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

DIVISION OF
CORPORATION FINANCE

March 20, 2018

Lillian Brown
Wilmer Cutler Pickering Hale and Dorr LLP
lillian.brown@wilmerhale.com

Re: Navient Corporation

Dear Ms. Brown:

This letter is in regard to your correspondence dated March 20, 2018 concerning the shareholder proposal (the "Proposal") submitted to Navient Corporation (the "Company") by the New York City Employees' Retirement System et al. (the "Proponents") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the Proponents have withdrawn the Proposal and that the Company therefore withdraws its January 22, 2018 request for a no-action letter from the Division. Because the matter is now moot, we will have no further comment.

Copies of all of the correspondence related to this matter will be made available on our website at http://www.sec.gov/divisions/corpfin/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,

Evan S. Jacobson
Special Counsel

cc: Michael Garland
The City of New York
Office of the Comptroller
mgarlan@comptroller.nyc.gov

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March 20, 2018

Via E-mail to shareholderproposals@sec.gov

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

Re: Navient Corporation
Withdrawal of No-Action Request Dated January 22, 2018 Regarding Shareholder Proposal Submitted by the Office of the Comptroller of the City of New York, Scott M. Stringer, as custodian and trustee of the New York City Employees' Retirement System, the New York City Fire Pension Fund, The New York City Teachers' Retirement System, and the New York City Police Pension Fund, and as custodian of the New York City Board of Education Retirement System

Ladies and Gentlemen:

We are writing on behalf of our client, Navient Corporation (the "Company"), with regard to our letter dated January 22, 2018 (the "No-Action Request") concerning the shareholder proposal and statement in support thereof relating to the Company's clawback policy for senior executives (collectively, the "Shareholder Proposal") submitted by the Office of the Comptroller of the City of New York, Scott M. Stringer, as custodian and trustee of the New York City Employees' Retirement System, the New York City Fire Pension Fund, The New York City Teachers' Retirement System, and the New York City Police Pension Fund, and as custodian of the New York City Board of Education Retirement System (the "Proponent") for inclusion in the proxy statement to be distributed to the Company's shareholders in connection with its 2018 Annual Meeting of Shareholders (the "2018 Proxy Materials"). In the No-Action Request, the Company sought concurrence from the staff of the Division of Corporation Finance of the Securities and Exchange Commission (the "Staff") that the Company could exclude the Shareholder Proposal from the 2018 Proxy Materials pursuant to Rule 14a-8(i)(10) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), on the basis that the Company has substantially implemented the Shareholder Proposal, or, alternatively, pursuant to

Rule 14a-8(i)(7) of the Exchange Act, on the basis that the Shareholder Proposal relates to the Company's ordinary business operations.

The Proponent has withdrawn the Shareholder Proposal by letter dated March 19, 2018 (attached as Exhibit A to this letter). In reliance on the Proponent's letter, the Company is withdrawing the No-Action Request.

If the Staff has any questions with respect to this matter, or requires additional information, please do not hesitate to contact the undersigned at 202-663-6743 or at lillian.brown@wilmerhale.com, or Mark Heleen, Executive Vice President, Chief Legal Officer & Secretary of Navient Corporation, at mark.heleen@navient.com.

Best regards,

Lillian Brown

Enclosure

cc: Mr. Michael Garland, Office of the Comptroller of the City of New York
Ms. Laura S. Unger, Chair of the Nominations and Governance Committee of the Navient Corporation Board of Directors
Mr. Mark L. Heleen, Navient Corporation
Mr. Kurt T. Slawson, Navient Corporation
Mr. Stephen P. Caso, Navient Corporation

Exhibit A

CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
SCOTT M. STRINGER

Michael Garland
ASSISTANT COMPTROLLER
CORPORATE GOVERNANCE AND
RESPONSIBLE INVESTMENT

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MGARLAN@COMPTROLLER.NYC.GOV

March 19, 2018

Kurt T. Slawson
Vice President & Deputy General Counsel
Navient Corporation
2001 Edmund Halley Drive
Reston, VA 20191

Via email and U.S. mail

Dear Mr. Slawson:

I write in response to the recent decision by the Navient Corporation Board of Directors to amend the Company's clawback policy to add a trigger for misconduct committed by persons under a senior officer's supervision. The addition represents a meaningful improvement to the policy that, in our view, will help the Board to ensure a strong tone at the top for robust compliance and ethical conduct, and also ensure that employees do not benefit financially from misconduct.

We believe the policy can and should be further strengthened, consistent with the request in the New York City Retirement Systems' shareowner proposal, including by addressing misconduct that causes significant reputational harm and providing for disclosure of any clawback actions under the policy. We are hopeful that we can make progress on these matters through continued engagement.

Therefore, in light of the recent enhancement of the policy to address supervisory failures, I hereby withdraw the Systems' shareowner proposal regarding clawbacks from consideration at the Company's 2018 annual meeting. Each System reserves its right to re-file a similar proposal in the future, a step we hope will prove unnecessary.

Sincerely,

Michael Garland

CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
SCOTT M. STRINGER

KATHRYN E. DIAZ
GENERAL COUNSEL

OFFICE OF THE GENERAL COUNSEL

February 20, 2018

By electronic mail: shareholderproposals@sec.gov

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

Re: Shareholder proposal to Navient Corporation from the New York City Employees' Retirement System, the New York City Fire Pension Fund, the New York City Teachers' Retirement System, the New York City Police Pension Fund and the New York City Board of Education Retirement System

Dear Counsel:

I write on behalf of the New York City Employees' Retirement System, the New York City Fire Pension Fund, the New York City Teachers' Retirement System, the New York City Police Pension Fund and the New York City Board of Education Retirement System (collectively the "Systems") in response to the letter from counsel for Navient Corporation ("Navient" or the "Company") dated January 22, 2018 ("Navient Letter") in which Navient advises that its intends to omit from its 2018 proxy materials a proposal submitted by the Systems (the "Proposal"). For the reasons set forth below, we respectfully ask the Division to deny the requested no-action relief.

The Proposal and Navient's Objections

The Systems' Proposal is a straight-forward "clawback" proposal of the sort that has been submitted to a number of companies in recent years, both by the Systems and by other institutional investors. It states:

> RESOLVED, that shareholders of Navient Corporation ("Navient") urge the Compensation Committee of the Board of Directors (the "Committee") to amend Navient's clawback policy to provide that the Committee will (a) review, and determine whether to seek recoupment of, incentive compensation paid, granted or awarded to a senior executive if, in the Committee's judgment, (i) there has been misconduct resulting in a violation of law or Navient policy that causes

> significant financial or reputational harm to Navient and (ii) the senior executive either committed the misconduct or failed in his or her responsibility to manage or monitor conduct or risks; and (b) disclose the circumstances of any recoupment if the circumstances of the underlying misconduct are public. Disclosure under the Policy is intended to supplement, not supplant, any disclosure of recoupment required by law or regulation, and to not require disclosure prohibited by law.

The supporting statement cites current reputational and financial risks facing the Company based on pending allegations that the Company engaged in improper loan servicing practices and misled investors and also that the Company unlawfully prevented borrowers holding student loans from being able to obtain lower payments. The supporting statement recommends a clawback policy that is stronger than the existing policy, which focuses primarily on clawbacks of executive compensation in the context of financial restatements.

Navient seeks no-action relief on two grounds:

(1) the proposal has been substantially implemented and may thus be omitted under Rule 14a-8(i)(10); and

(2) the proposal implicates the "ordinary business" of the Company and may thus be excluded under Rule 14a-8(i)(7).

As we now explain, neither objection has merit.

Discussion

B. Navient's "new" clawback policy does not "substantially implement" the Proposal.

Because Navient compares its new clawback policy to the prior policy, it may be useful at the outset to note what has not changed. The Navient Letter cites (at p. 6) language to the effect that the Board may clawback executive compensation whenever "…a participant as committed a material violation of company policy or has committed fraud or misconduct." This language is, however, identical to Navient's previous clawback policy, as reflected in award agreements under the Company's 2014 Omnibus Incentive Plan as amended, specifically, the Performance Stock Unit Agreement under this Plan included as Exhibit 10.1 to the Company's Q1 2017 Form 10-Q (April 27, 2017) (Board may clawback compensation under the Plan if the "Grantee has committed a material violation of corporate policy or has committed fraud or Misconduct")

Importantly, the Systems' Proposal correctly summarizes the Company's clawback policy, in both its previous and its recently amended form, stating:

> *Currently, Navient's policy provides for recoupment of incentive compensation from certain executives "in the event of a material misstatement of the Company's financial statements or performance [sic] resulting from a senior officer's conduct, or in*

> *the event a senior officer commits fraud or other misconduct or materially violates corporate policy.*

The Proposal also describes why the Systems believe the Company's policy is inadequate and why the policy requested in the Proposal is warranted:

> *In our view, significant damage can be caused by misconduct that does not necessitate a financial restatement, and it may be appropriate to hold accountable senior executives who did not commit misconduct but who failed in their management or monitoring responsibility. Our proposal gives the Committee discretion to decide whether recoupment is appropriate in particular circumstances.*

There are three significant ways in which Navient's new policy fails to "substantially implement" the Systems' Proposal.

First, we take a point that Navient omits discussing, namely, the fact that the new policy does not authorize the Board to recoup compensation for supervisory failures that cause financial or reputational harm. This omission alone is serious enough to undermine any argument that the new policy substantially implements the Proposal.

To be specific, the Systems' Proposal requests application of a clawback policy if a senior executive "failed in his or her responsibility to manage or monitor conduct or risks." There is no mention of this element in Navient's letter to the Division, and the omission is significant, particularly when dealing with senior executives who may have important responsibilities for many of a company's operations. When something bad happens to harm a company and its shareholders, it is critically important to ask questions such as, "Who was in charge? How did this happen? What controls were in place to present this from happening?"

Navient's new policy states that a clawback may be triggered by a "material violation of Company policy," but Navient does not argue that supervisory failure would fall into this category. Indeed, it is difficult to see how managerial lapses, including a failure to supervise properly or to ask the right questions, would be a "violation" of Navient policy, much less a "material" violation.

The inclusion of supervisory failures in the Proposal is perhaps the most essential element of the Proposal, which seeks to ensure that senior executives have a strong financial incentive to promote robust compliance and ethical conduct. The absence of supervisory failures in the Company's policy results in a perverse incentive system whereby a senior executive could benefit financially from the misconduct of a subordinate; this could occur, for example, when the subordinate's misconduct led to increased sales or earnings in the short-term, but ultimately caused significant financial or reputational harm to the Company.

Several recent examples illustrate the importance of a supervisory failure element in any clawback policy worthy of the name. The Wells Fargo scandal of 2016-2017 may have lopped billions of dollars off the stock price and generated fines and penalties of $185 million. Rather than limit its response to simply firing 5,300 lower-level employees for unlawful sales practices, the Wells Fargo board looked at the issue more systemically. Because Wells Fargo had a strong clawback policy in place, the board could recover $60 million from two top executives. Cowley, *Wells Fargo to Claw Back $41 Million of Chief's Pay Over Scandal*, The New York Times (Apr. 10, 2016), available at https://www.nytimes.com/2016/09/28/business/dealbook/wells-fargo-john-stumpf-compensation.html.[1]

That supervisory failure can have significant consequences for a company and its investors is illustrated by another recent scandal, this one involving Equifax. Equifax knew of the computer fix that was needed, yet an Equifax employee failed to act in a timely fashion, and the company's system was hacked. Bernard and Cowley, *Equifax Breach Caused by Lone Employee's Error, Former CEO Says,* The New York Times (Oct. 3, 2017), available at https://www.nytimes.com/2017/10/03/business/equifax-congress-data-breach.html. Navient, no less than Equifax, stores significant amounts of information about the financial situation of many individuals. If (heaven forbid) Navient should experience a massive security breach, the new clawback policy would seem to insulate senior executives from any consequences affecting their incentive compensation. Regardless of whether one believes that a clawback would be appropriate in that circumstance, Navient's new policy seemingly takes that prospect off the table. There is thus a serious discrepancy between the Systems' Proposal and what the Company has adopted as policy.

Second, the Navient Letter concedes (at p. 8) that the new policy does not cover clawbacks in the event of "reputational damage to the Company." In fact, we are told that this was a conscious decision, as the board did not believe that such a policy would be in the shareholders' best interest. This is a second serious omission that prevents invocation of the "substantially implemented" exclusion. Navient contends that the new policy is preferable to the Systems' Proposal because the new policy contains a "broad grant of discretion without prequalifiers." That language does not explain away the failure to cover reputational harm; if anything, the reasons in the Navient letter are more properly presented in a "statement in opposition" in the proxy statement, not to justify omission under the (i)(10) exclusion.

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[1] The Board subsequently recovered an additional $75 million from the two executives, some of which we believe was only made possible by the Board's decision to retroactively terminate one of the executives for cause. See Wells Fargo's April 10, 2017 news release, entitled "Wells Fargo Board Releases Findings of Independent Investigation of Retail Banking Sales Practices and Related Matters" and available at https://newsroom.wf.com/press-release/community-banking-and-small-business/wells-fargo-board-releases-findings-independent. No such determination was required for the initial $60 million in clawbacks under Wells Fargo's clawback policy, which is similar to the policy requested in the Proposal.

Third, Navient claims that the Company has substantially implemented the request in the Proposal that the board "disclose the circumstances of any recoupment if the circumstances of the underlying misconduct are public." Navient Letter, at p. 8. This argument rests upon the fact that Commission regulations require disclosures regarding (a) decisions about the adjustment or recovery of awards or payments if relevant performance metrics are restated or adjusted, and (b) the possibility that there may be disclosures in situations not involving restatements of results.

The short response to this is the text of the "Resolved" clause, which states: "Disclosure under the [Systems' recommended] Policy is intended to supplement, not supplant, any disclosure of recoupment required by law or regulation, and to not require disclosure prohibited by law." The Navient Letter acknowledges this statement in passing (at pp. 8-9), but argues that there is no "meaningful distinction" between the Company's new policy and what the Systems' are proposing, *id*., p. 9, the theory being that the Proposal is limited to significant legal violations of the sort that Navient would be required to disclose in its Exchange Act filings. This argument misreads the Systems' Proposal because it fails to take account of the fact that the Proposal contemplates clawbacks in situations not covered by the Company's new policy or SEC regulations, as discussed in the prior paragraphs.[2]

For these reasons, Navient has not "substantially implemented" the Systems' Proposal.

C. <u>The issue here transcends Navient's "ordinary business" operations.</u>

Navient's letter recites the familiar criteria for excluding a proposal under Rule 14a-8(i)(7), and the letter focuses on alleged efforts to "micro-manage" matters best left to management. Specifically, the charge is that the Proposal is trying to regulate Navient's legal compliance efforts. As we now show, however, the Proposal does not try to dictate Navient's legal compliance efforts. In addition, and consistent with the guidance in Part C of *Staff Legal Bulletin 14H* (2015), the issue here transcends Navient's business operations.

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[2] Navient suggests that disclosure is already required, citing (at p. 8) Item 402(b)(2)(viii) in Regulation S-K, which provides that the compensation discussion and analysis portion of a proxy statement should discuss "policies and decisions regarding the adjustment or recovery of awards or payments if the relevant [company] performance measures upon which they are based are restated or otherwise adjusted in a manner that would reduce the size of an award or payment." Navient cites footnote 83 in *Executive Compensation and Related Person Disclosure*, Release No. 33-8732A (Nov. 7, 2007), which addressed a public comment recommending disclosure of such policies. The Commission responded by citing section 304 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. § 7243), which deals with adjustments to compensation for a chief executive officer and chief financial officer in the event of a material non-compliance, as a result of misconduct, with any financial reporting requirement. The Commission then stated: "This example would not necessarily be limited to policies covering only situations contemplated by Section 304." It is unclear what policies a company must disclose under this "not necessarily" language, and in any event, Navient admits that its new policy does not reach the scope of the disclosures sought by the Proposal.

1. The proposal does not focus on Navient's "legal compliance" efforts.

Navient's first line of attack is a claim that the Systems' Proposal seeks to "dictate matters concerning the Company's legal compliance program," citing letters agreeing that proposals focusing on legal compliance raise an "ordinary business matter." The argument fails, however, because the Proposal does not seek to regulate, much less dictate, how the Company goes about its efforts to comply with applicable legal standards. The Systems' Proposal deals with an executive compensation issue. It is thus qualitatively different from proposals of the sort Navient cites, which tend to focus on how a company complies with specific laws or statutes or corporate codes of conduct or ethics, *e.g., Raytheon Co*. (Marc. 25, 2013); *FedEx Corp*.(July 14, 2009); *Verizon Communications Inc*. (Jan. 7, 2008).

Navient relies heavily on *Apple Inc.* (Dec. 30, 2014), where the Division agreed that the company could exclude a proposal recommending that incentive compensation for senior executives be based in part on "a metric related to the effectiveness of Apple's policies and procedures designed to promote adherence to laws and regulations." The Division stated that although the proposal relates to executive compensation, "the thrust and focus of the proposal [was] on the ordinary business matter of the company's legal compliance program."

Navient argues that *Apple* is in line with other letters that concurred as to omission of proposals that sought to tie executive compensation to the attainment of a goal that falls under the rubric of "ordinary business," *e.g., Delta Air Lines, Inc.* (Mar. 27, 2012) (attaining certain levels of retiree benefits); *Exelon Corp.* (Feb. 21, 2007) (same); *General Electric Co.* (Jan. 10, 2005) (efforts by a media company regarding presentation of teen smoking in movies, given that choice of what content to produce involves "ordinary business"); *Wal-Mart Stores, Inc.* (Mar. 17, 2003) (increased employment enrollment in health insurance programs).

Perhaps the best rebuttal to this argument is the Division's recent letter in *Johnson & Johnson* (Feb. 2, 2018), which rejected the company's claim that *Apple* allowed exclusion of a proposal saying that in determining executive compensation, no financial performance metric shall be adjusted to exclude legal or compliance costs. The company argued that the thrust of the proposal was the company's legal compliance practices and represented an attempt to promote compliance, as in the letters just cited.

The Division disagreed and with good reason. The *Johnson & Johnson* proposal plainly did not attempt to regulate legal compliance or to promote additional steps to assure legal compliance. The proposal simply said that certain categories of expenses incurred by a company (for whatever reason) should not be discarded or ignored when computing executive compensation. That proposal left the company free to design and execute its legal compliance program as it saw fit. So too here, the Systems' Proposal does not tie executive compensation to achievement of certain standards or levels that implicate Navient's "ordinary business."

2. Senior executive compensation transcends "ordinary business" concerns.

It has been nearly 30 years since the Division decided that issues regarding senior executive compensation could no longer be regarded as "ordinary business," so it is a bit surprising to see Navient argue that the issue here involves nothing more than the Company's legal compliance efforts. If anything, the no-action letters that Navient relegates to a footnote (Navient Letter, at p. 12, n.2) rebut the claim, for they are similar to what is being proposed here. See *JPMorgan Chase & Co.* (Feb. 23, 2016); *McKesson Corp.* (May 17, 2013); *AmerisourceBergen Corp.* (Jan. 11, 2018). In the first two situations the proponent sought to strengthen an existing clawback policy, and the company objected on "legal compliance" grounds, among others. The Division disagreed, finding that, as the McKesson letter stated, "the proposal focuses on the significant policy issue of senior executive compensation and does not seek to micromanage the company to such a degree that exclusion of the proposal would be appropriate." The proposal in Amerisource*Bergen Corp*. (Jan. 11, 2018) urged the company to "disclose annually whether it, in the previous fiscal year, [the company had] recouped any incentive compensation from any senior executive or caused a senior executive to forfeit an incentive compensation award." Despite the company's effort to frame the issue as one of legal compliance or discipline of employees, the Division denied relief, finding that the proposal "focuses on senior executive compensation."

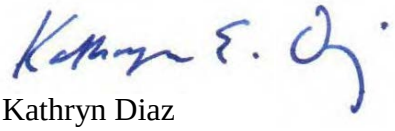
Thus, the Systems' Proposal does not focus on "legal compliance," but instead presents a "significant policy" issue that transcends Navient's ordinary business. Relief under Rule 14a-8(i)(7) is therefore not available.

Conclusion

For the foregoing reasons the Systems respectfully request that Navient's request for no-action relief be denied.

Thank you for your consideration of these points. Please do not hesitate to contact me if there is any further information that we can provide.

Respectfully submitted,



Kathryn Diaz
General Counsel

cc: Lillian Brown, Esq.

Lillian Brown

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January 22, 2018

Via E-mail to shareholderproposals@sec.gov

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

Re: Navient Corporation
Exclusion of Shareholder Proposal Submitted by the Office of the Comptroller of the City of New York, Scott M. Stringer, as custodian and trustee of the New York City Employees' Retirement System, the New York City Fire Pension Fund, The New York City Teachers' Retirement System, and the New York City Police Pension Fund, and as custodian of the New York City Board of Education Retirement System

Ladies and Gentlemen:

We are writing on behalf of our client, Navient Corporation (the "Company"), which received a shareholder proposal (the "Proposal") and statement in support thereof (the "Supporting Statement") relating to the Company's clawback policy for senior executives (collectively, the "Shareholder Proposal") from the Comptroller of the City of New York, Scott M. Stringer, as custodian and trustee of the New York City Employees' Retirement System, the New York City Fire Pension Fund, The New York City Teachers' Retirement System, and the New York City Police Pension Fund, and as custodian of the New York City Board of Education Retirement System (the "Proponent") for inclusion in the proxy statement to be distributed to the Company's shareholders in connection with its 2018 Annual Meeting of Shareholders (the "2018 Proxy Materials").

The Company respectfully requests that the staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") advise the Company that it will not recommend any enforcement action to the Commission if the Company excludes the Shareholder Proposal from its 2018 Proxy Materials pursuant to Rule 14a-8(i)(10) (referred to herein as the "Substantially Implemented Exclusion") of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), on the basis that the Company has substantially

implemented the Shareholder Proposal, or, alternatively, pursuant to Rule 14a-8(i)(7) (referred to herein as the "Ordinary Business Operations Exclusion"), on the basis that the Shareholder Proposal relates to the Company's ordinary business operations.

Pursuant to Rule 14a-8(j) of the Exchange Act and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D"), the Company is submitting electronically to the Commission this letter and the Shareholder Proposal and related correspondence (attached as Exhibit A to this letter), and is concurrently sending a copy to the Proponent, no later than eighty calendar days before the Company intends to file its definitive 2018 Proxy Materials with the Commission.

Below please find (1) a summary of the Shareholder Proposal, (2) a summary of the Company's bases for exclusion of the Shareholder Proposal from the 2018 Proxy Materials, (3) a discussion of the applicability of the Substantially Implemented Exclusion, (4) a discussion of the applicability of the Ordinary Business Operations Exclusion and (5) concluding thoughts.

(1) Summary of the Shareholder Proposal

On December 5, 2017, the Company received a letter from the Proponent containing the Proposal and the Supporting Statement. The Proposal states:

> RESOLVED, that shareholders of Navient Corporation ("Navient") urge the Compensation Committee of the Board of Directors (the "Committee") to amend Navient's clawback policy to provide that the Committee will (a) review, and determine whether to seek recoupment of, incentive compensation paid, granted or awarded to a senior executive if, in the Committee's judgment, (i) there has been misconduct resulting in a violation of law or Navient policy that causes significant financial or reputational harm to Navient and (ii) the senior executive either committed the misconduct or failed in his or her responsibility to manage or monitor conduct or risks; and (b) disclose the circumstances of any recoupment if the circumstances of the underlying misconduct are public. Disclosure under the Policy is intended to supplement, not supplant, any disclosure of recoupment required by law or regulation, and to not require disclosure prohibited by law.
>
> "Recoupment" includes (a) recovery of compensation already paid and (b) forfeiture, recapture, reduction or cancellation of amounts awarded or granted to an executive over which Navient retains control. These amendments should operate prospectively and be implemented in a way that does not violate any contract, compensation plan, law or regulation.

The Supporting Statement states, in part:

> In June, 2016, certain Navient shareholders filed a class action lawsuit in federal court alleging that, among other misconduct, Navient engaged in improper loan servicing practices and misled investors regarding its compliance with applicable laws and regulations. . . . [In the discussion below, we refer to this statement as "Statement #1."]
>
> In January 2017, the U.S. Consumer Financial Protection Bureau filed a lawsuit alleging that Navient violated Federal consumer financial laws by, among other improper practices, using shortcuts and deception to illegally cheat struggling student loan borrowers out of their rights to lower payments. . . . [In the discussion below, we refer to this statement as "Statement #2."]
>
> . . .
>
> As long-term shareholders, we believe compensation policies should promote sustainable value creation. We agree … that recoupment policies with business-related misconduct triggers are "a powerful mechanism for holding senior leadership accountable to the fundamental mission of the corporation: proper risk taking balanced with proper risk management and the robust fusion of high performance with high integrity." . . . [In the discussion below, we refer to this statement as "Statement #3."]
>
> In our view, significant damage can be caused by misconduct that does not necessitate a financial restatement, and it may be appropriate to hold accountable senior executives who did not commit misconduct but who failed in their management or monitoring responsibility. Our proposal gives the Committee discretion to decide whether recoupment is appropriate in particular circumstances. [In the discussion below, we refer to this statement as "Statement #4."]
>
> Finally, shareholders cannot monitor enforcement without disclosure. . . . [In the discussion below, we refer to this statement as "Statement #5."]
>
> . . .

(2) Summary of the Company's Bases for Exclusion

The Company believes that there are at least two independent and legally sufficient bases for exclusion of the Shareholder Proposal as follows:

(a) ***Substantially Implemented Exclusion***

The Shareholder Proposal is excludible from the 2018 Proxy Materials under the

Substantially Implemented Exclusion because the Company's existing policies, practices, procedures and public disclosures compare favorably to the terms of the Shareholder Proposal and address the essential objective of the Shareholder Proposal.

(b) ***Ordinary Business Operations Exclusion***

The Shareholder Proposal is also excludible from the 2018 Proxy Materials under the Ordinary Business Operations Exclusion because it implicates the Company's compliance with federal and state law and attempts to dictate ordinary business matters so fundamental to management's ability to run a company on a day-to-day basis that the matter could not, as a practical matter, be subject to direct shareholder oversight.

(3) Application of the Substantially Implemented Exclusion

The purpose of the Rule 14a-8(i)(10) exclusion is to "avoid the possibility of shareholders having to consider matters which have already been favorably acted upon by management." Commission Release No. 34-12598 (July 7, 1976). While the exclusion was originally interpreted to allow exclusion of a shareholder proposal only when the proposal was "'fully' effected" by the company, the Commission has revised its approach to the exclusion over time to allow for exclusion of proposals that have been "substantially implemented." Commission Release No. 34-20091 (Aug. 16, 1983) and Commission Release No. 34-40018 (May 21, 1998) (the "1998 Release"). In applying this standard, the Staff has noted that "a determination that the [c]ompany 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.* (Mar. 6, 1991, *recon. granted* Mar. 28, 1991).

The Staff has consistently permitted the exclusion of proposals under the Substantially Implemented Exclusion when it has determined that the company's policies, practices and procedures or public disclosures compare favorably with the guidelines of the proposal or where the company had addressed the underlying concerns and satisfied the "essential objective" of the proposal, even where the company's actions did not precisely mirror the terms of the shareholder proposal. For example, in *Wal-Mart Stores, Inc.* (Mar. 30, 2010), the proposal requested that the company adopt six principles for national and international action to stop global warming. The company argued that its Global Sustainability Report, which was available on the company's website, substantially implemented the proposal. Although the Global Sustainability Report set forth only four principles that covered most, but not all, of the issues raised by the proposal, the Staff concluded 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." *See also Applied Materials* (Jan. 17, 2018) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting that the company "improve the method to disclose the Company's executive compensation information with their actual information," on the basis that

the company's "public disclosures compare favorably with the guidelines of the proposal," where the company argued that its current disclosures follow requirements under applicable securities laws for disclosing executive compensation); *Kewaunee Scientific Corp.* (May 31, 2017) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting that nonemployee directors no longer be eligible to participate in the company's health and life insurance programs, on the basis that the company's "policies, practices and procedures compare favorably with the guidelines of the proposal," where the board had adopted a policy prohibiting nonemployee directors from participating in the company's health and life insurance programs after December 31, 2017); *Wal-Mart Stores, Inc.* (Mar. 16, 2017) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting that the company reform its corporate governance guidelines to add guidelines to discontinue and remove disqualified members of the board in accordance with applicable law, on the basis that the company's "policies, practices and procedures compare favorably with the guidelines of the proposal," where the company argued that shareholders already had the right to remove members of the board with or without cause under Delaware law); *Northrop Grumman Corporation* (Feb. 17, 2017), *General Dynamics Corporation* (Feb. 10, 2017) and *The Dun & Bradstreet Corporation* (Feb. 10, 2017) (permitting, in each case, exclusion under Rule 14a-8(i)(10) of a proposal that up to 50 shareholders be allowed to aggregate their shares for purposes of satisfying a proxy access nomination threshold, on the basis that each company's "policies, practices and procedures compare favorably with the guidelines of the proposal," where each company's bylaw had a 20-shareholder threshold); *Oshkosh Corp.* (Nov. 4, 2016) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting six changes to the company's proxy access bylaw, on the basis that the company's "policies, practices and procedures compare favorably with the guidelines of the proposal," where the company amended its proxy access bylaw to implement three of six requested changes); *American Tower Corp.* (Mar. 5, 2015) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting that the company "undertake such steps . . . to permit written consent" on "any topic . . . consistent with applicable law," on the basis that the company's "policies, practices and procedures compare favorably with the guidelines of the proposal," where state corporate law allowed, and the company's charter did not disallow, the ability of shareholders to act by written consent, such that the company did not need to undertake any steps to substantially implement the proposal); *Wal-Mart Stores, Inc.* (Mar. 27, 2014) (permitting exclusion under Rule 14a-8(i)(10) of a proposal urging the compensation committee to include employee engagement as at least one of the metrics used to determine senior executives' incentive compensation, on the basis that the company's "policies, practices and procedures compare favorably with the guidelines of the proposal," where the company's incentive plan included metrics for employee contributions toward organizational goals related to diversity and inclusion); *MGM Resorts Int'l* (Feb. 28, 2012) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting a report on the company's sustainability policies and performance and recommending the use of the Governance Reporting Initiative Sustainability Guidelines, on the basis that the company's "public disclosures compare favorably with the guidelines of the proposal," where the company published an annual sustainability report that did not use the

Governance Reporting Initiative Sustainability Guidelines or include all of the topics covered therein); *General Dynamics Corp.* (Feb. 6, 2009) (permitting exclusion under Rule 14a-8(i)(10) of a proposal seeking to provide holders of 10% of the company's outstanding common stock the power to call a special shareholder meeting, where the company's board adopted a bylaw amendment permitting a special shareholder meeting upon written request by a single holder of at least 10%, or holders in the aggregate of at least 25%, of the outstanding shares of the company); and *Alcoa Inc.* (Feb. 3, 2009) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting a report describing how the company's actions to reduce its impact on global climate change may have altered the current and future global climate, where the company published general reports on climate change, sustainability and emissions data on its website that did not discuss all topics requested in the proposal).

Beginning with a process that started in May 2017, well before the Company received the Shareholder Proposal, the Company's Compensation and Personnel Committee (the "Compensation Committee") undertook an extensive review of the Company's then-existing clawback policy. Consistent with the focus of the Shareholder Proposal, the Compensation Committee recommended changes to the Company's Board of Directors (the "Board"), which were subsequently approved on November 14, 2017, and which will be described in the Company's 2018 Proxy Materials to be filed on or about April 13, 2018. These changes expanded the Board's discretion to claw back incentive compensation from senior executives and refined the triggers for a clawback. As amended, the Company's clawback policy enables the Board discretion to claw back compensation both in the event of a restatement and in case of misconduct. Specifically, the Board may, in its sole discretion, claw back incentive compensation if "(i) the company is required to prepare an accounting restatement due to material noncompliance with any financial reporting requirement under federal securities laws, or (ii) a participant has committed a material violation of company policy or has committed fraud or misconduct . . . ." In addition, in the context of clawbacks triggered upon a financial restatement, the revised clawback policy permits the Board to claw back excess incentive compensation from an executive even if the executive's conduct was not the cause of or directly related to the restatement. If the Board exercises its discretion to claw back incentive compensation, the clawback policy allows the Board to recoup incentive compensation paid at any time during the three fiscal years preceding either the date that the financial restatement occurs or the fraud or misconduct is first reported to the Board, as applicable.

As a result of the November 2017 amendments to the Company's clawback policy, the Company has substantially implemented the Shareholder Proposal.[1] The essential objective of

[1] The Company acknowledges the Staff's previous denials of no-action relief to *Expeditors Int'l of Washington, Inc.* (Mar. 3, 2015), *Occidental Petroleum Corp.* (Feb. 25, 2015), *Brocade Communications Systems, Inc.* (Feb. 23, 2015), and *O'Reilly Automotive, Inc.* (Feb. 5, 2015) in situations involving clawback policies (collectively, the "2015 Letters"); however, these no-action letters are not dispositive. As the Staff noted in Staff Legal Bulletin No. 14 (July 13, 2001) ("SLB 14"), the Staff will consider the specific arguments advanced by the company and the

the Shareholder Proposal is to provide the Board with more discretion "to seek recoupment of, incentive compensation paid, granted or awarded to a senior executive" if there is misconduct. In addition, the Supporting Statement clearly focuses on accountability of senior executives for misconduct, stating "recoupment policies with business-related misconduct triggers are 'a powerful mechanism for holding senior leadership accountable to the fundamental mission of the corporation . . . .'" Notwithstanding the assertions in Statement #4 of the Supporting Statement, the Board believes that misconduct, whether or not resulting in a financial restatement, should trigger a clawback of incentive compensation, and that sentiment was reflected in the Company's prior policy and remains a key component of the newly amended clawback policy, which provides that the Board, "in its sole discretion" may claw back incentive compensation whenever "a participant has committed a material violation of company policy or has committed fraud or misconduct." Accordingly, the Company's clawback policy compares favorably with the Shareholder Proposal and satisfies the Shareholder Proposal's essential objective of affording the Board significant discretion to claw back incentive compensation both in instances involving a financial restatement and when a participant has committed a material violation of company policy or has committed fraud or misconduct.

As in the above-cited letters where the Staff concurred in exclusion under the Substantially Implemented Exclusion where the company's actions did not precisely mirror the terms of the shareholder proposal, the Company believes that its clawback policy substantially implements the Shareholder Proposal even though it is not identical to the terms described in the Proposal. The elements of the Proposal that the Company has not adopted exactly as specified in the Proposal are tangential to the essential objective of the Shareholder Proposal and do not prevent the Company from having substantially implemented the Proposal.

- While the Company's clawback policy does not explicitly state that the Board's discretion to claw back incentive compensation depends on whether the misconduct results in a "violation of law or Navient policy that causes significant financial or reputational harm to Navient," the Company's clawback policy more than satisfies the aims of this request. In fact, the Board's discretion to claw back incentive compensation in this regard applies if a "participant has committed a

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shareholder and will not make decisions based solely on the subject matter of a shareholder proposal. Accordingly, the Staff may concur with exclusion of a shareholder proposal in one instance while failing to concur in the exclusion of another proposal addressing "the same or similar subject matter." Considering the Staff's guidance in SLB 14, the Company does not believe the outcome in the 2015 Letters dictates the outcome with regard to the Shareholder Proposal because there are differences between the proposals that distinguish this letter from the proposals at issue in the 2015 Letters. As an initial difference, the Shareholder Proposal seeks to amend the Company's existing clawback policy, unlike the proposals set forth in the 2015 Letters, which sought adoption of a clawback policy. More significantly, unlike the clawback policies at issue in the 2015 Letters, under the Company's standalone clawback policy, the Board has broader discretion to claw back amounts of incentive compensation as requested in the Shareholder Proposal, including instances involving fraud or misconduct that are not triggered by a financial restatement.

material violation of company policy or has committed fraud or misconduct." While the Board could claw back incentive compensation for misconduct that could involve reputational harm, the Company's clawback policy can be viewed more broadly in that it does not require the Board to make such a qualifying determination before exercising its discretion to claw back incentive compensation. While the Compensation Committee did consider including a clawback trigger relating to reputational harm caused by fraud or misconduct, after consideration of such a provision, the Compensation Committee determined that such a trigger would not be in the best interest of its shareholders. A survey of the Company's peer group companies revealed that few of these companies have adopted such a clawback provision. Moreover, the Compensation Committee concluded that provisions of this nature may have adverse accounting implications relating to equity-based compensation, and that adopting such a provision therefore could limit the Compensation Committee's ability to design future incentive programs. In the end, the Compensation Committee determined that the broad grant of discretion without prequalifiers was adequate to protect the interests of shareholders. The Board agreed with the Compensation Committee's assessment in this regard and adopted the amendments to the clawback policy as proposed by the Compensation Committee.

- With respect to the Proposal's request that the Company "disclose the circumstances of any recoupment if the circumstances of the underlying misconduct are public," the Company is already required to provide public disclosure under the Commission's rules to disclose the circumstances of any recoupment from named executive officers and of any decision not to pursue such recoupment. Item 402(b)(2)(viii) of Regulation S-K provides that the compensation discussion and analysis ("CD&A") section of the Company's proxy statement in connection with its annual meeting should discuss the "decisions regarding the adjustment or recovery of awards or payments if the relevant [company] performance measures upon which they are based are restated or otherwise adjusted in a manner that would reduce the size of an award or payment." In addition, the Commission specifically noted that CD&A disclosure regarding recoupment of compensation would not necessarily be limited to recoupment resulting from financial statement restatements. *See* Exchange Act Release No. 34-54302A n.83 (Nov. 7, 2007). Notwithstanding Statement #5 of the Supporting Statement, which states, "[f]inally, shareholders cannot monitor enforcement without disclosure," the Company is already required to describe in the Company's CD&A the circumstances in which incentive compensation will be recouped, as well as any recoupment decisions that are made consistent with the Commission's rules and the Shareholder Proposal's essential objective. To the extent the Shareholder Proposal requests disclosure of matters that would not

be required under the Exchange Act, the Company is of the view that such a difference is not a meaningful distinction between the Shareholder Proposal and the Company's clawback policy. The Supporting Statement makes clear that the Proponent is primarily concerned about clawbacks arising from significant legal violations and other such events that typically would otherwise be disclosed in the Company's Exchange Act filings.

Consistent with the precedent described above, the Company believes that its clawback policy compares favorably with the terms of the Shareholder Proposal and more than satisfies the essential objective of such Shareholder Proposal. Accordingly, the Company is of the view that it may exclude the Shareholder Proposal from the Company's 2018 Proxy Materials pursuant to Rule 14a-8(i)(10).

(4) Application of the Ordinary Business Operations Exclusion

Rule 14a-8(i)(7) permits a company to exclude a shareholder proposal if the proposal "deals with a matter relating to the company's ordinary business operations." The underlying policy of the Ordinary Business Operations 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* 1998 Release.

(a) ***The Shareholder Proposal seeks to dictate matters concerning the Company's legal compliance program, a fundamental ordinary business matter.***

As set out in the 1998 Release, one of the "central considerations" underlying the Ordinary Business Operations Exclusion is that "certain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." The Shareholder Proposal implicates this concern in that it seeks to dictate the Company's legal compliance program, a fundamental ordinary business matter that is not appropriate for direct shareholder oversight.

In accordance with the aforementioned principles, the Staff has consistently permitted exclusion of shareholder proposals under Rule 14a-8(i)(7) relating to a company's general legal compliance program. In 2015, the Staff concurred in the Company's request for exclusion of a proposal requesting a report on the Company's internal controls over its student loan servicing operations, including the action to be taken to ensure compliance with applicable federal and state laws, on the basis that the proposal related to the Company's "ordinary business operations." In this regard, the Staff stated, "Proposals that concern a company's legal compliance program are generally excludable under rule 14a-8(i)(7)." *Navient Corporation* (Mar. 26, 2015, *recon. denied* Apr. 8, 2015); *see also, e.g.*, *JPMorgan Chase & Co.* (Mar. 13,

2014) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board prepare a policy review to evaluate opportunities to clarify and enhance implementation of directors' and officers' fiduciary, moral and legal obligations to shareholders and other stakeholders, on the basis that the proposal related to the company's "ordinary business operations"); *Raytheon Co.* (Mar. 25, 2013) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on the board's oversight of the company's efforts to implement the provisions of the Americans with Disabilities Act, the Fair Labor Standards Act, and the Age Discrimination in Employment Act, on the basis that the proposal related to the company's "ordinary business operations"); *Sprint Nextel Corp*. (Mar. 16, 2010, *recon. denied* Apr. 20, 2010) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting the board explain why the company has not adopted an ethics code designed to, among other things, promote securities law compliance, on the basis that the proposal related to the company's "ordinary business operations" and noting that proposals concerning "adherence to ethical business practices and the conduct of legal compliance programs are generally excludable under rule 14a-8(i)(7)"); *FedEx Corp*. (July 14, 2009) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on compliance by the company and its contractors with federal and state laws governing the proper classification of employees and contractors, noting that the proposal related to the ordinary business matter of a company's "general legal compliance program"); *The Coca-Cola Co*. (Jan. 9, 2008) (permitting exclusion under Rule 14a-8(i)(7) of a proposal seeking an annual report comparing laboratory tests of the company's products against national laws and the company's global quality standards, noting that the proposal related to the ordinary business matter of the "general conduct of a legal compliance program"); *Verizon Communications Inc*. (Jan. 7, 2008) (permitting exclusion under Rule 14a-8(i)(7) of a proposal seeking the adoption of policies to ensure the company does not illegally trespass on private property and a report on company policies for preventing and handling such incidents, noting that the proposal related to the ordinary business matter of a company's "general legal compliance program"); and *The AES Corp*. (Jan. 9, 2007) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board create an ethics committee to monitor the company's compliance with, among other things, federal and state laws, noting that the proposal related to the ordinary business matter of the "general conduct of a legal compliance program").

Further, the Staff has permitted exclusion of a shareholder proposal that focused on a company's legal compliance program even when the proposal related to executive compensation. In *Apple Inc.* (Dec. 30, 2014), the Staff concurred in exclusion of a proposal that urged the company's compensation committee to determine incentive compensation for Apple's five most-highly compensated executives in part based on "a metric related to the effectiveness of Apple's policies and procedures designed to promote adherence to laws and regulations." The proposal's supporting statement stressed the risks related to compliance failures, including financial and reputational risks, and the importance of designing "incentive compensation formulas to reward senior executives for ensuring that Apple maintains effective compliance policies and procedures." In granting relief to exclude the proposal under Rule 14a-8(i)(7), the Staff

concluded that "although the proposal relates to executive compensation, the thrust and focus of the proposal [was] on the ordinary business matter of the company's legal compliance program."

The decision in *Apple* was consistent with the Staff's approach of permitting exclusion under Rule 14a-8(i)(7) of proposals couched as relating to executive compensation but whose thrust and focus is on an ordinary business matter. *See, e.g.*, *Delta Air Lines, Inc.* (Mar. 27, 2012) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board prohibit payment of incentive compensation to executive officers unless the company first adopts a process to fund the retirement accounts of its pilots, noting that "although the proposal mentions executive compensation, the thrust and focus of the proposal is on the ordinary business matter of employee benefits"); *Exelon Corp.* (Feb. 21, 2007) (permitting exclusion under Rule 14a-8(i)(7) of a proposal seeking to prohibit bonus payments to executives to the extent performance goals were achieved through a reduction in retiree benefits, noting that "although the proposal mentions executive compensation, the thrust and focus of the proposal is on the ordinary business matter of general employee benefits"); *General Electric Co.* (Jan. 10, 2005) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the compensation committee include social responsibility and environmental criteria among executives' incentive compensation goals, where the supporting statement demonstrated that the goal of the proposal was to address a purported link between teen smoking and the presentation of smoking in movies produced by the company's media subsidiary, noting that "although the proposal mentions executive compensation, the thrust and focus of the proposal is on the ordinary business matter of the nature, presentation and content of programming and film production"); *The Walt Disney Co.* (Dec. 15, 2004) (same); and *Wal-Mart Stores, Inc.* (Mar. 17, 2003) (permitting exclusion under Rule 14a-8(i)(7) of a proposal urging the board to account for increases in the percentage of the company's employees covered by health insurance in determining executive compensation, noting that "while the proposal mentions executive compensation, the thrust and focus of the proposal is on the ordinary business matter of general employee benefits").

Here, the Shareholder Proposal's main focus is on the Company's legal compliance program, which is an ordinary business matter. The Shareholder Proposal seeks Board discretion to claw back incentive compensation and "disclos[ure] [of] the circumstances of any recoupment if the circumstances of the underlying misconduct are public" for "misconduct resulting in a violation of law or Navient policy." The Supporting Statement also clearly implicates the Company's legal compliance program with Statement #1, which repeats untested legal pleadings that "Navient engaged in improper loan servicing practices and misled investors regarding its compliance with applicable laws and regulations" and Statement #2, which again repeats untested legal allegations that "Navient violated Federal consumer financial laws by, among other improper practices, using shortcuts and deception to illegally cheat struggling student loan borrowers out of their rights to lower payments." In addition, Statement #3 conveys that clawback policies "promote sustainable value creation." Thus, while the Shareholder Proposal

would ultimately impact executive compensation, the primary point and focus of the Shareholder Proposal is on incentivizing senior executives to maintain and bolster the Company's legal and compliance program, which falls squarely within the Company's ordinary business operations.

The Company amended its clawback policy in accordance with the Company's traditional practices and procedures for enacting routine changes in the ordinary course of business. Specifically, the Compensation Committee began evaluating updates to the Company's clawback policy in May 2017 before receiving the Shareholder Proposal. After months of evaluating various considerations, the Compensation Committee made its recommendations to the Board regarding amendments to the Company's clawback policy, and the amendments were adopted by the Board in November 2017. This process and the myriad of considerations attendant thereto are fundamental to the Company's ability to operate on a day-to-day basis, and, in keeping with the purposes of Rule 14a-8(i)(7), should not, as a practical matter, be subject to direct shareholder oversight.

Accordingly, consistent with *Apple* and the other above-cited no-action letters, the Company is of the view that it may exclude the Shareholder Proposal from the Company's 2018 Proxy Materials pursuant to Rule 14a-8(i)(7) as relating to the Company's ordinary business operations.[2]

(b) ***There is no significant social policy issue that excepts the Shareholder Proposal from the Ordinary Business Operations Exclusion.***

In the 1998 Release, the Commission clarified that proposals that relate to ordinary business operations but that focus on "sufficiently significant social policy issues (e.g.,

[2] The Company acknowledges the Staff's previous denials of no-action relief under Rule 14a-8(i)(7) in certain instances where proposals requested specific edits to a company's clawback policy, such as in *JPMorgan Chase & Co.* (Feb. 23, 2016) and *McKesson Corp.* (May 17, 2013), or where proposals requested adoption of specific disclosures regarding reputational risks, such as in *AmerisourceBergen Corp.* (Jan. 11, 2018). Considering the Staff's guidance in SLB 14, the Company does not believe the outcome in such letters dictates the outcome with regard to the Shareholder Proposal because there are differences between the proposals that distinguish this letter from the proposals at issue in *JPMorgan Chase & Co., McKesson Corp.* and *AmerisourceBergen Corp.* Most notably, the Shareholder Proposal, including the Supporting Statement, focuses on the Company's legal compliance and does so in connection with a request to amend the Company's clawback policy. The proposal at issue in *JPMorgan Chase & Co.* sought specific changes to the company's incentive compensation structure to give the board discretion to defer "a substantial portion of annual total compensation of Executive Officers," not to amend the circumstances in which the board could claw back compensation like in the Shareholder Proposal. The proposal at issue in *McKesson Corp.* focused on deleting two specific provisions in the company's clawback policy, as opposed to requesting amendments to the company's clawback policy that satisfies general parameters set forth in the proposal, as in the Shareholder Proposal. The proposal at issue in *AmerisourceBergen Corp.* specifically requested disclosure of measures taken to monitor and manage financial and reputational risks related to the opioid crisis, as opposed to the Shareholder Proposal, which simply includes reputational risks as a subsidiary element for consideration when exercising discretion to claw back incentive compensation.

significant discrimination matters) generally would not be considered to be excludable [under Rule 14a-8(i)(7)], because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." The Staff provided additional guidance in Staff Legal Bulletin No. 14C (June 28, 2005), noting that, in determining whether a proposal focuses on a significant social policy issue, the Staff considers "both the proposal and the supporting statement as a whole." Further, in Staff Legal Bulletin No. 14E (Oct. 27, 2009), the Staff noted[3]:

> In those cases in which a proposal's underlying subject matter transcends the day-to-day business matters of the company and raises policy issues so significant that it would be appropriate for a shareholder vote, the proposal generally will not be excludable under Rule 14a-8(i)(7) as long as a sufficient nexus exists between the nature of the proposal and the company. Conversely, in those cases in which a proposal's underlying subject matter involves an ordinary business matter to the company, the proposal generally will be excludable under Rule 14a-8(i)(7). In determining whether the subject matter raises significant policy issues and has a sufficient nexus to the company, as described above, we will apply the same standards that we apply to other types of proposals under Rule 14a-8(i)(7).

Here, as in the above-cited letters, the Proposal and Supporting Statement have put forth no specific significant social policy issue that would transcend the Ordinary Business Operations Exclusion so as to make exclusion inappropriate. The focus of the Shareholder Proposal is on the Company's legal compliance program with respect to senior executives' conduct, not on a significant policy issue. Accordingly, the Company does not believe that the Shareholder Proposal implicates a significant policy issue and instead involves the type of day-to-day operational oversight of the Company's business that the Ordinary Business Operations Exclusion was meant to address. The Shareholder Proposal should, therefore, be deemed excludable under Rule 14a-8(i)(7), consistent with the above-cited no-action letters.

(5) Conclusion

For the foregoing reasons, and consistent with the Staff's prior no-action letters, the Company respectfully requests that the Staff concur that it will take no action if the Company

[3] The Company notes the Staff's guidance in Staff Legal Bulletin 14I (Nov. 1, 2017) ("SLB 14I") regarding the Staff's consideration of determinations made by a Company's board regarding whether a proposal concerns a matter that is sufficiently significant that it "transcends ordinary business and would be appropriate for a shareholder vote." While the Board, including members of its Compensation and Personnel Committee and Nominations and Governance Committee, has devoted significant time and attention since May 2017 to amendments to the Company's clawback policy and the concerns set forth in the Shareholder Proposal, the Company believes that the Board's determinations for purposes of SLB 14I are unnecessary because the Shareholder Proposal falls within the line of precedent cited herein that establishes the basis for the Ordinary Business Operations Exclusion.

excludes the Shareholder Proposal from its 2018 Proxy Materials pursuant to Rule 14a-8(i)(10), on the basis that the Company has substantially implemented the Shareholder Proposal, or, alternatively, pursuant to Rule 14a-8(i)(7), on the basis that the Shareholder Proposal relates to the Company's ordinary business operations.

If the Staff has any questions regarding this request or requires additional information, please contact the undersigned at 202-663-6743 or at lillian.brown@wilmerhale.com. I would appreciate you sending your response via e-mail to me at the above address, as well as to Mark Heleen, Executive Vice President, Chief Legal Officer & Secretary of Navient Corporation, at mark.heleen@navient.com. In addition, should the Proponent choose to submit any response or other correspondence to the Commission, we request that the Proponent concurrently provide that response or other correspondence to the Company, as required pursuant to Rule 14a-8(k) and SLB 14D, and copy the undersigned.

Best regards,

Lillian Brown

Enclosures

cc: Hon. Michael Garland, Office of the Comptroller of the City of New York
Ms. Laura S. Unger, Chair of the Nominations and Governance Committee of the Navient Corporation Board of Directors
Mr. Mark L. Heleen, Navient Corporation
Mr. Kurt T. Slawson, Navient Corporation
Mr. Stephen P. Caso, Navient Corporation

Exhibit A

CITY OF NEW YORK
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Michael Garland
ASSISTANT COMPTROLLER
CORPORATE GOVERNANCE AND
RESPONSIBLE INVESTMENT

December 5, 2017

Mark L. Heleen
Secretary
Navient Corporation
123 Justison Street
Wilmington, DE 19801

Dear Mr. Heleen:

I write to you on behalf of the Comptroller of the City of New York, Scott M. Stringer. The Comptroller is the custodian and a trustee of the New York City Employees' Retirement System, the New York City Fire Pension Fund, The New York City Teachers' Retirement System, and the New York City Police Pension Fund, and custodian of the New York City Board of Education Retirement System (the "Systems"). The Systems' boards of trustees have authorized the Comptroller to inform you of their intention to present the enclosed proposal for the consideration and vote of stockholders at the Company's next annual meeting.

Therefore, we offer the enclosed proposal for the consideration and vote of shareholders at the Company's next annual meeting. It is submitted to you in accordance with Rule 14a-8 of the Securities Exchange Act of 1934, and I ask that it be included in the Company's proxy statement.

Letters from State Street Bank and Trust Company certifying the Systems' ownership, for over a year, of shares of Navient Corporation common stock are enclosed. Each System intends to continue to hold at least $2,000 worth of these securities through the date of the Company's next annual meeting.

We would welcome the opportunity to discuss the proposal with you. Should the Board of Directors adopt a clawback policy that we consider responsive to the proposal, we will withdraw the proposal from consideration at the annual meeting.

Please feel free to contact me at (212) 669-2517 if you would like to discuss this matter.

Sincerely,

Michael Garland
Enclosures

RESOLVED, that shareholders of Navient Corporation ("Navient") urge the Compensation Committee of the Board of Directors (the "Committee") to amend Navient's clawback policy to provide that the Committee will (a) review, and determine whether to seek recoupment of, incentive compensation paid, granted or awarded to a senior executive if, in the Committee's judgment, (i) there has been misconduct resulting in a violation of law or Navient policy that causes significant financial or reputational harm to Navient and (ii) the senior executive either committed the misconduct or failed in his or her responsibility to manage or monitor conduct or risks; and (b) disclose the circumstances of any recoupment if the circumstances of the underlying misconduct are public. Disclosure under the Policy is intended to supplement, not supplant, any disclosure of recoupment required by law or regulation, and to not require disclosure prohibited by law.

"Recoupment" includes (a) recovery of compensation already paid and (b) forfeiture, recapture, reduction or cancellation of amounts awarded or granted to an executive over which Navient retains control. These amendments should operate prospectively and be implemented in a way that does not violate any contract, compensation plan, law or regulation.

SUPPORTING STATEMENT:

In June, 2016, certain Navient shareholders filed a class action lawsuit in federal court alleging that, among other misconduct, Navient engaged in improper loan servicing practices and misled investors regarding its compliance with applicable laws and regulations. (http://www.almcms.com/contrib/content/uploads/sites/292/2017/09/Navient-Complaint.pdf)

In January 2017, the U.S. Consumer Financial Protection Bureau filed a lawsuit alleging that Navient violated Federal consumer financial laws by, among other improper practices, using shortcuts and deception to illegally cheat struggling student loan borrowers out of their rights to lower payments. (http://files.consumerfinance.gov/f/documents/201701_cfpb_Navient-Pioneer-Credit-Recovery-complaint.pdf; https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-nations-largest-student-loan-company-navient-failing-borrowers-every-stage-repayment/)

Such circumstances can cause both reputational and financial harm.

As long-term shareholders, we believe compensation policies should promote sustainable value creation. We agree with former GE general counsel Ben Heineman Jr. that recoupment policies with business-related misconduct triggers are "a powerful mechanism for holding senior leadership accountable to the fundamental mission of the corporation: proper risk taking balanced with proper risk management and the robust fusion of high performance with high integrity." (http://blogs.law.harvard.edu/corpgov/2010/08/13/making-sense-out-of-clawbacks/)

Currently, Navient's policy provides for recoupment of incentive compensation from certain executives "in the event of a material misstatement of the Company's financial statements or performance [sic] resulting from a senior officer's conduct, or in the event a senior officer commits fraud or other misconduct or materially violates corporate policy."

In our view, significant damage can be caused by misconduct that does not necessitate a financial restatement, and it may be appropriate to hold accountable senior executives who did not commit misconduct but who failed in their management or monitoring responsibility. Our proposal gives the Committee discretion to decide whether recoupment is appropriate in particular circumstances.

Finally, shareholders cannot monitor enforcement without disclosure. We are sensitive to privacy concerns and urge Navient to adopt a policy that does not violate privacy expectations (subject to laws requiring fuller disclosure).

We urge shareholders to vote FOR this proposal.

STATE STREET.

Derek A. Farrell
Asst. Vice President, Client Services

State Street Bank and Trust Company
Public Funds Services
1200 Crown Colony Drive 5th Floor
Quincy, MA, 02169
Telephone (617) 784-6376
Facsimile (617) 786-2211

dfarrell@statestreet.com

December 5, 2017

Re: New York City Board of Education Retirement System

To whom it may concern,

Please be advised that State Street Bank and Trust Company, under DTC number 997, held in custody continuously, on behalf of the New York City Board of Education Retirement System, the below position from November 30, 2016 through today as noted below:

Security:	NAVIENT CORP
Cusip:	63938C108
Shares:	19,739

Please don't hesitate to contact me if you have any questions.

Sincerely,

Derek A. Farrell
Assistant Vice President

STATE STREET.

Derek A. Farrell
Asst. Vice President Client Services

State Street Bank And Trust Company
Public Funds Services
1200 Crown Colony Drive 5th Floor
Quincy, MA, 02169
Telephone (617) 784-6378
Facsimile (617) 786-2211

dfarrell@statestreet.com

December 5, 2017

Re: New York City Employee's Retirement System

To whom it may concern,

Please be advised that State Street Bank and Trust Company, under DTC number 997, held in custody continuously, on behalf of the New York City Employee's Retirement System, the below position from November 30, 2016 through today as noted below:

Security:	NAVIENT CORP
Cusip:	63938C108
Shares:	**467,262**

Please don't hesitate to contact me if you have any questions.

Sincerely,

Derek A. Farrell
Assistant Vice President

STATE STREET.

Derek A. Farrell
Asst. Vice President, Client Services

State Street Bank and Trust Company
Public Funds Services
1200 Crown Colony Drive 5th Floor
Quincy, MA. 02169
Telephone: (617) 784-6378
Facsimile: (617) 786-2211

dfarrell@statestreet.com

December 5, 2017

Re: New York City Teachers' Retirement System

To whom it may concern,

Please be advised that State Street Bank and Trust Company, under DTC number 997, held in custody continuously, on behalf of the New York City Teachers' Retirement System, the below position from November 30, 2016 through today as noted below:

Security:	NAVIENT CORP
Cusip:	63938C108
Shares:	**223,744**

Please don't hesitate to contact me if you have any questions.

Sincerely,

Derek A. Farrell
Assistant Vice President

STATE STREET.

Derek A. Farrell
Asst. Vice President, Client Services

State Street Bank and Trust Company
Public Funds Services
1200 Crown Colony Drive 5th Floor
Quincy, MA, 02169
Telephone (617) 784-6378
Facsimile (617) 786-2211

dfarrell@statestreet.com

December 5, 2017

Re: New York City Fire Pension Fund

To whom it may concern,

Please be advised that State Street Bank and Trust Company, under DTC number 997, held in custody continuously, on behalf of the New York City Fire Pension Fund, the below position from November 30, 2016 through today as noted below:

Security:	NAVIENT CORP
Cusip:	63938C108
Shares:	**41,851**

Please don't hesitate to contact me if you have any questions.

Sincerely,

Derek A. Farrell
Assistant Vice President

STATE STREET.

Derek A. Farrell
Asst. Vice President, Client Services

State Street Bank and Trust Company
Public Funds Services
1200 Crown Colony Drive 5th Floor
Quincy, MA 02169
Telephone: (617) 784-6378
Facsimile (617) 786-2211

dfarrell5@statestreet.com

December 5, 2017

Re: New York City Police Pension Fund

To whom it may concern,

Please be advised that State Street Bank and Trust Company, under DTC number 997, held in custody continuously, on behalf of the New York City Police Pension Fund, the below position from November 30, 2016 through today as noted below:

Security:	NAVIENT CORP
Cusip:	63938C108
Shares:	253,953

Please don't hesitate to contact me if you have any questions.

Sincerely,

Derek A. Farrell
Assistant Vice President

NAVIENT

2001 Edmund Halley Drive
Reston, VA 20191

Via email to: MGARLAND@COMPTROLLER.NYC.GOV

January 10, 2018

Michael Garland
Assistant Comptroller, Corporate Governance and Responsible Investment
City of New York, Office of the Comptroller
Municipal Building
One Centre Street, 8th Floor
New York, NY 10007-2341

Dear Mr. Garland:

Thank you for your letter of December 5, 2017, whereby you submitted, pursuant to Rule 14a-8 of the Securities Exchange Act of 1934, a proposal for inclusion in Navient Corporation's (the "Company") 2018 proxy statement relating to proposed changes to the Company's clawback policy. I am pleased to inform you that during 2017, our Board's Compensation and Personnel Committee undertook an extensive review of our then-existing clawback policy and, consistent with the sentiments expressed in your letter, the Committee recommended changes to the Company's Board of Directors which were subsequently approved on November 14, 2017.

While the approved amendments were not identical to those outlined in your letter, in the opinion of the Nominations and Governance Committee of the Board, which in accordance with its charter considered your proposal, the policy amendments adopted in November substantially implement the proposal suggested by your letter and, for that reason, we are requesting that you withdraw your proposal prior to January 23, 2018, the date on which any no-action request with respect to our 2018 proxy statement must be filed with the SEC. Because we feel that the proposal has been substantially implemented, we intend to seek no-action relief on or before that date, unless the proposal is withdrawn.

With regard to the specifics of the clawback provisions suggested by your proposal, your supporting statement provides as follows:

> "In our view, significant damage can be caused by misconduct that does not necessitate a financial restatement, and it may be appropriate to hold accountable senior executives who did not commit misconduct but who failed in the management or monitoring responsibility. Our proposal gives the Committee discretion to decide whether recoupment is appropriate in particular circumstances."

Our Board agrees that misconduct should trigger a clawback of executive compensation. That sentiment was reflected in our prior policy and remains a key component of our new amended policy: The Board may clawback executive compensation whenever *"...a participant has committed a material violation of company policy or has committed fraud or misconduct."*

Additionally, as requested by your proposal, the revised Clawback Policy affords significant discretion to the Board. Both in the event of a restatement and in the case of misconduct, the Board may in its sole discretion claw back incentive compensation. Importantly, the revised clawback policy permits the Board to claw back excess incentive compensation from an executive in the event of a restatement ***even if the executive's conduct was not the cause of or directly related to the restatement***.

Finally, the Board's Compensation Committee did consider including a broad clawback trigger relating to purely reputational harm caused by fraud or misconduct. However, after consideration of such a provision, the committee determined that such a trigger would not be in the best interest of shareholders. The committee determined it had adequate discretion to claw back compensation under the revised policy as may be warranted. The committee also considered a survey of peer group companies revealed that few of these companies have adopted such a broad clawback provision. In addition, the committee concluded that provisions of this nature may have adverse accounting implications relating to equity-based compensation, and that adopting such provision therefore would limit the committee's ability to design future incentive programs. In adopting the revised clawback policy, the Board agreed with the committee's assessment.

In conclusion, the Board greatly appreciates the investment by and interest of the Comptroller's Office in Navient Corporation and its proposal to amend the Company's clawback policy. If you would like additional information on this matter, please do not hesitate to contact my office. If you are in agreement with our Board that the November amendments to our clawback policy substantially implement those set forth in your proposal, please inform my office in writing no later than the close of business on Friday, January 19, 2018 that you wish to withdraw your proposal, to forestall our need to seek no-action relief in this matter.

Sincerely,

[redacted]

_____

From: Garland, Michael <mgarlan@comptroller.nyc.gov>
Sent: Friday, January 19, 2018 4:32 PM
Subject: NYC Comptroller Reply to your January 11, 2018 letter
To: Heleen, Mark <mark.l.heleen@navient.com>

--- External Email ---

Mr. Heleen,

Please see the attached. We are sending the original by Express Mail.

Mike

MICHAEL GARLAND
Assistant Comptroller - Corporate Governance and Responsible Investment
Office of New York City Comptroller Scott M. Stringer, Bureau of Asset Management
1 Centre Street, 8th Floor North, New York, NY 10007
Office: 212-669-2517 | Fax: 212-669-4072 | Email:mgarlan@comptroller.nyc.gov

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FAX: (212) 669-4072
MGARLAN@COMPTROLLER.NYC.GOV

Michael Garland
ASSISTANT COMPTROLLER
CORPORATE GOVERNANCE AND
RESPONSIBLE INVESTMENT

January 19, 2018

Mark L. Heleen
Secretary
Navient Corporation
123 Justison Street
Wilmington, DE 19801

Dear Mr. Heleen:

I write in response to your January 11, 2018 letter, which we received on January 16, informing us that, to forestall the Company's "need to seek no-action relief in this matter," your Board of Directors has given us until the close of business on January 19 to withdraw the New York City Retirement Systems' shareholder proposal requesting changes to Navient's clawback policy.

According to your letter, you feel that your Board has substantially implemented the proposal as a result of changes to the Company's then-existing clawback policy approved by the Board on November 14, 2017. While we have not had the opportunity to review the amended policy – given that you did not include a copy with your letter nor have we been able to locate it in any SEC filings – we respectfully disagree based on your description of the amended policy.

Specifically, if we understand your letter correctly, the amended policy does not address two of the three core components requested in the Systems' shareholder proposal: it neither authorizes the Board to recoup compensation for supervisory failures that cause significant financial or reputational harm nor does it provide for public disclosure of the circumstances of any recoupment. We are prepared to reconsider this conclusion based on a review of the actual policy, but without being able to compare the text of policy with the text of our proposal, we have no basis to determine that the proposal has been "substantially implemented."

We are disappointed and perplexed that the Company made no effort – on behalf of your Board – to engage constructively on this matter upon receipt of the proposal in order exchange views on whether the amended policy approved by the Board is responsive to the proposal. You certainly had ample time given you received the proposal more than a month before sending your January 11, 2018 letter.

As stated in our December 5, 2017 cover letter accompanying the proposal, we would welcome the opportunity to discuss the proposal and, should the Board adopt a clawback policy that we consider responsive, we would withdraw the proposal from consideration at the annual meeting. That offer stands.

Please contact me at (212) 669-2517 if you would like to discuss this matter.

Sincerely,

Michael Garland