methods for meeting its emissions reduction goals. To the contrary, the Proposal requests the disclosure of basic information based on data the Company is already collecting. The Proposal does not dictate a formula for how Goldman should measure client progress or emissions reductions, nor does it dictate how it should meet its reduction goals. Rather the Proposal asks Goldman to report *whether* it is likely to do so given its assessment of relevant clients and, if not, what responsive measures it will take.

The Company also argues that the Proposal may be excluded under Rule 14a-8(i)(3) because it is impermissibly vague insofar as it does not define what constitutes a “credible” net zero pathway. Despite the Company’s objections, the term “credible” is commonly used and understood with regard to net zero goals. As just one example, Goldman is a member of GFANZ which has issued “Guidance on Credible Net-Zero transition plans.” As used in the Proposal the term has self-evident meaning, while allowing the Company discretion to define the term’s contours as it chooses.

Disclosure of the information requested in the Proposal is important for 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. As Goldman recognizes, the Company’s success in helping its clients decarbonize will bear directly on its own financial performance. It is therefore an appropriate subject about which shareholders would seek disclosure.

THE PROPOSAL

WHEREAS: Goldman Sachs has established a Net Zero by 2050 goal and aligned 2030 emission reduction targets for its financing activity in the oil and gas, power, and auto manufacturing sectors. It is also a Net Zero Banking Alliance member.¹ Despite investor demand for disclosure of its transition plan, shareholders lack sufficient information as to whether Goldman is on a path to meet its 2030 targets.²

Critically, Goldman’s annual disclosures lack clear information on whether portfolio companies with no or slow transition plans in these sectors are likely to impair its ability to meet its 2030 targets. Independent assessments show that many companies in these sectors lack a 2030 Net Zero aligned pathway. The Transition Pathway Initiative finds no public companies in the oil and gas sector have 2030 targets aligned with a 1.5°C scenario;³ and no public auto manufacturers, besides dedicated electric vehicle manufacturers, are on a 2030-aligned Net Zero pathway.⁴ In order for the

¹ <https://www.goldmansachs.com/media-relations/press-releases/2021/2021-tcfdecarbonization-targets.html>; <https://www.unepfi.org/net-zero-banking/members/>

² <https://www.asyousow.org/press-releases/2023/4/26/shareholders-call-on-goldman-sachs-to-disclose-a-climate-transition-plan>

³ <https://www.transitionpathwayinitiative.org/sectors/oil-gas>

⁴ <https://www.transitionpathwayinitiative.org/sectors/autos>

electricity generation sector to reach a Net Zero aligned 2030 milestone, the rate of electrification needs to double.⁵

This omission leaves investors unable to assess the potential for misalignment between Goldman's 2030 targets and its clients' transition progress, and what actions, if any, Goldman is proactively taking to address such misalignment.

The potential for misalignment carries significant risk. If Goldman fails to meet its targets, it faces the possibility of reputational harm, litigation risk, and financial costs.⁶ Failure to meet targets also contributes to systemic climate risk that harms Goldman and investors' portfolios.

Goldman must have a fully informed, realistic transition plan in place to meet its goals. This requires assessing its clients' likelihood of meeting Net Zero-aligned 2030 goals. As the Institutional Investors Group on Climate Change explains, "[t]o deliver on their targets and commitments, banks should independently establish and disclose... protocols and strategies specific to each business activity," which will require "phasing out financing of inconsistent activities which present particular risks... while pivoting financing towards climate solutions."⁷ Other actions may include developing criteria related to financing misaligned clients and setting firm-wide targets to increase the share of financing, facilitation, and revenue derived from 1.5°C-aligned companies and activities.

RESOLVED: Shareholders request that, for each of its sectors with a Net Zero-aligned 2030 target, Goldman Sachs 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 Goldman from meeting its 2030 targets, and actions it proposes to address any such emissions reduction shortfalls.

SUPPORTING STATEMENT: Emissions attributable to unaligned clients can be measured using estimates or other appropriate method. At management discretion, the assessment should take into account all material financing mechanisms and asset classes that contribute to Goldman's emissions, including direct lending, underwriting, and investments.

⁵ <https://www.iea.org/energy-system/electricity/electrification>

⁶ <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/banks-face-mounting-risk-of-fines-regulatory-probes-over-sustainability-claims-74385257>

⁷ <https://139838633.fs1.hubspotusercontent-eu1.net/hubfs/139838633/Past%20resource%20uploads/IIGCC-Net-Zero-Standard-for-Banks-June-2023.pdf>, p.7,9

BACKGROUND

Goldman has recognized the “vital role” the financial sector must play in “support[ing] clients in . . . executing commercially smart transition plans.”¹ To that end, the Company has committed “to align [its] financing portfolio to a net zero pathway by 2050.”² This commitment “to drive decarbonization in the real economy in partnership with [its] clients” is central to its “approach to addressing climate change.”³ But it also represents a key business priority insofar as the Company has “prioritized climate transition in [its] commercial efforts with clients.”⁴ The Company lays out its financing transition strategy as follows:

Our north star in designing our framework is an understanding that our role is to help our clients take action that accelerates decarbonization. This means acting both at an individual company and a system level. We recognize that our clients will require a diverse set of advice, capital and financing solutions to measure, manage and execute on their decarbonization strategies, and are leveraging the capabilities across our business to support them in this effort. Reflecting this holistic approach to accelerating climate transition, we have included both direct and facilitated financing activities in our initial scope of review.⁵

Goldman sums up its climate transition strategy as primarily entailing “active engagement with [its] clients” to “support ambitious transition plans.”⁶

In order to drive and measure progress toward its 2050 net zero goal, in December 2021, the Company announced 2030 sectoral transition targets for certain high-carbon sectors: Oil & Gas, Power, and Auto Manufacturing.⁷ It chose these sectors both because it believed they were areas where it could “have the most material impact” and because it has “sufficient data and ability to engage clients on decarbonization.”⁸ In 2023, Goldman reiterated its commitment to “continue to support [its] clients in critical sectors as they deliver on their climate transition strategies” while also disclosing plans to “assess and set targets for additional carbon-intensive sectors.”⁹

In short, Goldman: (1) recognizes climate transition as a key strategic business priority; (2) identifies addressing its financed and facilitated emissions as the central plank of its climate

¹ Goldman Sachs, *Accelerating Transition: Task Force on Climate-Related Financial Disclosures Report 2021* (“2021 TCFD Report”) at 40 (December 2021), <https://www.goldmansachs.com/tcfid-report-2021/accelerating-transition-report.pdf>.

² *Id.* at 47.

³ *Id.* at 39.

⁴ *Id.*

⁵ *Id.* at 42.

⁶ *Id.* at 49.

⁷ *See id.* at 40.

⁸ *Id.*

⁹ Goldman Sachs, *Task Force on Climate-related Financial Disclosures: Goldman Sachs 2023 TCFD Report* (“2023 TCFD Report”) at 52, <https://www.goldmansachs.com/our-commitments/sustainability/tcfid-report-2023/report.pdf>.

strategy; and (3) has implemented 2030 sectoral targets for high-carbon sectors, with additional 2030 targets on the way, as a critical mechanism for reaching its long-term targets.

ANALYSIS

While Goldman has declined to disclose its total Scope 3 financed emissions, it can be safely assumed, based on peer disclosures, that these emissions constitute the vast majority of the Company's total climate impact. It has pledged to eliminate this impact by reducing to net zero its financed and facilitated emissions by 2050. To do so, it has set interim 2030 targets to ensure its clients — and therefore the Company itself — are aligned with this goal.

The Proposal therefore seeks a straightforward disclosure: an assessment of what proportion of the Company's financed emissions are attributable to clients not aligned with a credible net zero pathway; whether this will prevent Goldman from meeting its 2030 net zero targets; and actions the Company proposes to take to address any such emissions reduction shortfalls. Notably, the Company Letter makes no argument that the latter two aspects of the Proposal constitute micromanagement. Rather, its argument is that the Proposal micromanages simply by requesting that Goldman disclose an overall assessment of its clients' transition progress. Consistent with the Company Letter, this response will therefore focus on the first part of the Proposal.

In arguing that the first part of the Proposal *alone* constitutes micromanagement, Goldman hyperbolically claims that the Proposal “seeks to alter virtually every aspect of” the Company's 2030 goals and “dictat[es] specific methods for how the Company assesses and reports on its progress” in meeting its goals. Company Letter at 2, 3.

A plain reading of the Proposal, however, demonstrates that this portrayal is inaccurate. The Proposal requests disclosure related to actions the Company is already taking – an assessment of clients' emissions for the auto, power, and oil & gas sectors. Stated differently: what proportion of Goldman's total financed emissions in these sectors are attributable to clients that are not aligned with Goldman's own goals? This information is critical to understanding whether the Company can rely on client emission reductions to meet its own goals, or whether it must plan for additional actions to meet its 2030 GHG reduction goals. This information does not eliminate management discretion in how it measures its or its clients' emission reduction progress, nor does it dictate specific calculations or methodologies related to such assessment. The Company is free to measure its clients' progress by whatever means it is already using and to assign proportionality based on this measure.

Since the Company's 2030 goals are 1.5°C-aligned,¹⁰ and the Company is reporting progress toward its goals, the Proposal's request really boils down to a disclosure of whether the Company's clients are aligned with *its own* 2030 goals. The Proposal does not dictate *how* the Company will meet its 2030 goals, only that it disclose its plan for doing so. In short, investors are not asking Goldman to use new protocols for assessing or measuring client progress, nor mandating any specific responsive

¹⁰ See 2021 TCFD Report at 41.

action, only that it disclose the information it is already gathering about its likely progress toward meeting its targets.

The argument that such a basic disclosure request constitutes micromanagement amounts to a request that the Staff adopt a new standard wholly at odds with Rule 14a-8 and Staff precedent. The Company's proposed rule would require that shareholders 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. Such a position is at odds with the SEC's long-standing position that investors can seek reliable information from companies to make informed investment decisions about material risk, consistent with the SEC's core mandate to protect investors.

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 is both commonly used and self-explanatory, with its exact details intentionally left to management discretion. Goldman has set 2030 and 2050 net zero goals and is monitoring client transition progress. If Goldman is incapable of determining whether its clients' transition plans are credibly aligned with net zero goals, because it does not know the meaning of the term "credible" as applied to a net zero transition pathway, investors have cause to be alarmed.

I. The Proposal Does Not Micromanage the Company

The Company Letter describes the Proposal as "seek[ing] to alter virtually every aspect of the Company's 2030 Physical Emissions Intensity Goals." Company Letter at 3. The Company also argues that the Proposal is inconsistent with well-established national or international frameworks. *See* Company Letter at 6-8. After setting forth the relevant legal standards, this letter addresses each argument in turn.

A. Micromanagement Standard

Rule 14a-8(i)(7) permits the exclusion of proposals that "deal[] with a matter relating to the company's ordinary business operations." As the Commission has recognized, however, proposals focused on a *significant social policy issue* 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).

At the same time, the Commission has also recognized the exclusion under Rule 14a-8(i)(7) of 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. The Staff provided additional guidance about the scope of micromanagement exclusion in Staff Legal Bulletin No. 14L (Nov. 3, 2021). 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 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 Inappropriately Interfere with Management Discretion

As described above, the Company and Proponent agree that: (1) the Company has committed to reduce its financed and facilitated emissions to net zero by 2050; and (2) the progress of its clients in their climate transition will impact its ability to meet that goal; and (3) the Company can and must track that 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. As the Staff has explained, proponents may seek “the level of detail . . . consistent with that needed . . . to assess an issuer’s impacts, progress towards goals, risks or other strategic matters appropriate for shareholder input.” Staff Legal Bulletin No. 14L.

These standards are well aligned with the Proposal, which seeks the disclosure of information necessary to assess the Company’s progress towards its own goals and the climate risk it presents to investors’ portfolios associated with not meeting its climate targets. The Company itself describes at length exactly why its investors are right to be concerned about whether its clients have credible transition plans, explaining that failure to effectively transition by Goldman’s clients could result in “liquidity outflows,” “increased operating costs,” “negative impacts on asset evaluations,” “reduced demand for certain products and services,” “affect[ing] current and projected liability and reputational damage,” and “re-pricing of assets.”¹¹ The Proposal therefore squarely confronts a matter speaking directly to shareholders’ legitimate interest in judging risk in their portfolios. *See* Staff Legal Bulletin No. 14L.

The Company Letter’s arguments otherwise are unpersuasive.

The Company’s first argument is that the Proposal would “require the Company to alter the way it works with its clients by replacing its strategy of supporting its clients in their own goals with the

¹¹ 2023 TCFD Report at 38.

need to assess their ‘credibility’ as well as altering the way it gathers data for purposes of evaluating the Company’s pathway to net zero and reporting on its progress.” Company Letter at 9. As an initial matter, this is an inaccurate description of the Proposal, which does not by its terms require any alteration in the Company’s action, only a disclosure of its own assessment of its clients’ progress. The Proposal does not dictate how the Company “gathers data” or works with its clients.

Goldman’s attempt to justify how the Proposal micromanages it strains credulity. For example, Company Letter claims that the Proposal would interfere with its “strategy of supporting its clients” by “replacing” that strategy with a requirement that the Company assess the credibility of its clients’ transition plans. Company Letter at 9. Facially, there is no conflict whatsoever between supporting a client’s transition and assessing the consistency of its plan with the Company’s 2030 goals, and the Company does not explain how any such conflict actually exists. The Proposal does not request that the Company stop everything else it is doing and *only* make the requested disclosure.

So, too, with the Company’s claim that the Proposal would require it to implement a methodology “in which it first assesses whether each of its clients is or is not ‘aligned with a credible Net Zero pathway.’” Company Letter at 9. If, as this objection suggests, the Company is *not* comparing its clients’ transition plans to its own 2030 goals, investors would have real cause to be concerned about how seriously the Company is taking the commitments it has made. To develop its own effective climate transition plan and meet its 2030 goals, Goldman must understand the proportion of emissions in each sector that are associated with clients aligned with a net zero pathway. Are 50% of automakers likely to align their emissions with a credible net zero pathway or only 10%? How will this affect Goldman’s progress? The Proposal is agnostic as to how Goldman makes this assessment; as noted in the Supporting Statement, “emissions attributable to unaligned clients can be measured using estimates or other appropriate method.” It is the proportion of alignment that is critical.

The Company Letter next complains that, under the Proposal, Goldman “would then have to calculate and report on a ratio” — a basic division problem — “and how that ratio reflects on the Company’s progress to meeting its 2030 Physical Emissions Intensity Goals.” Company Letter at 9. The Company Letter further asserts, once more without explanation, that doing this would somehow be “[i]n contrast” to the Company having “developed proprietary pathways to set the 2030 Physical Emissions Intensity Goals, utilizing well-established reporting frameworks.” Company Letter at 9. Saying the word “contrast” does not make it so; the development of “proprietary pathways . . . using well-established reporting frameworks” is consistent with, and, indeed, is a good first step in, determining if its clients are aligned with those pathways, which presumably constitute a credible transition plan.

The Company Letter goes on at length to discuss how the Company has developed its pathways and methodologies. Company Letter at 9. But it fails to meaningfully explain how those efforts conflict with the Proposal. Nothing in the Proposal requires the Company to abandon its pathways or its “work to enhance its methodology to improve accuracy across sectors,” nor does the Proposal inhibit “internal engineering efforts to develop tools ‘that make it easier to compare and investigate vendor data.’” Company Letter at 9. Once more, both of those actions are actively aligned with the Proposal’s request.

Even if the Proposal did request that the Company “alter the way it works with its clients,” as the Company claims, Company Letter at 9, this would not automatically constitute micromanagement. Every shareholder proposal, in some way, requests that a company change some aspect of how it does business or gathers and reports data. The question under Rule 14a-8(i)(7) is whether that request is appropriately made by shareholders based on the request’s level of granularity and the discretion it leaves to the company’s management. *See* Staff Legal Bulletin No. 14L. Here, the Proposal’s reporting request does not seek overly granular data, does not mandate a collection methodology, and the Company is free to decide how to measure the percentage of its clients’ unaligned emissions.

Proposals that seek even more significant “alter[at]ions in] the way [a company] works with its clients” routinely survive micromanagement challenges. In *Morgan Stanley* (Mar. 25, 2022), for instance, the proposal requested that the bank “adopt a policy . . . committing to proactive measures to ensure that the Company’s lending and underwriting do not contribute to new fossil fuel development.” Implementation of that proposal would alter the bank’s relationship with its clients, and the company argued as much. Nonetheless, the Staff correctly concluded that the proposal “d[id] not seek to micromanage the Company.”¹² This is because the proposal’s request that the company adopt a policy was not: (a) too granular for investors to consider, or (b) too restrictive of management’s discretion to implement the request. So too here.

The Company’s second argument is closely related. The Company Letter next claims that the Proposal micromanages the Company because it “would require a different model for reporting goals and progress toward those goals than the approach the Company has adopted.” Company Letter at 10. This argument relies on an increasingly common but baseless legal argument in which companies seeking to exclude shareholder proposals argue that, because management has decided to do X, it is micromanagement for shareholders to suggest Y. This argument is especially problematic. If “seeking a change from the status quo” is a legitimate basis for exclusion, no proposals would be left standing. There is, however, no basis in the Rule or in Staff precedent to apply the micromanagement rule so broadly.

That being said, the Company Letter once more fails to make out a case that the Proposal requires the Company to deviate meaningfully from what it is already doing. For example, the Company takes issue with the Proposal’s suggestion that a “realistic transition plan . . . requires assessing its clients’ likelihood of meeting Net Zero-aligned 2030 goals.” *See* Company Letter at 10. The Company asserts, “there are many ways to have a realistic transition plan.” Company Letter at 10. This may be so, but the Company’s chosen transition plan involves setting net zero-aligned 2030

¹² The *Morgan Stanley* decision is consistent with numerous other Staff precedents before and since, all of which involve much more significant shareholder oversight of company-client relationships than this Proposal and many of which involve banks’ or insurance companies’ fossil fuel financing, investment, or underwriting. *See, e.g., Chubb Ltd.* (Mar. 27, 2023) (no exclusion where proposal requested company disclose medium- and long-term Scope 3 emissions reduction targets); *J.P. Morgan Chase & Co.* (Mar. 25, 2022) and *Citigroup Inc.* (Mar. 7, 2022) (same proposal as *Morgan Stanley*); *J.P. Morgan & Chase Co.* (Feb. 28, 2020) (proposal requested company issue report describing how it intended to reduce Scope 3 emissions).

goals for its clients in high-carbon sectors. *See supra*. Thus, the Proposal actually does align with “the path that the Company (or, indeed, most companies) have chosen.” Company Letter at 10.

It is also inaccurate to suggest that the Proposal “impose[s]” a “specific method” or a “one-size-fits-all approach.” Company Letter at 10. This is belied by the plain text of the Proposal, which accepts as given the Company’s 2030 goals, does not prescribe a methodology for measuring clients’ emissions or assessing clients’ progress, and explicitly defers to “management discretion” in implementation. More to the point, the Proposal does not impose *any* “method” or “approach” — as demonstrated previously, it is a pure disclosure request.

Denying the congruence between the Company’s climate action and the Proposal requires some acrobatics on the part of the Company. For example, the Company asserts that it “continues to ‘help facilitate its clients’ transition to more sustainable practices and a green future’ by for example, ‘offering insights on operational efficiencies, low-emission fuels, and carbon capture utilization and storage’ and ‘assisting companies involved in the development of tools and resources to understand and mitigate methane emissions through the Company’s core business segments.’” Company Letter at 11 (alterations omitted). While the Company may be correct that “[t]his type of dynamic and multi-faceted process would not be reflected in the snapshot assessment” sought by the Proposal, Company Letter at 11, that is irrelevant. The Proposal’s request, while not addressing these actions, does not stop the Company from taking them. The Company’s “dynamic and multi-faceted” client climate engagement process is in fact likely to assist clients’ transition. This does not mean that such activities conflict with the Proposal.

The Company Letter also argues that because its 2030 goals are sector-based, not client-based, they are inconsistent with the Proposal. *See* Company Letter at 10. This theory is unpersuasive. Each sector is made up of clients whose emissions are relevant to the Company’s own emissions. Even if the Company has sector-based goals, it must start its analysis with the clients in each relevant sector. It cannot understand how to achieve its 2030 goals without knowing the state of its current emissions, i.e., its clients’ greenhouse gas emissions and their transition status. Goldman acknowledges as much in stating that it chose the sectors for which it has set targets because it has “sufficient data and ability to engage *clients* on decarbonization.”¹³

Indeed, a sector-based approach is fully consistent with the Proposal, which requests that “for each of its sectors with a Net Zero-aligned 2030 target, Goldman Sachs annually disclose the proportion of sector emissions attributable to clients that are not aligned with *a* credible Net Zero pathway” (emphasis added). As such, there is no conflict between the Proposal and the Company’s actions.

As described above, when a proposal seeks disclosure of an additional piece of information than what is already disclosed, or that an additional action be taken, the micromanagement standard examines: (1) the level of granularity set forth in the proposal, and (2) management and board discretion in implementing a proposal’s request. *See* Staff Legal Bulletin No. 14L. Shareholders are allowed to propose actions that differ from those the Company is already taking — indeed, that is the point of a shareholder proposal, *see* Rule 14a-8(i)(10) (permitting exclusion of proposals that already have been substantially implemented by the company) — so long as they leave sufficient discretion for management in *implementation*. The Proposal satisfies this standard. The Company’s

¹³ 2021 TCFD Report at 40 (emphasis added).

position that: “We disagree with this approach” is an argument the Company can make to shareholders, but it is not a basis for a micromanagement exclusion.

The Company’s third argument is that the Proposal would “require the Company to address additional Company activities that are currently outside the scope of the 2030 Physical Emissions Intensity goals.” Company Letter at 8. The same two flaws present themselves here: The Proposal is consistent with the Company’s actions, and even if it were not, this does not therefore constitute micromanagement.

Starting with the latter point, investors are routinely permitted to request the disclosure of additional information beyond that provided by the Company. This was exactly the case in *Eli Lilly & Co.* (Mar. 10, 2023). There, the proponent requested that the company disclose additional quantitative information about “hiring, retention, and promotion of employees, including data by gender, race, and ethnicity.” Echoing the Company’s arguments here, Eli Lilly argued that the proposal intruded into a “broader workforce management strategy” that “include[d] multi-faceted processes guided by numerous factors,” and that the proposal “limit[ed] the Company’s discretion in preparing the requested report by dictating the metrics and data the report must contain.” Nonetheless, the Staff concluded that the proposal “does not micromanage the company.” The Company, by contrast, cites two completely inapposite precedents in *Deere & Co.* (Jan. 3, 2022) and *The Coca-Cola Co.* (Feb. 16, 2022). *Deere* involved a proposal demanding that shareholders be permitted to review every single piece of employee training material the company offered any employee, and *Coca-Cola’s* proposal demanded that shareholders literally micromanage the company by being given the authority to approve or disapprove any political statement the company wanted to make. Neither bears any resemblance to the Proposal here, and the contrast with *Eli Lilly* is instructive regarding application of the micromanagement exclusion. If a company could exclude a disclosure proposal merely by arguing that it requests the disclosure of any information beyond that which the company has already disclosed, *there could be no disclosure proposals*. That is not and cannot be the rule.

The Company further claims that the Supporting Statement’s request that “At management discretion, the assessment should take into account all material financing mechanisms and asset classes that contribute to Goldman’s emissions, including direct lending, underwriting, and investments,” constitutes micromanagement. The Proposal’s Supporting Statement is a request that the Company take into account any material source of emissions in its assessment. This request, which is consistent with the major international frameworks governing financial institutions’ disclosure of Scope 3 emissions, is hardly micromanagement. Fundamentally, however, even if it were considered to be granular, the request is made “at Company discretion.” It thus cannot be considered overly prescriptive.

Lastly, the precedents relied upon by the Company Letter are no longer good law. *Apple Inc.* (Dec. 5, 2016) requested that the Company “generate a feasible plan . . . to reach a net-zero GHG emissions status by the year 2030.” The Staff concluded that the Proposal “prob[ed] 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.” And *Apple Inc.* (Dec. 21, 2017) requested the company “prepare a report that evaluates the potential for the Company to achieve, by a fixed date, ‘net-zero’ emissions of greenhouse gases.” Staff Legal Bulletin No. 14L explicitly disavowed decisions like these, noting that “[g]oing forward we would not concur in the exclusion of similar proposals that suggest targets or timelines so long as the proposals afford discretion to management as to how to achieve such

goals.” Among the decisions explicitly called out as no longer representing the Staff’s approach to micromanagement was *Paypal Holdings, Inc.* (Mar. 6, 2018), which was identical to the latter *Apple* proposal in “asking the company to prepare a report on the feasibility of achieving net-zero emissions by 2030.”

Accordingly, the Proposal does not inappropriately interfere with management discretion. Rather, it is a modest disclosure request based on the Company’s own goals and actions, consistent with the level of granularity appropriate for shareholder consideration and replete with concessions to management discretion in implementation. The Company’s arguments otherwise would expand the micromanagement exception into a black hole that would swallow *any* disclosure proposal.

C. The Proposal Is Consistent with Well-Established National or International Frameworks

The Company Letter attempts to argue that the Proposal is inconsistent with the GHG Protocol “by delving too deeply into a company’s Scope 3 goal-setting and reporting process.” Company Letter at 12. Essentially, the Company is asserting that a proposal which addresses Scope 3 must necessarily in some way limit management discretion and is therefore inconsistent with the GHG Protocol, because the GHG Protocol “recognizes the complexities faced by a company” in measuring and reporting Scope 3 emissions. *See* Company Letter at 6-8.

This is not the case here. The GHG Protocol is a standard for how to *measure* GHG emissions. The Proposal does not dictate how the Company measures its GHG emissions. Full stop. The Proposal does not ask the Company to alter its Scope 3 inventory, it asks only for reporting on the Company’s conclusions regarding client progress, and thus its own progress, in meeting its Scope 3 targets.

The Company’s GHG Protocol argument is presumably an attempt to extend last season’s decision in *Amazon.com, Inc.* (Apr. 7, 2023), a precedent upon which the Company Letter relies heavily. But there is no indication in that decision, which addressed the Company’s Scope 3 inventory, that the Staff adopted a precedent holding that any request that touches on a company’s Scope 3 emissions is micromanagement.¹⁴ The Proposal here does not seek to alter the Company’s Scope 3 inventory. Rather, the Supporting Statement requests, at management discretion, that in the requested assessment the Company should take into account all relevant and material financed emissions.

¹⁴ Moreover, the Company’s version of the GHG Protocol bears little resemblance to the intent of the framework and conflicts with every single Staff precedent permitting Scope 3 proposals — which is to say, too many precedents to list. The Staff should not permit issuers to patch together out-of-context language from the GHG Protocol to create a blanket ban on an important category of proposals. While the GHG Protocol framework recognizes the complexity of Scope 3 reporting, it also repeatedly emphasizes the importance of complete and accurate Scope 3 reporting. Its basic objective is “[t]o help companies prepare a *true and fair* scope 3 GHG inventory” thereby creating “*consistent* and transparent public reporting” of emissions. This is why the Scope 3 Standard is very clear that “Companies *shall* account for *all* scope 3 emissions and disclose and justify any exclusions.” GHG Protocol, *Corporate Value Chain (Scope 3) Accounting and Reporting Standard* (“GHG Scope 3 Standard”) at 4, 21 (Sept. 2011), https://ghgprotocol.org/sites/default/files/standards/Corporate-Value-Chain-Accounting-Reporting-Standard_041613_2.pdf (emphasis added).

That is, once the Company measured, in whatever way it chose to do so, its clients' alignment with a credible Net Zero pathway, that it disclose the proportion of clients, in each of the three sectors, not aligned with such a pathway.

Finally, the assumption behind this argument — that shareholders cannot propose any action that might be in addition to or differ in any way from the terms of an established framework — has no basis in Rule 14a-8. Staff Legal Bulletin No. 14L is clear that the Staff may “consider [shareholder] references to well-established national or international frameworks . . . *as indicative of topics that shareholders are well-equipped to evaluate.*” Staff Legal Bulletin No. 14L (emphasis added). In other words, established frameworks are just *evidence* that a certain *topic* is within the appropriate level of granularity or complexity for a shareholder proposal. They do not create new substantive exclusions for proposals that depart from their guidance.

II. The Proposal Is Not Impermissibly Vague or Indefinite So As To Be Misleading

The Company Letter also argues that the Proposal is excludable under Rule 14a-8(i)(3) because it is “impermissibly vague and indefinite so as to be inherently misleading.” Company Letter at 14. 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 16. This argument itself is not credible.

The Company correctly identifies the standard for Rule 14a-8(i)(3): to be excluded, 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). The Staff does not lightly make such a determination. Staff Legal Bulletin No. 14B itself is dedicated in large part to 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 its requires — not whether a lawyer could identify a tortured reading that renders the proposal minorly ambiguous.

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, e.g., Apple Inc.* (Dec. 6, 2019) (proposal demanded company “improve” its executive compensation principles without defining what constituted improvement); *Walt Disney Co.* (Jan. 19, 2022) (proposal demanded prohibition on any communication with “politically charged biases” without defining what constituted a politically charged bias); *The Boeing Co.* (Feb. 23, 2021) (proposal demanded that 60% of company’s directors have an “aerospace/aviation/engineering executive background” without defining what would qualify as such); *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); *Berkshire Hathaway Inc.* (Jan. 31, 2012) (proposal demanded that company personnel “be required to sign-off be [sic] means of an electronic key, daily or weekly, that they have observed and approve or disapprove of figures and policies that show a high risk condition for the company, caused by those policies,” without explaining what any of that meant).

The Company's objection to the term "credible Net Zero pathway" does not meet this high standard. First, despite the Company's objection otherwise, the term does have an ordinary, commonly understood meaning: whether the transition plan in question is realistically aligned with net zero. One need look no further on that point than the Company itself, which has repeatedly used the terms "credible," "credible plan to reduce emissions," "credible pathway," within its climate transition planning.¹⁵ Nor is Goldman alone in using the term "credible" to describe climate transition planning without defining the term; rather, it is used in common parlance.¹⁶ There is no reason for Goldman to assume that the Proposal's use of "credible" means something different or indecipherable. The "vagueness" standard does not require every word of a Proposal to be defined. Words must be read reasonably in the context of the proposal in which it is found, as the Staff precedents below attest.

¹⁵ See, e.g., *Top of Mind: Investing in Climate Change 2.0* at 19, Goldman Sachs (Dec. 13, 2021), <https://www.goldmansachs.com/intelligence/pages/gs-research/investing-in-climate-change-2.0/report.pdf> (quoting Patrick Street, a Goldman leader who "helps oversee Goldman Sachs' carbon market solutions for corporate and investors" as stating that "The starting point is clearly a credible plan to reduce emissions, but many companies are additionally looking to use offsets as a tool in their decarbonization strategy as they offer a way to start acting now on emissions they cannot yet eliminate" without defining the term (emphasis added)); *id.* at 12 (interview with BlackRock executive who states: "In instances where company disclosures are insufficient, or they indicate a company hasn't created a credible plan to transition its business model, we often vote against board directors that we view as responsible for the oversight of climate risk," interviewer does not ask for clarification of what constitutes a credible plan (emphasis added)); GS Sustain, *SFDR, two years on – Trends and Anatomy of Article 8 & 9 funds in 2023*, Goldman Sachs (Sept. 4, 2023) (noting that screening and exclusion of E&S funds by asset managers permitted certain exposure to coal "subject to an allowance for entities deemed to have a credible transition plan to reduce their reliance/exposure to thermal coal in favour of less carbon intensive forms of energy" without defining the term).

Goldman's TCFD Reports each also repeatedly use the term "credible" to describe potential policy changes without defining it. See 2021 TCFD Report at 32 ("When implementing each scenario, we assume that a credible policy change is announced" without defining the term (emphasis added)); 2023 TCFD Report at 34 (same quote, also: "These estimates assume an immediate and credible change in climate policies" without defining the term (emphasis added)).

Goldman has also used the term "credible pathway" without defining it in other contexts, including asserting that it was "developing a credible pathway for segmenting, packaging, and selling [its derivatives portfolio]." *The Goldman Sachs Group, Inc. Resolution Plan 2016 Submission*, Goldman Sachs (Sept. 30, 2016), <https://www.fdic.gov/resources/resolutions/resolution-authority/resplans/plans/goldman-165-1610.pdf> (emphasis added).

¹⁶ See, e.g., Alastair Marsh, *Vanguard Exit Has Lawyers Mapping Out Wall Street's Top ESG Risk*, Financial Advisor (Dec. 19, 2022), <https://www.fa-mag.com/news/vanguard-exit-has-lawyers-mapping-out-wall-street-s-top-esg-risk-71183.html?print> ("For all the talk of antitrust risk, the bigger concern 'flows from not acting in ESG friendly ways, not taking account of climate risk, not adequately preparing for the energy transition and not having a credible pathway to net zero,' Tom Cummins, a partner at law firm Ashurst, said in an interview." (emphasis added)); *Credible Pathways to 1.5°C*, International Energy Agency (Apr. 2023), <https://www.iea.org/reports/credible-pathways-to-150c>.

As significantly, the Proposal intentionally allows the Company to determine whether a clients' transition plan is credible, based on management's discretion and evaluation of the many factors described in the Company Letter. The Company is fully capable of making such determination and has done so in its evaluations. There is no question that if the Proposal had attempted to define the term "credible Net Zero pathway" that the Company would have objected on the basis of micromanagement. Instead, the Proponent chose to allow the Company to determine whether a client's transition plan was credibly aligned with Net Zero. As the Company Letter notes, the methodology used to make that determination may vary by client; nothing in the Proposal requires otherwise.

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. It should do the same here.

CONCLUSION

The Proposal is a request for modest disclosure about the progress of the Company toward its net zero goals. The request is limited to the three sectors in which Goldman has already announced "a Net Zero-aligned 2030 target" and is based on information the Company is already collecting. The Proposal does not dictate specific methods or calculations for collecting such data nor does it dictate how the Company should meet its goals. It does not request the use of new or different protocols for assessing or measuring client progress, nor does it mandate the Company take any responsive action to a lack of progress. In sum, it does not micromanage the Company and is consistent with the level of granularity expected of investors' proposals. Nor is the Proposal ambiguous; rather, it leaves the Company to define whether its clients' transition plans are credibly aligned with net zero, consistent with the Company's disclosed ability to do so.

Based on the foregoing, we believe that the Company has provided no basis for the conclusion that the Proposal is excludable from the 2023 proxy statement pursuant to Rule 14a-8. We urge the Staff to deny the no action request.

Office of Chief Counsel

January 26, 2024

Page 16 of 16

Sincerely,

A handwritten signature in black ink, appearing to read 'LM', with a long, sweeping flourish extending to the right.

Luke Morgan

Staff Attorney

As You Sow

cc:

Jamie Greenberg, Goldman Sachs Group, Inc.