



DIVISION OF
CORPORATION FINANCE

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

March 29, 2024

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

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

Dear Brian V. Breheny:

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

The Proposal requests that the board of directors oversee an audit that analyzes the impacts, both adverse and beneficial, of the Company's climate transition policies regarding the economic and humanitarian effects on emerging nations.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(3). We do not believe that the Proposal, taken as a whole, is so vague or indefinite that it is rendered materially misleading.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal transcends ordinary business matters.

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

Sincerely,

Rule 14a-8 Review Team

cc: Luke Perlot
National Legal and Policy Center

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

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WASHINGTON, D.C. 20005-2111

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January 19, 2024

VIA STAFF ONLINE FORM

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

Re: Shareholder Proposal Submitted by
the National Legal and Policy Center

Ladies and Gentlemen:

This letter is submitted on behalf of JPMorgan Chase & Co., a Delaware corporation (the “Company”), pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). The Company requests that the staff of the Division of Corporation Finance (the “Staff”) of the U.S. Securities and Exchange Commission (the “Commission”) not recommend enforcement action if the Company omits from its proxy materials for the Company’s 2024 Annual Meeting of Shareholders (the “2024 Annual Meeting”) the shareholder proposal and supporting statement (the “Proposal”) submitted by the National Legal and Policy Center (the “Proponent”).

This letter provides an explanation of why the Company believes it may exclude the Proposal and includes the attachments required by Rule 14a-8(j). In accordance with relevant Staff guidance, we are submitting this letter and its attachments to the Staff through the Staff’s online Shareholder Proposal Form. A copy of this letter also is being sent to the Proponent as notice of the Company’s intent to omit the Proposal from the Company’s proxy materials for the 2024 Annual Meeting.

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

Background

The Company received the Proposal on October 31, 2023, along with a cover letter from the Proponent. On November 8, 2023, the Company sent a letter, via email, to the Proponent requesting a written statement verifying that the Proponent owned the requisite number of shares of the Company's common stock continuously for at least the requisite period preceding and including the date of submission of the Proposal. On November 8, 2023, the Company received an email from the Proponent with a copy of a letter from Fidelity Investments verifying the Proponent's stock ownership in the Company. Copies of the Proposal, cover letter and related correspondence are attached hereto as Exhibit A.¹

Summary of the Proposal

The text of the resolution contained in the Proposal follows:

RESOLVED: Shareholders request the Board of Directors to oversee an audit that analyzes the impacts, both adverse and beneficial, of JPM's climate transition policies regarding the economic and humanitarian effects on emerging nations, which rely heavily on — but have limited access to — fossil fuels and other non-“renewable” sources of power, such as nuclear. Perspectives from a full spectrum of respected economists, nongovernmental organizations, research firms, and public-interest groups could be considered. JPM should avoid one-sided political or viewpoint bias, with the auditor consulting specialists across a range of stances — including those who may rebut prevailing corporate media- and government-driven narratives on climate and energy. Among perspectives that may be considered include experts such as Alex Epstein, Michael Shellenberger, Bjorn Lomborg, Robert Bryce, Roy Spencer, John Christy,

¹ Exhibit A omits correspondence between the Company and the Proponent that is irrelevant to this request, such as the aforementioned deficiency letter and subsequent response. See the Staff's “Announcement Regarding Personally Identifiable and Other Sensitive Information in Rule 14a-8 Submissions and Related Materials” (Dec. 17, 2021), available at <https://www.sec.gov/corpfin/announcement/announcement-14a-8-submissions-pii-20211217>.

Roger Pielke, Jr., Richard Lindzen, and others.

A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be published on JPM's website.

Bases for Exclusion

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

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

Analysis

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

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

The Commission has stated that a proposal requesting the dissemination of a report is excludable under Rule 14a-8(i)(7) if the substance of the proposal involves a matter of ordinary business of the company. *See* Exchange Act Release No. 34-20091 (Aug. 16, 1983) ("[T]he staff will consider whether the subject matter of the special report or the committee involves a matter of ordinary business; where it does, the proposal will be excludable under Rule 14a-8(c)(7)."). In addition, in Staff Legal Bulletin No. 14E (Oct. 27, 2009) ("SLB 14E"), the Staff noted that if a proposal relates to management of risks or liabilities that a company faces as a result of its

operations, the Staff will focus on the “subject matter to which the risk pertains or that gives rise to the risk” in making a decision regarding whether a proposal can be properly excluded pursuant to Rule 14a-8(i)(7). Pursuant to SLB 14E, the Staff has consistently permitted exclusion of shareholder proposals under Rule 14a-8(i)(7) requesting an assessment of risks when the underlying subject matter concerns the ordinary business of the company. *See, e.g., Netflix, Inc.* (Mar. 14, 2016) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested a report “describing how company management identifies, analyzes and oversees reputational risks related to offensive and inaccurate portrayals of Native Americans, American Indians and other indigenous peoples, how it mitigates these risks and how the company incorporates these risk assessment results into company policies and decision-making,” noting that the proposal related to the ordinary business matter of the “nature, presentation and content of programming and film production”).

In accordance with the policy considerations underlying the ordinary business exclusion, the Staff has consistently permitted exclusion under Rule 14a-8(i)(7) of shareholder proposals relating to the products and services offered for sale by a company, including its lending and underwriting activities. *See, e.g., JPMorgan Chase & Co.* (Mar. 25, 2022) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a study on the effects of the Company’s underwriting practices regarding multi-class share offerings); *JPMorgan Chase & Co.* (Mar. 26, 2021) (same); *JPMorgan Chase & Co.* (Mar. 19, 2019) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report examining the “politics, economics and engineering for the construction of a sea-based canal through the Tehuantepec isthmus of Mexico,” noting that the proposal “relates to the products and services offered for sale by the Company”); *Wells Fargo & Co.* (Jan. 28, 2013, *recon. denied* Mar. 4, 2013) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company report on the adequacy of the company’s policies in addressing the social and financial impacts of its direct deposit advance lending service, noting that the proposal “relates to the products and services offered for sale by the company,” and that “[p]roposals concerning the sale of particular products and services are generally excludable under rule 14a-8(i)(7)”; *JPMorgan Chase & Co.* (Mar. 16, 2010) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board implement a policy mandating that the Company cease its current practice of issuing refund anticipation loans, noting that the proposal “relate[s] to [the Company’s] decision to issue refund anticipation loans” and that “[p]roposals concerning the sale of particular services are generally excludable under rule 14a-8(i)(7)”; *Bank of America Corp.* (Feb. 21, 2007) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on policies against providing financial services that enable capital flight and result in tax avoidance, noting that the proposal “relat[es] to [the company’s] ordinary business operations (i.e., sale of particular services”).

The Staff also has consistently permitted exclusion of shareholder proposals relating to a company's decisions with regard to financial products and services offered to particular types of customers. In *JPMorgan Chase & Co.* (Mar. 12, 2010), for example, the proposal requested a report assessing the impact of mountain top removal coal mining by the Company's clients on the environment and people of Appalachia and the adoption of a policy barring future financing of companies engaged in mountain top removal coal mining. The Company argued, in part, that the proposal related to its ordinary business matters because it sought "to determine the products and services the Company should offer, as well as those particular customers to whom the Company should provide its products and services." In permitting exclusion under Rule 14a-8(i)(7), the Staff noted that the proposal related to the Company's "decisions to extend credit or provide other financial services to particular types of customers" and that "[p]roposals concerning customer relations or the sale of particular services are generally excludable under rule 14a-8(i)(7)." See also, e.g., *JPMorgan Chase & Co.* (Feb. 21, 2019) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board complete a report on the impact to customers of the Company's overdraft policies); *Anchor Bancorp Wisconsin Inc.* (May 13, 2009) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board adopt a new policy for the lending of funds to borrowers and the investment of assets after taking preliminary actions specified in the proposal, noting that the proposal related to the company's "ordinary business operations (i.e., credit policies, loan underwriting and customer relations)"); *JPMorgan Chase & Co.* (Feb. 21, 2006) (permitting exclusion under Rule 14a-8(i)(7) of a proposal recommending that the company not issue first mortgage home loans, except as required by law, no greater than four times the borrower's gross income, noting that the proposal related to the Company's "ordinary business operations (i.e., credit policies, loan underwriting and customer relations)").

In this instance, the Proposal is focused on the products and services offered by the Company and its decisions with regard to underwriting and financing, both of which are ordinary business matters. In this respect, the Proposal's resolved clause requests that the Company provide an audit report that "analyzes the impacts [...] of [the Company's] climate transition policies regarding the economic and humanitarian effects on emerging nations." The Proposal's supporting statement indicates a particular concern with the Company's underwriting and financing decisions, noting that the Company "has made energy transition policies integral to its lending and underwriting activities." The supporting statement continues to describe ways in which the Company has committed to "finance and facilitate [...] climate action and sustainable development," reduce emissions, "phase out 'credit exposure' to the coal extraction industry," and "mobilize finance in support of the UN Sustainable Development Goals in emerging economies," all of which the Proposal claims are in conflict with the Company's commitment to the UN Sustainable Development Goals. More specifically, the Proposal's "whereas"

clauses improperly imply the Company's sustainability goals will harm developing nations, which "represent potential sources of business growth [...] for JPMorgan Chase & Co." When read together, the Proposal's resolved clause and supporting statement demonstrate a clear focus on the Company's ordinary business matters.

In this regard, the Proposal's concern with the impacts of the Company's financing and policy decisions on "emerging nations" further demonstrates that the Proposal is focused on the Company's ordinary business matters. The Company is one of the largest financial services firms in the world and is a leader in investment banking, financial services for consumers and small businesses, commercial banking, financial transaction processing and asset management. The Company's decisions to offer lending and underwriting products and services to particular customers in light of its climate-related targets and strategies, or the effect of those decisions on the worldwide economy, involve complex legal, regulatory and operational considerations. Moreover, the Proposal's request for an audit on the economic and humanitarian effects of these decisions on emerging nations does not transform these matters from ordinary business matters, because the effects of such decisions are themselves ordinary business. Namely, when making lending or underwriting decisions, the Company must consider numerous factors including the Company's climate-related targets and strategies as well as possible economic impacts and business risks presented by the Company's financing decisions. Such decisions are at the heart of the Company's business and are so fundamental to its day-to-day operations that they cannot, as a practical matter, be subject to direct shareholder oversight.

We note that a proposal may not be excluded under Rule 14a-8(i)(7) if it focuses on a significant policy issue. However, the fact that a proposal may touch upon a significant policy issue does not preclude exclusion under Rule 14a-8(i)(7). Instead, the question is whether the proposal focuses primarily on matters of broad public policy, such that they transcend the ordinary business of the company. *See* 1998 Release; SLB 14E. The Staff has consistently permitted exclusion of shareholder proposals where the proposal focused on ordinary business matters, even though it also related to a potential significant policy issue. As discussed above, in *JPMorgan Chase & Co.* (Mar. 12, 2010), the proposal requested, among other things, that the Company adopt a policy barring the financing of companies engaged in mountain top removal mining. In permitting exclusion under Rule 14a-8(i)(7), the Staff noted that "the proposal addresses matters beyond the environmental impact of [the Company's] project finance decisions, such as [the Company's] decisions to extend credit or provide other financial services to particular types of customers." *See also, e.g., PetSmart, Inc.* (Mar. 24, 2011) (permitting exclusion under Rule 14a-8(i)(7) when, although the proposal addressed the potential significant policy issue of the humane treatment of animals, the proposal covered a broad scope of laws ranging "from serious violations such as animal abuse to violations of administrative matters

such as record keeping”); *CIGNA Corp.* (Feb. 23, 2011) (permitting exclusion under Rule 14a-8(i)(7) when, although the proposal addressed the potential significant policy issue of access to affordable health care, it also asked CIGNA to report on expense management, an ordinary business matter); *Capital One Financial Corp.* (Feb. 3, 2005) (permitting exclusion under Rule 14a-8(i)(7) when, although the proposal addressed the significant policy issue of outsourcing, it also asked the company to disclose information about how it manages its workforce, an ordinary business matter).

In this instance, the Proposal does not focus on any significant policy issues; rather, it refers to “humanitarian effects” as an argument against climate transition policies due to the alleged detrimental economic effect of such policies. In fact, the Proposal urges that the requested report consider a particular viewpoint — supported by a number of authors, scientists and pundits that are largely skeptical of modern scientific consensus regarding climate change — that suggests there is no significant policy issue relating to climate change, greenhouse gas emissions or fossil fuel consumption.² Thus, the Proposal is firmly focused on the economic effects of the Company’s financing decisions, which demonstrates that the Proposal’s focus is on an ordinary business matter.

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

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

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

² *See, e.g.,* Alex Epstein, *Fossil Future: Why Global Human Flourishing Requires More Oil, Coal, and Natural Gas - Not Less* (2022); Michael Shellenberger, *Apocalypse Never: Why Environmental Alarmism Hurts Us All* (2020); Roy Spencer, *The Bad Science and Bad Policy of Obama's Global Warming Agenda* (2010).

is so vague and indefinite as to make it impossible for either the board of directors or the stockholders at large to comprehend precisely what the proposal would entail.”).

In accordance with SLB 14B, the Staff has consistently permitted exclusion of shareholder proposals under Rule 14a-8(i)(3) as impermissibly vague and indefinite where the proposal contained an essential term or phrase that, in applying the particular proposal to the company, was unclear, such that neither the company nor shareholders would be able to determine with any reasonable certainty what actions or measures the proposal requires. *See, e.g., Philip Morris Int’l, Inc.* (Jan. 8, 2021)* (permitting exclusion under Rule 14a-8(i)(3) of a proposal requesting that the company’s “balance sheet be strengthened significantly,” where it was unclear how the essential terms “strengthened” and “significantly” would apply to the company’s balance sheet); *Cisco Systems, Inc.* (Oct. 7, 2016) (permitting exclusion under Rule 14a-8(i)(3) of a proposal requesting that the board “not take any action whose primary purpose is to prevent the effectiveness of shareholder vote without a compelling justification for such action,” where it was unclear what board actions would “prevent the effectiveness of [a] shareholder vote” and how the essential terms “primary purpose” and “compelling justification” would apply to board actions); *Pfizer Inc.* (Dec. 22, 2014, *recon. denied* Mar. 10, 2015) (permitting exclusion under Rule 14a-8(i)(3) of a proposal requesting that the board adopt a policy that “the Chair of the Board of Directors shall be an independent director who is not a current or former employee of the company, and whose only nontrivial professional, familial or financial connection to the company or its CEO is the directorship,” where it was unclear whether the proposal intended to restrict or not restrict stock ownership of directors and any action taken by the company to implement the proposal, such as prohibiting directors from owning nontrivial amounts of company stock, could be significantly different from the actions envisioned by shareholders); *AT&T Inc.* (Feb. 21, 2014) (permitting exclusion under Rule 14a-8(i)(3) of a proposal requesting that the board review the company’s policies and procedures relating to “directors’ moral, ethical and legal fiduciary duties and opportunities” to ensure the protection of privacy rights, where it was unclear how the essential term “moral, ethical and legal fiduciary” applied to the directors’ duties and opportunities); *General Dynamics Corp.* (Jan. 10, 2013) (permitting exclusion under Rule 14a-8(i)(3) of a proposal requesting a policy that, in the event of a change of control, there would be no acceleration in the vesting of future equity pay to senior executives, “provided that any unvested award may vest on a pro rata basis,” where it was unclear how the essential term “pro rata” applied to the company’s unvested awards); *The Boeing Co.* (Jan. 28, 2011, *recon. granted* Mar. 2, 2011) (permitting exclusion under Rule 14a-8(i)(3) of a proposal requesting that senior executives relinquish preexisting “executive pay rights,” where it was

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

unclear how to apply the essential term “executive pay rights”).

In this instance, the Proposal is impermissibly vague and indefinite. The Proposal asks that the Company oversee an audit that “analyzes the impacts, both adverse and beneficial, of [the Company’s] climate transition policies regarding the economic and humanitarian effects on emerging nations.” The essential terms in this request—“economic and humanitarian effects” and “emerging nations”—are vague and indefinite, such that neither the Company nor shareholders would be able to determine with any reasonable certainty what actions or measures the Proposal requires. In this regard, there are no qualifying words or phrases that precede or follow the words “economic and humanitarian effects” or “emerging nations” that could help determine the scope of the requested report. For instance, although the resolution of the Proposal requests that the Company’s Board of Directors oversee and report on the audit, it is unclear exactly what “economic and humanitarian effects” the Company would analyze in relation to its climate-related targets and strategies and which nations qualify as “emerging nations” that should be the subject of the analysis. The Proposal implies that emerging nations are those that “rely heavily on – but have limited access to – fossil fuels and other non-‘renewable’ sources of power, such as nuclear,” which appears to implicate any country that uses fossil fuels. This could cover nearly every nation on earth. In addition, it is unclear how the Company would even determine and analyze the “economic and humanitarian effects” of its climate-related targets and strategies on certain nations, as the Proposal provides no guidance on the method for such analysis. Instead, the resolution of the Proposal simply states that “[p]erspectives from a full spectrum of respected economists, nongovernmental organizations, research firms, and public-interest groups could be considered.” Moreover, the complexity, depth and breadth of the requested report would vary drastically depending on how the underlying audit defines “economic and humanitarian effects” and “emerging nations,” which the Proposal, again, provides no guidance to the Company on how to define.

Further, the Proposal’s supporting statement does not provide any guidance on these matters either and only makes broad and vague assertions on rising energy prices and their impact on poverty. The Proposal provides no guidance on the time frame that analysis of the “economic and humanitarian effects” of the Company’s climate-related targets and strategies would cover. The Proposal thus could conceivably cover a wide range and time frame of impact related to the Company’s climate-related targets and strategies in making lending and underwriting decisions. Given these ambiguities, the resolution contained in the Proposal is so inherently vague and indefinite that neither shareholders voting on the Proposal, nor the Company implementing the Proposal (if adopted), would be able to determine with any reasonable certainty what actions or measures the Proposal requires.

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January 19, 2024
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Accordingly, consistent with the precedent described above, the Proposal may be excluded pursuant to Rule 14a-8(i)(3) on the basis that the Proposal is impermissibly vague and indefinite, in violation of Rule 14a-9.

Conclusion

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

Very truly yours,



Brian V. Breheny

Enclosures

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

Luke Perlot
Associate Director, Corporate Integrity Project
National Legal and Policy Center

EXHIBIT A

(see attached)



October 31, 2023

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

VIA UPS & EMAIL: corporate.secretary@jpmchase.com

Dear Mr. Tribolati/Corporate Secretary:

I hereby submit the enclosed shareholder proposal (“Proposal”) for inclusion in JPMorgan Chase & Co.’s (“Company”) proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the U.S. Securities and Exchange Commission’s proxy regulations.

National Legal and Policy Center (NLPC) is the beneficial owner of 47 shares of the Company’s common stock with a value exceeding \$2,000, which shares have been held continuously for more than three years prior to this date of submission. NLPC intends to hold the shares through the date of the Company’s next annual meeting of shareholders. A proof of ownership letter is forthcoming and will be delivered to the Company.

The Proposal is submitted in order to promote shareholder value by requesting the Board of Directors to conduct an audit that analyzes the impacts, both adverse and beneficial, of the company’s climate transition policies regarding the economic and humanitarian effects on emerging nations. Either an NLPC representative or I will present the Proposal for consideration at the annual meeting of shareholders.

I and/or an NLPC representative are able to meet with the Company via teleconference to discuss the proposal any business day Monday through Friday between November 10 and December 1, 2023, with the exception of November 24 through 29, between the hours of 9:00 a.m. and 5:00 p.m. in the Eastern Time Zone (U.S.). I can be reached at [REDACTED] or at [REDACTED].

If you have any questions, please contact me at the above phone number. Copies of correspondence or a request for a “no-action” letter should be forwarded to me via email or sent to my attention at [REDACTED].

Nat’l Headquarters: 107 Park Washington Court, Falls Church, Virginia 22046

Phone: [REDACTED] Email: [REDACTED]

Sincerely,

A handwritten signature in black ink, appearing to read 'L Perlot', with a long horizontal stroke extending to the right.

Luke Perlot
Associate Director
Corporate Integrity Project

Enclosure: "Humanitarian Risks Due to Climate
Change Policies" proposal

Humanitarian Risks Due to Climate Change Policies

WHEREAS: The global energy crisis has focused the public's and policy makers' attention on the effects from rising energy prices. Russia's invasion of Ukraine is partially to blame, but the haphazard worldwide transition to so-called¹ "green" energy has arguably inflicted greater harm via toxic pollution and energy prices:²

- According to Fatih Birol, Executive Director of the International Energy Agency, developing nations are the most vulnerable to rising fossil fuel prices.³ "Birol said those who will be hit hardest include oil-importing nations in Africa, Asia and Latin America because of higher import prices and their weaker currencies."
- 760 million people, primarily in Africa and Asia, still don't have access to electricity, according to the IEA.⁴
- Reduced investment in fossil fuels disproportionately impacts the poor.⁵ "Reducing poverty is not feasible without access to cheap and reliable energy."⁶
- Developing nations represent potential sources of business growth—or decline—for JPMorgan Chase & Co. ("JPM") and the global economy.

SUPPORTING STATEMENT: JPM has made energy transition policies integral to its lending and underwriting activities:

- JPM joined the Net-Zero Banking Alliance in October 2021.⁷ The NZBA is a group of leading global banks, convened by the United Nations, committed to transitioning the economy to net-zero emissions by 2050.⁸
- JPM has pledged to finance and facilitate \$2.5 trillion in climate action and sustainable development by 2030.⁹
- JPM is targeting a 31% reduction in emissions from crude steel production and a 36% reduction from aviation by 2030.¹⁰
- JPM has promised to phase out "credit exposure" to the coal extraction industry by 2024.¹¹

¹ <https://www.dailymail.co.uk/sciencetech/article-12545855/Devastating-transition-green-energy-metal-mining-23-million-people-toxic-waste-rivers-polluted-farmland.html>

² <https://www.wsj.com/articles/americas-new-energy-crisis-11659153633>

³ <https://www.cnbc.com/2022/10/26/iea-developing-nations-the-number-one-casualty-of-the-energy-crisis.html>

⁴ <https://www.iea.org/reports/sdg7-data-and-projections/access-to-electricity>

⁵ <https://www.brookings.edu/articles/it-is-unfair-to-push-poor-countries-to-reach-zero-carbon-emissions-too-early/>

⁶ <https://thebreakthrough.org/journal/no-16-spring-2022/let-them-eat-carbon>

⁷ <https://www.bloomberg.com/news/articles/2021-10-08/jpmorgan-joins-net-zero-banking-alliance-with-emissions-pledge#xj4y7vzkg>

⁸ <https://www.unepfi.org/net-zero-banking/>

⁹ <https://www.jpmorganchase.com/news-stories/jpmc-to-advance-climate-action-and-sustainable-dev-goals>

¹⁰ <https://www.reuters.com/business/sustainable-business/jpmorgan-sets-2030-emissions-targets-polluting-industries-2022-12-22/>

¹¹ <https://www.cnbc.com/2020/02/25/jpmorgan-says-it-will-fund-200-billion-in-sustainable-deals-this-year.html>

- “The J.P. Morgan Development Finance Institution (JPM DFI) was established in January 2020 to mobilize finance in support of the UN Sustainable Development Goals in emerging economies.”

JPM’s climate policies appear to conflict with its commitment to the SDGs,¹² especially the first goal of “no poverty.”¹³

RESOLVED: Shareholders request the Board of Directors to oversee an audit that analyzes the impacts, both adverse and beneficial, of JPM’s climate transition policies regarding the economic and humanitarian effects on emerging nations, which rely heavily on – but have limited access to – fossil fuels and other non-“renewable” sources of power, such as nuclear. Perspectives from a full spectrum of respected economists, nongovernmental organizations, research firms, and public-interest groups could be considered. JPM should avoid one-sided political or viewpoint bias, with the auditor consulting specialists across a range of stances – including those who may rebut prevailing corporate media- and government-driven narratives on climate and energy. Among perspectives that may be considered include experts such as Alex Epstein, Michael Shellenberger, Bjorn Lomborg, Robert Bryce, Roy Spencer, John Christy, Roger Pielke, Jr., Richard Lindzen, and others.

A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be published on JPM’s website.

¹² <https://www.jpmorganchase.com/impact/sustainability/es-commitments>

¹³ <https://sdgs.un.org/goals>



February 6, 2024

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

Re: *JPMorgan Chase & Co.*
Shareholder Proposal of the National Legal and Policy Center (“NLPC”)
Securities Exchange Act of 1934—Rule 14a-8

SUBMITTED THROUGH THE SEC ONLINE SHAREHOLDER PORTAL

Ladies and Gentlemen:

This letter responds to the letter dated January 19, 2024, from Brian V. Breheny on behalf of JPMorgan Chase & Co. (“JPM” or “Company”), requesting that the Division of Corporation Finance (“Staff”) take no action if the Company excludes our shareholder proposal (“Proposal”) from its proxy materials (“Proxy”) for its 2024 annual shareholder meeting.

The Company’s request provides insufficient justification for exclusion and should be denied no-action relief.

The Proposal requests the “Board of Directors to oversee an audit that analyzes the impacts, both adverse and beneficial, of JPM’s climate transition policies regarding the economic and humanitarian effects on emerging nations.”

The Company’s excuses to exclude our Proposal from the Proxy – because it deals with matters relating to the Company’s “ordinary business operations” pursuant to Rule 14a-8(i)(7), and because it is “impermissibly vague and indefinite” pursuant to Rule 14a-8(i)(3) – is erroneous. Contrary to JPM’s claims in its letter seeking no-action relief, NLPC’s proposal raises a significant social policy issue that transcends the Company’s ordinary business. Further, the Company’s claim that the Proposal is too vague is incorrect. The Proposal makes a specific request – for an audit of the effects of the Company’s climate policies – and even provides a list of experts for the Company to consult.

To address the Company’s no-action request, following I will address the

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Company's "Analysis" of two points of objection to our Proposal submission, in the order presented in its January 19 letter.

The Proposal does raise issues of broad societal impact that transcend the Company's ordinary business operations, and therefore the Proposal should NOT be excluded from its Proxy under Rule 14a-8(i)(7).

The Company's assertion that the Proposal improperly deals with matters related to ordinary business, and should therefore be excluded, is false. Also, the Staff has long allowed exceptions to the "ordinary business" rule for proposals that raise a "significant social policy issue." Staff Legal Bulletin 14L (CF) (November 3, 2021) ("SLB 14L") provided additional guidance on the ordinary business exception and made it harder for companies to exclude proposals on the grounds of ordinary business:

This exception is essential for preserving shareholders' right to bring important issues before other shareholders by means of the company's proxy statement, while also recognizing the board's authority over most day-to-day business matters. For these reasons, staff will no longer focus on determining the nexus between a policy issue and the company, but will instead focus on the social policy significance of the issue that is the subject of the shareholder proposal. In making this determination, the staff will consider whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company.

SLB 14L raises a key point – companies cannot reflexively exclude a proposal simply because its subject matter relates to the company's ordinary business, or else shareholders would have no avenue to address important issues via the company's proxy statement. The Company makes faulty appeals to precedent decisions made by the Staff prior to SLB 14L, while conveniently ignoring the Staff's more recent guidance. Additionally, the Company makes disingenuous comparisons between the Proposal and previously excluded proposals that have no parallel to NLPC's.

For example, the Company's no-action request states "[t]he Commission has stated that a proposal requesting the dissemination of a report is excludable under Rule 14a-8(i)(7) if the substance of the proposal involves a matter of ordinary business of the company." The letter cites "*Netflix, Inc.* (Mar. 14, 2016) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested a report 'describing how company management identifies, analyzes and oversees reputational risks related to offensive and inaccurate portrayals of Native Americans, American Indians and other indigenous peoples, how it mitigates these risks and how the company incorporates these risk assessment results into company policies and decision-making,' noting that the proposal related to the ordinary business matter of the 'nature, presentation and content of programming and film production')" as precedent for exclusion.

There are two problems with this comparison.

First, this decision was issued prior to SLB 14L, which altered the standard for exclusion. The Company cannot be certain the proposal would still be excluded today.

Second, the Staff's guidance and previous decisions indicate it balances the *significance* of the proposal's subject matter against the *degree* of micromanagement. The very nature of the Netflix proposal implies micromanagement. Netflix is an entertainment company, and entertainment is subjective experience. Many entertainment companies prefer to give creators near complete creative control over their production, any effort to dictate creative control is an *extreme* case of micromanagement unjustified by the scale of the issue. Additionally, the Netflix proposal requests a report on *management efforts* to oversee and mitigate the risks of negative portrayal, effectively assigning responsibility for these risks to management.

Conversely, NLPC's Proposal requests an audit of the *effects of existing policies*, which does not assign management any additional responsibility. The Proposal also encourages the Company to examine the effects of its policies, "*both adverse and beneficial*," while the Netflix proposal cited by JPM only looks at one side of the issue. Thus, it implies micromanagement of the company.

The Staff has consistently found climate change mitigation policies an issue of broad societal impact and ruled against exclusion of climate related proposals at financial institutions. *See JPMorgan Chase & Co (March 25, 2022)* (preventing exclusion of a proposal requesting "the company takes available actions to help ensure that its financing does not contribute to new fossil fuel supplies that would be inconsistent with the IEA's Net Zero Emissions by 2050 Scenario"). In fact, legal commentary seems to believe that reducing the excludability of climate-related proposals is one of the chief purposes of SLB14L.¹

The Proposal requests an audit of the humanitarian and economic effects of JPM's climate change mitigation policies. Although the Proposal may examine this issue from a different point of view, its subject matter is fundamentally the same. If the Staff views climate change as a significant social policy issue, it stands to reason that the Proposal transcends ordinary business. If the Staff excludes the Proposal after preventing exclusion of other climate-related proposals in previous years, the Staff may appear to apply biased standards to no-action enforcement. If the Staff wishes to exhibit impartiality, then it should deny the Company no-action relief.

For this reason, the Staff should disregard the Company's argument that the

¹ Anagnosti, Era; Gez, Maia; & Levi, Scott. "SEC's New Approach to No-Action Requests for Shareholder ESG Proposals," Harvard Law School Forum on Corporate Governance, December 4, 2021. See <https://corpgov.law.harvard.edu/2021/12/04/secs-new-approach-to-no-action-requests-for-shareholder-esg-proposals/>

Proposal warrants exclusion simply because it mentions *lending and underwriting activities*. The Staff has previously ruled against exclusion of other climate-related proposals even though they address the company's financing operations, including lending and underwriting. *See, e.g. JPMorgan Chase & Co.* (March 25, 2022) (preventing exclusion of a proposal requesting the board issue a report that sets absolute contraction targets for the Company's financed greenhouse gas emissions). The Company cites far less relevant precedents in its no-action letter. For example, it cites: "*JPMorgan Chase & Co.* (Mar. 19, 2019) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report examining the 'politics, economics and engineering for the construction of a sea-based canal through the Tehuantepec isthmus of Mexico')." However, this proposal requests a report on a specific project, while NLPC's Proposal addresses a far broader issue.

Lastly, the Staff should disregard the Company's contention that the Proposal warrants exclusion because it deals with financial products provided to specific types of customers. The precedents cited by the Company are preposterous comparisons, dealing with issues like overdraft policies, first home mortgages, and mountain top removal coal mining. By comparison, the Proposal addresses developing nations, which comprise most of the world's population. Additionally, NLPC's Proposal does not request a specific action, but merely an audit of how the Company's policies impact a broad societal issue. Clearly, the Staff guidance cited by the Company – derived from a Proposal excluded in 2010 that sought to bar JPM from financing mountain top coal removal – could never be relevant to NLPC's Proposal.

In sum, JPM's case for no-action relief rests on precedents set before SLB 14L that also have no parallel with our Proposal. But even if the proposals in question were relevant comparisons to NLPC's Proposal, it is worth pausing to note a significant flaw in the Company's reliance on precedents to substantiate its case for exclusion on both grounds.

When companies seek no-action relief from Staff, their lawyers throw every type of example as "precedents" that they can think of in their briefs, in the hopes that something will resonate to win Staff's agreement to exclude. But in recent years, whenever the Staff issues opinions favorable to companies, it only states that "there appears to be some basis for your view that the Company may exclude the Proposal...." The Staff has *not* identified *which* precedents or evidence it found convincing to reach its conclusions.

The Company has *no idea*, in *any* past Staff rulings on no-action requests in recent years, which specific rationale or evidence Staff has depended upon to render its decisions. The Company would have to be a mind-reader to do so. Just because a company in the past has cited a case where the Staff ruled in support of no-action, does not mean the various arguments or precedents that company invoked were relevant, credible or convincing to the Staff. For this reason, the Staff should disregard any

precedents cited by the Company in deciding whether our Proposal should be excluded from the Proxy.

Instead, Staff should adhere to its history of guidance on ordinary business and examine the Proposal purely on its merits as a significant social policy issue. It has already been explained above why this Proposal should be viewed as climate-related, and it would be a gross misapplication of the Staff's administrative authority to exclude NLPC's Proposal. The Proposal's unique viewpoint on climate mitigation policies – through the lens of humanitarian and economic advancement in the developing world – is a significant issue of its own.

According to the United Nations Conference on Trade and Development, 6.3 billion people – roughly 83% of the world's population – live in developing countries.² Further the Proposal's "Whereas" clause provides considerable evidence that fossil fuels are necessary for the economic growth of humanitarian nations. The Proposal states:

- "According to Fatih Birol, Executive Director of the International Energy Agency, developing nations are the most vulnerable to rising fossil fuel prices.³ 'Birol said those who will be hit hardest include oil-importing nations in Africa, Asia and Latin America because of higher import prices and their weaker currencies.'"
- "760 million people, primarily in Africa and Asia, still don't have access to electricity, according to the IEA.⁴"
- "Reduced investment in fossil fuels disproportionately impacts the poor.⁵ 'Reducing poverty is not feasible without access to cheap and reliable energy.'"⁶

The Company boasts that it "is one of the largest financial services firms in the world and is a leader in investment banking, financial services for consumers and small businesses, commercial banking, financial transaction processing and asset management." Thus, the Company cannot pretend that its policies have no impact on the global economy.

² United Nations Conference on Trade and Development. "Now 8 billion and counting: Where the world's population has grown most and why that matters.," November 15, 2022. See <https://unctad.org/data-visualization/nw-8-billion-and-counting-where-worlds-population-has-grown-most-and-why>

³ Shan, Lee Ying. "IEA says developing nations are the No. 1 casualty of the energy crisis," CNBC, October 25, 2022. See <https://www.cnbc.com/2022/10/26/iea-developing-nations-the-number-one-casualty-of-the-energy-crisis.html>

⁴ International Energy Agency. "Access to Electricity." See <https://www.iea.org/reports/sdg7-data-and-projections/access-to-electricity>

⁵ Tongia, Rahul. "It is unfair to push poor countries to reach zero carbon emissions too early" Brookings Institution, October 26, 2022. See <https://www.brookings.edu/articles/it-is-unfair-to-push-poor-countries-to-reach-zero-carbon-emissions-too-early/>

⁶ Baker, Arthur; Ramachandran, Vijaya. "Let Them Eat Carbon," Breakthrough, March 29, 2022. See <https://thebreakthrough.org/journal/no-16-spring-2022/let-them-eat-carbon>

To conclude its argument for exclusion on the basis of “ordinary business,” the Company argues that our Proposal does not raise a significant social policy issue. The Company dismisses NLPC’s concern for the “humanitarian effects” of its policies as mere economic issues, which it seems to believe shareholders should have no influence over. Yet economic impacts cascade throughout society. Shareholders have the right to debate whether climate change mitigation strategies will deny developing nations the dignity of economic prosperity.

Finally, the Proposal suggests experts for possible consultation in the creation of said audit. Many of those named experts – among them highly educated and experienced scientists and energy experts – contest parts of the popular narrative that catastrophic climate change justifies setting greenhouse gas emissions targets. The Proposal encourages (without demanding) the Company to consult experts that *include* some *like* those named so that it could thoroughly weigh all sides of this significant social policy issue. The Proposal is carefully worded to avoid being prescriptive or encouraging the Company to adopt a particular point of view, and the audit calls for an examination of the humanitarian and economic impacts “both adverse and beneficial.”

On this point the no-action letter is extremely deceptive, by stating that the Proposal “urges that the requested report consider a particular viewpoint...” The Company omits the following phrasing from the Proposal’s Resolved clause (emphases added):

- “Perspectives from a full spectrum of respected economists, nongovernmental organizations, research firms, and public-interest groups **could be considered.**”
- “JPM should **avoid one-sided** political or viewpoint **bias...**”
- “...the auditor [should consult] specialists **across a range of stances...**”
- “...including those **who may rebut** prevailing corporate media- and government-driven narratives...”
- “Among perspectives that **may be considered** include experts **such as...**”

Each of the emphasized phrasings in the bullet points conveys suggested approaches and consideration of multiple points of view, without – as the no-action request falsely claims – that the Proposal “urges that the requested report consider a particular viewpoint.”

The Company also mischaracterizes the presentation of the *suggested* experts by stating that they do not believe that climate change, greenhouse gas emissions or fossil fuel consumption are significant social policy issues, so then neither should the Staff.

This is absurd. For example, the three experts the no-action letter included in its footnote on Page 7 as so-called “disinterested” wrote entire books (some more than one) on the three interrelated issues. If they hoped to sell any books, they’d better be about significant issues!

Also, if that were the case, shareholders would never be allowed to take a negative stance on a societal issue – because that would imply that they do not view it as socially important – they would only be allowed to argue the affirmative. It does not matter whether the Proponent, or the Company, or the shareholders believe there should be concern about climate change. What matters is the Staff *already* has accepted that it is a significant social policy issue. There is no way the Proposal should be viewed as excludable.

The Proposal is not “impermissibly vague and indefinite”, and therefore the Proposal should NOT be excluded from its Proxy under Rule 14a-8(i)(3)

The Company’s second argument for exclusion – that the Proposal is “impermissibly vague and indefinite” – is a bad faith effort to use NLPC’s goodwill against it. On one hand, the Company contends that the Proposal interferes with ordinary business by encouraging it to adopt a particular viewpoint. On the other hand, it also argues that the Proposal is too vague. How can both be true at once?

As the Staff is aware, shareholders must constantly walk the line between being too vague or interfering with ordinary business. The Proposal outlines in detail why climate mitigation policies may have negative impacts on developing nations, why the issue is relevant to JPM, and exactly what is necessary to address it – an audit consulting a *variety* of experts from *across the viewpoint spectrum*. Further, the Proposal requests the Company make its findings public via its website, disclosures which are not currently available. The Proposal’s “Whereas” section provides a list of risks associated with energy shortages and the influence of climate change mitigation strategies on economic development. As previously mentioned, NLPC even offered the Company a list of experts it may consult in addition to those it may prefer. The Proposal is written as clearly defined as it could possibly be in less than 500 words.

However, the Proposal also allows the Company maximum flexibility in its implementation to remain compliant with Rule 14a-8(i)(7). As stated in JPM’s no action letter, Rule 14a-8(i)(3) is intended to excluded Proposals that are “so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires.”

Clearly, the Proposal does not apply on this basis. Not only does Proposal address a clearly defined issue (climate change), it addresses a particular aspect of that issue (economic and humanitarian development), among a particular demographic (developing

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nations), provides a list of recommended experts, and provides the format for releasing its findings. The Company insults shareholders by insinuating they will not be able to discern what this Proposal is requesting. The Staff should deny the JPM no-action relief and allow shareholders the opportunity to vote upon this significant issue through the Company's proxy.

Conclusion

As outlined above in further explanatory detail and context, that was either misrepresented or omitted by the Company in its no-action request, the Proposal is fully compliant with all aspects of Rule 14a-8. For this reason, NLPC asks the Staff to recommend enforcement action should the Company omit the Proposal.

A copy of this correspondence has been timely provided to the Company. If you have any questions or need more information, please feel free to contact me via email at lperlot@nlpc.org or by telephone at (571) 749-5085.

Sincerely,

Luke Perlot
Associate Director
Corporate Integrity Project

Cc: John H. Tribolati, JPMorgan Chase & Co.
Brian V. Breheny, Skadden, Arps, Slate, Meagher, & Flom LLP