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

DIVISION OF
CORPORATION FINANCE

March 8, 2024

Elizabeth A. Ising
Gibson, Dunn & Crutcher LLP

Re: Citigroup Inc. (the "Company")
Incoming letter dated December 29, 2023

Dear Elizabeth A. Ising:

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

The Proposal requests that the Company prepare a report on the feasibility of offering customized proxy voting preferences for Company clients that seek to maximize portfolio-wide returns by pursuing voting strategies designed to push certain companies to address social and environmental externalities.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal relates to ordinary business matters. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on Rule 14a-8(i)(7). In reaching this position, we have not found it necessary to address the alternative bases 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: James McRitchie

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December 29, 2023

VIA ELECTRONIC SUBMISSION

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

Re: *Citigroup Inc.*
Stockholder Proposal of James McRitchie
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, Citigroup Inc. (the "Company"), intends to omit from its proxy statement and form of proxy for its 2024 Annual Meeting of Stockholders (collectively, the "2024 Proxy Materials") a stockholder proposal (the "Proposal") and statement in support thereof (the "Supporting Statement") received from James McRitchie (the "Proponent").

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 Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D") provide that stockholder 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 Proponent that if the Proponent elects 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:** Citigroup ("Citi" or "Company") shareholders request our Company prepare a report on the feasibility of offering customized proxy voting preferences for Citi clients that seek to maximize portfolio-wide returns by pursuing voting strategies designed to push certain companies to address social and environmental externalities.[1] The report shall be available to stockholders and investors by October 1, 2024, prepared at reasonable cost, consistent with fiduciary duties and other legal obligations, and omitting proprietary information.
>
> [1] https://www.routledge.com/Moving-Beyond-Modern-Portfolio-Theory-Investing-That-Matters/Lukomnik-Hawley/p/book/9780367760823, chapter 5.

Copies of the Proposal, the Supporting Statement, and correspondence with the Proponent 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)(10) because the Company has substantially implemented the Proposal;
- Rule 14a-8(i)(7) because the Proposal relates to the Company's ordinary business operations and the Proposal seeks to micromanage the Company; and
- Rule 14a-8(i)(5) because the Proposal relates to operations that are not economically significant or otherwise significantly related to the Company's business.

BACKGROUND

Through Citi Global Wealth ("CGW"), the Company offers customers a range of products and services, including personalized investment solutions and portfolios that provide clients and advisors choice and flexibility when developing personalized portfolios aligned to each client's unique goals. CGW provides clients two types of services: (1) Citi Investment Management ("CIM") services, which are discretionary managed portfolios where portfolio managers manage a separately managed account for the client; and (2) non-CIM services, where bankers and investment counselors may recommend investments to clients. In both their CIM and non-CIM accounts, CGW clients may hold a variety of asset types and classes, including equities, mutual funds, and alternative funds (such as hedge funds, private equity, and real estate).

Clients with CIM accounts are provided with choices on how to manage voting of equity securities in their accounts. One option is true pass-through voting, where the clients retain proxy voting authority and vote their shares using their choice of voting strategies, including any voting strategy they identify as designed to encourage companies to address particular topics or concerns. Alternatively, clients may delegate authority to CIM to vote proxies on their behalf. In those cases, CIM will rely on and arrange for the shares to be voted in accordance with the voting recommendations of an unaffiliated proxy advisory firm, based on that advisory firm's sustainability policy guidelines, which are oriented to the United Nations Principles for Responsible Investment.

For CGW clients with a non-CIM account, clients retain proxy authority and vote proxies themselves. Clients have the option of either voting their proxies directly or providing voting instructions to CGW, who then votes the shares in accordance with those instructions. If the client does not direct that their shares be voted in accordance with specific instructions, CGW does not make any voting decisions for clients.

The Company is not, and does not have any subsidiary or operation that is, a mutual fund manager. Instead, clients can invest in a wide range of mutual funds operated by investment advisers that are neither owned nor controlled by the Company. For any mutual funds that clients own, the mutual fund managers control voting of such shares, and neither the Company nor its clients have any ability to impact the voting of such shares unless the mutual fund managers offer pass-through voting services to their clients. Thus, the examples provided in the Proposal of BlackRock, Vanguard, and State Street providing shareholders of their own funds with voting choices are not applicable to the Company. As noted above, the Company's clients can determine exactly how shares are voted for individual securities held in CIM or non-CIM accounts by electing to retain and exercise voting themselves, or they can delegate voting to CIM, which in turn delegates to a third-party service, as more than 90% of CIM clients have chosen to do.

As such, the Proposal is excludable under Rule 14a-8. It is well established that a proposal can be substantially implemented for purposes of Rule 14a-8(i)(10) even if implemented in a manner different than a proponent would have preferred. As well, a proposal is excludable under Rule 14a-8(i)(7) where, as here, it does not raise significant policy issues that transcend a company's ordinary business, but instead relates to customer relations and choices of product and service offerings and seeks to micromanage a company's business. And finally, the Proposal is excludable under Rule 14a-8(i)(5) because it relates to a concern that is not economically or otherwise significant to the Company's operations, given that the Company (in contrast to other companies mentioned in the Supporting Statement) is not an investment company or investment company manager.

ANALYSIS

I. The Proposal May Be Excluded Under Rule 14a-8(i)(10) Because The Company Has Substantially Implemented The Proposal

A. The Substantial Implementation Standard

Rule 14a-8(i)(10) permits a company to exclude a stockholder proposal from its proxy materials if the company has "substantially implemented" the proposal. The Commission stated in 1976 that the predecessor to Rule 14a-8(i)(10) was "designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management." Exchange Act Release No. 12598 (July 7, 1976) ("1976 Release"). Originally, the Staff narrowly interpreted this predecessor rule and concurred with the exclusion of a proposal only when proposals were "'fully' effected" by the company. *See* Exchange Act Release No. 19135 (Oct. 14, 1982) (the "1982 Release"). By 1983, the Commission recognized that the "previous formalistic application of [the rule] defeated its purpose" because proponents were successfully avoiding exclusion by submitting proposals that differed from existing company policy in minor respects. Exchange Act Release No. 20091, at § II.E.6. (Aug. 16, 1983) ("1983 Release"). Therefore, in the 1983 Release, the Commission adopted a revised interpretation of the rule to permit the omission of proposals that had been "substantially implemented," and the Commission codified this revised interpretation in Exchange Act Release No. 40018, at n.30 (May 21, 1998) (the "1998 Release").

Applying this standard, when a company can demonstrate that it already has taken actions to address the underlying concerns and essential objectives of a stockholder proposal, the Staff has concurred that the stockholder proposal has been "substantially implemented" and may be excluded as moot. The Staff has noted that "a determination that the company has substantially implemented the proposal depends upon whether [the company's] particular policies, practices and procedures compare favorably with the guidelines of the proposal." *Walgreen Co.* (avail. Sept. 26, 2013); *Texaco, Inc. (Recon.)* (avail. Mar. 28, 1991).

At the same time, a company need not implement a proposal in exactly the same manner set forth by the proponent. In *General Motors Corp.* (avail. Mar. 4, 1996), the company observed that the Staff had not required that a company implement the action requested in a proposal exactly in all details but had been willing to issue no-action letters under the predecessor of Rule 14a-8(i)(10) in situations where the "essential objective" of the proposal had been satisfied. The company further argued, "[i]f the mootness requirement [under the predecessor rule] were applied too strictly, the intention of [the rule]—permitting exclusion of 'substantially implemented' proposals—could be evaded merely by including some element in the proposal that differs from the registrant's policy or practice." Therefore, if a company has satisfactorily addressed both the proposal's underlying concerns and its "essential objective," the proposal will be deemed

"substantially implemented" and, therefore, may be excluded. *See, e.g.*, *Quest Diagnostics, Inc.* (avail. Mar. 17, 2016); *Exelon Corp.* (avail. Feb. 26, 2010); *Anheuser-Busch Companies, Inc.* (avail. Jan. 17, 2007); *ConAgra Foods, Inc.* (avail. July 3, 2006); *Johnson & Johnson* (avail. Feb. 17, 2006); *Talbots* (avail. Apr. 5, 2002); *Masco Corp.* (avail. Mar. 29, 1999); *The Gap, Inc.* (avail. Mar. 8, 1996).

The Staff has concurred that, when substantially implementing a stockholder proposal, companies can address aspects of implementation in ways that may differ from the manner in which the stockholder proponent would implement the proposal. Of particular relevance here, the Staff has concurred with the exclusion of proposals seeking a report on the feasibility of undertaking certain actions when a company has already addressed the essential objective of the proposal by undertaking the action. For example, in *Dunkin Brands Group, Inc.* (avail. Mar. 6, 2019), the proposal requested that the Board issue a report assessing the feasibility of integrating sustainability metrics into the performance quotas of senior executive compensation plans. The company's no-action request explained that the company had already addressed both the underlying concern and the essential objective of the proposal by integrating sustainability goals and metrics into its executive compensation programs and reporting on that action in its proxy statements and biannual corporate sustainability report. The Staff concurred that the company had substantially implemented the proposal, and thus that it could be excluded under Rule 14a-8(i)(10). *See also eBay Inc.* (avail. Mar. 29, 2018) (concurring with exclusion of a proposal requesting that the Board issue a report assessing the feasibility of integrating sustainability metrics into the performance quotas of senior executive compensation plans, where the proponent argued among other things that the proposal sought a future-looking report and the company's actions had only occurred in the past); *Target Corp.* (avail. Mar. 26, 2013) (concurring with exclusion under Rule 14a-8(i)(10) of a proposal requesting that the board of directors study the feasibility of adopting a policy prohibiting the use of treasury funds for any direct or indirect political contributions when the company had already reported the board's determination that such a policy was not practical, even though the proponents objected that the company's past actions did not constitute the type of feasibility study contemplated by the proposal); *Covance Inc.* (avail. Feb. 28, 2008) (concurring with exclusion of a proposal requesting a report on the feasibility of establishing environmental enrichment committees at the company's laboratories to foster quality standards of care for animals because it was substantially implemented for purposes of Rule 14a-8(i)(10) by the company establishing an institutional animal care and use committee at each of its laboratories).

In Exchange Act Release No. 95267 (July 13, 2022), the Commission proposed to amend Rule 14a-8(i)(10) to provide that proposals would be excludable if a company has already implemented the "essential elements" of the proposal. While the Commission has not yet adopted that proposed amendment, and it is therefore not applicable to the Staff's review of this letter, it is notable the Commission stated that even under the proposed standard, "a proposal need not be rendered entirely moot, or be fully implemented in exactly the way a proponent

desires, in order to be excluded. A company may be permitted to exclude a proposal it has not implemented precisely as requested if the differences between the proposal and the company's actions are not essential to the proposal." Therefore, under the proposed standard as well, the Company has substantially implemented the Proposal because it offers customized proxy voting options to its clients as described below.

B. The Company's Existing Client Voting Policies Substantially Implement The Proposal

The Company's businesses already offer clients a number of choices on how to manage voting of equity securities in their accounts, including true pass-through voting where the client can retain proxy voting authority themselves and vote their shares however they wish and delegation to CIM where voting is delegated to a third-party to vote in accordance with its sustainability policy guidelines. These alternatives are already communicated to clients through various account and service brochures and materials provided by the Company's businesses. Thus, there is no need to further study the feasibility of offering customized proxy voting preferences for clients wishing to pursue social and environmental voting strategies as clients are already able to pursue such voting strategies. Although the granular control offered by the Company that provides clients the ability to pursue such voting strategies themselves may differ from what the Proponent had in mind and the customized voting strategies available may not be as extensive as the Proponent may prefer, the Company's current offerings reflect the Company's careful consideration of how best to address clients' voting preferences, and thereby address the underlying concern and essential objective of the Proposal. As a result, the Company's already available products and services implement the Proposal and present precisely the scenario contemplated by the Commission when it adopted the predecessor to Rule 14a-8(i)(10) "to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management." 1976 Release. The Company's policies related to client voting therefore substantially implement the Proposal and, consistent with the well-established precedent cited above, the Proposal may properly be excluded under Rule 14a-8(i)(10).

II. The Proposal May Be Excluded Pursuant To Rule 14a-8(i)(7) Because It Involves Matters Related 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 stockholder 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." 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 was 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." Examples of the tasks cited by the Commission include "management of the workforce, such as the hiring, promotion, and termination of employees, *decisions on production quality and quantity*, and the retention of suppliers" (emphasis added). 1998 Release. 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 "1976 Release")).

A stockholder proposal being framed in the form of a request for a report does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the proposed report is within the ordinary business of the issuer. See Exchange Act Release No. 20091 (Aug. 16, 1983); *Johnson Controls, Inc.* (avail. Oct. 26, 1999) ("[Where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under [R]ule 14a-8(i)(7)."); *see also Ford Motor Co.* (avail. Mar. 2, 2004) (concurring with the exclusion of a proposal requesting that the company publish a report about global warming/cooling, where the report was required to include details of indirect environmental consequences of its primary automobile manufacturing business).

We note that, although the Staff recently issued guidance specifically relating to its approach to evaluating certain aspects of the ordinary business exclusion, such guidance does not impact the arguments made herein. *See* Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L"). Although SLB 14L, among other things, reverses prior Staff guidance regarding the company-specific approach to evaluating the significance of a policy issue that is the subject of a stockholder proposal for purposes of the ordinary business exclusion, this no-action request does not rely on a company-specific approach to evaluating significance and relies on precedent preceding, or not involving, the reversed prior Staff guidance. Therefore, SLB 14L is not applicable to this Proposal.

B. The Proposal May Be Excluded Because Its Subject Matter Relates To The Products And Services That The Company Offers, Including How The Company Handles Its Customer Relations

The Proposal requests that the Company prepare a report on "the feasibility of offering customized proxy voting preferences for [Company] clients that seek to maximize portfolio-wide

returns by pursuing voting strategies designed to push certain companies to address social and environmental externalities." The Company's decisions about the policies and procedures for the products and services that it offers, including those related to its customer portfolios, and how it handles its customer relations, including communications with customers regarding the Company's products and services, implicate routine management decisions encompassing legal, regulatory, operational, and financial considerations, among others. For example, as a global financial institution organized under the laws of the United States, the Company is subject to significant federal, state, and local laws and regulations, which, among other things, include requirements relating to appropriate procedures for managing customer portfolios. As a result, the Company has developed a set of policies and procedures encompassing customers' use of its products and services, including customer portfolios. The Proposal impermissibly seeks to override the Company's ordinary business decisions in this respect.

The Staff has consistently determined that proposals relating to the products and services that a company offers to its customers can be excluded pursuant to Rule 14a-8(i)(7) as relating to the company's ordinary business operations. For example, the Staff recently concurred with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that a financial services company prepare a report specifying the company's policy "in responding to requests to close, or in issuing warnings of imminent closure about, customer accounts by any agency or entity operating under the authority of the executive branch of the United States Government." The company sought exclusion of the proposal under Rule 14a-8(i)(7) and argued that the proposal addressed issues that were ordinary business matters for the company by attempting to dictate the disclosure of the company's policies surrounding the offering of its products and services and the management of the company's customer accounts and customer relations. The Staff concurred with the exclusion of the proposal under Rule 14a-8(i)(7), noting that "the [p]roposal relates to, and does not transcend, ordinary business matters." *Wells Fargo & Co. (National Legal and Policy Center)* (avail Mar. 2, 2023) ("*Wells Fargo 2023*"). In two other recent instances, the Staff also concurred with the exclusion under Rule 14a-8(i)(7) of proposals requesting that the boards of financial services companies complete a report evaluating each company's overdraft policies and practices and the impacts those have on customers. In each case, the proposal raised concerns that overdraft fees allegedly impacted certain customers more than others and that the provision of such services exposed the companies to increased litigation and reputational risks. The Staff nonetheless concurred with exclusion under Rule 14a-8(i)(7) as the proposals related to "ordinary business operations," and specifically, "the products and services offered for sale" by those companies. *See Bank of America Corp. (Worcester County Food Bank and Plymouth Congregational Church of Seattle)* (avail. Feb. 21, 2019); *JPMorgan Chase & Co.* (avail. Feb. 21, 2019). *See also JPMorgan Chase & Co.* (avail. Mar. 16, 2010) (concurring with the exclusion of a proposal regarding the company's decision to issue refund anticipation loans to customers, noting that "proposals concerning the sale of particular services are generally excludable under Rule 14a-8(i)(7)"); *Bank of America Corp.* (avail. Jan. 6, 2010) (concurring

with the exclusion of a proposal requiring the company to stop accepting matricula consular cards as a form of identification, which effectively sought "to limit the banking services the [company could] provide to individuals the [p]roponent believe[d] [we]re illegal immigrants," because the proposal sought to control the company's "customer relations or the sale of particular services"); *Banc One Corp.* (avail. Feb. 25, 1993) (concurring with the exclusion of a proposal requesting that the corporation publish "a report reviewing the [c]ompany's lending practices" as they pertained to specifically identified groups of people, noting that the proposal involved "a description of special technical assistance and advertising programs[,] lending strategies and data collection procedures").

The Staff also has consistently concurred with the exclusion of proposals relating to how a company handles its customer accounts and any associated policies and procedures. For instance, in *PayPal Holdings, Inc. (James A. Heagy)* (avail. Apr. 2, 2021), the proposal requested that the company ensure "that [the company's] users do not have accounts frozen or the use of [company] services terminated without giving specific, good and substantial reasons to the user for so doing." The company argued that the proposal "attempt[ed] to dictate the [c]ompany's management of its customer accounts, including the design and administration of [c]ompany policies and procedures" and related to communications with customers and the company's processes related to customer accounts, which are both fundamental to day-to-day operations and matters of ordinary business operations. The Staff concurred with the proposal's exclusion under Rule 14a-8(i)(7). This was also the Staff's conclusion in *Zions Bancorporation* (avail. Feb. 11, 2008, *recon. denied* Feb. 29, 2008), where the proposal requested that the company implement a mandatory adjudication process prior to the termination of certain customer accounts. The Staff concurred that the proposal related to "ordinary business operations (i.e., procedures for handling customers' accounts)."

The Staff also has consistently concurred with the exclusion of proposals relating to customer relations. For instance, in *Wells Fargo & Co. (Harrington Investments, Inc.)* (avail Feb. 27, 2019) ("*Wells Fargo 2019*"), the Staff concurred with the exclusion of a proposal requesting that the board commission an independent study and then report to stockholders on "options for the board[] to amend [the] [c]ompany's governance documents to enhance fiduciary oversight of matters relating to customer service and satisfaction" because the proposal "relate[d] to decisions concerning the [c]ompany's customer relations." Similarly, in *Prudential Financial, Inc.* (avail. Jan. 10, 2013), the Staff concurred that a proposal directing the company to state "the fees and charges and the investment performance" in the quarterly statements provided to the company's annuity participants was excludable because it "concern[ed] customer relations" and "account information provided to customers." *See also The Coca-Cola Co.* (avail. Jan. 21, 2009, *recon. denied* Apr. 21, 2009) (concurring with the exclusion of a proposal concerned about the "company's reputation with consumers" requesting that the company prepare a report evaluating new or expanded policy options to further enhance transparency of information to consumers of bottled beverages produced by the company with the Staff noting that it "relat[ed] to [the

company's] ordinary business operations (i.e., marketing and consumer relations)"); *Bank of America Corp.* (avail. Feb. 27, 2008) (concurring with the exclusion of a proposal requesting the preparation of a report detailing, in part, the company's policies and practices regarding the issuance of credit cards and lending of mortgage funds to individuals without Social Security numbers as relating to the company's "credit policies, loan underwriting and customer relations"); *Wells Fargo & Co. (The Community Reinvestment Assoc. of North Carolina, et al.)* (avail. Feb. 16, 2006) (concurring with the exclusion of a proposal requesting that the company not provide its services to payday lenders as concerning "customer relations"); *Bank of America Corp. (The Community Reinvestment Assoc. of North Carolina)* (avail. Mar. 7, 2005) (same).

In addition, the Staff has repeatedly concurred that "[p]roposals that concern a company's choice of technologies for use in its operations are generally excludable under rule 14a-8(i)(7)" as related to ordinary business matters. *FirstEnergy Corp.* (avail. Mar. 8, 2013). *See also AT&T Inc.* (avail. Jan. 4, 2017) (concurring with exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on the company's progress toward providing Internet service and products for low-income customers); *PG&E Corp.* (avail. Mar. 10, 2014) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal advocating that the company make analog electrical meters available instead of "smart" meters); *AT&T Inc.* (avail. Feb. 13, 2012) (concurring with exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on financial and reputational risks posed by continuing to use technology that inefficiently consumed electricity); *CSX Corp.* (avail. Jan. 24, 2011) (concurring with the exclusion of a proposal requesting that the company develop a kit to convert its fleet to fuel cell power, noting that "[p]roposals that concern a company's choice of technologies for use in its operations are generally excludable under rule 14a-8(i)(7)").

Here, like the policies, practices, and procedures at issue in *Wells Fargo 2023, PayPal*, *Wells Fargo 2019*, and the other precedent cited above, the Proposal is an attempt to influence and override the Company's determinations of what products and services the Company offers its clients, including the Company's procedures for handling its customer portfolios and customer relations, and to urge the Company to adopt "[n]ew technologies." In particular, the Proposal asks that the Company "prepare a report on the feasibility of offering customized proxy voting preferences for [Company] clients." The Supporting Statement asserts that "[d]iversified investors are interested in ensuring companies in portfolios managed by [the Company] do not threaten the rest of their portfolios," that "[s]oliciting the diverse views of clients on issues raised in shareholder elections and incorporating them into voting/engagement practices, or facilitating the client's ability to do so themselves, can mitigate risk," and that "[n]ew technologies facilitate soliciting investor preferences efficiently to inform voting and engagement." Thus, the Proposal is entirely focused on what products and services the Company offers its clients with respect to voting preferences for securities held in the clients' portfolios. Decisions regarding the policies around services and products the Company offers and on what terms, as well as what technology to employ in offering such services, are a fundamental responsibility of management, requiring consideration of a number of factors such as cost, integration with existing client account

technology and services, client preferences, and regulatory compliance. Balancing such considerations is a complex matter and is, in the words of the 1998 Release, "so fundamental to management's ability to run a company on a day-to-day basis that [it] could not, as a practical matter, be subject to direct shareholder oversight." Consistent with Staff precedent, the Proposal, by attempting to direct the Company's product and service offerings, the management of the Company's customer portfolios and customer relations, and the Company's choice of technology, addresses issues that are ordinary business matters for the Company. Accordingly, the Proposal is properly excludable under Rule 14a-8(i)(7).

C. The Proposal Does Not Focus On Any Significant Policy Issue That Transcends The Company's Ordinary Business Operations

The well-established precedent set forth above demonstrates that the Proposal squarely addresses ordinary business matters and, therefore, is excludable under Rule 14a-8(i)(7). The 1998 Release distinguishes proposals pertaining to ordinary business matters from those involving "significant social policy issues." *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)). While "proposals . . . focusing on sufficiently significant social policy issues (*e.g.*, significant discrimination matters) generally would not be considered to be excludable," the Staff has indicated that proposals relating to both ordinary business matters and significant social policy issues may be excludable in their entirety in reliance on Rule 14a-8(i)(7) if they do not "transcend the day-to-day business matters" discussed in the proposals. 1998 Release. In this regard, when assessing proposals under Rule 14a-8(i)(7), the Staff considers "both the proposal and the supporting statement as a whole." Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005). Moreover, as Staff precedent has established, merely referencing topics in passing that might raise significant policy issues in other contexts, but which do not define the scope of actions addressed in a proposal and which have only tangential implications for the issues that constitute the central focus of a proposal, does not transform an otherwise ordinary business proposal into one that transcends ordinary business.

In SLB 14L, the Staff stated that it "will realign its approach for determining whether a proposal relates to 'ordinary business' with the standard the Commission initially articulated in [the 1976 Release], which provided an exception for certain proposals that raise significant social policy issues, and which the Commission subsequently reaffirmed in the 1998 Release." In addition, the Staff stated that it will focus on the issue that is the subject of the stockholder proposal and determine whether it has "a broad societal impact, such that [it] transcend[s] the ordinary business of the company," and noted that proposals "previously viewed as excludable because they did not appear to raise a policy issue of significance for the company may no longer be viewed as excludable under Rule 14a-8(i)(7)."

Here, the Proposal does not transcend the Company's ordinary business operations. Rather, as discussed above, the Proposal is principally focused on the Company's product and service

offerings, the Company's management of its associated customer relations, and the Company's choice of technology. Specifically, the Proposal focuses on the manner in which the Company offers granular control to clients of voting decisions for securities held in their accounts, the type of customized voting offerings made available, and whether the Company should employ "[n]ew technologies" to offer different customized voting choices. While the Proposal and Supporting Statement provide passing references to voting strategies that are "designed to push certain companies to address social and environmental externalities," which is something clients are able to do if they elect to exercise direct control over voting of securities held in their accounts, the central focus of the Proposal is on offering customized proxy voting preferences for Company clients. Thus, the Proposal does not implicate any significant policy issue.

Because the Proposal does not implicate any significant policy issue it is readily distinguished from proposals related to proxy voting and policies where the proposal focused on a significant policy issue. For example, in *T. Rowe Price Group, Inc.* (avail. Mar. 13, 2020), the Staff did not concur with the exclusion of a proposal requesting that the company "initiate a review and issue a report on the proxy voting policies and practices of its subsidiaries related to climate change, including an assessment of any incongruities between T. Rowe Price Group's public statements and pledges regarding climate change . . . and the voting policies and practices of its subsidiaries." In arguing that the proposal related to ordinary business matters, the company contended that "voting proxies solely in the best interest of Clients is unquestionably part of the core investment process and business operations." In rejecting the company's argument, the Staff stated that because the proposal's focus on the congruity of "public statements and pledges regarding climate change and the voting policies and practices of [the company's] subsidiaries . . . regarding climate change," the proposal transcended the company's ordinary business operations. *See also Franklin Resources, Inc.* (avail. Nov. 24, 2015) (denying the exclusion under Rule 14a-8(i)(7) of a proposal requesting "a climate change report to shareholders assessing any incongruities between the proxy voting practices of the company and its subsidiaries within the last year, and any of the company's policy positions regarding climate change" because the proposal "focuses on the significant policy issue of climate change").

Unlike the proposals in *T. Rowe Price Group* and *Franklin Resources*, the Proposal does not focus on climate change or on the congruity of Company statements with how the Company is voting clients' securities on issues relating to climate change since, as noted above, the Company does not determine how to vote clients' shares on such issues. Here, the text of the Proposal makes clear that it is singularly focused on the Company's ordinary business operations (specifically, the services and products offered by the Company, its customer relations, and its choice of technologies). As such, the Proposal does not transcend the Company's ordinary

business operations and, similar to the proposals in the precedent discussed above, the Proposal may be excluded under Rule 14a-8(i)(7).

D. The Proposal Is Excludable Because It Seeks To Micromanage The Company

As explained above, the Commission stated in the 1998 Release that one of the considerations underlying the ordinary business exclusion is "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." The 1998 Release further states that micromanagement "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 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 assessing whether a proposal seeks to micromanage a company's ordinary business operations, 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 Deere & Co.* (avail. Jan. 3, 2022) and *The Coca-Cola Co.* (avail. Feb. 16, 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."

The Proposal requests that the Company prepare a report on "the feasibility of offering customized proxy voting preferences for [Company] clients that seek to maximize portfolio-wide returns by pursuing voting strategies designed to push certain companies to address social and environmental externalities." The Supporting Statement focuses on the products and services the Company offers to customers, noting that "[n]ew technologies facilitate soliciting investor preferences efficiently to inform voting and engagement," and stating that the requested report should include "technologies that provide clients with granular control over voting, like the configurable options offered by [the Company] for constructing portfolios." The Proposal thus delves into the details of how the Company provides its clients differing alternatives to address the voting of shares in their portfolios and what technology the Company uses in offering such

services through different account and product offerings. As such, the Proposal seeks to micromanage the Company and therefore may be excluded under Rule 14a-8(i)(7).

In this regard, the Proposal is similar to the one submitted in *Amazon.com, Inc.* (avail. Jan. 18, 2018, *recon. denied* Apr. 5, 2018) ("*Amazon 2018*"), where the proposal instructed the company to list WaterSense showerheads before the listing of other showerheads and to provide a short description of the meaning of WaterSense showerheads. The Staff concurred with the exclusion, noting that the proposal sought "to micromanage the Company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." Similarly, in *Marriott International, Inc.* (avail. Mar. 17, 2010, *recon. denied* Apr. 19, 2010), the Staff concurred with the exclusion of a proposal requiring the installation of low-flow showerheads at certain of the company's hotels because "although the proposal raise[d] concerns with global warming, the proposal …[sought] to micromanage the company to such a degree that exclusion of the proposal …[was] appropriate." In particular, the Staff noted that the proposal required the use of "specific technologies." *See also Deere & Co.* (avail. Jan. 3, 2022) (concurring with the exclusion of a proposal requesting that the company's board publish "the written and oral content of any employee-training materials offered to any subset of the company's employees" where the supporting statement focused on the company's diversity, equity, and inclusion efforts and the company argued that the proposal "intend[ed] for shareholders to step into the shoes of management and oversee the 'reputational, legal and financial' risks to the [c]ompany" and thus did not "afford[] management sufficient flexibility or discretion to address and implement its policy regarding the complex matter of diversity, equality, and inclusion").

As in *Amazon 2018* and the other precedent cited above, the Proposal "seeks to impose . . . specific methods for implementing complex policies." SLB 14L (citing 1998 Release). The Proposal dictates specific products and services that the Company may offer to its customers by criticizing the voting choice programs of BlackRock, Vanguard, and State Street, stating that the Company should assess offering "control over voting, like the configurable options offered by [the Company] for constructing portfolios," and that in doing so it should assess "[n]ew technologies" related to soliciting investor preferences. Despite the fact that the Company goes beyond voting choice programs and offers its clients the option of true pass-through voting or delegation of voting to a third-party to vote in accordance with its guidelines, the Proposal seeks to have the Company design specific offerings for client voting and implement specific new policies for managing customer's accounts. The extent to which the Proposal seeks to override management's discretion with regard to the products and services the Company offers are comparable to the particular product presentation mandated in *Amazon 2018* and the specific technology choices prescribed in *Marriott International*. The Proposal thus micro-manages the Company's fundamental day-to-day decisions and policies and procedures with respect to its

products and services, customer accounts and customer relations. As a result, the Proposal may properly be excluded under Rule 14a-8(i)(7).

III. The Proposal May Be Excluded Under Rule 14a-8(i)(5) Because The Proposal Is Not Relevant To The Company's Business

A. Background

Rule 14a-8(i)(5) provides that a stockholder proposal may be excluded "[i]f the proposal relates to operations which account for less than five percent of the company's total assets at the end of its most recent fiscal year, and for less than five percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business." Prior to adoption of this version of Rule 14a-8(i)(5), the rule permitted companies to omit any proposal that "deals with a matter that is not significantly related to the issuer's business." In proposing changes to that version of the rule in 1982, the Commission noted that the Staff's practice had been to agree with exclusion of proposals that bore no economic relationship to a company's business, but that "where the proposal has reflected social or ethical issues, rather than economic concerns, raised by the issuer's business, and the issuer conducts any such business, no matter how small, the staff has not issued a no-action letter with respect to the omission of the proposal." 1982 Release. The Commission stated that this interpretation of the rule may have "unduly limit[ed] the exclusion," and proposed adopting the economic tests that appear in the rule today. *Id.* In adopting the rule, the Commission characterized it as relating "to proposals concerning the functioning of the economic business of an issuer and not to such matters as shareholders' rights, e.g., cumulative voting." 1983 Release.

In SLB 14L, the Staff returned to its historic approach of interpreting Rule 14a-8(i)(5) and noted that "proposals that raise issues of broad social or ethical concern related to the company's business may not be excluded, even if the relevant business falls below the economic thresholds of Rule 14a-8(i)(5)."

B. The Proposal May Be Excluded Pursuant To Rule 14a-8(i)(5) Because The Proposal Is Not Significantly Related To The Company's Business

The Company does not charge clients for offering the various voting alternatives described above, and the fees generated by the Company's CGW services are not significant to the Company's business under the standards of Rule 14a-8(i)(5). The Company has confirmed that for its fiscal year 2023, the revenue, income, and assets associated with CGW services are expected to represent less than 5% of each of the Company's total revenue, net income, and assets.

Moreover, the Supporting Statement does not demonstrate that the Proposal is otherwise significantly related to broad social or ethical concerns arising from the Company's business. Instead, the Supporting Statement makes generalized assertions and addresses practices or issues that are not applicable or significant to the Company. For example, the Supporting Statement notes that "[c]ontroversy over proxy voting - especially environmental, social, and governance ("ESG") proposals, increases risk," and also provides that "[i]nvestment companies that fail to engage clients more fully in proxy voting will be subject to ever-increasing legal and reputational jeopardy." However, the Company does not determine how to vote clients' shares on such issues and is not an investment company, and neither the Proposal nor the Supporting Statement demonstrate how their broad claims on potential risk are significantly related to the Company's business, particularly since only one division of the Company, CGW, actually holds and manages client equity securities. Moreover, CIM and non-CIM clients retain the right to elect to vote their own proxies for the securities held in their accounts and any proxy voting authority delegated to CGW is either voted in accordance with non-CIM clients' instructions or passed on to a third party to vote CIM clients' shares in alignment with the third party's sustainability policy guidelines. As such, the types of risk discussed in the Supporting Statement are at most only remotely related to an economically insignificant portion of the Company's business.

Based on the foregoing, the Proposal is similar to the stockholder proposal considered in *Dunkin' Brands Group, Inc.* (avail. Feb. 22, 2018). There, the Staff concurred with the exclusion under Rule 14a-8(i)(5) of a proposal regarding the environmental impacts of K-Cup Pods brand packaging, noting that the proposal's "significance to the [c]ompany's business is not apparent on its face" and the proponent had "not demonstrated that it is otherwise significantly related to the [c]ompany's business." *See also*, *Reliance Steel & Aluminum Co.* (avail. Apr. 2, 2019) (concurring with the exclusion of a proposal requesting a report on political contributions and expenditures that contains information specified in the proposal where the proposal related to operations that accounted for less than five percent of the company's total assets, net earnings and gross sales for its most recent fiscal year and were not otherwise significantly related to the company's business); *JP. Morgan & Co., Inc.* (avail. Feb. 5, 1999) (concurring with the exclusion of a proposal that mandated that the company discontinue banking services with Swiss entities until all claims by victims of the Holocaust and their heirs are settled and total restitution is made, because the amount of revenue, earnings, and assets attributable to J.P. Morgan's operations in Switzerland was less than five percent and the proposal was not otherwise significantly related to J.P. Morgan's business); *PepsiCo, Inc.* (avail. Jan. 24, 1994) (concurring with the exclusion of a proposal requesting the company's board "urge its franchised restaurants in Northern Ireland, at the time of contract renewal, to make all possible lawful efforts to implement . . . the MacBride Principles" where the Staff noted "that the Company does not own or operate any restaurants in Northern Ireland, does not have a contractual right to review the employment practices of its franchisees and the amounts associated with the Company's franchises in Northern Ireland are less than the five percent tests under rule 14a-8(c)(5)"); *AT&T*

Co. (avail. Jan. 19, 1990) (concurring with the exclusion of a proposal addressing the company's expansion and resulting relocation of workers and jobs where any specific activity by the company would have a *de minimis* impact on the company's operations, and the impact of its activities on general housing costs in affected areas was too remote). Here, the Proposal relates to operations that are not economically significant to the Company, and much of the Supporting Statement consists of sweeping assertions that are not applicable to the Company. Accordingly, the Proponent has not demonstrated that the Proposal is significant to the Company. As such, the Proposal may be properly excluded under Rule 14a-8(i)(5), because the Proposal is not economically relevant to the Company's operations and is not otherwise significantly related to the Company's business.

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@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8287, or Shelley Dropkin, the Company's Deputy Corporate Secretary and General Counsel, Corporate Governance, at (212) 793-7396.

Sincerely,

Elizabeth A. Ising

Enclosures

cc: Shelley Dropkin, Citigroup Inc.
James McRitchie
John Chevedden

EXHIBIT A

Corporate Governance

CorpGov.net: improving accountability through democratic corporate governance since 1995

Citigroup Inc.
c/o the Corporate Secretary, Brent J. McIntosh
388 Greenwich Street
New York, NY 10013
Via: shareholderrelations@citi.com

Dear Mr. McIntosh or current Corporate Secretary:

I am submitting the attached shareholder proposal, which I support, for a vote at the next annual shareholder meeting requesting Citigroup Inc. (C) **Ascertain Client Voting Preferences.** I pledge to continue to hold the required amount of stock until after the date of that meeting.

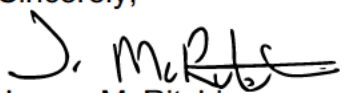
I will meet Rule 14a-8 requirements, including the continuous ownership of the required stock value until after the date of the next shareholder meeting. My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication. I am available to meet with the Company representative via phone on November 27, at 1:00 or 1:30 pm Pacific or at any time on any day that is mutually convenient.

I am delegating John Chevedden to act as my agent to present this proposal at the forthcoming shareholder meeting if I am unavailable to do so myself. Please copy John Chevedden ([redacted]) in future communications.

Avoid the time and expense of filing a deficiency letter to verify ownership by acknowledging receipt of my proposal promptly by emailing [redacted]. That will prompt me to request the required letter from my broker and submit it to you.

Per SEC SLB 14L https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals, Section F, Staff "encourages both companies and shareholder proponents to acknowledge receipt of emails when requested." As stated above, I so request.

Sincerely,



James McRitchie

November 13, 2023

Date

[Citi: Rule 14a-8 Proposal, November 13, 2023]
[This line and any line above it – *Not* for publication.]

Proposal [4*] - Ascertain Client Voting Preferences

Resolved: Citigroup ("Citi" or "Company") shareholders request our Company prepare a report on the feasibility of offering customized proxy voting preferences for Citi clients that seek to maximize portfolio-wide returns by pursuing voting strategies designed to push certain companies to address social and environmental externalities.[1] The report shall be available to stockholders and investors by October 1, 2024, prepared at reasonable cost, consistent with fiduciary duties and other legal obligations, and omitting proprietary information.

Supporting Statement:

Citi and its subsidiaries manage approximately $474B in Personal Banking and Wealth Management assets[2]. As a fiduciary, Citi owes clients and investors duties of care and loyalty in exercising shareholder voting rights.[3]

Controversy over proxy voting - especially environmental, social, and governance ("ESG") proposals, increases risk.[4] Companies like Citi may be criticized from all sides.[5]

Diversified investors are interested in ensuring companies in portfolios managed by Citi do not threaten the rest of their portfolios[6] when individual companies prioritize their financial returns over systems critical to diversified portfolios.[7] Practically, this can mean maximizing profits by externalizing social and environmental risks to the detriment of other companies.

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[1] https://www.rout edge.com/Mov ng-Beyond-Modern-Portfo o-Theory-Invest ng-That-Matters/Lukomn k-Haw ey/p/book/9780367760823, chapter 5.
[2] https://www.citigroup.com/rcs/citigpa/storage/public/10k20221231.pdf
[3] See 14 CFR 275.206(4)-6
[4] https://ssrn.com/abstract=4360428
[5] https://ssrn.com/abstract=4299462
[6] https://theshareho dercommons.com/wp-content/up oads/2022/09/C mate-Change-Case-Study-FINAL.pdf
[7] https://ssrn.com/abstract=4056602

Reliance on proxy advisors does little to mitigate this problem or shield Citi from controversy.[8] Such advisors generally provide advice that maximizes the value of individual companies, not the value of diversified portfolios invested in such companies.[9]

Citi markets goal prioritization, scenario planning, asset allocation, progress tracking, and other services customized to the needs of investors[10]. But Citi fails to offer granular control over customized proxy voting, a core advisor responsibility subject to fiduciary duty standards.

Soliciting the diverse views of clients on issues raised in shareholder elections and incorporating them into voting/engagement practices, or facilitating the client's ability to do so themselves, can mitigate risk. Criticism of BlackRock, Vanguard, and State Street[11] led to programs providing investors with voting choices.

However, these programs present limited choices due to overreliance on traditional proxy advisors. New technologies facilitate soliciting investor preferences efficiently to inform voting and engagement.[12] Therefore, the report should not be limited to preset voting profiles but should include approaches and technologies that provide clients with granular control over voting, like the configurable options offered by Citi for constructing portfolios.

Investors want a voice. According to one study from Stanford Graduate School of Business, 83% of investors, irrespective of age, life stage, or ideological bent, want managers to consider their preferences when voting on environmental issues.[13]

Investment companies that fail to engage clients more fully in proxy voting will be subject to ever-increasing legal and reputational jeopardy.

Vote For Proposal [4*] Ascertain Client Voting Preferences

[This line and any below it is *not* for publication]
Number 4* to be assigned by the Company.

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[8] See, e.g., https://www.texasattorneygenera .gov/s tes/defau t/f es/ mages/press/Utah%20%26%20Texas%20Letter%20to%20G ass%20Lew s%20%26%20ISS%20FINAL.pdf, https://www.ws .com/art c es/b ackrocks-fa se-vot ng-cho ce-proxy-esg-ba ots- ss-g ass- ew s-66652357?mod=op n on ead pos1

[9] https://theshareho dercommons.com/wp-content/up oads/2023/09/The-Shareho der-Commons-response-to-ISS-Po cy-Survey-2023.pdf

[10] https://on ne.c t .com/US/JRS/pands/deta .do?ID= nvest-w th-persona -adv sor& ntc=c t ~ nvest ng-w th-c t ~choose-how-you- nvest~c t -wea th-management~ earn-more

[11] https://ssrn.com/abstract=4580206

[12] https://ssrn.com/abstract=4360428

[13] https://www.gsb.stanford.edu/s tes/defau t/f es/pub cat on/pdfs/survey- nvestors-ret rement-sav ngs-esg.pdf

The above title is part of the proposal and within the word limit. It should not be altered or misrepresented. The title should be used in all references to the proposal in the proxy and on the ballot. If there is an objection to the title, please negotiate or seek no-action relief as a last resort.

The above graphic are intended to be published with the rule 14a-8 proposal. The graphics would be the same size as the largest management graphics (and/or accompanying bold or highlighted management text with a graphic, box or shading) or any highlighted management executive summary used in conjunction with a management proposal or any other rule 14a-8 shareholder proposal in the 2024 proxy.

The proponent is willing to discuss the mutual elimination of both shareholder graphics and management graphics in the proxy in regard to specific proposals. Issuers should not assume proponent will not insist on the inclusion of the graphic if the issuer unilaterally decides not to include their own graphic.

Reference: SEC Staff Legal Bulletin No. **14L** (CF)**[16]**

> Companies should not minimize or otherwise diminish the appearance of a shareholder's graphic. For example, if the company includes its own graphics in its proxy statement, it should give similar prominence to a shareholder's graphics. If a company's proxy statement appears in black and white, however, the shareholder proposal and accompanying graphics may also appear in black and white.

Notes: This proposal is believed to conform with Staff Legal Bulletin No. **14B** (CF), September 15, 2004, including (with our emphasis):

> Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(i)(3) in the following circumstances:
>
> - the company objects to factual assertions because they are not supported;
> - the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
> - the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
> - the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.
>
> **We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.**

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

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge receipt of this proposal promptly by emailing the proponent.

Corporate Governance
CorpGov.net: improving accountability through democratic corporate governance since 1995

Submission via Online Submission Form

January 29, 2024

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
cc: shareholderproposals@gibsondunn.com

SEC Reference Number:
Re: Shareholder Proposal Submitted by James McRitchie (Proponent)

To Whom It May Concern:

This letter is in response to a December 29, 2023, letter by Elizabeth Ising on behalf of Citigroup, Inc. (the "Company" or “Citigroup” or “Citi”). In that letter, the Company contends that the Proposal may be excluded from the Company’s 2024 proxy statement. A copy of this letter is being emailed concurrently to Elizabeth Ising.

SUMMARY

The Proposal requests that Citigroup publicly report on “the feasibility of offering customized proxy voting preferences for Citi clients that seek to maximize portfolio-wide returns by pursuing voting strategies designed to push certain companies to address social and environmental externalities.” The full proposal is attached as Exhibit A to this letter.

The Company letter asserts the Proposal is excludable as substantially implemented; addressing clients, products, and services offered by the Company; not addressing a significant social policy issue; and not being sufficiently related to the Company’s business.

The Company asserts that it has substantially implemented the Proposal because its current proxy voting options allow certain clients to retain voting authority or delegate such authority to Citi Investment Management services (CIM) where CIM arranges for the shares to be voted “in accordance with the voting recommendations of an unaffiliated proxy advisory firm, based on that advisory firm’s sustainability policy guidelines.” The proposal requests a report on the feasibility of offering customized

proxy voting preferences for Citi clients that seek to maximize portfolio-wide returns by pursuing voting strategies focused on externalities. No such report was issued and there is also no evidence provided by the Company that the options purportedly offered would fulfill such a goal. In contrast, it appears that the currently offered proxy voting options from the Company only offer options that seek to maximize enterprise value or seek to address the ethical behavior of corporations and the social and environmental impact of their actions.

None of the offered options focus on proxy voting strategies to "maximize portfolio-wide returns" in determining whether to support shareholder proposals that may address externalities. There is a material difference between such approaches. As an example, proxy voting based on the ethical behavior of corporations and the social and environmental impact of their actions may be perceived as values-based voting and may be prescribed by state and federal fiduciary laws. In contrast, proxy voting decisions based on maximizing portfolio-wide returns are consistent with mandates to maximize financial returns for beneficiaries.

The Company also argues that the Proposal implicates ordinary business issues because it relates to the Company's products and services and client relations. However, the Proposal transcends ordinary business because it addresses the significant social policy issue of corporate externalization of environmental and social costs in pursuit of financial return. These externalized costs harm the economy and diversified investors, such as the Company's clients and shareholders. This issue, sometimes referred to as "shareholder primacy," is an issue that has been the subject of significant public debate, legislation, and regulation.

The Proposal similarly does not micromanage the Company as alleged because it does not "prob[e] 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" nor does it "seek to impose specific . . . methods for implementing complex policies." Instead, the Proposal asks the Company to complete its own feasibility report on a range of proxy voting options for clients that are concerned about the impact of corporate cost externalization on their ability to maximize portfolio-wide returns. The Proposal maintains and even relies on the Company's discretion to determine the feasibility of the range of possible options.

Despite Citi's claim that the Proposal is not relevant to the Company's business, the Company's investment services constitute a significant segment of the company, around 10% of its net revenue.[1] As part of those services, Citi provides proxy voting options for its investment clients. In addition, decisions regarding proxy voting that affect environmental and social issues are linked to the Company's reputation, which is built on good corporate citizenship; thus, the impact on reputation renders this issue "otherwise significantly related" to the company's business operations in accordance with Rule 14a-8(i)(5).

[1] Citigroup 2022 10-K Report, Pages 10 and 18, available at https://www.citigroup.com/rcs/citigpa/storage/public/citi-2022-annual-report.pdf

BACKGROUND

The Proposal requests that Citigroup report on the feasibility of offering customized proxy voting preferences for its clients that seek to maximize portfolio-wide returns by pursuing voting strategies designed to push certain companies to address social and environmental externalities.

Sound investment practice mandates that fiduciaries adequately diversify their portfolios. This allows investors to reap the increased returns available from risky securities while greatly reducing their overall risk. This insight defines Modern Portfolio Theory.[2] This core principle is reflected in legal regimes that govern investment fiduciaries, such as ERISA, the federal law that governs private pension plans. ERISA requires plan fiduciaries to act prudently "by diversifying the investments of the plan."[3] The late John Bogle, founder of one of the world's largest mutual fund companies, summarized the wisdom of a diversified investment strategy: "Don't look for the needle in the haystack; instead, buy the haystack." [4]

Thus, accepted investment theory and fiduciary standards require adequate diversification. However, once a portfolio is diversified, the most important factor determining return will not be how the companies in that portfolio perform relative to other companies ("alpha"), but rather how the market performs as a whole ("beta"). "[A]ccording to widely accepted research, alpha is about one-tenth as important as beta [and] drives some 91 percent of the average portfolio's return." [5]

This distinction between individual company returns and overall market return is critical because shareholder return at an individual company does not reflect its "externalized" costs, i.e., those costs it generates but does not pay. Externalized costs may include harmful emissions, resource depletion, and the instability and lost opportunities caused by inequality. Diversified shareholders (including the Company's clients) absorb the collective costs of such externalities because they degrade and endanger the stable, healthy systems upon which corporate financial returns depend. Thus, while individual companies can externalize costs from their own narrow perspective to "maximize shareholder value," diversified shareholders experience and in a sense "internalize" these costs through lowered return on their portfolios.[6] Stewardship of the

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[2] Jon Lukomnik, James P. Hawley, Moving Beyond Modern Portfolio Theory Investing That Matters https://www.routledge.com/Moving-Beyond-Modern-Portfolio-Theory-Investing-That-Matters/Lukomnik-Hawley/p/book/9780367760823 (2021)

[3] 29 USC Section 404(a)(1)(C); see also Uniform Prudent Investor Act, § 3 ("trustee shall diversify the investments of the trust" absent special circumstances.).

[4] John C. Bogle, The Little Book of Common Sense Investing: The Only Way to Guarantee your Fair Share of the Stock Market, 86 (2007).

[5] Stephen Davis, Jon Lukomnik and David Pitt-Watson, *What They Do with Your Money* (2016).

[6] *Externalities and Corporate Objectives in a World with Diversified Shareholder/Consumers,* Robert G. Hansen and John R. Lott, JOURNAL OF FINANCIAL AND QUANTITATIVE ANALYSIS, 1996, vol. 31, issue 1, 43-68 (abstract) ("If shareholders own diversified portfolios, and if companies impose externalities on one another, shareholders do not want value maximization to be corporate policy. Instead, shareholders want companies to maximize portfolio values. This occurs when firms internalize between-firm externalities.")

externalizing companies can reduce externalities (even profitable ones) with an eye toward increasing portfolio-level return.

In many instances, decision-making on proxy voting focuses on the effect that environmental and social behaviors may have on the financial performance of companies whose activity is at issue, and not on the external costs the behaviors create. In so doing, the shareholder or fiduciary may be undercutting the 91 percent of potential return attributed to market return in order to maximize the 9 percent that comes from outperformance. Externalized social and environmental costs can play an outsized role in that 91 percent. Proxy voting decision-making with a focus on the impact of externalities on portfolio-wide returns can help to ensure better rationalized voting decisions that reflect the range of impact on beneficiaries' short and long-term returns.

At present, Citigroup does not provide proxy voting options that would do as the proposal requests and recommend voting practices by clients to maximize portfolio-wide returns by pushing certain companies to address social and environmental externalities.

The Company's letter states that CIM customers may delegate authority to Citi to vote proxies on their behalf, and that Citi does so by relying on an unaffiliated proxy advisory firm and that firm's sustainability policy guidelines. The proponent attempted to find more details about which proxy advisory firm and which sustainability policy guidelines the Company relies on but was unable to do so based on Company disclosures. Most proxy voting options seek to improve the enterprise value of the individual investee companies, or to address the ethical behavior of corporations and the social and environmental impact of their actions. Neither approach is consistent with the Proposal.

In contrast, proxy voting on a system stewardship basis might involve, in particular instances, asking a company to forgo an activity that would improve the company's financial performance, but that would also materially harm the economy due to the damage it causes to the environment. Presently, Citigroup does not offer customized proxy voting preferences that would allow its clients to support shareholder proposals based on a focus on these material impacts on systems and beta to maximize portfolio-wide returns.

ANALYSIS

I. The Proposal is not Substantially Implemented

Under Rule 14a-8(i)(10), a company may exclude a shareholder proposal if it can meaningfully demonstrate that "the company has already substantially implemented the proposal." Rule 14a-8(i)(10) exclusion is "designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by management." *See Exchange Act Release* No. 12598 (regarding predecessor to Rule 14a- 8(i)(10)). A company can be said to have "substantially implemented" a proposal when its "policies, practices and procedures compare favorably with the guidelines of the proposal." *See Texaco, Inc.* (March 8, 1991).

The Company argues that the Proposal has been substantially implemented because the Company's clients are "already able to pursue such voting strategies" and "the Company's current offerings reflect the Company's careful consideration of how best to address clients' voting preferences." The Company references that the SEC has previously concurred with exclusion based on substantial implementation for proposals "seeking a report on the feasibility of undertaking certain actions when a company has already addressed the essential objective of the proposal by undertaking the action."

However, in those precedents, unlike here, the Company had implemented the essential purpose and guidelines of the Proposal.

Notably, Citigroup does not allege that it has issued a report outlining the feasibility of portfolio-wide, cost externalization proxy voting options as requested. The Company instead states that there is "no need to further study the feasibility of offering customized proxy voting preferences for clients wishing to pursue social and environmental voting strategies as clients are already able to pursue such voting strategies." This ignores the Proposal language which addresses maximizing portfolio-wide returns.

As addressed below, this does not substantially implement the Proposal. The Company has not met the guidelines of the Proposal because it has not issued a report outlining this requested analysis. Investors have no insight into Citigroup's analysis or determination. The Company similarly has not met the essential purpose of the Proposal because the Company has not provided transparency into its current voting options. With the information currently available to investors, the current option of delegating proxy voting to CIM, and then to a third-party proxy advisor, does not appear to provide Citi clients with voting advice that takes a portfolio-wide value maximization approach to proposals addressing externalities.

1. The Company has provided neither a report nor an analysis

The Proposal requests that the Citigroup issue a **report** that analyzes "the feasibility of offering customized proxy voting preferences for Citi clients that seek to maximize portfolio-wide returns by pursuing voting strategies designed to push certain companies to address social and environmental externalities." The Company does not argue that it has reported on this issue, but instead argues there is "no need to further study the feasibility of offering customized proxy voting preferences" because, without providing insight into any alleged analysis, the Company apparently believes that its current offerings are sufficient. Notably, the Company has not alleged that the information is available for investors' review elsewhere. Presently, there is no transparency into how the Company's proxy voting options would address the needs raised in the Proposal.

There are numerous SEC decisions historically which support the assertion that a Proposal requesting a report is not substantially implemented where the Company has not issued a report or disclosures consistent with the proposal. *See, i.e., Nordstrom, Inc.* (March 31, 2000) (No substantial implementation where the proponent argued:"[I]n short, there is no report, the very thing requested by the shareholder proposal."); *Toys "R" Us, Inc.* (April 8, 1999) (No substantial implementation where the proponent argued:

"there is no report in existence. No report at all cannot possibly moot a request for a report.").

Even in cases where there is *some* disclosure, unlike here, the SEC has still found no substantial implementation where the information is published in various forms, but does not include the analysis requested. *See, i.e., CVS Health Corporation* (February 9, 2015) (no substantial implementation where the proposal requests a congruency analysis and the Company reports on donations and policies without any analysis of congruency) *and see NextEra Energy, Inc.* (March 4, 2022), *Eli Lilly and Company* (March 10, 2023), and *NIKE Inc.* (June 15, 2021) (no substantial implementation where the Company discloses EEO-1 data and the existence of DEI programs, but does not report on the efficacy of its programs nor does it report on recruiting and retention efforts as requested in the proposal.) and *Pfizer Inc.* (February 10, 2022) (no substantial implementation found for the same DEI proposal as above where the Proponent argued: "The Company has not conducted the review requested and thus, has not in any sense fulfilled the ask.").

2. The Company's current offerings are insufficient to address the essential purpose and guidelines of the Proposal

Further, the Company argues that the Proposal has been substantially implemented because it allows clients to retain their proxy voting authority and it allows clients to delegate proxy voting authority to CIM, where voting is then delegated to a third-party "to vote in accordance with its sustainability policy guidelines."

Allowing clients to retain their own proxy voting authority does not implement the Proposal request because Citigroup is not "**offering** customized proxy voting preferences." (Emphasis added). Further, none of the Company's proxy voting options are described as taking a portfolio-wide approach. To the extent the Company believes that its current proxy voting options do allow their clients to take a portfolio-wide value maximization approach for targeting externalities, that analysis should be made public so that investors and customers can review this determination. Similarly, to the extent the Company has reviewed the range of possible offerings, as requested in the Proposal, and determined that such offerings are not feasible, it should provide transparency into that analysis.

Because the no action request did not even explain exactly what proxy advice it offers clients that ostensibly fulfills the Proposal's essential objectives, the Proponent searched for available information on options offered and did not find further disclosures.

The Company's lack of transparency around its proxy voting options leaves unclear whether the Company believes its options address portfolio value maximization through control of externalities, address ESG, or address broad societal impact.

Instead, the Company merely states that it allows clients to use proxy advisory services. The Supporting Statement explains that "[r]eliance on proxy advisors does

little to mitigate this problem or shield Citi from controversy. Such advisors generally provide advice that maximizes the value of individual companies, not the value of diversified portfolios invested in such companies." The proxy voting guidelines of the two largest proxy advisory firms makes this clear.

Glass Lewis' United States voting guidelines state: "Glass Lewis evaluates all environmental and social issues through the lens of long-term shareholder value. . . When evaluating environmental and social factors that may be relevant to a given company, **Glass Lewis does so in the context of the financial materiality of the issue to the company's operations**." (Emphasis added). ISS takes the same position in its description of its "Global Approach" to "Social and Environmental Issues" in its United States voting guidelines: "While a variety of factors goes into each analysis, the overall principle guiding all vote recommendations **focuses on how the proposal may enhance or protect shareholder value** in either the short or long term. . . Management and the board should be afforded the flexibility to make decisions on specific public policy positions based on their own assessment of the most beneficial strategies **for the company**." (Emphasis added).

Again, it is unclear from their letter what proxy voting options the Company offers that it believes address externalities as a means of maximizing portfolio-wide value. If the Company is alleging that it offers ESG proxy voting options, such options are insufficient to address externalities because it still focuses on alpha (the company's own return), even to the detriment of beta (the return of the entire market). If the Company alleges that it offers proxy voting options that are concerned with societal issues, that also does not address portfolio-wide profit maximization by control of externalities because the focus is on societal good, not portfolio value.

The proposal seeks an evaluation of voting strategies designed to address externalities so as to maximize portfolio-wide returns. This is distinct from offering ESG considerations or voting options concerned with societal issues. The importance of this distinction is clear when considering that many fiduciaries might not be able to support proposals focused on broad societal interests given their singular mandate to invest in the best interest of their beneficiaries to increase portfolio returns, rather than improving the plight of society as a whole. For example, the Employee Retirement Income Security Act of 1974 (ERISA) requires fiduciaries to "discharge his duties… solely in the interest of the participants and beneficiaries"[7] (ERISA also requires that the fiduciary diversify the investments of the plan).[8] Similarly, most state laws contain language that requires trustees of public pension funds to act in the "sole interest" of the beneficiaries.[9]

3. The Company's referenced substantial implementation precedents are inapplicable

The Company's cited precedents are inapplicable because unlike those cases, Citi

[7] 29 U.S. Code § 1104(a)(1)
[8] 29 U.S. Code § 1104(a)(1)(C)
[9] Freshfields, "A Legal Framework for Impact"
https://www.freshfields.com/4a1df8/globalassets/noindex/documents/lfi/unep-final-compiled.pdf

has not addressed the guidelines or essential purpose of the Proposal. For example, in *eBay, Inc.* (March 29, 2018) (cited by the Company), the SEC concurred with exclusion because "it appears that the Company's policies, practices and procedures compare favorably with the guidelines of the Proposal and that the Company has, therefore, substantially implemented the Proposal." The Company argues that the essential purpose of the proposal is the "*feasibility* of integrating sustainability metrics into performance measures" (emphasis in original) and the Company had determined that including sustainability metrics was feasible because it "already incorporates some elements of sustainability and diversity into its compensation decisions for the Chief Executive Officer." *See also, Dunkin' Brands Group, Inc.* (March 6, 2019).

Unlike in *eBay* and *Dunkin' Brands*, it remains unclear whether Citi actually did analyze the feasibility of "offering proxy voting preferences for Citi clients that seek to maximize portfolio-wide returns by pursuing voting strategies designed to push certain companies to address social and environmental externalities." There is a complete lack of transparency in the Company's current offerings, which demonstrates that the essential purpose of the Proposal is unfulfilled, in addition to the guidelines being unfulfilled due to the lack of a report on feasibility.

In *eBay* and *Dunkin' Brands*, it was clear that the Company had determined that it was feasible to incorporate sustainability metrics into performance measures because the Company was already doing so. In contrast, based on publicly available information, it appears that Citi is not currently offering proxy voting options that address externalities as a means of portfolio-wide value maximization, so it is unclear whether it would be feasible or not for the Company to do so.

Similarly, in *Target Corporation* (March 26, 2013) (cited by the Company), the SEC concurred with exclusion for substantial implementation and stated that "Target's public disclosures compare favorably with the guidelines of the proposal." The proposal requested a study of "the feasibility of adopting a policy prohibiting the use of treasury funds for any direct or indirect political contributions intended to influence the outcome of an election or referendum." The Company successfully argued that, in response to a similar proposal submitted the year before, it reported on its policy review in its 2012 proxy statement and also reported on its "thorough review of the Company's policies and practices regarding public-policy engagement in its 2011 Corporate Responsibility Report." Unlike Target, Citi has not publicly reported on any purported analysis it has completed, nor has it disclosed how its current offerings provide clients with the ability to vote proxies in accordance with concerns around externalities and portfolio-wide value.

II. The Proposal is not excludable for Ordinary Business Concerns

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

micromanages.

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

Second, proposals could be excluded to the extent they seek to “micromanage” a company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would be unable to make an informed judgment. This concern did not, however, result in the exclusion of all proposals seeking detailed timeframes or methods. Proposals that passed the first prong but for which the wording involved some degree of micromanagement could be subject to a case-by-case analysis of whether the proposal probes too deeply for shareholder deliberation.

1. The Proposal concerns a significant social policy issue that transcends ordinary business

a. The SEC has determined that proposals focused on significant social policy issues transcend the company’s ordinary business even where the subject matter relates to products and services that a company offers.

The Company argues that the Proposal is excludable for ordinary business concerns either because its subject matter relates to the products and services that a company offers to its customers or because it micromanages.

However, the Company’s argument related to products and services and the precedent cited to support it are inapplicable because each of the cited cases did not focus on a significant social policy issue. In contrast, this Proposal focuses on a significant social policy issue that transcends the Company’s ordinary business.

Contrary to the Company's assertion, the Staff has made it clear in legal bulletins and in precedents that proposals directed to “nitty-gritty” aspects of the Company's business, including a focus that impacts selection of clients, products or services offered, are not excludable to the extent they are focused on significant policy issues and do not attempt to micromanage business relationships.

Although decisions regarding clients served may be “nitty-gritty” for the company, where the focus of the Proposal is entirely on a significant policy issue, the fact that it may touch on issues related to products and services offered does not cause it to be excludable. Staff Legal Bulletin 14H, October 22, 2015, made this clear: [T]he Commission has stated that proposals focusing on a significant policy issue are not excludable under the ordinary business exception “because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.” [Release No. 34-40018]. Thus, a proposal

may transcend a company's ordinary business operations even if the significant policy issue relates to the "nitty-gritty of its core business."

It is well-established that a proposal is not excludable merely because it deals with the sale of a company's products or services where significant social policy issues are implicated—as they are here. Instead, many different social policy issues have been found to transcend the company's ordinary business related to its products and services. *See, i.e., Morgan Stanley* (March 25, 2022) (climate change issue transcends focus on lending and underwriting); *The Travelers Companies, Inc.* (April 1, 2022) (racial justice issue transcends focus on insurance offerings); *Johnson & Johnson* (March 2, 2023) ("the role IP protections play in access to medicines" transcends the focus on company decision making regarding applying for patents); *Mastercard Incorporated* (April 25, 2023) ("the twin epidemics of mass shootings and the diversion of legally purchased firearms into illegal markets" transcends focus on establishing a merchant category code for standalone gun and ammunition stores); *Amazon.com, Inc.* (April 3, 2023) ("impact of climate change on employees' retirement accounts" transcends focus on company's default retirement options).

Significantly, the focus of a proposal on a policy level rather than directing the Company's relations with particular suppliers or customers is sufficient to avoid the products and services exclusion. For example, in *TJX Companies* (April 9, 2020), the proposal requested that the board commission an independent analysis of any material risks of continuing operations without a company-wide animal welfare policy or restrictions on animal-sourced products associated with animal cruelty. The company objected that the proposal was excludable as relating to sales of particular products, but the proponent effectively argued that the policy focus of the proposal on a clear, significant policy issue for the company caused the proposal to transcend ordinary business. Similarly, here, the issue was not that the Proponent disagreed with the vendors the Company engaged, but instead that there is no evidence that the current vendors are willing to fulfill the ultimate purpose of the Proposal. The Proposal focuses on a strategic policy level and does not direct the Company to engage with any particular vendor or supplier.

As the Company acknowledges, the Staff has specifically rejected exclusion of proposals relating to company proxy voting policies where the proposal focused on a significant social policy issue. Contrary to the Company's assertion, these proposals are similar to the Proposal at hand, and are arguably even more expansive because they focus on the proxy voting of the entire company, rather than proxy voting options for customers.

For example, in *T. Rowe Price* (March 13, 2020), the Staff denied exclusion where the proposal requested that the board report on the company's proxy voting practices and policies related to climate change, including an analysis of any incongruities between the company's public statements regarding climate change and the voting policies and practices of its subsidiaries. The Staff found that the proposal transcends the company's ordinary business operations and specified that "the Proposal is focused on possible differences between T. Rowe Price Group's public statements and pledges regarding climate change and the voting policies and practices of its subsidiaries,

including any subsidiaries which are investment advisers." Similarly, in *Franklin Resources, Inc.* (November 24, 2015), the Staff denied exclusion of a proposal that requested that the board issue climate change report which assesses "any incongruities between the proxy voting practices of the company and its subsidiaries within the last year, and any of the company's policy positions regarding climate change" because "the proposal focuses on the significant policy issue of climate change." *See also, BlackRock, Inc.* (April 4, 2022) (discussed in detail below).

b. The SEC has established that cost externalization of environmental and social costs and shareholder primacy are significant social policy issues.

The focus of the Proposal is consistent with numerous Staff determinations regarding proposals related to cost externalization and shareholder primacy, which were found to both address a transcendent policy issue and not to micromanage.

In *BlackRock, Inc.* (April 4, 2022) ("*BlackRock*" or "BlackRock Proposal") the Staff did not allow exclusion for ordinary business, finding instead that the Proposal "transcends ordinary business matters and does not seek to micromanage the Company."

The proposal requested that the Company "adopt stewardship practices designed to curtail corporate activities that externalize social and environmental costs that are likely to decrease the returns of portfolios that are diversified in accordance with portfolio theory, even if such curtailment could decrease returns at the externalizing company."

Like Citigroup, BlackRock also argued that the proposal was excludable as ordinary business because it related to the products and services offered for sale by a company and the methods of distribution of those products and services. The Company argued that the proposal "focuses primarily on BlackRock's stewardship practices." Further, the Company alleged that the Proposal was excludable because it micromanaged the Company. The SEC disagreed with both arguments. The Staff found that the proposal did not micromanage and agreed that it focused on a significant social policy issue: "the question of how corporations account for the systemic and other costs they impose on other companies when they prioritize shareholder returns and ignore the costs they externalize."

The SEC has also determined that cost externalization, connected to other social impacts, is a significant social policy issue sufficient to transcend ordinary business. See *Johnson & Johnson* (February 8, 2022), (unable to concur with exclusion for a proposal requesting that the board report on the public health costs created by limited sharing of the Company's COVID-19 vaccine technologies and the manner in which such costs may affect the market returns available to its diversified shareholders, where the proponent argues that the proposal addresses a significant policy issue of "whether companies should create financial return with practices that harm social and environmental systems" and that part of that issue is "the treatment of COVID-19 intellectual property."); *and see, CVS Health Corporation* (March 15, 2022) (unable to concur with exclusion of a proposal which requests that the board report on the link

between the public-health costs created by the Company's sale of unhealthy foods and its prioritization of financial returns over its healthcare purpose and whether such prioritization threatens the returns of diversified shareholders, where the proponent argued that that the proposal "addresses the policy issue of shareholder primacy and corporate cost externalization in pursuit of financial return" and also argues that "the sale of unhealthful food" is a significant social policy issue).

2. The Proposal is not excludable for micromanagement concerns.

According to the Commission and the Staff, proposals that address a societal impact but which are written in a manner that seeks to micromanage the business of the company could still be excludable if they are found to probe too deeply for shareholder deliberation. The Staff's interpretation of micromanagement has evolved over the years, most recently articulated in the November 3, 2021 Staff Legal Bulletin 14 L. To assess micromanagement going forward, the bulletin notes that the Staff:

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

a. The Proposal does not attempt to micromanage the Company.

The Proposal does not micromanage the Company because these issues are of obvious and legitimate concern to investors. Proxy voting offerings related to cost externalization do not probe into matters "too complex" for shareholders to make an informed judgment. As more investors become diversified, there is increased concern about externalization. For example, in September of 2023, the International Corporate Governance Network (ICGN), a global network of investors with US$77 trillion in assets under management, published a report that emphasized the importance of systems to institutional investors: "As investment institutions grow in scale and become increasingly diversified, more investors can be considered as 'universal asset owners or managers,' where their portfolios constitute a 'slice' of the global economy and whose performance is tied to the success of the economic system at large."[10]

The Proposal even references investor interest and understanding of this issue, stating: "Investors want a voice. According to one study from Stanford Graduate School

[10] ICGN Systemic Stewardship & Public Policy Advocacy Toolkit September 2023, available at https://www.icgn.org/sites/default/files/2023-09/ICGN%20Systemic%20Stewardship%20%26%20Public%20Policy%20Toolkit.pdf

of Business, 83% of investors, irrespective of age, life stage, or ideological bent, want managers to consider their preferences when voting on environmental issues."[11]

Further, the Proposal does not interfere with Company assessments or supplant the judgment of the board. Instead, the Proposal preserves management's discretion and actually relies on the Company's judgment to determine the feasibility of the range of possible options.

The Proposal requests a report on the feasibility of a range of proxy voting options which "**should not be limited** to preset voting profiles but **should include** approaches and technologies that provide clients with granular control over voting, like the configurable options offered by Citi for constructing portfolios." (Emphasis added). In the Proponent's opinion, the Company's configurable portfolio options are extensive, with many model portfolio options.[12]

This language in the Supporting Statement of the Proposal, rather than the Resolved Clause is a demonstration of the range of types of approaches that the feasibility study could address, ensuring that the feasibility report provides some flexibility in shareholder options. The Proposal does not impose a specific method for implementation, but instead requests that the Company report on its own analysis of the feasibility of providing a range of proxy voting options.

b. The Company's referenced precedent is inapplicable.

The Company claims the Proposal would micromanage the Company because it "delves into the details of how the Company provides its clients differing alternatives to address the voting of shares in their portfolios and what technology the Company uses in offering such services through different account and product offerings." The Company compares this Proposal to the proposals in *Amazon.com* (January 18, 2018) (where the proposal instructed the company to list certain shower heads before others) and *Marriott International, Inc.* (March 17, 2010, recon. denied Apr. 19, 2010) (where the proposal required the installation of certain shower heads) where the Staff concurred with exclusion for micromanagement concerns.

In stark contrast to those proposals, the Proposal at hand does not require the Company to offer specific products and services. The Proposal does not "seek to impose specific . . . methods for implementing complex policies." SLB 14L (citing 1998 Release). Where the proposals in *Amazon* and *Marriot* instructed the companies to take extremely specific action, this Proposal is a request focused on a strategic level and does not direct the Company to use a certain vendor or technology. It instead asks the Company to analyze the feasibility of implementing proxy voting options, and explains that the report should include a range of possible approaches and technologies.

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[11] https://www.gsb.stanford.edu/sites/default/files/publication/pdfs/survey-investors-retirement-savings-esg.pdf

[12] https://newsroom.bankofamerica.com/press-releases/merrill-lynch/bank-america-expands-model-portfolios-available-through-merrill-lynch

c. Relevant precedent

The SEC has rejected micromanagement arguments where the proposal, like this one, requests a report on company policy in product offerings. In *Merck & Co., Inc.* (March 28, 2023) and *Johnson & Johnson* (March 2, 2023), the Staff found no micromanagement where the proposal requested that the board report on "a process by which the impact of extended patent exclusivities on product access would be considered in deciding whether to apply for secondary and tertiary patents." In *Morgan Stanley* (March 25, 2022), the SEC found no micromanagement where the proposal went beyond requesting a report and instead requested that the board "adopt a policy by the end of 2022 committing to proactive measures to ensure that the company's lending and underwriting do not contribute to new fossil fuel development."

In *BlackRock* (discussed above), the Proposal requested that the Company "adopt stewardship practices designed to curtail corporate activities that externalize social and environmental costs that are likely to decrease the returns of portfolios that are diversified in accordance with portfolio theory, even if such curtailment could decrease returns at the externalizing company." The Company similarly argued that the proposal micromanaged the company. However, even though the BlackRock proposal directly asks the Company to take action related to its own proxy voting, the SEC Staff still found that the proposal did not micromanage. Here, the proposal asks for a feasibility report regarding client proxy voting, a much narrower request that retains even more company discretion than in BlackRock.

III. The Proposal is sufficiently related to the Company's business

The Company Letter asserts that the Proposal is excludable under the relevance rule. Rule 14a-8(i)(5) provides for exclusion of a proposal:

> "If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business."

There are two prongs to the Rule: (1) whether the Proposal relates to operations accounting for 5% of total assets and earnings; and (2) whether the Proposal is "otherwise significantly related to the company's business." This Proposal satisfies both prongs of this Rule and therefore is not excludable under the Rule.

1. Investment services constitute at least 5% of the Company's operations

The Company alleges that the Proposal is excludable under Rule 14a-8(i)(5) because the Proposal is not sufficiently related to the Company's business. In making this argument, Citigroup states that the Company "does not charge clients for offering the various voting alternatives described above, and the fees generated by the Company's CGW services are not significant to the Company's business under the standards of Rule 14a-8(i)(5)" and further argues that "the revenue, income, and assets associated with CGW services are expected to represent less than 5% of each of the

Company's total revenue, net income, and assets." It is unclear if the Company is referring to its entire CGW services, or only to those services related to proxy voting alternatives. If the Company is only referring to proxy voting-related services, this unfairly narrows the scope of Citigroup's services. In fact, Citigroup's Global Wealth Management (CGW) services make up significantly more than 5% of the Company's business.

In the Company's annual 10-K report,[13] the Company reports that the revenue directly from the CGW segment is $7.3 billion which represents 10% of the Company's total net revenue of $75 billion. (*see* 10-K at 10 and 18).

Because the Proposal relates to more than 5% of the Company's business, it is not excludable under Rule 14a-8(i)(5).

The SEC has previously rejected arguments which inaccurately and narrowly described the business segment related to the proposal. The Proposal at hand is similar to the one in *Freeport-McMoRan, Inc.* (March 18, 2016). The SEC found that the proposal was not excludable under Rule 14a-8(i)(5) where the proposal requested a report on company actions being taken to reduce harms that arise from the company's "enhanced oil recovery operations in urban areas of California." The company argued its Los Angeles Basin operations were the only properties located in the urban areas of California and those operations constituted less than 5% of the company's business operations, but the Proponent successfully rebutted this argument by arguing that *all* of the Company's oil and gas operations in California, Wyoming, Louisiana, and the Gulf of Mexico, constituted 22% of the company's revenue and therefore exceeded the 5% requirement.

Similarly, in *The Goldman Sachs Group, Inc* (March 12, 2018), the SEC denied exclusion of a proposal under Rule 14a-8(i)(5) where the proposal requested a report related to the company's lobbying policy and expenditures. The proponent successfully argued that the company "framed the Relevance's Exclusion's quantitative analysis too narrowly" when it did not account for "those segments of Goldman's business that could be affected by the lobbying efforts, rather than to the amount of the lobbying expenditures themselves."

2. The Proposal is otherwise sufficiently related to the Company's business

In addition to meeting the 5% prong of Rule 14a-8(i)(5), the Proposal also meets prong two because it is otherwise significantly related to the company's business.

As the Proposal explains, investment companies that fail to engage clients more fully in proxy voting will be subject to ever-increasing legal and reputational jeopardy. This risk is particularly significant for Citigroup, given the Company's public emphasis on its commitment to environmental and societal issues. For example, the Company states in its ESG report that "[o]ur commitments, considerations and priorities around

[13] Citigroup 2022 10-K Report, Pages 10 and 18, available at https://www.citigroup.com/rcs/citigpa/storage/public/citi-2022-annual-report.pdf

environmental, social and governance (ESG) issues are part of our business model and central to our mission."[14]

CGW issued a document titled "Sustainable Investing"[15] which proclaims that the Company provides products in response to customer interest in certain issues. For example, the Jane Fraser, Citi CEO, states: "At Citi, helping our clients navigate the challenges and embrace the opportunities of our rapidly changing world is fundamental to our mission of enabling growth and economic progress. Importantly, it's also vital to our own business and central to how we deliver for our clients and help them sustain their businesses for the future."

The Company even acknowledges the increasing risk related to cost externalization: "At some point in the not-too-distant future, a significant proportion of costs, or negative externalities, incurred outside one's company, such as environmental damage, nature and biodiversity loss, or social upheaval, might be forced onto companies' books. Along the same lines, companies that can point to operational benefits, or positive externalities, such as reduced pollution, safe and diverse work places through the supply chain, and transparent, ethical business practices, could stand to become even more appealing."

The Company also states: "Armed with the insight that we derive from our conversations with you and our analyses of your objectives and needs, we deliver portfolios **and products customized to your worldview and financial objectives."** In order to ensure that the Company is living up to this commitment, it will be necessary that the Company evaluate how it can update its offerings to provide meaningful opportunities for its clients to engage in system stewardship.

The Proposal is not excludable under Rule 14a-8(i)(5) because it is sufficiently related to the Company's business. Implementing the Proposal and reviewing the feasibility of expanding its current offerings to provide clients with the ability to address externalities and maximize portfolio value would situate Citigroup as a leader in the area.

CONCLUSION

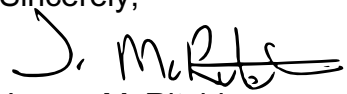
In permitting the exclusion of proposals, Rule 14a-8(g) imposes the burden of proof on companies. Companies seeking to establish the availability of exclusion under Rule 14a-8, therefore, have the burden of showing ineligibility. As argued above, the Company has failed to meet that burden. Accordingly, Staff must deny the no-action request.

We would be pleased to respond to Staff questions or negotiate with Citi on mutually agreeable terms for withdrawing the Proposal. We would appreciate any

[14] Citigroup 2022 Environmental, Social, and Governance Report, available at https://www.citigroup.com/rcs/citigpa/storage/public/Global-ESG-Report-2022.pdf
[15] Citigroup "Sustainable Investing" available at https://www.privatebank.citibank.com/legacy/newcpb-media/media/documents/insights/sustainable-investing-brochure.pdf.coredownload.inline.pdf

opportunity to answer any questions Staff may have concerning this matter before the final determination.

Sincerely,



James McRitchie

Exhibit A

[Citi: Rule 14a-8 Proposal, November 13, 2023]
[This line and any line above it – *Not* for publication.]

Proposal [4*] - Ascertain Client Voting Preferences

Resolved: Citigroup ("Citi" or "Company") shareholders request our Company prepare a report on the feasibility of offering customized proxy voting preferences for Citi clients that seek to maximize portfolio-wide returns by pursuing voting strategies designed to push certain companies to address social and environmental externalities.[1] The report shall be available to stockholders and investors by October 1, 2024, prepared at reasonable cost, consistent with fiduciary duties and other legal obligations, and omitting proprietary information.

Supporting Statement:

Citi and its subsidiaries manage approximately $474B in Personal Banking and Wealth Management assets[2]. As a fiduciary, Citi owes clients and investors duties of care and loyalty in exercising shareholder voting rights.[3]

Controversy over proxy voting - especially environmental, social, and governance ("ESG") proposals, increases risk.[4] Companies like Citi may be criticized from all sides.[5]

Diversified investors are interested in ensuring companies in portfolios managed by Citi do not threaten the rest of their portfolios[6] when individual companies prioritize their financial returns over systems critical to diversified portfolios.[7] Practically, this can mean maximizing profits by externalizing social and environmental risks to the detriment of other companies.

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[1] https://www.routledge.com/Moving-Beyond-Modern-Portfolio-Theory-Investing-That-Matters/Lukomnik-Hawley/p/book/9780367760823, chapter 5.
[2] https://www.citigroup.com/rcs/citigpa/storage/public/10k20221231.pdf
[3] See 14 CFR 275.206(4)-6
[4] https://ssrn.com/abstract=4360428
[5] https://ssrn.com/abstract=4299462
[6] https://theshareholdercommons.com/wp-content/uploads/2022/09/Climate-Change-Case-Study-FINAL.pdf
[7] https://ssrn.com/abstract=4056602

Reliance on proxy advisors does little to mitigate this problem or shield Citi from controversy.[8] Such advisors generally provide advice that maximizes the value of individual companies, not the value of diversified portfolios invested in such companies.[9]

Citi markets goal prioritization, scenario planning, asset allocation, progress tracking, and other services customized to the needs of investors[10]. But Citi fails to offer granular control over customized proxy voting, a core advisor responsibility subject to fiduciary duty standards.

Soliciting the diverse views of clients on issues raised in shareholder elections and incorporating them into voting/engagement practices, or facilitating the client's ability to do so themselves, can mitigate risk. Criticism of BlackRock, Vanguard, and State Street[11] led to programs providing investors with voting choices.

However, these programs present limited choices due to overreliance on traditional proxy advisors. New technologies facilitate soliciting investor preferences efficiently to inform voting and engagement.[12] Therefore, the report should not be limited to preset voting profiles but should include approaches and technologies that provide clients with granular control over voting, like the configurable options offered by Citi for constructing portfolios.

Investors want a voice. According to one study from Stanford Graduate School of Business, 83% of investors, irrespective of age, life stage, or ideological bent, want managers to consider their preferences when voting on environmental issues.[13]

Investment companies that fail to engage clients more fully in proxy voting will be subject to ever-increasing legal and reputational jeopardy.

Vote For Proposal [4*] Ascertain Client Voting Preferences

[This line and any below it is *not* for publication]
Number 4* to be assigned by the Company.

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[8] See, e.g., https://www.texasattorneygeneral.gov/sites/default/files/images/press/Utah%20%26%20Texas%20Letter%20to%20Glass%20Lewis%20%26%20ISS%20FINAL.pdf, https://www.wsj.com/articles/blackrocks-false-voting-choice-proxy-esg-ballots-iss-glass-lewis-66652357?mod=opinion_lead_pos1

[9] https://theshareholdercommons.com/wp-content/uploads/2023/09/The-Shareholder-Commons-response-to-ISS-Policy-Survey-2023.pdf

[10] https://online.citi.com/US/JRS/pands/detail.do?ID=invest-with-personal-advisor&intc=citi~investing-with-citi~choose-how-you-invest~citi-wealth-management~learn-more

[11] https://ssrn.com/abstract=4580206

[12] https://ssrn.com/abstract=4360428

[13] https://www.gsb.stanford.edu/sites/default/files/publication/pdfs/survey-investors-retirement-savings-esg.pdf

The above title is part of the proposal and within the word limit. It should not be altered or misrepresented. The title should be used in all references to the proposal in the proxy and on the ballot. If there is an objection to the title, please negotiate or seek no-action relief as a last resort.

The above graphic are intended to be published with the rule 14a-8 proposal. The graphics would be the same size as the largest management graphics (and/or accompanying bold or highlighted management text with a graphic, box or shading) or any highlighted management executive summary used in conjunction with a management proposal or any other rule 14a-8 shareholder proposal in the 2024 proxy.

The proponent is willing to discuss the mutual elimination of both shareholder graphics and management graphics in the proxy in regard to specific proposals. Issuers should not assume proponent will not insist on the inclusion of the graphic if the issuer unilaterally decides not to include their own graphic.

Reference: SEC Staff Legal Bulletin No. **14L** (CF)**[16]**

> Companies should not minimize or otherwise diminish the appearance of a shareholder's graphic. For example, if the company includes its own graphics in its proxy statement, it should give similar prominence to a shareholder's graphics. If a company's proxy statement appears in black and white, however, the shareholder proposal and accompanying graphics may also appear in black and white.

Notes: This proposal is believed to conform with Staff Legal Bulletin No. **14B** (CF), September 15, 2004, including (with our emphasis):

> Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(i)(3) in the following circumstances:
>
> - the company objects to factual assertions because they are not supported;
> - the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
> - the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
> - the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.
>
> **We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.**

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

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge receipt of this proposal promptly by emailing the proponent.

GIBSON DUNN

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February 27, 2024

VIA ELECTRONIC SUBMISSION

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

Re: *Citigroup Inc.*
Supplemental Letter Regarding Stockholder Proposal of James McRitchie
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

On December 29, 2023, we submitted a letter (the "No-Action Request") on behalf of our client, Citigroup Inc. (the "Company"), to inform the staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") that the Company intends to omit from its proxy statement and form of proxy for its 2024 Annual Meeting of Stockholders (collectively, the "2024 Proxy Materials") a stockholder proposal entitled "Ascertain Client Voting Preferences" (the "Proposal") and statement in support thereof received from James McRitchie (the "Proponent"). The No-Action Request sets forth the basis for our view that the Proposal properly may be excluded from the 2024 Proxy Materials pursuant to: (i) Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal; (ii) Rule 14a-8(i)(7) because the Proposal relates to the Company's ordinary business operations and seeks to micromanage the Company; and (iii) Rule 14a-8(i)(5) because the Proposal relates to operations that are not economically significant or otherwise significantly related to the Company's business.

This supplemental letter responds to a letter dated January 29, 2024 received from the Proponent in response to the No-Action Request (the "Response Letter").

I. The Proposal May Be Excluded Under Rule 14a-8(i)(10)

As discussed in the No-Action Request, the Company already has addressed the essential objective of the Proposal through the proxy voting options it offers clients with respect to securities held in their accounts. When a company can demonstrate that it already has taken actions to address the underlying concerns and essential objectives of a stockholder

proposal, the Staff has concurred that the stockholder proposal has been "substantially implemented" and may be excluded as moot. The Staff has noted that "a determination that the company has substantially implemented the proposal depends upon whether [the company's] particular policies, practices and procedures compare favorably with the guidelines of the proposal." *Walgreen Co.* (avail. Sept. 26, 2013); *Texaco, Inc. (Recon.)* (avail. Mar. 28, 1991). Even under proposed amendments to Rule 14a-8(i)(10), "a proposal need not be . . . fully implemented in exactly the way a proponent desires, in order to be excluded."

Here, because the proxy voting options available to the Company's clients already address the essential objective of the Proposal, there is no need for the Company to prepare the feasibility report requested in the Proposal. The "feasibility" of providing customized proxy voting options for the Company's clients has already been determined and is demonstrated by the Company making proxy voting options available to clients that allow them to pursue particular investment objectives. In this respect, the situation is identical to that in *Covance Inc.* (avail. Feb. 22, 2008), which was cited in the No-Action Request. In *Covance Inc.*, the proposal requested that the company "issue a report on the feasibility of establishing environmental enrichment committees at the company's laboratories to foster quality standards of care for animals." The company stated that it had already appointed an Institutional Animal Care and Use Committee at each of its laboratories, thereby rendering moot the need to report on the feasibility of establishing the committees requested in the proposal. Because the company had addressed the essential objective of the proposal by taking the action addressed by the Proposal, instead of issuing a report on the feasibility of taking such action, the Staff concurred that the proposal could be excluded under Rule 14a-8(i)(10).

Similarly, in *E.I. du Pont de Nemours and Company* (avail. Feb. 26, 2008), the proposal requested that the company "issue a report on PFOA compounds used in DuPont products . . . evaluating the feasibility of rapid phaseout of PFOA from all DuPont products, including materials that can degrade to PFOA in use or in the environment, and the development and adoption of safer substitutes." The company stated that it had already committed to and taken steps to cease using, buying or making PFOA, and therefore had addressed the essential objective of the proposal. Even though the company had not issued a feasibility report as requested by the proposal, the company's actions mooted the need for the feasibility report, and the Staff concurred that the proposal could be omitted under Rule 14a-8(i)(10).

In the present situation as well, the issuance of a feasibility report is not the essential

objective of the Proposal. Instead, as confirmed in the Response Letter,[1] the essential objective is providing clients proxy voting options that allow those clients to pursue a particular investment objective. The Response Letter's argument that the Company has failed to address the essential objective of the Proposal rests on two themes, both of which are ill-founded.

First, the Response Letter asserts that the Company's proxy voting offerings do not allow for "customized proxy voting preferences." In making this argument, the Response Letter ignores the fact that one proxy voting option offered to Company clients is the ability to self-direct the proxy voting of shares held in their accounts. By offering an option where clients can self-direct the proxy voting of shares held in their accounts, the Company already provides clients the ability to "seek to maximize portfolio-wide returns by pursuing voting strategies designed to push certain companies to address social and environmental externalities," as requested in the Proposal. While the methodology by which this voting strategy is implemented by clients may differ from what the Proponent would prefer—a self-directed proxy voting strategy is apparently too "customized" and too "granular" of an approach for the Proponent—the Response Letter fails to address why this option does not implement the Proposal's essential objective.

Second, the Response Letter argues that socially conscious third-party administered proxy voting options of the type offered by the Company do not satisfy the Proposal. The Response Letter tries to support this claim by asserting that by considering "broad societal interests," socially conscious proxy voting options of the type used by Citi Investment Management's ("CIM") third-party service do not take into account portfolio returns. The Response Letter claims that the distinction between, on the one hand, socially conscious third-party administered proxy voting strategies of the type used by CIM's third-party service and, on the other hand, the proxy voting options advocated in the Proposal "is clear when considering that many fiduciaries might not be able to support proposals focused on broad society interests [*i.e.,* socially conscious voting strategies] given their singular mandate to invest in the best interest of their beneficiaries to increase portfolio returns." The absurdity of this argument is evident from the many pension funds and other fiduciaries that utilize the type of socially conscious proxy voting policies referenced in the

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[1] The Response Letter at page 5 states, "The Company similarly has not met the essential purpose of the Proposal because the Company has not provided transparency into its current voting options. With the information currently available to investors, the current option of delegating proxy voting to CIM, and then to a third-party proxy advisor, does not appear to provide [the Company's] clients with voting advice that takes a portfolio-wide value maximization approach to proposals addressing externalities."

Response Letter for the express purpose of maximizing risk-adjusted financial returns. The Response Letter also mischaracterizes the type of socially conscious proxy voting options that the Company makes available to clients by describing them as having a singular focus without regard to portfolio value.[2] Instead of eschewing portfolio returns, the socially conscious proxy voting strategies quoted on page 7 of the Response Letter specifically state that they are concerned with both investment returns and social and environmental externalities of companies' actions. Specifically, the proxy voting standards cited by the Proponent also assess whether certain proposals "enhance long-term shareholder and stakeholder value while aligning the interests of the company with those of society at large."[3]

The Response Letter asserts that "decisions regarding proxy voting that affect environmental and social issues are linked to the Company's reputation,"[4] but then claims several pages later that third-party administered proxy voting service utilized by the Company that addresses social and environmental externalities is somehow not responsive to the Proposal. This assertion conflicts with the text of the Proposal, which addresses "the feasibility of offering customized proxy voting preferences for [Company] clients that seek to maximize portfolio-wide returns by pursuing voting strategies *designed to push certain companies to address social and environmental externalities"* (emphasis added). As discussed in the No-Action Request, one of the Company's offerings allows clients to self-direct the proxy voting of shares held in their account. This option affords clients the ultimate form of customized proxy voting strategy by allowing those who so wish to vote

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[2] For example, at page 7 the Response Letter summarizes its argument:

> If the Company is alleging that it offers ESG proxy voting options, such options are insufficient to address externalities because it still focuses on alpha (the company's own return), even to the detriment of beta (the return of the entire market). If the Company alleges that it offers proxy voting options that are concerned with societal issues, that also does not address portfolio-wide profit maximization by control of externalities because the focus is on societal good, not portfolio value.

[3] Institutional Shareholder Services United States Sustainability Proxy Voting Guidelines, 2024 Policy Recommendations, at 63, *available at* https://www.issgovernance.com/file/policy/active/specialty/Sustainability-US-Voting-Guidelines.pdf?v=1.

[4] Response Letter at 2. As noted in the No-Action Request, the Company does not make "decisions regarding proxy voting" for clients except in cases where the client has elected to authorize CIM to vote on its behalf, and in those cases CIM arranges for the shares to be voted in accordance with the voting recommendations of an unaffiliated proxy advisory firm, based on that advisory firm's sustainability policy guidelines. Moreover, for Citi Global Wealth's ("CGW") non-CIM clients, if the client does not direct that their shares be voted in accordance with specific instructions, CGW does not make any voting decisions for clients. Therefore, the reputational risk associated with such decisions is remote.

their shares in a manner designed to push companies to address social and environmental externalities. The Company also utilizes a third-party proxy advisory firm that votes in alignment with its sustainability policy guidelines, which are designed to address both portfolio value and social and environmental externalities of the portfolio companies' operations. While the customized proxy voting strategy alternatives that the Company offers clients may not be the ones that the Proponent would prefer, the Company's offerings nevertheless fulfill the Proposal's essential objective of providing clients proxy voting options to both take into account portfolio returns and utilize self-directed or other customized proxy voting strategies that address social and environmental externalities. Because the Company offers clients these alternatives for voting shares held in their accounts, there is no need for stockholders to vote on having the Company issue a report on the feasibility of offering those services. As such, the Proposal is moot because the Company has already implemented the Proposal's essential objective, and therefore the Proposal may be excluded under Rule 14a-8(i)(10).

II. The Proposal May Be Excluded Pursuant To Rule 14a-8(i)(7)

The Proposal relates to whether the Company provides clients a proxy voting option that allows the clients to pursue a particular investment objective. Repeatedly, the Response Letter demonstrates that the principal concern of the Proposal is whether the Company's clients are able to pursue a particular proxy voting strategy in an effort to "maximize portfolio-wide returns."[5] Offering products and services that assist clients in maximizing their portfolio returns is a significant aspect of the Company's day-to-day business operations, but is not a significant policy issue with broad societal impacts.

Because the Proposal addresses the ability of the Company's clients to maximize portfolio-wide returns, the Proposal differs from each of the precedent cited in the Response Letter. In contrast to the Proposal, those precedent involve proposals focused on whether an aspect of a company's operations or policies created externalities with broad societal implications. For example, in the *BlackRock, Inc. (McRitchie)* (avail. April 4, 2022) precedent cited in the Response Letter, the proposal requested that the company "adopt stewardship practices designed to curtail corporate activities that externalize social and environmental costs that are likely to decrease the returns of portfolios that are diversified

[5] For example, on page 7 the Response Letter claims that "it is unclear from [the No-Action Request] what proxy voting options the Company offers that it believes address externalities as a means of maximizing portfolio-wide value" and later in that paragraph it asserts (incorrectly, as discussed above) that socially conscious voting strategies utilized by the Company's third-party service focus "on societal good, not portfolio value."

in accordance with portfolio theory." Similarly, in *Morgan Stanley* (avail. Mar. 25, 2022), which also is cited in the Response Letter, the proposal requested that the company "adopt a policy . . . committing to proactive measures to ensure that the company's lending and underwriting do not contribute to new fossil fuel development." In those and other precedent cited in the Response Letter, the proposals focused on whether the subject company's business operations were imposing environmental or societal externalities. In contrast, the Proposal does not focus on externalized costs or societal impacts of the Company's operations or proxy voting decisions; nor could it, since the Company's clients have the option to direct how their shares are to be voted. Instead, the Proposal addresses whether (and through what means)[6] the Company allows its clients to pursue a particular proxy voting strategy to maximize portfolio-wide returns.

The other line of precedent cited in the Response Letter similarly is distinguishable from the Proposal because it focuses on congruency analyses between a company's policy statements and the company's actual operations. In *T. Rowe Price* (avail. Mar. 13, 2020) and *Franklin Resources, Inc.* (avail. Nov. 24, 2015), the proposals requested a congruency analysis regarding those companies' proxy voting practices in comparison to their publicly stated policy positions. As the Response Letter acknowledges, those letters focus on proxy voting practices by the subject companies that were viewed as having broad societal implications. In contrast, the Proposal relates to whether and through what methodology the Company's clients can pursue a particular proxy voting strategy in order for the clients to maximize portfolio-wide returns. Unlike the proposals in *T. Rowe Price* and *Franklin Resources, Inc.*, societal externalities from voting decisions are not a focus of the Proposal; they are instead an incidental aspect of the Proposal's main subject, which, as the Response Letter reiterates numerous times, is clients' ability to seek to maximize portfolio-wide returns.

The Response Letter demonstrates that the Proposal seeks to micromanage the Company by dismissing the proxy voting options and voting methods the Company offers clients and instead advocating proxy voting options and methods the Proponent believes the Company should implement and clients should adopt. The Response Letter demonstrates that the Proponent wants the Company to offer something different than the "granular control over voting" that is currently available through self-directed proxy voting and something different than the "preset voting profiles" that are available through the third-party voting

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[6] As discussed above, the Company offers an arrangement through which clients can self-direct voting of shares in their accounts and, when clients choose to delegate proxy voting to CIM, utilizes third-party administered voting strategies that are designed to consider portfolio returns while "push[ing] . . . companies to address social and environmental externalities," as set forth in the Proposal.

service's sustainability policy guidelines. The Proposal thus seeks to second-guess management's judgment (and client preferences) as to the number and type of proxy voting options that are offered to clients and how self-directed proxy voting is implemented, calling for "configurable options [similar to those] offered by [the Company] for constructing portfolios." As discussed in the No-Action Request, decisions as to the number and variety of proxy voting options offered to clients involve precisely the type of judgments as to technological feasibility, cost, client demand and preferences that fall within the scope of the Rule 14a-8(i)(7) ordinary business exclusion. The Proposal's requested report on the service offerings the Company makes available to clients to maximize portfolio-wide returns thus squarely relates to the Company's ordinary business operations. As such, the Proposal is excludable under Rule 14a-8(i)(7).

III. The Proposal May Be Excluded Under Rule 14a-8(i)(5)

The Response Letter's efforts to avoid exclusion under Rule 14a-8(i)(5) are misplaced. The fact that the Proposal addresses voting strategies offered to clients in the Company's CGW segment does not mean that all of CGW's revenue is relevant under Rule 14a-8(i)(5). In the two precedents the Response Letter cites, the proponents took issue with the companies' statements as to the relevant revenue *and* with the companies' assertions under the second prong of the Rule 14a-8(i)(5) standard. The Staff responses did not indicate which prong of Rule 14a-8(i)(5) the companies failed to satisfy, but it is clear that both proposals addressed issues that were otherwise significantly related to the companies' business. Thus, the precedents do not stand for the proposition that the Response Letter cites.

As indicated on page 25 of the Company's Annual Report on Form 10-K filed on February 23, 2024, CGW's revenue for 2023 represented banking, lending, mortgages, investment, custody and trust product offerings. The vast majority of the revenues associated with those activities are not dependent on or implicated by the proxy voting options offered to clients. Thus, as stated in the No-Action Request, the Company has confirmed that for its fiscal year 2023, the revenue, income and assets associated with the proxy voting services offered to CGW clients represent significantly less than 5% of the Company's total revenue, net income and assets, respectively. The Response Letter claims that the Proposal is otherwise significantly related to the Company's business because "investment companies that fail to engage clients more fully in proxy voting will be subject to ever-increasing legal and reputational jeopardy." However, as stated in the No-Action Request, the Company does not determine how to vote clients' shares and does not operate an investment company, so the Response Letter's claims about implications for investment companies have no bearing on the Proposal's relevance to the Company's

business. Moreover, in Staff Legal Bulletin 14L, the Staff stated "proposals that raise issues of broad social or ethical concern related to the company's business may not be excluded" under the "otherwise significantly related" provision of Rule 14a-8(i)(5).[7] However, concerns relating to potential legal and reputational jeopardy are not "issues of broad social or ethical concern," and thus do not preclude exclusion of the Proposal under Rule 14a-8(i)(5). As such, because the Proposal relates to operations that are not economically relevant to the Company and does not otherwise raise issues of broad social or ethical concerns relating to the Company's business, the Proposal is properly excludable under Rule 14a-8(i)(5).

Based upon the foregoing and the No-Action Request, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2024 Proxy Materials. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8287, or Shelley Dropkin, the Company's Deputy Corporate Secretary and General Counsel, Corporate Governance, at (212) 793-7396.

Sincerely,

Elizabeth A. Ising

Enclosures

cc: Shelley Dropkin, Citigroup Inc.
James McRitchie
John Chevedden

[7] Staff Legal Bulletin 14L (Nov. 3, 2021), at part C.

March 4, 2024, Submission via Online Submission Form

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
cc: shareholderproposals@gibsondunn.com

SEC Reference Number: 472946
Re: Supplemental Response Regarding Shareholder Proposal Submitted by James McRitchie (Proponent)

To Whom It May Concern:

This letter is in response to a February 27, 2024, supplemental letter from Citigroup Inc. ("Company Supplemental Letter") sent to the Securities and Exchange Commission by Elizabeth Ising of Gibson Dunn on behalf of Citigroup Inc. (Citi). The Company supplements its No-Action Request of December 29, 2023, in that letter. We previously responded to the Company's No-Action Request on January 29, 2024 (the "Response Letter").

We have redacted personal information consistent with the Staff's guidance. A copy of this letter is being emailed concurrently to Gibson Dunn.

I, the Proponent, stand by the arguments and responses outlined in my January 29, 2024, Response Letter. The Company has not provided new arguments or evidence in its Supplemental Letter. Therefore, I incorporate my previous arguments here in response to the repetitive claims made in the Supplemental Letter regarding Rule 14a-8(i)(10), (i)(7), and (i)(5) exclusions.

The Company has not demonstrated that it offers or has assessed the feasibility of offering customized proxy voting preferences for BAC clients that seek "to maximize portfolio-wide returns" by pursuing voting strategies designed to push certain companies to address social and environmental externalities." Such a request transcends ordinary business, does not micromanage, and is relevant to the Company based on either a financial or "otherwise significantly related to the business operations" test.

Bank of America (McRitchie, February 29, 2024) was granted no-action relief with regard to a similar proposal under Rule 14a-8(i)(7). If Staff makes a similar decision in this case, I hope they provide the rationale.

Citi repeatedly asserts that it has substantially implemented the essential objective of the proposal because it offers clients the ability to "self-direct the proxy voting of shares

held in their accounts," meaning clients can develop their own proxy voting policies and vote shares in each company accordingly; in other words, leaving clients on their own without proxy voting services. Offering no proxy voting service certainly is not equivalent to offering "customized proxy voting preferences for Citi clients that seek "to maximize portfolio-wide returns by pursuing voting strategies designed to push certain companies to address social and environmental externalities." Staff did not express an opinion on substantial implementation under Rule 14a-8(i)(10) in *Bank of America* (McRitchie, February 29, 2024).

Background

From *BlackRock, Inc.* (McRitchie, April 4, 2022), it is clear that proxy voting is considered a significant social policy issue that transcends ordinary business and that shareholders can ask companies to adopt stewardship practices, such as proxy voting, that seek to curtail "activities that externalize social and environmental practices designed to curtail corporate activities that externalize social and environmental costs that are likely to decrease the returns of portfolios that are diversified in accordance with portfolio theory."

The proposal at *BlackRock, Inc.* (McRitchie, April 4, 2022) and the current Proposal at Citi are based on the logical conclusion of applying Modern Portfolio Theory[1] to proxy voting. Modern Portfolio Theory and sound investment practice mandate that fiduciaries diversify portfolios to reap increased returns from risky securities while significantly reducing their overall risk.

Once a portfolio is diversified, the most critical factor determining return is not how companies in that portfolio perform relative to other companies ("alpha") but rather how the entire market performs ("beta"). According to accepted research,[2] beta drives 91 percent of the average portfolio return. While individual companies can externalize costs to "maximize shareholder value," diversified shareholders essentially "internalize"[3] such costs through lowered portfolio returns.

Focusing on individual companies undercuts the 91 percent of potential return attributed to market return (beta) in order to maximize the 9 percent that comes from outperformance (alpha). Externalized social and environmental costs can play an outsized role in the value of that 91 percent.

Yet the two principal proxy advisers provide voting guidance to clients with diversified returns based on maximizing returns at each individual company they cover. Although both services offer overlays addressing values beyond maximizing returns, many fiduciaries need help to justify supporting proposals focused on broad societal interests. Most funds take a similar approach to proxy voting. The Employee Retirement Income Security Act of 1974 (ERISA) requires fiduciaries to discharge their duties "solely in the

[1] https://en.wikipedia.org/wiki/Modern_portfolio_theory
[2] https://yalebooks.yale.edu/book/9780300194418/what-they-do-with-your-money/
[3] https://www.jstor.org/stable/2331386

interest of the participants and beneficiaries."[4] Many interpret that to mean maximizing returns regardless of adverse consequences.

Corporate directors focus on maximizing profits at their companies. That's where their fiduciary duty lies. However, since most portfolios are broadly diversified, their proxy votes should focus on minimizing systemic risk since 91 percent of their potential returns are attributable to market returns.

Citi and *BlackRock*

The difference between Citi and *BlackRock* (McRitchie, April 4, 2022) is that I asked BlackRock to consider taking a portfolio-wide approach to proxy voting. In contrast, I am asking Citi to offer proxy voting policies that accomplish the same goal (maximizing returns by addressing externalized costs) by offering clients unsatisfied with Citi's proxy voting policy (offered through Citi Investment Management's third-party service) such an option.

According to *BlackRock* (McRitchie, April 4, 2022), asking a company to change their proxy voting policies to address externalities that may reduce overall portfolio returns, even if those votes reduce the value of individual companies in the portfolio, is not "ordinary business." In other words, we asked *BlackRock* to take a portfolio-wide approach to maximizing value when voting its proxies, instead of viewing votes at each company out of context from their portfolios.

The Proposal at Citi takes a slightly different approach. It is a gentler approach to the same goal as *BlackRock*, so logically, it is less disruptive to Citi's ordinary business, even though it deals with the same issue that proxy voting is considered a significant social policy issue that transcends ordinary business. Instead of asking Citi to change its voting policy, we request a feasibility report. Instead of asking Citi to alter its core proxy voting policy, we ask them to consider offering portfolio-wide voting approaches to clients as an alternative.

Because the Company has not met its burden in the No-Action Request nor the Supplemental Letter to prove that the Proposal is excludable under Rule 14a-8(i)(10) or Rule 14a-8(i)(7), or Rule 14a-8(i)(5), we request that the Staff inform the Company that the SEC proxy rules require denial of the Company's no-action request. We would appreciate any opportunity to answer any questions Staff may have concerning this matter before the final determination.

Sincerely,

James McRitchie

[4] https://www.law.cornell.edu/uscode/text/29/1104