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

DIVISION OF
CORPORATION FINANCE

April 11, 2019

R. Patrick Quinn
New York Community Bancorp, Inc.
r.patrick.quinn@mynycb.com

Re: New York Community Bancorp, Inc.
Incoming letter dated February 4, 2019

Dear Mr. Quinn:

This letter is in response to your correspondence dated February 4, 2019 concerning the shareholder proposal (the "Proposal") submitted to New York Community Bancorp, Inc. (the "Company") by Jeffrey L. Doppelt (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence on the Proponent's behalf dated February 15, 2019. 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/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,

M. Hughes Bates
Special Counsel

Enclosure

cc: Carol S. Shahmoon
Shahmoon Keller
cshahmoon@shahmoonkeller.com

April 11, 2019

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

Re: New York Community Bancorp, Inc.
Incoming letter dated February 4, 2019

The Proposal recommends that the board adopt a policy that no equity compensation grant may be made to a senior executive at a time when the Company's common stock has a market price that is lower than the grant date market price (taking into account stock dividends and stock splits) of any prior equity compensation grants to such individual.

We are unable to concur in your view that the Company may exclude the Proposal under rule 14a-8(i)(3). We are unable to conclude that you have demonstrated objectively that the Proposal is materially false or misleading. Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(i)(3).

We are unable to concur in your view that the Company may exclude the Proposal under rule 14a-8(i)(7). In our view, the Proposal, which focuses on policies for granting equity compensation awards to senior executives, transcends ordinary business matters. Although we note your representation that equity compensation awards are broadly available to the Company's general workforce, you have not demonstrated that the senior executives' eligibility to receive equity compensation awards does not implicate significant compensation matters. See Section C.3.b of Staff Legal Bulletin No. 14J (Oct. 23, 2018). Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(i)(7).

We are unable to concur in 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 do not compare favorably with the guidelines of the Proposal and that the Company has not, therefore, substantially implemented the Proposal. Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(i)(10).

Sincerely,

Kasey L. Robinson
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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February 15, 2019

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. 20549-3010

Re: New York Community Bancorp, Inc.
Response on Behalf of Proponent Jeffrey L. Doppelt

Ladies and Gentlemen:

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, Jeffrey L. Doppelt ("Proponent") submitted a shareholder proposal (the "Proposal") to New York Community Bancorp, Inc. ("NYCB" or the "Company"). The Proposal, if adopted, would recommend that the Board of Directors adopt a policy limiting equity grants to senior executives under certain circumstances when the stock price has declined, to address the extremely dilutive effect on NYCB shareholders of the oversized executive compensation equity grants.

In a letter to the Division dated February 4, 2019 (the "No-Action Request"), NYCB stated that it intends to omit the Proposal from its proxy materials to be distributed to shareholders in connection with the Company's 2019 annual meeting of shareholders. NYCB argues that it is entitled to exclude the Proposal in reliance on Rule 14a-8(i)(3), arguing that the Proposal is excessively vague and indefinite; Rule 14a-8(i)(7), on the ground that the Proposal deals with NYCB's ordinary business operations; and Rule 14a-8(i)(10) because NYCB asserts that it has substantially implemented the Proposal. NYCB is wrong on all counts.

**The Proposal:**

> To recommend to the Board of Directors to adopt a policy on making equity awards to senior executives, as follows:
>
> *No equity compensation grant may be made to a senior executive at a time when NYCB common stock has a market price that is lower*

*than the grant date market price (taking into account stock dividends and stock splits) of any prior equity compensation grants to such individual. Compliance with this policy is excused if it would result in the violation of any existing contractual obligation or the terms of any existing compensation plan.*

**Responses to the Company's Arguments for Excluding the Proposal:**

## I. The Proposal is Not So Vague and Indefinite as to Be Misleading

The Company attempts to rely on vagueness and indefiniteness as a basis for excluding the Proposal. The Company cites Staff Legal Bulletin No. 14B ("SLB 14B") for the proposition that a shareholder proposal may be omitted from the company's proxy statement when the language of that proposal or its statement in support renders the proposal so vague or indefinite that "neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." The Company's arguments, however, in no way show that the Proposal as a whole is vague or misleading. *See, e.g.*, Amgen, Inc. (Mar. 16, 2018) (Commission is unable to conclude that proposal, "taken as a whole, is so vague or indefinite that it is rendered materially misleading"); Comcast Corp. (Feb. 8, 2016).

First, the Company objects to the factually true statement that shareholders have voted "no" to "say on pay" each time that the "say on pay" vote was held since 2014, merely because the Company chose to hold only two such votes in the period. Another factually true statement that the Company finds objectionable is its own computation of total compensation for officers and directors, as listed in its most recent proxy statement, and set forth in the supporting statement for the Proposal. NYCB argues that it will "create the impression" of higher than actual compensation.[1] In fact, the statement in support explains clearly that the computed number includes director and senior executive officer compensation; it is meant to illustrate that compensation of those who have been running the Company, is bloated. What and how senior executives get paid is a significant policy consideration for shareholders, which is related to overall concerns about excessive pay and the dilutive effect on shareholders.

Nor could there be any confusion that the proposal deals with the negative impact on shareholders from the dilutive effect of equity grants, while the Company continues to perform poorly. As the Company admits, "[t]he essential objective of

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[1] The Company has also identified a minor typographical error; the compensation number cited in the Proponent's letter is $24.2, which was a reversal of two numbers and should have stated $22.4. We apologize for the error, but it may be easily corrected when the proxy statement is printed, so that shareholders can weigh in on a significant policy matter.

the Proposal is to impose limits on the Company's Board of Directors' ability to make equity compensation grants to the Company's senior executives, under certain circumstances, based on the Company's financial performance." No-Action Request, at p. 9. For that reason, the statement in support uses the phrase "print currency" to emphasize that there is a cost to shareholders even when there is no cash being expended by the Company on the compensation, and cautions against granting lower priced stock options in a period when shareholders are suffering from stock price declines. While the Company objects to this assertion, their argument -- that grants of lower priced equity may create performance incentives – is merely counterargument and not a basis to exclude the Proposal.

Overall, NYCB's arguments for exclusion do not touch on vagueness or indefiniteness or anything false and misleading. Rather, the Company does not agree with the policy being suggested by the Proponent. That type of argument belongs in the proxy statement in the Company's statement in opposition, which will allow shareholders to consider arguments on both sides and have an opportunity to weigh in on this significant policy issue.

Accordingly, the Proposal should not be omitted on the basis of Rule 14a-8(i)(3).

## II. The Proposal Does Not Cover Ordinary Business Operations

Under Rule 14a-8(i)(7), a company may omit a proposal that "deals with a matter relating to the ordinary business operations of the registrant." NYCB argues that the Proposal covers ordinary business operations, essentially the day-to-day operations. NYCB's argument ignores the standards that have been applied by the Staff consistently with regard to what types of compensation matters are "ordinary" and what types involve significant policy concerns, which are proper subjects for shareholder proposals.[2]

NYCB seeks to stretch language from recent SEC guidance, set forth in Staff Legal Bulletin No. 14J ("SLB 14J"), issued on October 23, 2018, which permits a company to omit a proposal "if a primary aspect of the targeted compensation is broadly available or applicable to the company's general workforce and the company demonstrates that the executives' or directors' eligibility to receive the compensation does not implicate significant compensation matters." In essence, a shareholder proposal is excludable if it "focuses on an ordinary business matter" and merely "***touches upon*** senior executive or director compensation matters" (emphasis added). The Proposal, however, is not addressed

[2] Staff Legal Bulletin No. 14A ("SLB 14A"), sets forth the standard for excludability under Rule 14a-8(i)(7) of proposals involving compensation. It indicates that senior executive compensation is not generally considered "ordinary business." Furthermore, it recognizes that dilution is also an issue that shareholders would consider significant.

to the general workforce, nor are the exorbitant senior executive equity grants and other such retention packages "broadly available to the general workforce." NYCB's 2018 proxy statement explains that the Board, through its Compensation Committee, determines the award of compensation and equity grants to the senior executive officers, while the general workforce is subject to "Incentive Compensation Performance Management Committee," an entirely different process run by management, not the Board. As the senior executives, not the general workforce, are responsible for the overall success of the Company, the incentives in their compensation scheme necessarily reflect different considerations from those of the general workforce, who have no such responsibility or control over the Company's overall success or failure. The fact that the equity necessary for the awards was set aside in 2012 under the same plan does not make them part of the same compensation scheme, just as the fact that cash may be used to compensate both senior executive officers and the general workforce does not make the compensation schemes the same. Here, the Company has two separate schemes, one administered by the Board for the senior executives, and the other administered by the senior executives and other members of management for the general workforce.

NYCB likens the Proposal to one that involves a golden parachute provision broadly available to a significant portion of the general workforce, but such a "golden parachute provision" is not comparable to the Proposal. The Proposal suggests that the Board of Directors adopt a policy regarding when senior executive compensation should and should not be issued in the form of dilutive equity grants. This is the quintessential type of senior executive compensation proposal that implicates important policy concerns for shareholders. By contrast, golden parachutes are provisions generally applicable to the workforce, which are triggered by a single uniform event for senior executives and the workforce alike.

NYCB's letter disproves its own point. In more than five single-spaced pages, NYCB sets forth the high-level consideration of senior executive equity grants, and thus, cannot argue that it is falls into the category of ordinary day-to-day management of the business. *See* No-Action Request, at pp. 6-11. Moreover, NYCB explains that recently it focused its shareholder engagement efforts on executive compensation and equity grants, as it is precisely the type of issue that is important to shareholders. *Id.* at p.8.

The fact that non-senior executives could also be granted equity awards does not make the Proposal, which applies only to senior executive equity grants, an "ordinary business" matter. Applying the "ordinary business" exclusion as NYCB suggests would cause the exception to swallow up the rule. As NYCB admits, "the Staff has generally allowed exclusion of proposals that relate to the compensation of employees outside a narrow band of 'senior executives…'" *See* No-Action Request, at p. 7; The Walt Disney Company (Dec. 1, 2000) (if proposal regarding equity grants is limited to "grants to executive officers," then it would not be excludable as relating to "ordinary business operations"); Associates First

Capital Corporation (Mar. 2, 2000) (if compensation proposal is limited to bonuses of executive officers, then it is not a matter of "ordinary business operations").

Moreover, per the standards of SLB 14J, the Proposal cannot be excluded because the Company cannot show that the Proposal "does not implicate significant compensation matters." The amount of equity compensation paid to senior executives is the subject of the Company's own proxy statement and its efforts to seek approval of the "say on pay" vote, and thus the Proposal, which narrowly addresses the same subject, is the proper subject for shareholder consideration. Amgen, Inc. (Mar. 16, 2018) (proposal regarding an annual report on risks related to public concern over drug pricing strategies but integrated into incentive compensation and other compensation programs for senior executives is not excludable under Rule 14a-8(i)(7)); AmerisourceBergen Corporation (Jan. 11, 2018) (not a matter of "ordinary business operations" as Company did not use quantitative analysis to show that monitoring issues involving opioids was not significant to the business);Walgreens Boots Alliance, Inc. (Nov. 20, 2018) (same).

Accordingly, the Company has not met its "burden of demonstrating that it may exclude the Proposal" as a matter relating to ordinary business operations. Amgen, Inc. (Mar. 16, 2018).

## III. The Company Has Not Substantially Implemented the Proposal

The Company argues that it has substantially implemented the Proposal, which is false. The Company provides a lengthy description of the ways in which the Board has been working to ameliorate a system that has resulted in excessive compensation to executives, including dilutive equity grants, in periods when the shareholders have suffered substantial losses. But that description is not equivalent to the specific limitations on senior executive equity grants called for in the Proposal. Again, if the Company believes that shareholders would be better off without the Proposal because it has curtailed the excesses, then it can indicate that in its response in the proxy statement. But the Company has provided no reason for the Proposal to be kept off the proxy statement entirely. *See also* Lockheed Martin Corporation (Jan. 31, 2001) (proposal was not substantially implemented); Amgen, Inc. (Mar. 16, 2018) (same); AmerisourceBergen Corporation (Jan. 11, 2018) (same).

**Conclusion**

For all of the reasons set forth above, the Company has no basis for omitting the Proposal from its 2019 proxy materials. Should you wish to contact me, you may reach me at 646-517-4399, and please send any written responses to this letter to me via email at cshahmoon@shahmoonkeller.com.

Very truly yours,

Carol S. Shahmoon, Esq.
On behalf of Proponent Jeffrey L. Doppelt

cc: R. Patrick Quinn (via email: R.Patrick.Quinn@myNYCB.com)

NEW YORK COMMUNITY BANCORP, INC.

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February 4, 2019

**Via Electronic Mail to shareholderproposals@sec.gov**

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of the Chief Counsel
100 F. Street, N.E.
Washington, D.C. 20549-3010

Re: New York Community Bancorp, Inc.
Shareholder Proposal submitted by Jeffrey L. Doppelt

Ladies and Gentlemen:

This letter and the enclosed materials are submitted on behalf of New York Community Bancorp, Inc. (the "Company") pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), to notify the Securities and Exchange Commission (the "Commission") of the Company's intention to exclude from its proxy materials for its 2019 annual meeting of shareholders (the "2019 Proxy Materials") a shareholder proposal (the "Proposal") submitted to the Company by Jeffrey L. Doppelt (the "Proponent"). We hereby request confirmation that the staff of the Division of Corporation Finance (the "Staff") will not recommend to the Commission that enforcement action be taken if the Company omits the Proposal from its 2019 Proxy Materials for the reasons discussed below.

The full text of the Proposal and supporting statement are set forth in **Exhibit A** to this letter.

In accordance with Staff Legal Bulletin No. 14D (November 7, 2008) ("SLB 14D"), this submission is being delivered by e-mail to shareholderproposals@sec.gov. Pursuant to Rule 14a-8(j), a copy of this submission also is being sent to the Proponent. Rule 14a-8(k) and SLB 14D provide that a shareholder proponent is required to send to the Company a copy of any correspondence which the proponent elects to submit to the Commission or the Staff. Accordingly, we hereby inform the Proponent that, if the Proponent elects to submit additional correspondence to the Commission or the Staff relating to the Proposal, the Proponent should concurrently furnish a copy of that correspondence to the undersigned.

Pursuant to the guidance provided in Section F of Staff Legal Bulletin 14F (October 18, 2011), we ask that the Staff provide its response to this request to the undersigned via e-mail at the address noted in the last paragraph of this letter.

The Company intends to file its definitive 2019 Proxy Materials with the Commission 80 days after the date of this letter.

**<u>The Proposal</u>**

The Proposal requests that the Company's stockholders approve the following:

> To recommend to the Board of Directors to adopt a policy on making equity awards to senior executives, as follows:
>
> No equity compensation grant may be made to a senior executive at a time when NYCB common stock has a market price that is lower than the grant date market price (taking into account stock dividends and stock splits) of any prior equity compensation grants to such individual. Compliance with this policy is excused if it would result in the violation of any existing contractual obligation or the terms of any existing compensation plan.

**<u>Bases for Excluding the Proposal</u>**

We request that the Staff concur that the Company may exclude the Proposal pursuant to:

- Rule 14a-8(i)(3), as the Proposal is so vague and indefinite as to be materially false and misleading;
- Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company's ordinary business operations; and
- Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal.

## I. The Proposal May Be Excluded Under Rule 14a-8(i)(3) Because It Contains Materially False or Misleading Statements.

Rule 14a-8(i)(3) permits a company to omit a proposal or supporting statement, or portions thereof, that are contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false and misleading statements in proxy materials. Pursuant to Staff Legal Bulletin No. 14B (Sept. 15, 2004) ("SLB 14B"), reliance on Rule 14a-8(i)(3) to exclude a proposal or portions of a supporting statement may be appropriate in only a few limited instances, one of which is when the language of the proposal or the supporting statement renders the proposal so vague or indefinite that "neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." See Philadelphia

Electric Company (Jul. 30, 1992). The Staff has further explained that a shareholder proposal can be sufficiently misleading and therefore excludable under Rule 14a-8(i)(3) when the company and its shareholders might interpret the proposal differently such that "any action ultimately taken by the [c]ompany upon implementation [of the proposal] could be significantly different from the actions envisioned by the shareholders voting on the proposal." Fuqua Industries, Inc. (Mar. 12, 1991).

The Company believes that it may properly omit the Proposal from its 2019 Proxy Materials pursuant to Rule 14a-8(i)(3), as the Proposal is materially false and misleading, contrary to Rule 14a-9, which could potentially mislead shareholders. The Proposal's Supporting Statement discusses unsupported and conclusory statements which could easily mislead shareholders as the Proponent provides incorrect factual information and unjustly makes misstatements on a complex subject.

The supporting statement for the Proposal reads:

> NYCB's shareholders voted "no" in the "say on pay" vote every year that the vote has been held since 2014. Shareholders' dissatisfaction with NYCB's pay practice is not surprising. Compensation at the senior level is outrageously excessive -- the 2018 proxy reports total director and executive compensation in 2017 of $24.2 million, while NYCB's total return in that period is down 13.8% as compared to the SNL U.S. Bank and Thrift Index, which was up 17.6%. And 2018 does not look brighter, with the stock price down 29% in 2018, and net income down 4 cents a share from 2017. To make matters worse, a substantial portion of senior-level compensation arises from equity grants, which are dilutive and costly to the owners of the company. It is irresponsible for the Board of Directors to in effect "print currency" indiscriminately at the shareholders' expense through these equity grants. If the purpose of these grants is to create incentives for executives to work to increase share value, a benefit that would be shared with the owners of the company, that goal would be better accomplished if the executives were not so rewarded when the stock price declines under their management.

The first sentence states, "NYCB's shareholders voted "no" in the "say on pay" vote every year that the vote has been held since 2014." This statement is misleading. While it is true that the shareholders' have voted no on the "say on pay" vote since 2014, it is important to note that the shareholders voted in 2011 in favor of making the frequency of the "say on pay" vote every three years, not every year. The Proponent's statement is misleading because it appears to infer that the voters have had a "say on pay" vote every year since 2014, i.e., four votes, when, in fact, they have only had two votes, i.e., votes in 2014 and 2017.

Next, the Proponent continues "...the 2018 proxy reports total director and executive compensation in 2017 of $24.2 million," which statement is inaccurate. Total compensation for the named executive officer and directors as reflected in the 2017 proxy statement was $22.4 million, not $24.2 million as the Proposal states. More importantly, as reported in the Summary Compensation Table on page 36 of the Company's 2018 proxy statement, aggregate compensation for the named executive officers paid in 2018 is only $18.7 million. The policy advocated by the Proposal targets the eligibility of "senior executive officers." Without presuming to fully understand Proponent's meaning of "senior executive officers", by adding aggregate "director" compensation to aggregate named executive officer compensation in his supporting statement (which supports a proposal that relates solely to "senior executive officer" compensation, not director compensation, Proponent attempts to create the impression that the Company's named executive officers were paid more in 2017 than they actually were.

Continuing, the Proponent states, "To make matters worse, a substantial portion of senior-level compensation arises from equity grants, which are dilutive and costly to the owners of the company." While it is true that equity awards are dilutive and require the Company to incur compensation expense, to suggest that if the Company were to eliminate the equity grants then it would eliminate or reduce the cost of executive compensation is disingenuous. A company must compensate its senior executives in one way or another in order to retain, attract and motivate executives in a competitive market. The Proponent's suggestion that any other form of compensation is not costly falsely implies that granting equity awards is a bad way to compensate senior executives or, even worse, that the Company has chosen a methodology which is more costly than alternative forms of compensation, e.g., cash incentives.

The Proponent then states, "It is irresponsible for the Board of Directors to in effect 'print currency' indiscriminately at the shareholders' expense through these equity grants." This statement is not only misleading, it is inflammatory and, in effect, unduly prejudicial. The equity grants given to senior executives are not given indiscriminately but, instead, are granted from a specific reserve of shares contemplated by the 2012 Stock Incentive Plan and are entirely consistent with the manner in which shareholders authorized the Board to grant such awards. Such authority was given to the Board by the shareholders through their adoption of the 2012 Stock Incentive Plan in 2012 and their reapproval of the performance measures in the Plan in 2017. Therefore, these grants are not indiscriminate and to suggest otherwise is completely misleading.

Finally, the Proponent concludes its argument by stating, "If the purpose of these grants is to create incentives for executives to work to increase share value, a benefit that would be shared with the owners of the company, that goal would be better accomplished if the executives were not so rewarded when the stock price declines under their management." This statement is inaccurate as share value can be created notwithstanding the price of the stock. Equity grants are part of the primary form of compensation to the Company's senior executives. Furthermore, to suggest that an incentive dissipates when the stock price decreases is also inaccurate as executives are more incentivized by a stock price decrease because their interests are aligned with shareholders.

If the goal is to create incentives for senior executives, but the effect of this proposed policy is to preclude the Board of the Company from granting equity awards that create such incentives for the senior executives, which the Proponent's proposed policy would do, then ultimately there is no incentive for the senior executives to increase share value and work in the shareholders' best interests.

Proponents of shareholder proposals must not be allowed or encouraged to inaccurately manipulate facts and figures in order to influence shareholders' through the proxy solicitation process. Accordingly, the Company believes that the Proposal includes materially false and misleading statements that could confuse shareholders and, therefore, is excludable under Rule 14a-8(i)(3).

## II. Rule 14a-8(i)(7) – The Proposal Deals with a Matter Relating to the Company's Ordinary Business Operations

The Proposal may also be excluded under Rule 14a-8(i)(7) because it addresses an aspect of senior executive compensation that is also available or applicable to members of the Company's general workforce. A shareholder proposal may be excluded under Rule 14a-8(i)(7) from its proxy materials if "the proposal deals with a matter relating to the company's ordinary business operations." The term "ordinary business" refers to matters that are not necessarily "ordinary" in the common meaning of the word; instead the term "is rooted in the corporate law concept of providing management with flexibility in directing certain core matters involving the company's business and operations." See Securities Exchange Act Release No. No. 34-40018 (May 21, 1998) (the "1998 Release"). When adopting amendments to Rule 14a-8 in 1998, the Commission explained that the general policy underlying the "ordinary business" exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." As explained in the 1998 Release, this general policy reflects two central considerations: (i) "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight;" and (ii) the "degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment."

On October 23, 2018, the Staff issued Staff Legal Bulletin No. 14J ("SLB 14J"), which provides important guidance on the scope and application of Rule 14a-8(i)(7) for proposals that address aspects of senior executive and/or director compensation matters. In SLB 14J, the Staff states its view that "a proposal that addresses senior executive and/or director compensation may be excludable under Rule 14a-8(i)(7) if a primary aspect of the targeted compensation is broadly available or applicable to a company's general workforce and the company demonstrates that the executives' or directors' eligibility to receive the compensation does not implicate significant compensation matters." The Staff further explains, "For example, a proposal that seeks to limit when senior executive officers will receive golden parachutes may be excludable under Rule 14a-8(i)(7) if the company's golden parachute provision broadly applies to a significant portion of its general workforce. This is because the availability of certain forms of compensation to senior executives and/or directors that are also broadly available or applicable to the general workforce does not generally raise significant compensation issues that transcend ordinary business matters."

The Proposal seeks to impose limits on the Company's Board of Directors' ability to make equity compensation grants to the Company's senior executives[, under certain circumstances, based on the market price of the Company's common stock.] The Company believes that the Proposal may be properly excluded under Rule 14a-8(i)(7) because the aspect of compensation targeted by the Proposal — namely, the granting of equity awards — relates to general employee compensation and benefits, precisely as contemplated by SLB 14J.

Currently, a committee of the Company's Board of Directors is authorized to make equity stock awards under the Company's 2012 Stock Incentive Plan (the "Plan"). The Plan is a broad-based, shareholder-approved plan that the Company utilizes to better align the interests of Plan participants with the Company's shareholders by awarding participants equity in the Company. Specifically, the purpose of the Plan is to (i) align the interests of the Company's shareholders and recipients of awards under the Plan by increasing the economic interest of such recipients in the Company's growth and success; (ii) advance the interests of the Company by attracting and retaining employees, non-employee directors, and other service providers; and (iii) encourage such persons to act in the long-term best interests of the Company and its shareholders. See Appendix A to the New York Community Bancorp, Inc. Definitive Proxy Statement filed pursuant to Schedule 14A, as filed with the Securities and Exchange Commission on April 27, 2012. Pursuant to Section 1.4 of the Plan, "Participants in this Plan shall consist of such officers, other employees, Non-Employee Directors, or other service providers (including consultants or other independent contractors) of the Company and its Subsidiaries as the Committee in its sole discretion may select from time to time." Accordingly, all of the Company's employees (including, but not limited to, officers), non-employee directors and other service providers, are eligible to receive awards under the Plan. Indeed, the vast majority of Company employees who have been granted equity awards (representing approximately 88% of all awards) under the Plan are not "senior executives" (which we believe would include only persons who are "executive officers" as defined in Rule 3b-7 under the Exchange Act). Additionally, because a stated purpose of the Plan is to attract and retain employees, all equity awards granted to employees under the Plan are granted in a consistent manner, regardless of whether the employee is a senior executive or is a non-executive employee. For example, to ensure the retention of all employee participants in the Plan, all equity awards granted under the Plan (and not just those granted to senior executives) are subject to a multi-year vesting schedule. The Company further notes that the granting of equity awards, such as those regularly awarded to Company employees under the Plan, are routinely used by companies in order to help attract and retain a wide spectrum of employees below the level of senior executive. Accordingly, the Company believes that exclusion of the Proposal under Rule 14a-8(i)(7) is consistent with the views and approach expressed by the Staff in SLB 14J.

The Staff has generally allowed exclusion of proposals that relate to the compensation of employees outside a narrow band of "senior executives," even when the Proposal would only apply to a limited group of high-level employees. In Bank of America Corporation (January 31, 2012), for example, the Staff concurred in the exclusion of a proposal regarding the compensation of the company's "100 top earning executives . . . and . . . members of its Board of Directors." In Bank of America, the company observed that the Staff "has consistently found that proposals regarding the compensation of a large number of employees that did not have a policy making role at their companies . . . are excludable under Rule 14a-8(i)(7)." The Staff concurred, concluding that the proposal was excludable as relating to "compensation that may be paid to employees generally and . . . not limited to compensation that may be paid to senior executive officers and directors." Similarly, in Minnesota Mining and Manufacturing Company (March 4, 1999), the Staff allowed exclusion of a proposal to limit the compensation of the company's CEO and its "top 40 executives" as "relating to [the company's] ordinary business operations (i.e., general compensation matters)." In Alliant Energy Corp. (February 4, 2004), the Staff concurred in the exclusion of a proposal seeking to regulate the salary of "the president, all levels of vice president, the CEO, CFO and all levels of top management." In Alliant, the company explained that the classes of employees covered by the proposal included persons not commonly identified as senior executives. The Staff concurred, concluding that the proposal was excludable as relating to "general compensation matters." See also 3M Company (January 8, 2018) (allowing exclusion of a proposal relating to stock and option awards to "Corporate Officers"); Apple Hospitality REIT, Inc. February 18, 2015) (concurring in the exclusion of a proposal that related to the compensation of (a company's "management team"); The Goldman Sachs Group, Inc. (March 8, 2010) (allowing exclusion of a proposal that applied to named executive officers and the 100 most highly-compensated employees); 3M Company (March 6, 2008) (concurring in the exclusion of a proposal related to compensation of "high-level 3M employees"); and Lucent Technologies Inc. (November 6, 2001) (allowing exclusion of a proposal concerning the compensation of "ALL officers and directors" (emphasis in original) of the company).

Finally, in concluding that the Proposal deals with matters relating to the Company's ordinary business operations, the Company's Board of Directors considered, among other things, (i) whether the Company has already addressed the issue raised by the Proposal, (ii) the extent of shareholder engagement on the issue and the level of shareholder interest expressed through that engagement; (iii) whether anyone other than the Proponent has requested the type of action or information sought by the proposal; and (iv) whether the Company's shareholders have previously voted on the matter and the Board's views as to the related voting results. In connection with this analysis, the Board of Directors concluded that the Company has already addressed the issue raised by the Proposal by submitting the Plan to a vote of the Company's shareholders at the Company's 2012 annual meeting of shareholders. The Plan identifies which employees are eligible to receive stock awards and on what basis such awards may be granted. The Plan, as overwhelmingly approved by the Company's shareholders -- 92% of the votes cast at the 2012 annual meeting voted in favor of the Plan -- did and does not tie an employee's eligibility to receive equity awards to the market price of the Company's common stock as contemplated by the Proposal. Further, the Board considered the fact that the Company has increased its shareholder engagement efforts in recent years, particularly as relates to executive and broad-based employee compensation matters. Specifically, during 2018, the Company conducted an extensive shareholder outreach program designed to solicit feedback from, and engage in meaningful dialogue with, several shareholders relating to the Company's broad-based and long-term equity compensation matters, including the Company's practice of granting of equity awards under the Plan. Institutional shareholders holding a substantial number of the Company shares of common stock were consulted. During these communications, a majority of those shareholders voiced a preference that executive compensation be divided between stock equity awards and base (cash) compensation. As part of its analysis of the Proposal, the Board noted that during this extensive shareholder engagement campaign, not a single shareholder requested the type of action contemplated by the Proposal. On the contrary, implementation of the Proposal could serve to preclude the use of equity grants to senior executive officers, which would directly conflict with the wishes of shareholders as expressed to us through the shareholder engagement process.

## III. The Proposal May Be Excluded Under Rule 14a-8(i)(10) Because the Company has Substantially Implemented the Proposal.

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal if the company has already substantially implemented the proposal. The Commission adopted the "substantially implemented" standard in 1983 in order to "avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management." See Exchange Act Release No. 34-20091 (Aug. 16, 1983) (the "1983 Release") and Exchange Act Release No. 34-12598 (July 7, 1976). A company need not have implemented each element in the precise manner suggested by the proponent. Rather, the actions taken by a company must have addressed the proposal's "essential objective." See Anheuser-Busch Companies, Inc. (Jan. 17, 2007). As a result, in accordance with Rule 14a-8(i)(10), the actions requested by a proposal need not be "fully effected" provided that they have been "substantially implemented" by the company. See 1983 Release. Instead, substantial implementation under Rule 14a-8(i)(l0) requires a company's actions to have satisfactorily addressed both the proposal's underlying concerns and its essential objective. See Exelon Corp. (Feb. 26, 2010); ConAgra Foods, Inc. (Jul. 3, 2006); Johnson & Johnson (Feb. 17, 2006); Talbots Inc. (Apr. 5, 2002); Masco Corp. (Mar. 29, 1999).

In this respect, the Staff has consistently applied Rule 14a-8(i)(10) in a manner that permits the exclusion of a proposal in instances where the Staff has determined that the company's policies, practices and procedures or public disclosures compare favorably with the guidelines of the proposal. See, e.g., United Cont'l Holdings, Inc. (Apr. 13, 2018); eBay Inc. (Mar. 29, 2018); Kewaunee Scientific Corp. (May 31, 2017); Wal-Mart Stores, Inc. (Mar. 16, 2017); Dominion Resources, Inc. (Feb. 9, 2016); Ryder Sys., Inc. (Feb. 11, 2015); Wal-Mart Stores, Inc. (Mar. 27, 2014); Peabody Energy Corp. (Feb. 25, 2014); The Goldman Sachs Group, Inc. (Feb. 12, 2014); Hewlett-Packard Co. (Dec. 18, 2013); Deere & Co. (Nov. 13, 2012); Duke Energy Corp. (Feb. 21, 2012); Exelon Corp. (Feb. 26, 2010). As discussed in detail below, the Company has already implemented policies, practices and procedures that satisfactorily address both the Proposal's underlying concerns and its essential objective and should therefore be permitted to omit the Proposal from its 2019 proxy materials pursuant to Rule 14a-8(i)(10).

The essential objective of the Proposal is to impose limits on the Company's Board of Directors' ability to make equity compensation grants to the Company's senior executives, under certain circumstances, based on the Company's financial performance. In the supporting statement to the Proposal, the Proponent articulates two underlying concerns with respect to the Proposal. First, the Proponent suggests that the limits in the Proposal are appropriate because of the performance of the Company's stock price in comparison to other companies listed in the SNL U.S. Bank and Thrift Index. Second, the Proponent suggests that equity compensation grants are used by the Company to, in effect, "print currency indiscriminately" in a manner that is dilutive and costly to shareholders.

As stated above, the Proposal seeks to impose limits on the Company's Board of Directors' ability to make equity compensation grants to the Company's senior executives, under certain circumstances, based on the market price of the Company's common stock. The rationale for this policy as articulated in the Proposal's supporting statement is that the Company's total return is "down" compared to other companies listed on the SNL U.S. Bank and Thrift Index. However, the Company has already adopted policies, practices and procedures – which were disclosed in its proxy statement for its 2018 annual meeting of shareholders – to ensure that equity compensation grants to the Company's senior executives are considered based on the Company's performance with respect to metrics relative to the performance of the Company's designated peer group. The first of these metrics, the Company's net charge-offs as a percentage of average loans and leases, provides a solid measure of the Company's loan quality and the effectiveness of its risk management controls since, as a highly regulated business, having a strong credit culture minimizes risk to the Company's business and shareholder value. The second of these metrics, the Company's return on average tangible common equity, provides a strong measure of the effectiveness of the Company's capital deployment strategies over time. Accordingly, consistent with the objective of the Proposal, the Company already conducts an analysis of its executive compensation structure and financial performance relative to a peer group of similarly sized, publicly traded financial institutions, as a critical element of its compensation philosophy, and as a key reference point for formulating compensation decisions for the Company's senior executives.

To guide and instruct the Company's analysis, the Compensation Committee of the Company's Board of Directors has retained an independent compensation consultant, which works with the Compensation Committee to review the Company's executive compensation program – including equity compensation grants – and assess the Company's program relative to its performance and the market. Management works with the independent compensation consultant, at the direction of the Compensation Committee, to develop materials and analyses that are critical to the Compensation Committee's evaluations and determinations. Such materials include competitive market assessments of executive compensation and guidance on regulatory and legal developments. In addition, the independent compensation consultant also helps the Compensation Committee to identify an appropriate peer group for the Company and annually provides the Compensation Committee with comparative financial information for the peer group to establish and approve award levels under the Company's incentive compensation program.

Additionally, as disclosed in its proxy statement for its 2018 annual meeting of shareholders, the Company's Compensation Committee has greatly expanded the range of factors supporting "negative discretion" in approving equity compensation grants, including the consideration of the Company's performance relative to peer banks when comparing the key financial metrics discussed above. Indeed, based on the Compensation Committee's exercise of negative discretion, for the year ended December 31, 2017, the Company's senior executives received substantially reduced long-term incentive compensation awards under the Plan, which resulted in a significant year-over-year decline from 2016 in total direct compensation for each senior executive. Specifically, although the executives were eligible for awards at the maximum funding level under the Plan, the Compensation Committee exercised negative discretion to reduce the actual award for each senior executive to the midpoint between the minimum and target award levels or, in dollar terms, to 42% of the maximum award value. This determination was based principally on (i) the Compensation Committee's evaluation of a range of supplemental financial metrics that provided the Committee with a broader perspective of the Company's 2017 performance relative to the peer group and (ii) the year-over-year downward trend in the metrics used to determine awards under the long-term program.

The Compensation Committee's decisions in 2017 were focused on the alignment of pay and 2017 Company performance, reflecting an acknowledgment of shareholder concerns while recognizing each executive's high level of individual performance. Consistent with the aim of the Proposal, the Company intends to continue to implement the compensation policies, practices and procedures set forth above, including the exercise of negative discretion when appropriate, to ensure that future equity compensation grants to the Company's senior executives are considered based on the Company's performance in comparison with its designated peer group.

Finally, the Company has also implemented policies, practices and procedures to adequately address the Proposal's second underlying concern that equity compensation grants are dilutive and costly to shareholders. All future equity compensation grants will be awarded pursuant to the terms of the Plan, which was overwhelmingly approved by shareholders at the Company's 2012 annual meeting of shareholders.

Under the terms of the Plan, the Company's Compensation Committee is authorized to grant equity compensation awards for up to (i) 18,000,000 shares of Company common stock plus (ii) up to 1,030,673 shares that remained available for grant under the Company's prior 2006 Stock Incentive Plan. The Plan provides that, subject to the terms of the Plan, the Compensation Committee has the authority to select eligible persons to receive awards and to determine all of the terms and conditions of each award. The number of shares available for grants under the Plan, as well as the Compensation Committee's authority to determine the terms and conditions of equity compensation awards, were clearly set forth in the Company's proxy statement for the Company's 2012 annual meeting of shareholders, and a copy of the Plan was attached as an appendix to the proxy statement. As a result, the Company's shareholders were well aware of the potential dilutive impact of potential equity compensation grants under the Plan and the Compensation Committee's authority to determine the terms and conditions of awards when they overwhelmingly approved the Plan, which, in turn refutes the Proposal's contention that grants made under the Plan constitute the indiscriminate printing of currency at the expense of shareholders.

**Conclusion**

For the reasons discussed above, the Company believes that it may omit the Proposal from its 2019 proxy materials. We request the Staff's concurrence in our view or, alternatively, confirmation that the Staff will not recommend any enforcement action to the Commission if the Company excludes the Proposal.

If you have any questions or need additional information, please feel free to contact me at (516) 683-4570. When a written response to this letter is available, I would appreciate your sending it to me via email at R.Patrick.Quinn@myNYCB.com.

Sincerely yours,

NEW YORK COMMUNITY BANCORP, INC.

R. Patrick Quinn
*Executive Vice President,*
*Chief Corporate Governance Officer*
*and Corporate Secretary*

cc: Jeffrey L. Doppelt (via Federal Express)
Carol S. Shahmoon, Esq. (via email: cshahmoon@shahmoonkeller.com)

**Exhibit A**

**Copy of the Proposal and other correspondence**

**[EXHIBIT BEGINS ON THE NEXT PAGE]**

NEW YORK COMMUNITY BANCORP, INC.

615 MERRICK AVENUE, WESTBURY, NY 11590
Tel: (516) 683-4675 • Fax: (516) 683-8349 • E-mail: laura.coleman@myNYCB.com

**LAURA K. COLEMAN, ESQ.**
First Vice President, Staff Attorney
Legal Department, Corporate Governance Unit

January 7, 2019

Jeffrey L. Doppelt
***

Re: Shareholder Proposal Submitted to New York Community Bancorp, Inc. by Jeffrey L. Doppelt

Dear Mr. Doppelt:

We are in receipt of your letter addressed to Corporate Secretary R. Patrick Quinn dated November 6, 2018. On behalf of New York Community Bancorp, Inc. (the "Company"), I am writing to advise you that your proposal letter has been submitted to the Company's Board of Directors and is currently being considered.

Either Mr. Quinn or I will be in contact with you once the Board has determined its response to your proposal.

If you have any questions, please feel free to contact me at (516) 683-4675.

Sincerely yours,

Laura K. Coleman

Laura K. Coleman

/s

cc: R. Patrick Quinn (via email)
Carol S. Shahmoon, Esq. (via email: chahmoon@csslegalgroup.com)

Jeffrey L. Doppelt
***

November 6, 2018

<u>VIA OVERNIGHT</u>
Corporate Secretary, R. Patrick Quinn
New York Community Bancorp, Inc.
615 Merrick Avenue
Westbury, New York 11590

Dear Mr. Quinn:

I am the trustee of a Trust which is the beneficial owner of 5,000 shares of New York Community Bancorp, Inc. ("NYCB"), and I intend to continue to own these shares on behalf of the trust until the date of NYCB's next annual meeting. (See attached written statement from the record holder verifying my ownership.) I would like to present a shareholder proposal at the 2019 annual meeting and to have that proposal included in NYCB's 2019 proxy statement. I intend to appear in person or by a qualified representative at the annual meeting to bring this proposal before the annual meeting.

<u>The Proposal</u>:

> To recommend to the Board of Directors to adopt a policy on making equity awards to senior executives, as follows:
>
> *No equity compensation grant may be made to a senior executive at a time when NYCB common stock has a market price that is lower than the grant date market price (taking into account stock dividends and stock splits) of any prior equity compensation grants to such individual. Compliance with this policy is excused if it would result in the violation of any existing contractual obligation or the terms of any existing compensation plan.*

<u>Statement In Support</u>:

> NYCB's shareholders voted "no" in the "say on pay" vote every year that the vote has been held since 2014. Shareholders' dissatisfaction with NYCB's pay practice is not surprising. Compensation at the senior level is outrageously excessive – the 2018 proxy reports total director and executive compensation in 2017 of $24.2 million, while NYCB's total return in that period is ***down 13.8%*** as compared to the SNL U.S. Bank and Thrift Index, which was ***up 17.6%***. And 2018 does not look brighter, with the stock price down 29% in 2018, and net income down 4 cents a share from 2017. To

make matters worse, a substantial portion of senior-level compensation arises from equity grants, which are dilutive and costly to the owners of the company. It is irresponsible for the Board of Directors to in effect "print currency" indiscriminately at the shareholders' expense through these equity grants. If the purpose of these grants is to create incentives for executives to work to increase share value, a benefit that would be shared with the owners of the company, that goal would be better accomplished if the executives were not so rewarded when the stock price declines under their management.

Please include my proposal in the 2019 Proxy Statement, and contact me, if you have any questions or comments. Also, if you believe you have reason to exclude this proposal from the company's proxy statement, please let me know as soon as possible.

Sincerely,

Jeffrey L. Doppelt

Jeffrey L. Doppelt

cc: Carol S. Shahmoon, Esq.
cshahmoon@shahmoonkeller.com

Bank of America
Merrill Lynch

Nov 06, 2018

To whom it may concern,

As of 11/06/2018, Mr. Jeffrey L. Doppelt held, and has continuously for at least one year, 5,000 shares of New York Community Bancorp (NYCB).

Regards,

Thomas Turner
Ops SR Analyst MKTS
Bank of America Merrill Lynch | 4804 Deer Lake Drive | Jacksonville, FL 32246
Merrill, Lynch, Pierce, Fenner & Smith Incorporated