



DIVISION OF  
CORPORATION FINANCE

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

January 30, 2018

Elizabeth A. Ising  
Gibson, Dunn & Crutcher LLP  
shareholderproposals@gibsondunn.com

Re: Occidental Petroleum Corporation  
Incoming letter dated January 2, 2018

Dear Ms. Ising:

This letter is in response to your correspondence dated January 2, 2018 concerning the shareholder proposal (the "Proposal") submitted to Occidental Petroleum Corporation (the "Company") by John Chevedden (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence from the Proponent dated January 8, 2018 and January 17, 2018. Copies of all of the correspondence on which this response is based will be made available on our website at <http://www.sec.gov/divisions/corpfina/cf-noaction/14a-8.shtml>. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Matt S. McNair  
Senior Special Counsel

Enclosure

cc: John Chevedden  
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January 30, 2018

**Response of the Office of Chief Counsel**  
**Division of Corporation Finance**

Re: Occidental Petroleum Corporation  
Incoming letter dated January 2, 2018

The Proposal requests that the board undertake such steps as may be necessary to permit written consent by shareholders entitled to cast the minimum number of votes that would be necessary to authorize the action at a meeting at which all shareholders entitled to vote thereon were present and voting.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(10). Based on the information you have presented, it appears that the Company's policies, practices and procedures compare favorably with the guidelines of the Proposal and that the Company has, therefore, substantially implemented the Proposal. 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)(10). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which the Company relies.

Sincerely,

M. Hughes Bates  
Special Counsel

**DIVISION OF CORPORATION FINANCE**  
**INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS**

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the company in support of its intention to exclude the proposal from the company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes and rules administered by the Commission, including arguments as to whether or not activities proposed to be taken would violate the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversarial procedure.

It is important to note that the staff's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly, a discretionary determination not to recommend or take Commission enforcement action does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the company's management omit the proposal from the company's proxy materials.

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January 17, 2018

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

**# 2 Rule 14a-8 Proposal**  
**Occidental Petroleum Corporation (OXY)**  
**Written Consent**  
**John Chevedden**

Ladies and Gentlemen:

This is in regard to the January 2, 2018 no-action request.

In regard to this company Amendment baggage:

“requiring the solicitation of consents from all stockholders, a waiting period for the delivery of consents, and a requirement that stockholders holding at least 20% of the outstanding shares of common stock request that the Board set a record date.”


The company did not claim that the above text made its shareholder right of written consent a more viable option.

The company did not compare this text to the text in the resolved statement:

“This written consent is to be consistent with applicable law and consistent with giving shareholders the fullest power to act by written consent consistent with applicable law.”

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2018 proxy.

Sincerely,



John Chevedden

cc: Nicole E. Clark <Nicole\_Clark@oxy.com>

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JOHN CHEVEDDEN

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January 8, 2018

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

**# 1 Rule 14a-8 Proposal**  
**Occidental Petroleum Corporation (OXY)**  
**Written Consent**  
**John Chevedden**

Ladies and Gentlemen:

This is in regard to the January 2, 2018 no-action request.

The company waived discussion of its 20% rule compared to the text of the resolved statement:  
“Fullest power to act by written consent consistent with applicable law.”

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2018 proxy.

Sincerely,

  
John Chevedden

cc: Nicole E. Clark <Nicole\_Clark@oxy.com>

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a waiting period for the delivery of consents, and a requirement that stockholders holding at least 20% of the outstanding shares of common stock request that the Board set a record date.

[This line and any line above it – *Not* for publication.]

**Proposal [4] – Right to Act by Written Consent**

Resolved, Shareholders request that our board of directors undertake such steps as may be necessary to permit written consent by shareholders entitled to cast the minimum number of votes that would be necessary to authorize the action at a meeting at which all shareholders entitled to vote thereon were present and voting. This written consent is to be consistent with applicable law and consistent with giving shareholders the fullest power to act by written consent consistent with applicable law. This includes shareholder ability to initiate any topic for written consent consistent with applicable law.

This proposal topic won majority shareholder support at 13 major companies in a single year. This included 67%-support at both Allstate and Sprint. Hundreds of major companies enable shareholder action by written consent.

This proposal could obtain a higher vote than the 53%-support it received in 2013 at OXY – especially since our stock had slid from \$85 in 2013 to \$65 in late 2017.

Taking action by written consent in lieu of a meeting is a means shareholders can use to raise important matters outside the normal annual meeting cycle. A shareholder right to act by written consent and to call a special meeting are 2 complimentary ways to bring an important matter to the attention of both management and shareholders outside the annual meeting cycle. Taking action by written consent saves the expense of holding a special shareholder meeting.

Our company now requires 25% of shares to aggregate their holdings to call a special meeting – a higher level than the 10% of shares permitted by our state of incorporation, Delaware. Scores of Fortune 500 companies provide for both shareholder rights – to act by written consent and to call a special meeting. Our higher 25% threshold for shareholders to call a special meeting is one more reason that shareholder should be empowered to act by written consent.

Shareholder written consent and shareholder-called special meetings can be 2 means to obtain directors with better qualifications than current directors after 2018. For instance John Feick had 19-years long-tenure. Long-tenure can detract from the independence of a director no matter how qualified he is. Carlos Gutierrez could be distracted by his work on 4 other boards. Edward Spencer Abraham received 20-times as many negative votes as some of our directors.

Please vote to increase our options to ensure the best-qualified directors:

**Right to Act by Written Consent – Proposal [4]**

[The above line – *Is* for publication.]

January 2, 2018

Elizabeth Ising  
Direct: 202.955.8287  
Fax: 202.530.9631  
Elsing@gibsondunn.com

**VIA E-MAIL**

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

Re: *Occidental Petroleum Corporation*  
*Stockholder Proposal of John Chevedden*  
*Exchange Act of 1934—Rule 14a-8*

Ladies and Gentlemen:

This letter is to inform you that our client, Occidental Petroleum Corporation (the “Company”), intends to omit from its proxy statement and form of proxy for its 2018 Annual Meeting of Stockholders (collectively, the “2018 Proxy Materials”) a stockholder proposal (the “Proposal”) and statements in support thereof submitted by John Chevedden (the “Proponent”).

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

- filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 2018 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

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



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## THE PROPOSAL

The Proposal states:

Resolved, Shareholders request that our board of directors undertake such steps as may be necessary to permit written consent by shareholders entitled to cast the minimum number of votes that would be necessary to authorize the action at a meeting at which all shareholders entitled to vote thereon were present and voting. This written consent is to be consistent with applicable law and consistent with giving shareholders the fullest power to act by written consent consistent with applicable law. This includes shareholder ability to initiate any topic for written consent consistent with applicable law.

In support of the Proposal, which the Proponent titled “Right to Act by Written Consent,” the Proponent includes several statements that describe his views as to why stockholders should have the right to act by written consent. For example, the Proposal states that “[h]undreds of major companies enable shareholder action by written consent,” and that “[t]aking action by written consent in lieu of a meeting is a means shareholders can use to raise important matters outside the normal annual meeting cycle.” In addition, the Proposal describes written consent as giving stockholders a means “to bring an important matter to the attention of both management and shareholders outside the annual meeting cycle” and “to obtain directors with better qualifications” that “saves the expense of holding a special shareholder meeting.” After describing the Company’s special meeting ownership threshold, the Proponent emphasizes that it “is one more reason that shareholder[s] *should be empowered* to act by written consent” (emphasis added); notes that “[s]cores of Fortune 500 companies provide for *both* shareholder rights,” (emphasis added); and asks stockholders to “vote to increase our options to ensure the best-qualified directors” by providing the right to act by written consent.

A copy of the Proposal, as well as related correspondence with the Proponent, is attached to this letter as Exhibit A.

## BASES FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal properly may be excluded from the 2018 Proxy Materials pursuant to:

- Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal; and

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- Rule 14a-8(i)(3) because the Proposal is false and misleading in violation of Rule 14a-9.

## BACKGROUND

The Proposal asks that the Company’s Board of Directors (the “Board”) act to give stockholders the right to act by written consent using the “minimum number of votes that would be necessary to authorize the action at a meeting at which all shareholders entitled to vote thereon were present and voting.” As described below, the Company’s Board previously acted to amend the Restated Certificate of Incorporation (the “Certificate”) to permit the Company’s stockholders to act by written consent using this approval standard.<sup>1</sup>

The Company received and included in its 2013 proxy statement a proposal from the Proponent that included an identical first sentence and substantially similar subsequent sentences:

Resolved, Shareholders request that our board of directors undertake such steps as may be necessary to permit written consent by shareholders entitled to cast the minimum number of votes that would be necessary to authorize the action at a meeting at which all shareholders entitled to vote thereon were present and voting. This written consent includes all issues that shareholders may propose. This written consent is to be consistent with applicable law and consistent with giving shareholders the fullest power to act by written consent consistent with applicable law.

At the time, the Certificate did not permit stockholders to act by written consent. The following year, “in conformity with [its] long-standing practice of the Board . . . reconsider[ing] all stockholder proposals that receive a significant vote in favor,” the Company proposed amendments to Article V of the Company’s Certificate to permit stockholder action by written consent (the “2014 Amendment”).<sup>2</sup> The 2014 Amendment and the Certificate are silent on the minimum vote required for stockholders to act by written consent, which means that the default standard under Delaware law<sup>3</sup>—which is identical to the standard requested in the first sentence of the Proposal—applies.

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<sup>1</sup> See Article V, Certificate of Amendment of Restated Certificate of Incorporation of the Company, *available at* <https://www.sec.gov/Archives/edgar/data/797468/000119312515166437/d913638dex41.htm>.

<sup>2</sup> See the Company’s Definitive Proxy Statement on DEF14A (filed Mar. 25, 2014), *available at* [https://www.sec.gov/Archives/edgar/data/797468/000130817914000089/loxy2014\\_def14a.htm](https://www.sec.gov/Archives/edgar/data/797468/000130817914000089/loxy2014_def14a.htm).

<sup>3</sup> See Delaware General Corporation Law Section 228(a) (“Unless otherwise provided in the certificate of incorporation, any action required by this chapter to be taken at any annual or special meeting of stockholders of a corporation, or any action which may be taken at any annual or special meeting of such stockholders, may

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In the Company's 2014 proxy statement, the Board noted that it "believes that permitting stockholder action by written consent promotes stockholder democracy." The Board then explained that the right created by the 2014 Amendment "requires procedures to ensure that all stockholders have the opportunity to deliberate and vote on pending stockholder actions." Thus, "consistent with applicable [Delaware] law," the 2014 Amendment included certain procedures to be followed when exercising the right to act by written consent, including requiring the solicitation of consents from all stockholders, a waiting period for the delivery of consents, and a requirement that stockholders holding at least 20% of the outstanding shares of common stock request that the Board set a record date. The 2014 Amendment became effective after stockholders approved it at the 2014 Annual Meeting,<sup>4</sup> and it continues in effect today.

## ANALYSIS

### **I. The Proposal May Be Excluded Under Rule 14a-8(i)(10) As Substantially Implemented.**

Rule 14a-8(i)(10) permits a company to exclude a stockholder proposal from its proxy materials if the company has substantially implemented the proposal. As discussed below, the Company has substantially implemented the Proposal because the Company's Certificate already provides stockholders the ability to act by written consent using the requested approval threshold.

#### *A. Rule 14a-8(i)(10) Background*

Rule 14a-8(i)(10) permits a company to exclude a stockholder proposal from its proxy materials if the company has substantially implemented the proposal. The Commission stated in 1976 that the predecessor to Rule 14a-8(i)(10) was "designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management." Exchange Act Release No. 12598 (July 7, 1976). Originally, the Staff narrowly interpreted this predecessor rule and concurred with the exclusion of a proposal only when proposals were "'fully' effected" by the company. *See* Exchange Act Release No. 19135 (Oct. 14, 1982). By 1983, the Commission recognized that the "previous formalistic application of [the Rule] defeated its purpose" because proponents were successfully avoiding exclusion by submitting

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be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted . . .").

<sup>4</sup> *See* the Company's Form 8-K (filed May 6, 2014), *available at* [https://www.sec.gov/Archives/edgar/data/797468/000110465914035291/a14-12101\\_18k.htm](https://www.sec.gov/Archives/edgar/data/797468/000110465914035291/a14-12101_18k.htm).

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proposals that differed from existing company policy by only a few words. Exchange Act Release No. 20091, at § II.E.6. (Aug. 16, 1983) (“1983 Release”). Therefore, in the 1983 Release, the Commission adopted a revised interpretation to the rule to permit the omission of proposals that had been “substantially implemented,” and the Commission codified this revised interpretation in Exchange Act Release No. 40018 (May 21, 1998) (“1998 Release”). Applying this standard, the Staff has noted, “a determination that the company has substantially implemented the proposal depends upon whether [the company’s] particular policies, practices and procedures compare favorably with the guidelines of the proposal.” *Texaco, Inc.* (avail. Mar. 28, 1991).

At the same time, a company need not implement a proposal in exactly the same manner as set forth by the proponent. In *General Motors Corp.* (avail. Mar. 4, 1996), the company observed that the Staff has not required that a company implement the action requested in a proposal exactly in all details but has been willing to issue no-action letters under the predecessor of Rule 14a-8(i)(10) in situations where the “essential objective” of the proposal had been satisfied. The company further argued, “If the mootness requirement of paragraph (c)(10) were applied too strictly, the intention of [the rule]—permitting exclusion of ‘substantially implemented’ proposals—could be evaded merely by including some element in the proposal that differs from the registrant’s policy or practice.” For example, the Staff has consistently concurred that companies have substantially implemented stockholder proposals where the companies’ actions address aspects of implementation on which a proposal is silent or which may differ from the manner in which the stockholder proponent would implement the proposal. *See, e.g., Hewlett-Packard Co.* (avail. Dec. 11, 2007) (concurring that the company had substantially implemented a proposal requesting that the board permit stockholders to call special meetings via a bylaw amendment permitting stockholders to call a special meeting except where the board determined that the business to be addressed had been addressed recently or would soon be addressed at an annual meeting); *Johnson & Johnson* (avail. Feb. 17, 2006) (concurring with the exclusion of a proposal requesting the company confirm the legitimacy of all current and future U.S. employees as substantially implemented because the company had verified the legitimacy of 91% of its domestic workforce).

*B. The Company’s Certificate Substantially Implements The Proposal.*

The Proposal may properly be excluded from the 2018 Proxy Materials pursuant to Rule 14a-8(i)(10) because the Company’s Certificate has substantially implemented the Proposal. The Proposal’s essential objective is that the Board “permit” stockholders to take an action they already have the power to take; specifically, the ability to act by written consent by the requested approval threshold. This objective is evidenced by the express language of the Proposal, which focuses on the benefits of giving stockholders the ability to act by written consent. Specifically,

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the Proposal's supporting statement (the "Supporting Statement") sets forth multiple arguments about why stockholders would be better off if they are "permit[ted]" to have this right:

- "Taking action by written consent in lieu of a meeting is a means shareholders can use to raise important matters outside the normal meeting cycle;"
- Written consent "saves the expense of holding a special shareholder meeting;"
- Written consent "can be [a] means to obtain directors with better qualifications;"
- The Company's "25% threshold for shareholders to call a special meeting is one more reason that shareholder[s] *should be empowered* to act by written consent" (emphasis added); and
- Stockholders of other companies favor the ability of stockholders to act by written consent, as evidenced by "[t]his proposal topic w[inning] majority support at 13 major companies in a single year."

Compounding this view is the Proposal's attempt to contrast between the "[s]cores of Fortune 500 companies provid[ing] for both" a special meeting right and a written consent right, with the Company, whose special meeting threshold the Proponent notes before describing it as "*one more reason that shareholder[s] should be empowered* to act by written consent" (emphasis added). The Proposal then closes by asking stockholders to "vote to *increase our options* to ensure the best-qualified directors" by providing the "Right to Act by Written Consent" (emphasis added). As discussed above, the Company has achieved the Proposal's objective because the Company has already amended its Certificate to grant stockholders the ability to act by written consent using the approval threshold requested in the Proposal.

The Staff has concurred with the exclusion of "adopt" written consent proposals such as the Proposal under Rule 14a-8(i)(10) where the requesting company had taken all possible action to implement a written consent right. *See, e.g., American Tower Corp.* (avail Mar. 5, 2015) (concurring with the exclusion of a proposal requesting the adoption of a written consent right where the company's certificate permitted stockholder action by written consent); *Citigroup Inc.* (avail. Jan. 27, 2011) (same); *PG&E Corp.* (avail. Feb. 2, 2010) (same). Like the companies in *American Tower Corp.*, *Citigroup Inc.*, and *PG&E Corp.*, the Company has already achieved the Proposal's fundamental objective of "permit[ing] written consent by stockholders."

As described above, and "consistent with applicable [Delaware] law," the Certificate also includes certain procedures for stockholders to follow when exercising the right to act by written

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consent. However, these requirements are—as the Company explained in its 2014 proxy statement—necessary to ensure the opportunity of all stockholders to participate in such matters. The Staff has consistently agreed that stockholder proposals had been substantially implemented when companies included similar procedures when adopting written consent rights. *See, e.g., Omnicom Group Inc.* (avail. Mar. 29, 2011) (concurring with the exclusion of a proposal requesting that stockholders be permitted to act by written consent as substantially implemented where the right of stockholders to act by written consent included certain procedures to be followed). The Staff similarly has concurred with the exclusion under Rule 14a-8(i)(10) of stockholder proposals requesting the adoption of special meeting rights where the company included additional requirements. For example, in *Borders Group, Inc.* (avail. Mar. 11, 2008), the proposal requested that the company amend its bylaws and other governing documents “in order that there is no restriction on the shareholder right to call a special meeting.” Notably, the proposal appeared to request that there be no minimum ownership percentage required for stockholders to request a special meeting. The company’s bylaws provided the ability to call a special meeting for requests submitted by holders of 25% of the shares entitled to vote and subject to satisfaction of certain other procedures. Despite these provisions, the Staff concurred with exclusion of the proposal under Rule 14a-8(i)(10), as the existing bylaws substantially implemented the request that there be “no restriction” on the stockholder right to call a special meeting. Just as the written consent rights provided in *Omnicom* and the special meeting rights given in *Borders Group* substantially implemented their proposals’ requests for such rights (even with additional procedures), the substantive rights granted in the Certificate still satisfy the Proposal’s essential objective of providing the Company’s stockholders with the ability to act by written consent.

It is also worth noting that the Proposal does not request or propose any changes to stockholders’ existing written consent right or take issue with any particular provisions currently in place. The Proposal is in fact almost identical to the original “adopt” written consent proposal the Proponent submitted to the Company in 2013, which the Proponent acknowledges in the Supporting Statement (stating that “[t]his proposal could obtain a higher vote than the 53%-support it received in 2013 at OXY”). The Proposal is therefore distinguishable from “fix” or “amend” written consent stockholder proposals where the Proponent sought to change specific provisions of an existing right. In contrast, in *The Home Depot, Inc.* (avail. Mar. 7, 2012), the Proponent asked the company to take very specific steps to amend its written consent right, which included the “removal of the requirement that a percentage of shares ask for a record date to be set” and “removal of the requirement that all shareholders must be solicited.” The company argued that “shareholders have a meaningful right to act by written consent” but did not act to remove the specific restrictions at issue in that proposal. The Staff denied the company’s request, finding the company’s practices and policies did not compare favorably with the proposal’s guidelines.

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The contrast between the Proposal and proposals like that in *Home Depot* is further evidenced by the Staff's approach when applying Rule 14a-8(i)(10) to proxy access stockholder proposals seeking the adoption of proxy access as opposed to amendments to an existing proxy access right. For example, the Staff consistently has concurred that a company's proxy access bylaw that includes a 20-stockholder aggregation limit substantially implements a stockholder proposal requesting the adoption of a proxy access bylaw even where the proposal explicitly stated that an unlimited number of stockholders should be able to aggregate their shares. *See, e.g., Cardinal Health, Inc.* (avail. July 20, 2016); *Amazon.com, Inc.* (avail. Mar. 3, 2016); *Alaska Air Group, Inc.* (avail. Feb. 12, 2016); *General Dynamics Corp.* (avail. Feb. 12, 2016). By contrast, where a stockholder proposal requested a specific change to an existing proxy access right, the Staff has denied relief under Rule 14a-8(i)(10) unless the specific term in the company's proxy access bylaw compared favorably. *See, e.g., H&R Block, Inc.* (avail. July 21, 2017) (denying exclusion under Rule 14a-8(i)(10) of proposal seeking no limit on the number of stockholders able to aggregate their shares to meet the ownership percentage required under the company's proxy access bylaw where company argued existing proxy access bylaw permitting no more than 20 stockholders to aggregate substantially implemented proposal's essential objective of implementing proxy access).

Here, the Proposal's essential objective is that the Company adopt a written consent right—it does not seek to amend or alter in any way the existing written consent rights granted to stockholders under the Company's Certificate. Accordingly, the Proposal may be excluded from the 2018 Proxy Materials in reliance on Rule 14a-8(i)(10).

## **II. The Proposal May Be Excluded Under Rule 14a-8(i)(3) Because It Is Materially False And Misleading.**

Rule 14a-8(i)(3) provides that a company may exclude from its proxy materials a stockholder proposal if the proposal or supporting statement is “contrary to any of the Commission’s proxy rules, including [Rule] 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials.” Specifically, Rule 14a-9 provides that no solicitation shall be made by means of any proxy statement “containing any statement which, at the time and in light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading.” In SLB 14B, the Staff stated that exclusion under Rule 14a-8(i)(3) may be appropriate where “the company demonstrates objectively that a factual statement is materially false or misleading.”

The Staff consistently has allowed the exclusion under Rule 14a-8(i)(3) of stockholder proposals that contain statements that are materially false or misleading. *See, e.g., Microsoft Corp.* (avail.

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Oct. 7, 2016) (concurring in the exclusion of a proposal requesting that the “board shall not take any action whose primary purpose is to prevent the effectiveness of shareholder vote without a compelling justification for such action” because neither the company nor its stockholders could determine which situations the proposal applied to or what types of conduct it was intended to address); *Ferro Corp.* (avail. Mar. 17, 2015) (concurring in the exclusion of a proposal requesting that the company reincorporate in Delaware based on misstatements of Ohio law, which improperly suggested that the stockholders would have increased rights if the Delaware law governed the company instead of Ohio law); *General Electric Co.* (avail. Jan. 6, 2009) (concurring in the exclusion of a proposal under which any director who received more than 25% in “withheld” votes would not be permitted to serve on any key board committee for two years because the company did not typically allow stockholders to withhold votes in director elections); *Johnson & Johnson* (avail. Jan. 31, 2007) (concurring in the exclusion of a proposal to provide stockholders a “vote on an advisory management resolution . . . to approve the Compensation Committee [R]eport” because the proposal would create the false implication that stockholders would receive a vote on executive compensation); *State Street Corp.* (avail. Mar. 1, 2005) (concurring in the exclusion of a proposal requesting stockholder action pursuant to a section of state law that had been recodified and was thus no longer applicable); *General Magic, Inc.* (avail. May 1, 2000) (concurring in the exclusion of a proposal requesting that the company make “no more false statements” to its stockholders because the proposal created the false impression that the company tolerated dishonest behavior by its employees when in fact the company had corporate policies to the contrary). “[W]hen a proposal and supporting statement will require detailed and extensive editing in order to bring them into compliance with the proxy rules, [the Staff] may find it appropriate for companies to exclude the entire proposal, supporting statement, or both, as materially false or misleading.” Staff Legal Bulletin No. 14 (July 13, 2001) (“SLB 14”).

In the instant case, the Proposal is materially false and misleading because it fails to acknowledge that the Company’s stockholders already have the right to act by written consent through multiple false implications that no such right exists. The Proposal asks the Board to take the steps necessary “to permit written consent by shareholders.” (emphasis added). The Supporting Statement asks stockholders to “vote to *increase our options* to ensure the best-qualified directors,” cites the 25% ownership threshold of the Company’s special meeting right as “one more reason that shareholder[s] *should be empowered* to act by written consent,” (emphasis added) and emphasizes that “[t]aking action by written consent in lieu of a meeting is a means shareholders can use to raise important matters outside the normal annual meeting cycle,” “saves the expense of holding a special shareholder meeting,” and can be a “means to obtain directors with better qualifications.” These statements render the Proposal excludable under Rule 14a-8(i)(3) because they falsely imply that the Company does not currently permit stockholders to act by written consent. To the contrary, as reflected in the Background section



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discussed above, the Board “believes that permitting stockholder action by written consent promotes shareholder democracy” and has amended its Certificate to provide stockholders the ability to act by written consent.

The materiality under Rule 14a-8(i)(3) of false and misleading assertions in a supporting statement is demonstrated by the court’s holding in *Express Scripts Holding Co. v. Chevedden*, 2014 WL 631538, at \*4 (E.D. Mo. Feb. 18, 2014). There, in the context of a proposal that sought to separate the positions of chief executive officer and chairman, the court ruled that, “when viewed in the context of soliciting votes in favor of a proposed corporate governance measure, statements in the proxy materials regarding the company’s existing corporate governance practices are important to the stockholder’s decision whether to vote in favor of the proposed measure” and therefore are material. Just as in *Express Scripts*, the statements discussed above are misleading because they materially misconstrue the Company’s “existing governance practices.” Specifically, they convey the false notion that the Company does not currently permit stockholders to act by written consent and falsely suggest that the Proposal will change a situation that does not in fact exist. Moreover, as in *Express Scripts*, these statements are material because stockholders would assume them to be true and would consider them in the context of determining how to vote on the Proposal. As a result, a stockholder’s vote might be based upon the mistaken assumption that the Proposal is necessary to enable him or her to “be empowered to act by written consent” and to “increase [his or her] options to ensure the best-qualified directors,” when in fact the Company’s Certificate has, since 2014, permitted stockholders to act by written consent. The Supporting Statement’s claim that the Proposal “could obtain a higher vote than the 53%-support *it received* in 2013” (emphasis added) at the Company compounds the potential for misleading stockholders. This claim acknowledges that the Proposal is the same “adopt” written consent proposal submitted to stockholders four years ago without acknowledging that the Board and stockholders acted the very next year to adopt stockholders’ right to act by written consent. Thus, just as the excludable proposals in *General Electric*, *Johnson & Johnson*, *State Street* and *General Magic* created false impressions upon which stockholders would be impermissibly misled in their votes, this series of materially false or misleading statements and implications make the Proposal and the Supporting Statement upon which it relies so fundamentally misleading that it would “require detailed and extensive editing in order to bring [the Proposal and Supporting Statement] into compliance with the proxy rules.”

Rule 14a-8(i)(3) is intended to protect a company from having to include in its proxy materials a proposal that contains materially false and misleading allegations as a means to trick stockholders into supporting a proposal. Accordingly, the Proposal is excludable under Rule 14a-8(i)(3) for containing materially false and misleading statements that violate Rule 14a-9.

Office of Chief Counsel  
Division of Corporation Finance  
January 2, 2018  
Page 11

## CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2018 Proxy Materials.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to [shareholderproposals@gibsondunn.com](mailto:shareholderproposals@gibsondunn.com). If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8287, or Nicole E. Clark, the Company's Associate General Counsel, at (713) 215-7550.

Sincerely,



Elizabeth A. Ising

Enclosures

cc: Nicole E. Clark, Occidental Petroleum Corporation  
John Chevedden

**EXHIBIT A**

---

Mr. H. Elliott Heide  
Corporate Secretary  
Occidental Petroleum Corporation (OXY)  
5 Greenway Plaza  
Suite 110  
Houston, TX 77046  
PH: 713-215-7000  
FX: 713-215-7095

Dear Mr. Heide,

This Rule 14a-8 proposal is respectfully submitted in support of the long-term performance of our company.

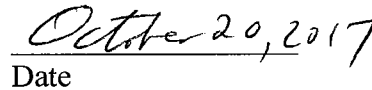
This Rule 14a-8 proposal is intended as a low-cost method to improve company performance – especially compared to the substantial captialization of our company.

This proposal is for the next annual shareholder meeting. Rule 14a-8 requirements will be met including the continuous ownership of the required stock value until after the date of the respective shareholder meeting and presentation of the proposal at the annual meeting. This submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

Your consideration and the consideration of the Board of Directors is appreciated in support of the long-term performance of our company. Please acknowledge receipt of this proposal by email to

Sincerely,

  
John Chevedden

  
Date

cc: Nicole E. Clark <Nicole\_Clark@oxy.com>  
Associate General Counsel  
Norma Valadez <Norma\_Valadez@oxy.com>  
Jenarae Garland <Jenarae\_Garland@oxy.com>  
PH: 310-443-6189  
FX: 310-443-6737  
FX: 310-443-6977

[OXY: Rule 14a-8 Proposal, October 20, 2017]  
[This line and any line above it – *Not* for publication.]

**Proposal [4] – Right to Act by Written Consent**

Resolved, Shareholders request that our board of directors undertake such steps as may be necessary to permit written consent by shareholders entitled to cast the minimum number of votes that would be necessary to authorize the action at a meeting at which all shareholders entitled to vote thereon were present and voting. This written consent is to be consistent with applicable law and consistent with giving shareholders the fullest power to act by written consent consistent with applicable law. This includes shareholder ability to initiate any topic for written consent consistent with applicable law.

This proposal topic won majority shareholder support at 13 major companies in a single year. This included 67%-support at both Allstate and Sprint. Hundreds of major companies enable shareholder action by written consent.

Taking action by written consent in lieu of a meeting is a means shareholders can use to raise important matters outside the normal annual meeting cycle. A shareholder right to act by written consent and to call a special meeting are 2 complimentary ways to bring an important matter to the attention of both management and shareholders outside the annual meeting cycle. Taking action by written consent saves the expense of holding a special shareholder meeting.

Our company now requires 25% of shares to aggregate their holdings to call a special meeting – a higher level than the 10% of shares permitted by our state of incorporation, Delaware. Scores of Fortune 500 companies provide for both shareholder rights – to act by written consent and to call a special meeting. Our higher 25% threshold for shareholders to call a special meeting is one more reason that shareholder should be empowered to act by written consent.

This proposal could obtain a higher vote than the 53%-support it received in 2013 at OXY – especially since our stock slid from \$85 in 2013 to \$65 in late 2017.

Shareholder written consent and shareholder-called special meetings can be 2 means to obtain directors with better qualifications than current directors after 2018. For instance John Feick had 19-years long-tenure. Long-tenure can detract from the independence of a director no matter how qualified he is. Carlos Gutierrez could be a distracted director since he works on 5 boards. Edward Spencer Abraham received 20-times as many negative votes as some of our directors.

Please vote to increase our options to ensure the best-qualified directors:

**Right to Act by Written Consent – Proposal [4]**

[The above line – *Is* for publication.]

John Chevedden,  
proposal.

sponsors this

Notes:

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

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(l)(3) in the following circumstances:

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

**We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.**

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

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

**From:** Norma\_Valadez@oxy.com  
**Sent:** Tuesday, October 24, 2017 4:42 PM  
**To:** \*\*\*  
**Cc:** Jenarae\_Garland@oxy.com; Nicole\_Clark@oxy.com; Elliott\_Heide@oxy.com  
**Subject:** Stockholder Proposal for 2018 Annual Meeting  
**Attachments:** Ownership Confirmation Request - Final.pdf

Please see attached correspondence.

## Norma Valadez

---

Norma Valadez  
Legal Administrative Coordinator

**Occidental Petroleum Corporation**  
5 Greenway Plaza, Ste 110  
Houston, TX 77046  
Phone: (713) 871-6429  
[norma\\_valadez@oxy.com](mailto:norma_valadez@oxy.com)



Occidental Petroleum Corporation

5 Greenway Plaza, Suite 110, Houston, Texas 77046  
Telephone 713.215.7550 Fax 713.985.8736

Nicole E. Clark  
Associate General Counsel and Assistant Corporate Secretary

October 24, 2017

**VIA FEDERAL EXPRESS  
AND VIA EMAIL**

John Chevedden \*\*\*

**Re: Stockholder Proposal for 2018 Annual Meeting**

Dear Mr. Chevedden:

I am writing to acknowledge receipt of the proposal you submitted on October 20, 2017 by email for the 2018 Annual Meeting of the Stockholders of Occidental Petroleum Corporation ("Occidental").

As we have asked in prior years, pursuant to subparagraphs (b) and (f) of Rule 14a-8 under the Securities Exchange Act of 1934 (a copy of which is included herewith), please provide the following ownership verification information:

1. If your shares are held by a DTC participant or an affiliate of a DTC participant, a written statement from the record holder of shares (a) confirming that it is a DTC participant or an affiliate of a DTC participant, and (b) verifying the number of shares held for you as of October 20, 2017 and that it has held at least the required amount of Occidental Common Stock (at least \$2,000 in market value, or 1% of Occidental Common Stock) for you continuously for at least one year prior to and including October 20, 2017, the date of submission of your proposal.
2. If your shares are held through a broker or bank or other entity that is not a DTC participant or an affiliate of a DTC participant, (a) a written statement from the holder verifying the number of shares held for you as of October 20, 2017 and that it has held at least the required amount of Occidental Common Stock (at least \$2,000 in market value, or 1% of Occidental Common Stock) for you continuously for at least one year prior to and including October 20, 2017, the date of submission of your proposal and (b) an additional written statement of ownership from the DTC participant (or an affiliate thereof) verifying the holdings of that holder continuously for at least one year prior to and including October 20, 2017, the date of submission of your proposal.



All statements must be postmarked or transmitted electronically no later than fourteen days from the date you receive this notification. If we do not receive the statement(s), we will seek to have the proposal excluded on the basis of eligibility.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Nicole E. Clark

NEC:nv

cc: Elliott Heide  
Jenarae N. Garland

\*\*\*

**From:**  
**Sent:** Tuesday, October 24, 2017 5:47 PM  
**To:** Norma\_Valadez@oxy.com  
**Cc:** Jenarae\_Garland@oxy.com; Nicole\_Clark@oxy.com; Elliott\_Heide@oxy.com  
**Subject:** [EXTERNAL] Rule 14a-8 Proposal (OXY) blb  
**Attachments:** CCE24102017\_7.pdf

Dear Ms. Valadez,  
Please see the attached broker letter.  
Sincerely,  
John Chevedden



October 24, 2017

John R. Chevedden  
\*\*\*

OXY

Post-it® Fax Note	7671	Date	10-24-17	# of pages ▶
To	Nicole Clark	From	John Chevedden	
Co./Dept.		Co.		
Phone #		Phone		***
Fax #	713-985-8736	Fax #		

To Whom It May Concern:

This letter is provided at the request of Mr. John R. Chevedden, a customer of Fidelity Investments.

Please accept this letter as confirmation that as of the date of this letter, Mr. Chevedden has continuously owned no fewer than the share quantity listed in the following table in each of the following securities, since October 1, 2016:

Security name	CUSIP	Trading symbol	Share quantity
Alaska Air Group, Inc.	011659109	ALK	100
AMN Healthcare Services, Inc.	001744101	AMN	200
Air Transport Services Group, Inc.	00922R105	ATSG	200
JP Morgan Chase & Co.	46625H100	JPM	100
Occidental Petroleum Corporation	674599105	OXY	50

The securities referenced in the preceding table are registered in the name of National Financial Services LLC, a DTC participant (DTC number: 0226) and Fidelity Investments subsidiary.

I hope you find this information helpful. If you have any questions regarding this issue, please feel free to contact me by calling 800-397-9945 between the hours of 8:30 a.m. and 5:00 p.m. Central Time (Monday through Friday) and entering my extension 15838 when prompted.

Sincerely,

George Stasinopoulos  
Personal Investing Operations

Our File: W377095-24OCT17

Fidelity Brokerage Services LLC, Members NYSE, SIPC.

\*\*\*

**From:**  
**Sent:** Friday, November 24, 2017 11:57 AM  
**To:** Nicole\_Clark@oxy.com  
**Cc:** Norma\_Valadez@oxy.com; Jenarae\_Garland@oxy.com  
**Subject:** [EXTERNAL] Rule 14a-8 Proposal (OXY)``  
**Attachments:** CCE24112017\_5.pdf

Dear Ms. Clark,

Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the large market capitalization of the company.

Sincerely,

John Chevedden

Mr. H. Elliott Heide  
Corporate Secretary  
Occidental Petroleum Corporation (OXY)  
5 Greenway Plaza  
Suite 110  
Houston, TX 77046  
PH: 713-215-7000  
FX: 713-215-7095

REVISED 24 NOV 2017

Dear Mr. Heide,

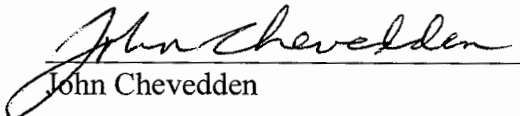
This Rule 14a-8 proposal is respectfully submitted in support of the long-term performance of our company.

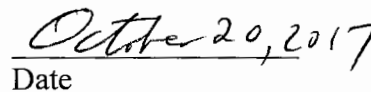
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\*\*\*

Sincerely,

  
John Chevedden

  
Date

cc: Nicole E. Clark <Nicole\_Clark@oxy.com>  
Associate General Counsel  
Norma Valadez <Norma\_Valadez@oxy.com>  
Jenarae Garland <Jenarae\_Garland@oxy.com>  
PH: 310-443-6189  
FX: 310-443-6737  
FX: 310-443-6977

[This line and any line above it – *Not* for publication.]

**Proposal [4] – Right to Act by Written Consent**

Resolved, Shareholders request that our board of directors undertake such steps as may be necessary to permit written consent by shareholders entitled to cast the minimum number of votes that would be necessary to authorize the action at a meeting at which all shareholders entitled to vote thereon were present and voting. This written consent is to be consistent with applicable law and consistent with giving shareholders the fullest power to act by written consent consistent with applicable law. This includes shareholder ability to initiate any topic for written consent consistent with applicable law.

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Please vote to increase our options to ensure the best-qualified directors:

**Right to Act by Written Consent – Proposal [4]**

[The above line – *Is* for publication.]

John Chevedden,  
proposal.

sponsors this

Notes:

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

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- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

**We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.**

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

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

\*\*\*

**From:** Norma\_Valadez@oxy.com  
**Sent:** Monday, November 27, 2017 8:58 AM  
**To:** \*\*\*  
**Cc:** Jenarae\_Garland@oxy.com; Nicole\_Clark@oxy.com; Elliott\_Heide@oxy.com  
**Subject:** Stockholder Proposal for 2018 Annual Meeting  
**Attachments:** Ownership Confirmation Request - Final 2.pdf

Please see attached correspondence.

## Norma Valadez

---

Norma Valadez  
Legal Administrative Coordinator

**Occidental Petroleum Corporation**  
5 Greenway Plaza, Ste 110  
Houston, TX 77046  
Phone: (713) 871-6429  
[norma\\_valadez@oxy.com](mailto:norma_valadez@oxy.com)





Occidental Petroleum Corporation

5 Greenway Plaza, Suite 110, Houston, Texas 77046  
Telephone 713.215.7550 Fax 713.985.8736

Nicole E. Clark  
Associate General Counsel and Assistant Corporate Secretary

November 27, 2017

VIA FEDERAL EXPRESS  
AND VIA EMAIL

John Chevedden \*\*\*

**Re: Stockholder Proposal for 2018 Annual Meeting**

Dear Mr. Chevedden:

I am writing to acknowledge receipt of the proposal you submitted on November 24, 2017 by email for the 2018 Annual Meeting of the Stockholders of Occidental Petroleum Corporation ("Occidental").

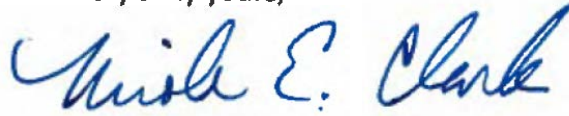
As we have asked in prior years, pursuant to subparagraphs (b) and (f) of Rule 14a-8 under the Securities Exchange Act of 1934 (a copy of which is included herewith), please provide the following ownership verification information:

1. If your shares are held by a DTC participant or an affiliate of a DTC participant, a written statement from the record holder of shares (a) confirming that it is a DTC participant or an affiliate of a DTC participant, and (b) verifying the number of shares held for you as of November 24, 2017 and that it has held at least the required amount of Occidental Common Stock (at least \$2,000 in market value, or 1% of Occidental Common Stock) for you continuously for at least one year prior to and including November 24, 2017, the date of submission of your proposal.
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All statements must be postmarked or transmitted electronically no later than fourteen days from the date you receive this notification. If we do not receive the statement(s), we will seek to have the proposal excluded on the basis of eligibility.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Nicole E. Clark

NEC:nv

cc: Elliott Heide  
Jenarae N. Garland

\*\*\*

**From:**  
**Sent:** Sunday, December 3, 2017 9:16 PM  
**To:** Nicole\_Clark@oxy.com  
**Cc:** Norma\_Valadez@oxy.com; Jenarae\_Garland@oxy.com  
**Subject:** [EXTERNAL] Rule 14a-8 Proposal (OXY)``  
**Attachments:** CCE24112017\_5.pdf

Dear Ms. Clark,  
This revised rule 14a-8 proposal does not trigger a need for 2 broker letters.  
Please let me know if there is any question.  
John Chevedden  
Sincerely,  
John Chevedden

----- Forwarded Message

**From:** John Chevedden  
**Date:** Fri, 24 Nov 2017 10:56:31 -0800  
**To:** "[Nicole Clark@oxy.com](mailto:Nicole_Clark@oxy.com)" <[Nicole\\_Clark@oxy.com](mailto:Nicole_Clark@oxy.com)>  
**Cc:** Norma Valadez <[Norma\\_Valadez@oxy.com](mailto:Norma_Valadez@oxy.com)>, "[Jenarae Garland@oxy.com](mailto:Jenarae_Garland@oxy.com)" <[Jenarae\\_Garland@oxy.com](mailto:Jenarae_Garland@oxy.com)>  
**Conversation:** Rule 14a-8 Proposal (OXY)``  
**Subject:** Rule 14a-8 Proposal (OXY)``

Dear Ms. Clark,  
Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the large market capitalization of the company.  
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Corporate Secretary  
Occidental Petroleum Corporation (OXY)  
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Suite 110  
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PH: 713-215-7000  
FX: 713-215-7095

REVISED 24 NOV 2017

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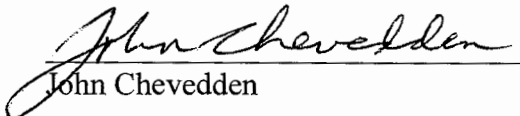
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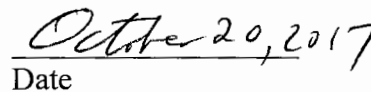
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John Chevedden

  
Date

cc: Nicole E. Clark <Nicole\_Clark@oxy.com>  
Associate General Counsel  
Norma Valadez <Norma\_Valadez@oxy.com>  
Jenarae Garland <Jenarae\_Garland@oxy.com>  
PH: 310-443-6189  
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