



DIVISION OF
CORPORATION FINANCE

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

March 20, 2024

Louis Goldberg
Davis Polk & Wardwell LLP

Re: Exxon Mobil Corporation (the "Company")
Incoming letter dated January 21, 2024

Dear Louis Goldberg:

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

The Proposal requests that the board issue a tax transparency report to shareholders prepared in consideration of the indicators and guidelines set forth in the Global Reporting Initiative's (GRI) Tax Standard.

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).

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: Aubrey Menard
Oxfam America

January 21, 2024

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

RE: Exxon Mobil Corporation
Exclusion of Shareholder Proposal – Oxfam America
Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen:

On behalf of Exxon Mobil Corporation, a New Jersey corporation (the “**Company**”), and in accordance with Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), we are filing this letter with respect to the shareholder proposal (the “**Proposal**”) submitted by Oxfam America (the “**Proponent**”) for inclusion in the proxy materials the Company intends to distribute in connection with its 2024 Annual Meeting of Shareholders (the “**2024 Proxy Materials**”). The Proposal is attached hereto as Exhibit A.

We hereby request confirmation that the Staff of the Division of Corporation Finance (the “**Staff**”) will not recommend any enforcement action if, in reliance on Rule 14a-8, the Company omits the Proposal from the 2024 Proxy Materials.

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. Also, in accordance with Rule 14a-8(j), a copy of this submission is being sent simultaneously to the Proponent as notification of the Company’s intention to omit the Proposal from the 2024 Proxy Materials. This letter constitutes the Company’s statement of the reasons it deems the omission of the Proposal to be proper. We have been advised by the Company as to the factual matters set forth herein.

THE PROPOSAL

The Proposal states:

RESOLVED: Shareholders request that the Board of Directors issue a tax transparency report to shareholders, at reasonable expense and excluding confidential information, prepared in consideration of the indicators and guidelines set forth in the Global Reporting Initiative’s (GRI) Tax Standard.

REASON FOR EXCLUSION OF THE PROPOSAL

The Company believes that the Proposal may be properly omitted from the 2024 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal deals with matters related to the Company's ordinary business operations.

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

A. The Proposal Directly Relates to the Company's Ordinary Business Operations

Rule 14a-8(i)(7) allows a company to omit a shareholder proposal from its proxy materials if such proposal deals with a matter relating to the company's ordinary business operations. The general policy underlying 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." See Exchange Act Release No. 34-40018 (May 21, 1998) (the "**1998 Release**"). The 1998 Release also identified two central considerations that underlie this policy: that (i) 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" and (ii) the "degree to which the proposal seeks to 'micromanage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." See Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("**SLB 14L**"). The mere fact that a proposal or supporting statement mentions or touches upon a significant policy issue is not alone sufficient to avoid the application of Rule 14a-8(i)(7) when the proposal implicates ordinary business matters. *1998 Release*. In addition, a shareholder 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.* (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).").

B. The Proposal Is Excludable Because It Relates To The Company's Management Of Its Tax Expense and Seeks Disclosure of Competitively Sensitive Information.

The Proposal clearly implicates core matters involving the Company's "business and operations" within the scope of the 1998 Release. Management of corporate taxation is a task fundamental to management's ability to run the company on a day-to-day basis, and requires an intricate understanding of ever-changing tax regulations and tax regimes that is inappropriate for direct shareholder oversight. The Company is a multinational corporation that is subject to tax legislation in more than 60 countries. Tax management, compliance and planning associated with these jurisdictions is highly complex, multifaceted and requires significant management resources and effort that involves expert judgment and advice. The conduct of these tax functions requires hundreds of internal and external tax professionals with multi-jurisdictional tax expertise and is therefore not a matter for shareholder oversight. Tax management, compliance and planning is thus intricately interwoven into a company's business strategies, financial planning, financial reporting and legal compliance, which are precisely the types of ordinary business issues which should remain with the Company's management and board. Furthermore, the form and amount of taxation in other jurisdictions is often the outcome of a negotiation with a host government in connection with the Company's commitment to expend significant financial and operational

resources to explore and develop oil and gas resources with or for host governments. In fact, we believe such information can be misleading when viewed simply as tax disclosure compared to our competitors or other industries as some host governments may prefer to receive resource payments in taxes, while others may choose to receive it through greater participation in the resource directly or through public works projects. This information is also competitively sensitive and is not a matter that should be subject to shareholder oversight or public disclosure in disaggregated detail. Additionally, in many cases, it may be sensitive to the host government so that disclosure could hurt the Company's relationships or ability to negotiate broadly with these important partners.

In addition, at the core of the Proposal is an effort to seek disclosure of "certain company financial information, including revenues, profits and losses, and tax payments within each jurisdiction." This level of information is competitively sensitive, is not required by SEC public reporting standards, and is a matter to be properly determined by management as part of its risk management and oversight functions.

The Commission and Staff have long held that shareholder proposals may be excluded under Rule 14a-8(i)(7) when they relate to a company's management of its tax expense and financial reporting, both core aspects of management's day-to-day running of the company. Notably, the Staff has consistently recognized that proposals pertaining to the assessment and reporting of a company's approach to taxation and its tax management efforts are excludable under Rule 14a-8(i)(7). For example, in *The Boeing Co.* (Feb. 8, 2012), the proposal requested the Company to prepare a report "disclosing its assessment of the financial, reputational and commercial effects of changes to, and changes in interpretation and enforcement of, US federal, state, and local tax laws and policy that pose risks to shareholder value." The Staff concurred that the proposal was excludable under Rule 14a-8(i)(7) because it "relate[d] to decisions concerning the company's tax expenses and sources of financing." Similarly, in *Amazon.com, Inc.* (Mar. 21, 2011), the proposal requested the company to prepare a report regarding the board's assessment of "the risks created by the actions [the company] takes to avoid or minimize US federal, state and local taxes." The Staff concurred with the exclusion of the proposal under Rule 14a-8(i)(7) because it "relate[d] to decisions concerning the company's tax expenses and sources of financing." See also *The TJX Companies Inc.* (Mar. 29, 2011) (same); *Wal-Mart Stores, Inc.* (Mar. 21, 2011) (same); *The Home Depot Inc.* (Mar. 2, 2011) (same); and *Lazard Ltd.* (Feb. 16, 2011) (same). The Staff has also concurred with exclusion under Rule 14a-8(i)(7) where a proposal requests a report on the estimated impacts of a flat tax for the company. See, e.g., *Verizon Communications Inc.* (Jan. 31, 2006); *Johnson & Johnson* (Jan. 24, 2006); and *General Electric Co. (National Legal and Policy Center)* (Jan. 17, 2006). In addition, the Staff has historically found that proposals seeking additional, detailed financial disclosure, the subject matter of which involves ordinary business operations, may be excluded under Rule 14a-8(i)(7). See, e.g., *Citigroup Inc.* (Feb. 20, 2008) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting disclosure of certain prescribed financial information on a website on a quarterly basis); *AmerInst Insurance Group. Ltd.* (April 14, 2005) (permitting the exclusion of a proposal requesting that the board provide each quarter a full, complete and adequate disclosure of the accounting of the line items and amounts of the operating and management expenses of the company); *Johnson Controls, Inc.* (Oct. 26, 1999) (permitting the exclusion of a proposal requesting additional disclosure of financial statements in reports to shareholders); and *Santa Fe Southern Pacific Corp.* (Jan. 30, 1986) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting disclosure of cost basis financial statements to all shareholders, noting that the proposal related to the conduct of ordinary business operations, including "financial disclosure not required by law").

Here, the Proposal relates to the Company's management of its tax expense and tax strategies because it seeks a tax transparency report "prepared in consideration of the indicators and guidelines set forth in the Global Reporting Initiative's (GRI) Tax Standard." The supporting statement for the Proposal (the

“Supporting Statement”) further elaborates that the GRI Tax Standard (GRI 207) is “the first comprehensive, global standard for public tax disclosure,” and identifies its four components: (i) GRI 207-1 (approach to tax), (ii) GRI 207-2 (tax governance, control, and risk management), (iii) GRI 207-3 (stakeholder engagement and management of concerns related to tax), and (iv) GRI 207-4 (country-by-country reporting including of financial information on a country-by-country basis). Based on how the Proposal is phrased, the Company would be required to consider each of the “indicators and guidelines” prescribed in these four components under GRI 207:

- GRI 207-1 would require the Company to include a description of the Company’s approach to tax, including tax strategy, regulatory compliance and linkage to its business and sustainable development strategies.¹
- GRI 207-2 would require the Company to include a discussion of the risks associated with the Company’s tax practices that might lead to compliance risks or risks related to uncertain tax positions, changes in legislation, or a perception of aggressive tax practices.²
- GRI 207-3 would require the Company to report on its approach to “stakeholder engagement and management of stakeholder concern related to tax,” “engagement with tax authorities” and “public policy advocacy on tax.”³
- GRI 207-4 would require the Company to disclose the following for each tax jurisdiction that the Company and its entities are tax residents: the names of the resident entities, revenues from third-party sales and intra-group transactions, profit and loss before tax, tangible assets other than cash and cash equivalents and corporate income tax paid on a cash basis (which, if provided, would go far beyond existing SEC reporting tax disclosure requirements).⁴

It is clear that the comprehensive guidelines and recommendations set forth in GRI 207 involve complex corporate taxation matters on which “shareholders, as a group, would not be in a position to make an informed judgment,” and shareholders would be unable to fully understand the Company’s tax strategies and related risk assessments without the requisite knowledge of tax regulations and policies. *1998 Release*. Such an understanding requires knowledge across over 60+ national jurisdictions with many additional sub-jurisdictions and is not isolated on a jurisdictional-by-jurisdictional basis. That analysis is further complicated by how those jurisdictions are interwoven. Moreover, U.S. federal income tax rules overlay the Company’s entire global tax apparatus and require the Company, as a U.S. multinational, to account for its global operations and the elements of worldwide taxation to which it is subject. To digest and synthesize such tax data from the Company requires dedicated teams of tax experts with specialized country knowledge.

Moreover, the Proposal’s request for additional disclosure regarding the Company’s taxes is comparable to a long line of tax-related proposals that have been excludable under Rule 14a-8(i)(7). *See, e.g., Exxon Mobil Corp.* (avail Mar. 3, 2011, *recon. denied* Mar. 21, 2011) (concurring with the exclusion of a proposal requesting publication of a report detailing the government subsidies received by the company, including tax breaks, as relating to ordinary business) and *NIKE, Inc.* (June 22, 2018) (concurring with the

¹ See GRI 207: Tax 2019 (“GRI 207”), available at: <https://www.globalreporting.org/standards/media/2482/gri-207-tax-2019.pdf>.

² *Id.* at 7.

³ *Id.* at 9.

⁴ *Id.* at 10.

exclusion of a proposal requesting that company adopt and disclose a set of principles guiding its tax practices to respond to public pressure to limit offshore tax avoidance strategies). *See also Allergan plc* (Feb. 7, 2018) (concurring with the exclusion of a proposal nearly identical to NIKE as relating to the company's ordinary business).

The Proposal Does Not Raise Significant Social Policy Issues That Transcend the Company's Ordinary Business Operations.

In the 1998 Release, the Commission expressed that while proposals relating to ordinary business matters “but focusing on sufficiently significant social policy issues generally would not be excludable,” under Rule 14a-8(i)(7), the Staff has indicated that proposals that relate to both ordinary business matters and significant social policy issues may be excludable if the proposals do not “transcend the day-to-day business matters.” SLB 14L states that in making a determination on whether a proposal raises a significant social policy issue, the Staff will “focus on the social policy significance of the issue that is the subject of the shareholder proposal” and “consider whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company.” The mere fact that a proposal is phrased to reference or invoke issues that could implicate significant social policy issues under the Staff's current interpretation of Rule 14a-8(i)(7) is not sufficient to transcend day-to-day business matters. A proposal may still be excluded when it effectively focuses on an ordinary business matter. When assessing proposals under Rule 14a-8(i)(7), the Staff will also consider the terms of the resolution and its supporting statement as a whole. *See Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005)* (“In determining whether the focus of these proposals is a significant social policy issue, we consider both the proposal and the supporting statement as a whole.”).

We recognize that that the Staff was unable to concur on the exclusion of a similar proposal in *Amazon.com, Inc.* (avail. Apr. 5, 2022). We believe, however, that the Proposal is distinguishable. In the case of some other multi-national companies, the core social policy the Staff was likely concerned about – potential profit allocation by multi-national corporations to other jurisdictions – is not applicable with respect to the Company. Profit shifting is not widely available to oil and gas companies like the Company, given that large-scale, hard asset businesses producing tangible products are generally taxed in the countries in which they operate. The Company is in the energy and petrochemical industry and its principal business involves, among other things, exploration for, and production of, crude oil and natural gas, operating refineries and chemical plants, and selling tangible products to customers through brick and mortar retailers. The Company pays tax in the jurisdiction in which its crude oil is extracted and its petroleum and chemical products are produced.

Countries hosting petroleum and petrochemical economic activity, at least in the Company's decades of experience, are nearly always aware and often intricately involved in such activity and the taxation thereof. The Company believes each country in which it materially operates has a complete or near complete knowledge of the Company's operations. In most, if not nearly all, cases, host countries have granular details of oil and gas operations occurring within their boundaries and make well-informed decisions about the level of tax to apply and audits to pursue. Again, we note that the form and amount of taxation in other jurisdictions is often the outcome of a negotiation with a host government in connection with the Company's commitment to expend significant financial and operational resources to explore and develop oil and gas resources with or for host governments. Since this information is part of a broader, confidential negotiation with these governments, if disclosed alone it will not tell the whole story and we believe is likely to mislead those who simply want to compare one tax rate to another, such as the proponent. We view the entirety of these relationships, of which taxes is one part, as competitively sensitive to both the company and our host government partners, who are each trying to satisfy different

social needs and objectives, and is not a matter that should be subject to shareholder oversight or public disclosure in disaggregated detail. Additionally, in many cases, it may be sensitive to the host government so that disclosure could hurt the Company's relationships or ability to negotiate broadly with these important partners.

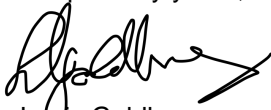
The Proposal also differs from *Amazon.com, Inc.* in that it emphasizes the extensive incremental financial disclosure (by jurisdiction) that would be required in connection with complying with the GRI Tax Standard and GRI-aligned tax transparency reporting. At the core of the Proposal is an effort to seek disclosure of "certain company financial information, including revenues, profits and losses, and tax payments within each jurisdiction" in which the Company operates. This level of information is competitively sensitive, is not required by SEC public reporting standards, and is a matter to be properly determined by management as part of its own risk management and oversight functions, and is therefore an ordinary business matter. Accordingly, we believe that the distinct characteristics of the Company's business and related tax strategies and the Proposal's emphasis on non-required disclosure of disaggregated, financial disclosure (beyond SEC rules) about each jurisdiction in which the Company operates, make this Proposal an ordinary business matter and does not involve a social policy that transcends the ordinary business of the Company.

CONCLUSION

For the reasons set forth above, the Company believes that the Proposal may be excluded from its 2024 Proxy Materials pursuant to Rule 14a-8(i)(7). The Company respectfully requests the Staff's concurrence with its decision to exclude the Proposal from its 2024 Proxy Materials and further requests confirmation that the Staff will not recommend enforcement action to the SEC if it so excludes the Proposal.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this request. Please do not hesitate to call me at (212) 450-4539 or James Parsons at james.e.parsons@exxonmobil.com. If the Staff does not concur with the Company's position, we would appreciate an opportunity to confer with the Staff concerning these matters prior to the issuance of its response.

Respectfully yours,



Louis Goldberg

Attachment

cc w/ att: James E. Parsons, Exxon Mobil Corporation
Oxfam America

Proposal

RESOLVED: Shareholders request that the Board of Directors issue a tax transparency report to shareholders, at reasonable expense and excluding confidential information, prepared in consideration of the indicators and guidelines set forth in the Global Reporting Initiative's (GRI) Tax Standard.

Supporting Statement

Tax transparency is increasingly important to investors. The PRI, representing investors with \$89 trillion assets under management, states that, "For investors, tax risk is financially material at the individual asset level. With tightening regulations and shifting societal expectations, tax avoidance activities of multinational enterprises have attracted large fines and highlighted growing reputational, governance, and earnings risks."¹ Economic challenges have increased government concern about corporate tax avoidance, and 96% of US companies expect more tax disputes as governments become more rigorous in tax examinations.²

In 2021, 136 countries signed a global tax reform framework.³ The proposed Disclosure of Tax Havens and Offshoring Act, passed by the House of Representatives, would require public country-by-country reporting (CbCR) of financial (including tax) data by SEC-registered companies.⁴ Further, in November 2021, the European Union approved a directive to implement public CbCR for large multinationals operating there.⁵ In April 2023, the Australian government released draft legislation that would, if legislated, require CbCR for any large multinational doing business in Australia.⁶

ExxonMobil does not disclose revenues or profits in non-US markets, nor foreign tax payments, with adequately disaggregated data. This challenges investors' ability to evaluate the risks of taxation reforms, or whether ExxonMobil engages in responsible tax practices that ensure long term value creation. Tax authorities across the globe have repeatedly challenged ExxonMobil's taxation approach, producing significant costs for the company.⁷ For example, ExxonMobil was recently issued a \$215 million fine by Russian authorities for their Sakhalin 1 oil and gas project for alleged non-payment of back taxes.⁸

The GRI Standards are the world's most utilized corporate reporting standard.⁹ The GRI Tax Standard - GRI 207 - is the first comprehensive, global standard for public tax disclosure. It includes four components. GRI 207-1, 207-2, and 207-3 require companies to disclose their approach to tax; their tax governance, control, and risk management; and their stakeholder engagement and management of

¹ <https://www.unpri.org/download?ac=15325#:~:text=Some%20investors%20believe%20that%20tax,good%20risk%20management%20and%20governance.&text=Prudent%20tax%20planning%20as%20the%20basis%20for%20tax%20management>

² <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/gx-beps-global-survey-summary-results-2022.pdf>

³ <https://www.oecd.org/tax/international-community-strikes-a-ground-breaking-tax-deal-for-the-digital-age.htm>

⁴ <https://www.congress.gov/bill/117th-congress/house-bill/3007>

⁵ <https://www.internationaltaxreview.com/article/b1vf7yc65qpzcd/this-week-in-tax-eu-on-track-for-public-cbcr-by-2023>

⁶ <https://treasury.gov.au/consultation/c2023-383896>

⁷ <https://www.theguardian.com/business/2018/jul/03/exxonmobil-spent-10m-fighting-australian-tax-office>;
<https://www.bloomberg.com/news/articles/2018-08-09/exxon-loses-fight-for-337-million-tax-refund-from-u-s>;
<https://www.france24.com/en/20170914-exxonmobil-russia-settle-tax-row>

⁸ <https://www.upstreamonline.com/politics/exxonmobil-hit-with-215-million-court-fine-in-russian-tax-dispute/2-1-1397064>

⁹ <https://assets.kpmg/content/dam/kpmg/xx/pdf/2020/11/the-time-has-come.pdf>

concerns related to tax, respectively. 207-4 requires public CbCR of certain company financial information, including revenues, profits and losses, and tax payments within each jurisdiction.¹⁰ GRI 207 also recommends disclosing “industry-related and other taxes or payments to governments.” Given the significance of other project-specific payments to governments in the oil and gas sector, GRI identifies disclosures of all significant project-level payments to governments as relevant for that sector in reporting under the Tax Standard.¹¹

A GRI-aligned tax transparency report would bring ExxonMobil in line with peer companies – including many in the oil, gas, and mining industries¹² – that report using GRI 207.¹³ ExxonMobil already reports CbCR information to OECD tax authorities privately, so any increased burden is negligible.

¹⁰ <https://www.globalreporting.org/standards/media/2482/gri-207-tax-2019.pdf>

¹¹ <https://www.globalreporting.org/standards/standards-development/sector-standard-for-oil-and-gas/>

¹² <https://www.hess.com/sustainability/how-we-operate/tax-practices>; <https://reports.shell.com/tax-contributionreport/2020/our-tax-data.html>; https://s24.q4cdn.com/382246808/files/doc_downloads/2022/sustainability/newmont-2021-tax-report.pdf; <https://www.bp.com/en/global/corporate/sustainability/our-approach-to-sustainability/taxtransparency.html>; <https://reports.shell.com/tax-contribution-report/2020/>; https://www.eni.com/assets/documents/eng/reports/2020/Country-by-Country-2020_ENG.pdf; https://totalenergies.com/sites/g/files/nytnzq121/files/documents/2022-03/Tax_transparency_report_2019_2020.pdf

¹³ <https://www.globalreporting.org/news/news-center/momentum-gathering-behind-public-country-by-country-taxreporting/>

February 20, 2024

Via Shareholder Proposal Portal

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

Re: Request by Exxon Mobil Corporation to omit proposal submitted by Oxfam America

Ladies and Gentlemen,

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, Oxfam America (the “Proponent”) submitted a shareholder proposal (the “Proposal”) to Exxon Mobil Corporation (“Exxon” or the “Company”). The Proposal asks Exxon to issue a tax transparency report in consideration of the indicators and guidelines set forth in the Global Reporting Initiative’s (“GRI’s”) Tax Standard.

In a letter to the Division dated January 21, 2024 (the “No-Action Request”), Exxon stated that it intends to omit the Proposal from its proxy materials to be distributed to shareholders in connection with the Company's 2024 annual meeting of shareholders. Exxon argues that it is entitled to exclude the Proposal in reliance on Rule 14a-8(i)(7), on the ground that the Proposal deals with the Company’s ordinary business operations. As discussed more fully below, tax transparency is a consistent topic of widespread public debate and has broad societal impact. Accordingly, Exxon has not met its burden of proving its entitlement to exclude the Proposal, and the Proponent respectfully requests that the Company’s request for relief be denied.

The Proposal

The Proposal states:

RESOLVED: Shareholders request that the Board of Directors issue a tax transparency report to shareholders, at reasonable expense and excluding confidential information, prepared in consideration of the indicators and guidelines set forth in the Global Reporting Initiative’s (GRI) Tax Standard.

Ordinary Business

Rule 14a-8(i)(7) allows exclusion of a proposal related to a company’s ordinary business operations. Exxon argues that the Proposal relates to the Company’s ordinary business operations because it deals with “the Company’s management of its tax expense,”¹ which does not transcend ordinary business. Exxon urges that “management of corporate taxation is a task fundamental to management’s ability to run the company on a day-to-day basis, and requires an intricate understanding of ever-changing tax regulations and tax regimes that is inappropriate for direct shareholder oversight.”²

The Proposal’s language does not support Exxon’s characterization: Nothing in the Proposal asks Exxon to take any different action with respect to taxation—to manage taxes in any particular way. Rather, the Proposal focuses solely on transparency regarding taxes. Thus, it is not accurate to say that the Proposal seeks to subject Exxon’s tax management to direct shareholder oversight.

The publication of accessible tax transparency reports by other companies in Exxon’s industry shows that the issue is not too difficult and confusing for shareholders, as Exxon claims. Fellow oil major Royal Dutch Shell provides country-by-country reporting on corporate income taxes paid.³ French multinational oil and gas company TotalEnergies also produces a tax transparency report that includes country-by-country reporting on taxes paid, consistent with GRI 207.⁴ Hess, the U.S. oil and gas firm, began publishing a report of its country-by-country income tax payments in 2022.⁵ Clearly, Shell, Total, and Hess do not believe that in-depth knowledge of tax laws and regulations is necessary to understand the tax disclosures they are making. These companies’ reports also include contextual information on tax strategy and governance to enhance readers’ understanding of the figures presented. Exxon could do the same in order to address its concern that information on taxes paid, standing alone, would not “tell the whole story.”⁶

Tax transparency is a significant social policy issue. In Staff Legal Bulletin (“SLB”) 14L, the Staff explained that its current approach to determining if an otherwise excludable proposal concerns a significant social policy issue asks whether the proposal “raises issues with a broad societal impact.”⁷ The Staff has also stated that it analyzes whether the proposal’s subject is a consistent subject of widespread public debate.⁸ Both articulations of the standard support a conclusion that Exxon should not be permitted to omit the Proposal in reliance on the ordinary business exclusion.

Shortly after the issuance of SLB 14L, the Staff declined to exclude on ordinary business grounds a proposal whose resolved clause was identical to the Proposal’s. In Amazon,⁹ the proposal requested that “the Board of Directors issue a tax transparency report to shareholders, at reasonable

¹ No-Action Request, at 2

² No-Action Request, at 2

³ <https://reports.shell.com/tax-contribution-report/2022/introduction/corporate-income-tax-paid.html>

⁴ https://totalenergies.com/sites/g/files/nytnzq121/files/documents/2023-05/TotalEnergies_Tax_transparency_report_2021-2022.pdf

⁵ <https://www.hess.com/sustainability/how-we-operate/tax-practices>

⁶ No-Action Request, at 5

⁷ Staff Legal Bulletin 14L (Nov. 3, 2021)

⁸ See, e.g., www.sec.gov/interp/legal/cfslb14a.htm.

⁹ Amazon.com, Inc. (Apr. 5, 2022)

expense and excluding confidential information, prepared in consideration of the indicators and guidelines set forth in the Global Reporting Initiative’s (GRI) Tax Standard.” Amazon urged that the proposal was excludable on ordinary business grounds because the proposal’s subject was Amazon’s legal compliance or, as Exxon claims here, “management of [the company’s] tax expense.” Amazon also urged that the proposal did not implicate a significant social policy issue.

The Amazon proponent rejected Amazon’s characterizations, countering that the proposal’s subject, “profit-shifting and public country-by-country reporting,” was a significant social policy issue. The proponent traced the evolution of the debate over tax transparency, including press coverage and concerns over the impact of tax avoidance on governments’ ability to address challenges and achieve the U.N.’s Sustainable Development Goals. The proponent’s response also described legislative developments and multilateral initiatives, including the 2021 Organisation for Economic Cooperation and Development agreement by which 137 jurisdictions sought to combat profit-shifting by imposing a global minimum tax for corporations. Finally, the proponent illustrated the continued debate over country-by-country reporting.

In short, the proponent’s response made a powerful case that tax transparency is a significant social policy issue with broad societal impact and strong links to overall sustainability performance, not simply an expense management or legal issue. We do not repeat the Amazon proponent’s arguments here but instead incorporate them by reference. Since the Amazon proponent’s response was submitted in February 2022, the debate over tax transparency has showed no sign of abating:

- EU member states had until June 22, 2023 to implement the EU’s Public Country-by-Country Reporting Directive (“CbCRD”) enacted in 2021. The CbCRD requires certain large multinational company groups to report financial data, including income tax paid in EU member states and countries on the “EU list of noncooperative jurisdiction or on the ‘grey list’ for two consecutive years.”¹⁰
- In February 2024, after consulting with stakeholders regarding 2023 draft legislation, the Australian government released revised legislation requiring that multinational enterprises domiciled in Australia and foreign-domiciled multinationals with at least \$10 million in Australian-sourced income report taxes paid to each of 41 “specified” jurisdictions, as well as an aggregated total for other jurisdictions. The reports would be publicly available.¹¹ According to the explanatory material released with the legislation, it “reflects the shifting public sentiment for greater transparency and accountability on corporate activity, particularly from large businesses.”¹²
- Ireland, one of the most popular tax havens,¹³ proposed new rules in 2023 “aimed at eliminating situations of so-called ‘double non-taxation’, where money is moved between two different jurisdictions, but taxed in neither.”¹⁴

¹⁰ <https://assets.kpmg.com/content/dam/kpmg/xx/pdf/2023/07/eu-public-cbyc-implementation-tracker.pdf>

¹¹ <https://kpmg.com.au/TaxNow/Images/documents/2024/KPMG-Tax-Now-Australia-public-country-by-country-reporting-revised-draft-legislation.pdf>

¹² https://treasury.gov.au/sites/default/files/2024-02/c2024-488354-em_0.pdf, at 6.

¹³ <https://www.irishtimes.com/business/2023/10/23/ireland-identified-as-one-of-worlds-top-tax-havens/>

¹⁴ <https://www.independent.ie/business/irish/american-chamber-warns-tax-avoidance-crackdown-could-hit-us-investment/a184601548.html>

- The U.S. Senate Finance Committee held a hearing on May 11, 2023 on “Cross-border Rx: Pharmaceutical Manufacturers and U.S. International Tax Policy,” focused on profit-shifting and companies paying their “fair share.”¹⁵

Exxon tries to distinguish the Amazon determination on the ground that the Amazon proposal focused on a technology firm shifting profits by assigning intellectual property rights to entities domiciled in low-tax jurisdictions. According to Exxon, oil and gas companies’ reliance on physical assets that generate income that is taxed in the assets’ locations means that profit-shifting is not “applicable.”¹⁶ But that is not the case. Multinational companies in extractive industries shift profits from high- to low-tax jurisdictions using a variety of strategies.

Related-party transactions provide an opportunity for profit shifting. Discussing mining company avoidance of tax in African countries where mines are located, International Monetary Fund staff explained that a multinational could use “an interest-bearing loan arranged between the different entities within a multinational company. The interest expenses are claimed as a deduction in the higher tax country ([one in] Africa) while interest income is allocated to a lower-tax country offshore.”¹⁷ Other extractive industry strategies include abusive transfer pricing; for example, the value of output transferred to affiliates outside the high-tax jurisdiction may be underestimated and above-market prices may be paid to affiliates in lower tax jurisdictions for goods and services.¹⁸ Companies may apportion a larger share of costs to operations in a high-tax jurisdiction or even a higher-tax activity or project within the same jurisdiction.¹⁹ Transfer pricing issues may also arise in connection with hedging transactions between related parties.²⁰

A 2023 study of the relationship between geopolitical risk and tax avoidance analyzed the impact of a 2016 OPEC agreement, which boosted geopolitical risk for U.S. oil-related companies. The study found that firms in oil-related industries engaged in more aggressive tax avoidance than firms in other industries following the 2016 agreement.²¹ A Reuters investigation found that “Shell and other oil majors are avoiding hundreds of millions of dollars in taxes in countries where they drill by shifting profits to thinly staffed insurance and finance affiliates based in tax havens”²²

In sum, Exxon is not entitled to exclude the Proposal on ordinary business grounds because the Proposal’s subject of tax transparency is a significant social policy issue transcending ordinary business, as evidenced by the broad societal impact and widespread public debate. Exxon has thus not met its burden of showing that it is entitled to exclude the Proposal in reliance on Rule 14a-8(i)(7), and the Proponent respectfully asks that its request be denied.

¹⁵

<https://www.finance.senate.gov/imo/media/doc/Wyden%20Hearing%20Statement%20on%20Big%20Pharma%20Tax%20Avoidance%20Schemes.pdf>

¹⁶ See No-Action Request, at 5.

¹⁷ <https://www.imf.org/en/Blogs/Articles/2021/11/05/blog-counterering-tax-avoidance-sub-saharan-africa-mining-sector>

¹⁸ <https://www.elibrary.imf.org/display/book/9781475539660/ch004.xml>, section 2

¹⁹ <https://www.elibrary.imf.org/display/book/9781475539660/ch004.xml>, section 2.1

²⁰ <https://www.elibrary.imf.org/display/book/9781475539660/ch004.xml>, section 2.2

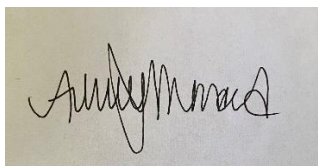
²¹ Tariq Haque et al., “Geopolitical risk, financial constraints, and tax avoidance,” *Journal of International Financial Markets, Institutions, and Money*, Oct. 2023

²² <https://www.reuters.com/article/idUSKBN28J1IH/>

* * *

The Proponent appreciates the opportunity to be of assistance in this matter. If you have any questions or need additional information, please contact me at (413) 459-1168.

Sincerely,

A handwritten signature in black ink on a light-colored background. The signature is cursive and appears to read "Aubrey Menard".

Aubrey Menard
Senior Policy Advisor
Extractive Industries Transparency
Oxfam America

cc: Louis Goldberg
Louis.Goldberg@davispolk.com