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February 15, 2021
Via electronic mail

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

Re: State Street Corporation; Shareholder Proposal of James McRitchie (John Chevedden)
Securities Exchange Act of 1934 ("Exchange Act")—Rule 14a-8

Ladies and Gentlemen:

James McRitchie (the "Proponent") is beneficial owner of common stock of State Street Corporation (the "Company") and has submitted a shareholder proposal (the "Proposal") to the Company. I have been asked by the Proponent to respond to the letter dated January 15, 2020 ("Company Letter") sent to the Securities and Exchange Commission (the "SEC") by Lillian Brown ("Company Counsel"). In that letter, the Company contends that the Proposal may be excluded from the Company's 2021 proxy statement. A copy of the Proposal is attached to this letter.

Based on the Proposal, as well as the letter sent by the Company, we respectfully submit that the Proposal must be included in the Company's 2021 proxy materials and that it is not excludable under Rule 14a-8. A copy of this letter is being emailed concurrently to Company Counsel.

The Proposal requests a study of the how the Company's voting and engagement policies, which focus solely on individual corporation materiality to the exclusion of capital markets materiality, affect the majority of its clients and shareholders, who rely primarily on overall stock market performance for their returns, rather than upon the returns of individual companies. The Company asserts that the Proposal is excludable (1) under Rule 14a-8(i)(7) for being vague and misleading, (2) under Rule 14a-8(i)(2) and Rule 14a-8(i)(6) because implementing the Proposal would be illegal under both state and federal law and thus beyond its authority to implement, (3) under Rule 14a-8(i)(10), because it has been substantially implemented, and (4) under Rule 14a-8(i)(7), because it relates to the Company's ordinary business.

According to the "kettle logic"[1] of the Company Letter, then, the following three things are true: the Proposal cannot be understood, the Proposal can be understood well enough to know that it would be illegal to implement, and the Company has implemented the illegal Proposal. This contradictory tangle of arguments results from a clear misconstruction of the Proposal, as discussed below.

A. The Proposal asks the Company to report whether its policies of maximizing the value of individual portfolio companies harms its clients, which is neither illegal nor outside the Company's authority, and thus should not be excluded under Rules 14a-8(i)(2) or (6)

1. *The proposal does not propose subordinating the interests of beneficiaries to any other interests.*

Much of the Company Letter springs from the false idea that the Proposal asks the Company to put any interests before those of its clients. The Company Letter claims that the Proposal suggests that the Company "can or should, in its engagement and voting activities on behalf of clients place the interests of the 'global commons' before the interests of its clients." This is specious. First, the Proposal only suggests a report, and not any action at all. More to the point, however, is the nature of the requested report, which is disclosure of how ignoring the global commons will "affect the majority of its clients and shareholders." Rather than suggesting that the interests of its clients be subjugated, the Proposal asks for a report on whether the Company is *harming its clients* with its current policy of maximizing shareholder value at individual companies.[2] In other words, the Proposal seeks to determine whether the company is subjugating the interests of its clients to those of individual portfolio companies.

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[1] Slavoj Zizek, IRAQ: THE BORROWED KETTLE ("In order to render the strange logic of dreams, Freud quoted the old joke about the borrowed kettle: (1) I never borrowed a kettle from you, (2) I returned it to you unbroken, (3) the kettle was already broken when I got it from you. Such an enumeration of inconsistent arguments, of course, confirms exactly what it attempts to deny—that I returned a broken kettle to you.")

[2] *Global Proxy Voting and Engagement Policies* (March 2020) available at https://www.ssga.com/library-content/pdfs/ic/proxy-voting-and-engagement-guidelines-principle.pdf ("At State Street Global Advisors, we take our fiduciary duties as an asset manager very seriously. . . . The underlying goal is to maximize shareholder value" and "Proposals that are in the best interests of shareholders, demonstrated by enhancing share value or improving the effectiveness of the company's operations, will be supported.")

The Company letter cites a number of fiduciary standards to which it is subject; in each case the Proposal complies with the standard:

- *It must "place its client's interest before its own or the interests of others."* The Proposal is in keeping with this standard as it seeks to discover whether the Company is harming the interests of its clients, who rely not on individual company performance, but on market performance.[3]

- *"[T]o satisfy its fiduciary duty in making any voting determination, the investment adviser must make the determination in the best interests of the client."* As the quotes in the margin show,[4] the Company's own description of its voting and engagement strategies focus first on the interests of the individual companies, apparently believing that will best serve its clients. The goal of the Proposal is to study whether the interests of those companies is entirely aligned with the interests of clients.

- *The Company must "administer the trust solely in the interest of the beneficiaries."* Again, the Proposal asks that the Company ensure that its current policies, which focus on individual portfolio companies, protect the interests of its clients/beneficiaries when the value-maximizing conduct of individual companies harms the portfolios of those investors.

The Company Letter cites additional expressions of the fiduciary standard they are held to as an asset manager, but they all boil down to the same critical point: they must put the interests of their clients first. Because the Proposal is in fact designed to further the interests of those clients, the Company Letter can only make the illegality argument by proposing a hypothetical that is not even remotely suggested by the Proposal: "if [the Company] engaged portfolio companies in discussions regarding the interests of the 'global commons' ahead of the direct interests of the beneficiaries, it would be in violation of its first duty of loyalty."

Of course it would. But the Proposal never suggests putting the global commons "ahead of beneficiaries." Instead, it asks the Company to investigate whether the Company's failure to engage with companies directly in relation to their impact on the global commons will harm those beneficiaries. As discussed in the next section, this is a critical concern.

2. *The Company's focus on maximizing the value of individual companies risks harming investors who hold diversified portfolios,*

[3] To be clear, the Proposal only requests a report; if that report were to show that, contrary to the Proponent's concern, the Company's current policies in fact were in the best interest of beneficiaries, no law would be broken.
[4] *Supra,* n.2; *see also id.* ("When voting, we fundamentally consider whether the adoption of a shareholder proposal addressing a material sustainability issue would promote long-term shareholder value.")

a. Diversification and the importance of overall market return

Sound investing practice mandates that fiduciaries adequately diversify their portfolios.[5] This allows investors to reap the increased returns available from risky securities while greatly reducing their overall risk—it is this insight that defines Modern Portfolio Theory.[6] This core principle is reflected in ERISA (the source of some of the standards cited in the Company Letter), which requires plan fiduciaries to act prudently "by diversifying the investments of the plan."[7] The wisdom of a diversified investment strategy can be summarized through the philosophy of the late John Bogle, founder of one of the largest mutual funds companies in the world: "Don't look for the needle in the haystack; instead, buy the haystack."[8]

Thus, adequate diversification is required by accepted investing theory and fiduciary standards. However, once a portfolio is diversified, the most important factor determining return will not be how the companies in that portfolio perform relative to other companies ("alpha"), but rather how the market performs as a whole ("beta"). As one work describes this, "[a]ccording to widely accepted research, alpha is about one-tenth as important as beta [and] drives some 91 percent of the average portfolio's return."[9]

b. Beta and ESG

This distinction between individual company returns and overall market return is critical because shareholder return at an individual company does not reflect "externalized" costs, i.e., those costs it generates but does not pay. Externalized costs include harmful emissions, resource depletion, and the instability and lost opportunities caused by inequality. The collective costs of such externalities are absorbed by diversified shareholders (including the Company's clients) because they degrade and endanger the stable, healthy systems upon which corporate financial returns depend. Thus, while individual companies can "efficiently" externalize costs from their own narrow perspective in order to "maximize shareholder value" (as contemplated by the Company's Governance Principles), diversified shareholders pay these costs through a lowered return on their portfolios.[10] Stewardship of the externalizing companies reduce externalities (even profitable ones) and provides an opportunity to increase return at the portfolio level.

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[5] *See generally*, Burton G. Malkiel, A Random Walk Down Wall Street (2015)
[6] *Id.*
[7] 29 USC Section 404(a)(1)(C).
[8] John C. Bogle, The Little Book of Common Sense Investing: The Only Way to Guarantee your Fair Share of the Stock Market, 86 (2007).
[9] Stephen Davis, Jon Lukomnik and David Pitt-Watson, *What They Do with Your Money* (2016).
[10] *Externalities and Corporate Objectives in a World with Diversified Shareholder/Consumers,* Robert G. Hansen and John R. Lott, JOURNAL OF FINANCIAL AND QUANTITATIVE ANALYSIS, 1996, vol. 31, issue 1, 43-68 (abstract) ("If shareholders own diversified portfolios, and if companies impose externalities on one another, shareholders do not want value maximization to be corporate policy. Instead, shareholders want companies to maximize portfolio values. This occurs when firms internalize between-firm externalities.")

Thus, if a fiduciary like the Company focuses only on the effect that environmental, social, and governance ("ESG") behaviors have on the performance of companies whose activity is at issue, and not on the external costs created by the behavior, the fiduciary may be sacrificing the 91% of potential return attributed to market return in order to optimize the 9% that comes from outperformance. Externalized social and environmental costs can play an outsized role in that 91%. A recent study (the "Schroders Report") by a major asset manager was able to discern that 55% of the profits attributed to publicly listed companies globally were consumed by external costs absorbed by the rest of the economy:

> *In total, the earnings listed companies generate for shareholders currently total US$4.1 trillion, which would fall by 55% to US$1.9 trillion if those social and environmental impacts crystallised as financial costs. One third of companies would become loss-making.*[11]

But those costs will crystalize: as the economy absorbs them, growth and productivity will fall, leading to decreasing overall market returns.[12] The PRI, an investor initiative whose members (including the Company) have $89 trillion in assets under management, recently explained how the pursuit of profit by an individual company can reduce the return of diversified owners even if the company is included in their portfolio, highlighting problems that arise from optimizing for too narrow a scope:

- *A company strengthening its position by externalising costs onto others. The net result for the [diversified] investor can be negative when the costs across the rest of the portfolio (or market/economy) outweigh the gains to the company;*
- *A company or sector securing regulation that favours its interests over others. This can impair broader economic returns when such regulation hinders the development of other, more economic companies or sectors;*

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[11] *Foresight,* Schroders, *available at* https://www.schroders.com/en/sysglobalassets/digital/insights/2019/pdfs/sustainability/sustainex/sustainex-short.pdf

[12] On the economic cost of climate change, s*ee, e.g.,* Kahn, M., Mohaddes, K., Ng, R., Hashem Pesaran, M., Raissi, M, and Yang, J., *Long-Term Macroeconomic Effects of Climate Change: A Cross-Country Analysis*, IMF Working Paper (2019) (abstract) (" Our counterfactual analysis suggests that a persistent increase in average global temperature by 0.04°C per year, in the absence of mitigation policies, reduces world real GDP per capita by more than 7 percent by 2100. On the other hand, abiding by the Paris Agreement, thereby limiting the temperature increase to 0.01°C per annum, reduces the loss substantially to about 1 percent."); as to the economic cost of inequality, *see, e.g., Dana Peterson and Catherine Mann, Closing the Racial Inequality Gaps: The Economic Cost of Black Inequality in the U.S.* (2020) (closing racial gaps could lead to $5 trillion in additional GDP over next five years) available at https://ir.citi.com/%2FPRxPvgNWu319AU1ajGf%2BsKbjJjBJSaTOSdw2DF4xynPwFB8a2jV1FaA3Idy7vY59bOtN2lxVQM%3D; *Inequality is Slowing U.S. Economic Growth,* Economic Policy Institute (December 12, 2017) (Inequality reduces demand by 2-4% annually) available at https://www.epi.org/publication/secular-stagnation/; Heather Boushey, Unbound: How Inequality Constricts Our Economy and What We Can Do about It (2019).

- *A company or sector successfully exploiting common environmental, social or institutional assets. Notwithstanding greater harm to societies, economies, and markets on which investment returns depend, the benefits to the company or sector can be large enough to incentivise and enable them to overpower any defence of common assets by others.*[13]

c. The Need for Systems Stewardship

Given the critical importance of overall market return, and the danger to that return from company activities that damage social and environmental systems, the Company's clients/beneficiaries clearly need protection from individual portfolio companies that improve their own performance in ways that damage overall market return. In order to protect the interest of plans and beneficiaries, plan fiduciaries must consider whether they can effectively engage and vote in order to limit or eliminate conduct that threatens the social and economic systems on which investors with diversified portfolios rely.

Because investors collectively have the power to vote against the management at companies that endanger systems that are critical to all companies, they have the power to steward companies away from negative sum activities and towards authentically productive profits. The PRI report cited above reaches the conclusion that collective investor action to manage social and environmental systems is needed in order to satisfy the fiduciary duties of investment trustees:

> *Systemic issues require a deliberate focus on and prioritisation of outcomes at the economy or society-wide scale. This means stewardship that is less focused on the risks and returns of individual holdings, and more on addressing systemic or 'beta' issues such as climate change and corruption. It means prioritising the long-term, absolute returns for universal owners, including real-term financial and welfare outcomes for beneficiaries more broadly.*[14]

Thus, the Proposal simply asks the Company to report on an issue raised by two investor alliances of which it is a member. Providing the requested report would not violate state or federal law and is fully within the Company's authority.

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[13]PRI, *Active Ownership 2.0: The Evolution Stewardship Urgently Needs,* available at https://www.unpri.org/download?ac=9721. *See also Addressing Climate as a Systemic Risk: A call to action for U.S. financial regulators, available at* https://www.ceres.org/resources/reports/addressing-climate-systemic-risk ("The SEC should make clear that consideration of material environmental, social and governance (ESG) risk factors, such as climate change, to portfolio value is consistent with investor fiduciary duty."). Ceres is a non-profit organization with a network of investors with more than $29 trillion under management. The Company is a member of its Investor Network.

[14] *Supra,* n.13 (emphasis added.)

B. The Proposal is not misleading or vague and is therefore not excludable pursuant to Rule 14a-8(i)(3)

1. The statements in the Proposal are not false.

The Company claims that four statements in the Proposal are false. We take them in order.

First, the Company Letter says, "*Contrary to the assertion in the Resolved clause in the proposal, the Company's policies do not focus on individual companies.*" This is simply a mischaracterization of what the Proposal says. As described in the preceding section, the Proposal addresses the Company's focus on company-by-company value maximization, which the Company's own policies make clear.[15] The fact that those issues may extend across the market does not change the fact that the Company supports them only to the extent that they increase individual company profitability. For example, the Company Letter cites gender diversity and racial diversity as examples of issues that it covers "industry-wide and market-wide" rather than individually. But the recent letter of the Company's CEO to the board members of portfolio companies clearly states that its support of diversity is intended to increase returns at the companies that improve their diversity, and not to improve social systems on which other companies rely:

> *Research has shown the positive impacts diverse groups can have on improved decision making, risk oversight, and innovation, as well as how management teams with a critical mass of racial, ethnic, and gender diversity are more likely to generate above-average profitability.*
>
> *Likewise, companies that promote workforce diversity and inclusion through transparent hiring, promotion, and wage practices have seen improved productivity, revenues, and market share . . .*[16]

Second, the Company Letter claims that the Proposal falsely states that "a majority of the Company's shareholders rely primarily on one particular measure of overall stock market performance." In order to make the Proposal appear misleading, the Company Letter gratuitously adds the phrase "one particular measure." The Proposal makes no such claim and simply posits the uncontroversial idea that almost all shareholders generally spread their investments among different securities[17] (and indeed, funds that perform that diversification are the very product for

[15] *Supra,* n.2 &4.

[16] *CEO's Letter on our 2021 Proxy Voting Agenda* (January 11, 2021) available at https://www.ssga.com/us/en/institutional/ic/insights/ceo-letter-2021-proxy-voting-agenda

[17] *See* n.5-7 and accompanying text.

which the Company is known.) In such cases, market performance will matter because of overall correlations among investments and the economy.[18] While there is of course "no one measure" for every investor, it is clear that healthy social and environmental systems support for-profit enterprises generally. Indeed, the very purpose of the Proposal is to ask the Company to gather information about how to find a variety of measures that will allow it to vote its shares and engage with portfolio companies in the way that best serves its clients.

Third, the Company Letter argues that the Proposal is misleading because it asserts that the Company stewards portfolio companies to improve ESG performance only if it improves their own performance. The Company's argument that this claim is misleading is as follows: "the Company's engagements address a number of industry-wide and market-wide issues and are focused on long-term value enhancement." That statement is not contrary to the Proposal, however, because such issues may affect the individual company value of the companies being engaged. The issue raised by the Proposal is not whether an issue pertains to one company or many companies; *it is whether it will be advanced at any one company even if it lowers that company's financial return in order to enhance market return,* and based on the many discussions of shareholder value in the Company's materials, the answer appears to be "no."

Finally, the Company claims that the assertion that it is focused on company-by-company materiality is false. As with the previous claim, however, the Company Letter only offers a non-denial denial, stating that its analyses include "the impact of these ESG issues across industries and market sectors and not only on the impact of these ESG issues on an individual company." But again, this is perfectly consistent with a focus on materiality to companies, rather than the focus of the proposal, which is materiality to systems. Indeed, the Company's proprietary R-Factor™ system relies on materiality models that stretch across industries, but which are still focused on materiality to companies, and not to systems.[19] That system leverages "widely accepted, transparent materiality frameworks from the Sustainability Accounting Standards Board (SASB) and corporate governance codes to generate a unique ESG score for listed companies."[20]

SASB itself is known for focusing solely on Company materiality. As it describes its own standards, "SASB standards address the sustainability topics that are reasonably likely to have material impacts on the financial condition or operating performance of companies in an industry."[21] A recent collaborative effort among disclosure standard setters distinguished between disclosure that addressed impacts beyond companies themselves and the narrower, company-only standards created by SASB:

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[18] *See* n.9 and accompanying text

[19] *See R-Factor™ — A Roadmap to Build Sustainable Companies* available at https://www.ssga.com/us/en/institutional/ic/capabilities/esg/data-scoring/r-factor-transparent-esg-scoring

[20] *Id.*

[21] *SASB Conceptual Framework* (February 2017) available at https://www.sasb.org/wp-content/uploads/2020/02/SASB_Conceptual-Framework_WATERMARK.pdf. As a result, SASB's standards treat data on race and gender as material in only 13 or the 77 industries for which it establishes disclosure standards, even though racial and gender injustice in any industry can harm the social fabric. (see https://www.sasb.org/blog/exploring-diversity-inclusion-in-the-sasb-standards/)

> *The SASB Standards . . . focus exclusively on enabling companies to identify the sub-set of sustainability information that is material for enterprise value creation.*[22]

Thus, none of the statements in the Proposal are misleading: they are all consistent with the question that underlies the Proposal: are clients well-served by the Company's focus on improving shareholder value at individual companies without accounting for the harm they impose on other companies?[23]

2. The Proposal is not vague

The Company's argument that the Proposal is vague grasps at straws to try to find vagueness in a clearly written proposal. As the Company Letter correctly states: "The Staff consistently has taken the position that vague and indefinite shareholder proposals are inherently misleading and therefore excludable under Rule 14a-8(i)(3) because 'neither the [share]holders 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.'" In contrast, the Proposal is quite clear.

First, the Company argues that "market materiality" is not defined, and then throws out the names of different stock indices the term might apply to. But in context, it is clear that the Proposal is not referring to a specific index—it is referring to the fact that company behavior does not only affect the financial performance of that company itself, but the broader markets as well. The exact same point is true with respect to the Company's claim that the term "global commons" is vague. This reference is included in the supporting statement and simply explains how an engagement based on preserving market value would operate—by preserving common goods upon which all companies depend. What the Company Letter calls "vague" is actually just "unknown," which is the very point the Proponent wants the Company to address. The Proposal asks the Company to investigate just what type of behavior by the companies in its portfolios may be harming the commons and its clients.

The Company claim that the Proposal is vague because it does not specify the harms to the economy that affect its clients' portfolios is similarly circular. The Company is essentially saying that the Proposal's request for a report is vague because it does not specify what the report will say.

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[22] Statement of Intent to Work Together Towards Comprehensive Corporate Reporting (September 2020) available at https://29kjwb3armds2g3gi4lq2sx1-wpengine.netdna-ssl.com/wp-content/uploads/Statement-of-Intent-to-Work-Together-Towards-Comprehensive-Corporate-Reporting.pdf.

[23] *Global Proxy Voting and Engagement Policies* (March 2020) ("In all cases, we use our discretion in order to maximize shareholder value.") available at https://www.ssga.com/library-content/pdfs/ic/proxy-voting-and-engagement-guidelines-principle.pdf.

The last claim of vagueness simply makes no sense. The Proposal notes that a study may cause shareholders to rethink a number of characteristics of the Company. Based on this innocuous statement, the Company claims that the Proposal is vague because the shareholders voting on the Proposal and the Company in preparing the report would not "be able to determine with any certainty exactly what actions or measures the Proposal requires." This is a *non sequitur*: the Proposal requires the study it asks for; that the completed study may have consequences that are not already known does not mean the Proposal is vague—it just means that it is potentially useful.

There is no question that compilation of the report described in the Proposal will require discretion and business judgment on the part of the Company because it will have to make decisions as to the best methodologies to follow. But that does not make the request vague. The Proposal presents a fairly simple request: that the Company investigate whether its clients and shareholders are harmed by its focus on maximizing shareholder value of portfolio companies while ignoring the systemic effects of their externalities. Being asked to report on these issues may be difficult and perhaps uncomfortable for the Company's management, but it there is nothing vague about it.[24]

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[24] The Company also argues that the "thumbs up" image intended to encourage votes in favor of the Proposal should be excluded. Although the Letter references SLB 14I, it fails to quote its clear standards for excluding images:

> *2. The use of images in shareholder proposals.*
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> *Questions have recently arisen concerning the application of Rule 14a-8(d) to proposals that include graphs and/or images. In two recent no-action decisions. the Division expressed the view that the use of "500 words" and absence of express reference to graphics or images in Rule 14a-8(d) do not prohibit the inclusion of graphs and/or images in proposals. Just as companies include graphics that are not expressly permitted under the disclosure rules, the Division is of the view that Rule 14a-8(d) does not preclude shareholders from using graphics to convey information about their proposals.*
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> *The Division recognizes the potential for abuse in this area. The Division believes, however, that these potential abuses can be addressed through other provisions of Rule 14a-8. For example, exclusion of graphs and/or images would be appropriate under Rule 14a-8(i)(3) where they:*
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> - *make the proposal materially false or misleading;*
> - *render the proposal so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing it, would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires;*
> - *directly or indirectly impugn character, integrity, or personal reputation, or directly or indirectly make charges concerning improper, illegal, or immoral conduct or association, without factual foundation; or*

C. The Proposal does not relate to ordinary business and thus cannot be excluded under Section 14a-8(i)(7)

The Proposal is not excludable pursuant to Rule 14a-8(i)(7) because it is solely directed to a significant social policy issue posed by the Company's ongoing business, namely *the question of how corporations account for the systemic and other costs they impose on stakeholders when they prioritize the interests of their shareholders and ignore the costs that they externalize*. These externalized costs harm the economy and diversified investors such as the Company's clients. The Company Letter fails to acknowledge that this policy issue is at the heart of the Proposal, and therefore fails to address the key question of whether that issue transcends the ordinary business question upon which the Proposal touches.

1. Background

The Staff has indicated that a shareholder proposal that might otherwise be excludable as relating to ordinary business under Rule 14a-8(i)(7) may not be excludable if it raises significant social policy issues. Amendments to Rules on Shareholder Proposals, Exchange Act Release No. 34-40018, (May 21, 1998). In addressing the ordinary business exclusion, the Release noted:

> *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. Examples include the management of the workforce, such as the hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers. However, proposals relating to such matters but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable, 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.*
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> ***
>
> *The determination as to whether a proposal deals with a matter*

- *are irrelevant to a consideration of the subject matter of the proposal, such that there is a strong likelihood that a reasonable shareholder would be uncertain as to the matter on which he or she is being asked to vote.*

Staff Legal Bulletin No. 14I (November 1, 2017) (footnotes omitted). The image in the Proposal is not excludable under this standard.

> *relating to a company's ordinary business operations is made on a case-by-case basis, taking into account factors such as the nature of the proposal and the circumstances of the company to which it is directed.*

As we will discuss below, in the present matter, the reporting on the question raised by the Proposal relates to an underlying significant policy issue: the appropriate manner of accounting for the external costs of corporate behavior that benefits a company's shareholders but may harm social and environmental systems and other stakeholders.

2. *Significant policy issue: externalizing costs to stakeholders*

The Company's argument to exclude the Proposal under Rule 14a-8(i)(7) is based on a failure to acknowledge the underlying significant policy issue addressed by the Proposal, which is clear on its face: the pursuit of corporate financial returns to shareholders that cause harm to other stakeholders. The Company's clients (and all diversified shareholders) are stakeholders in the social and environmental systems that support their investments, and thus, while they may be shareholders in a particular company, they are also stakeholders in that company to the extent that its impacts affect their other investments. The Proposal highlights this issue by citing a specific study that quantifies the social harm that corporate-induced racial inequality can cause, and also cites a study showing how environmental damage harms diversified shareholders. Yet in arguing that that the Proposal does not address a transcendent policy issue, the Company Letter fails to acknowledge the debate over shareholder primacy and stakeholder values. Below, we explain how this issue has become a central feature of the policy debate in the United States and beyond.

a. Corporate Law and Shareholder Primacy

The directors of U.S. corporations have long focused their efforts on improving the financial return of their corporations to their shareholders. While there has been a fierce, ongoing debate as to whether corporations should in fact be managed for the benefit of only shareholders or for a broader group of stakeholders,[25] the concept of shareholder primacy has dominated corporate law. This doctrine eschews consideration of the external costs of a business unless those costs affect the corporation's own financial return to its shareholders. A series of decisions by the Delaware courts cemented the place of shareholder primacy in the United States.[26] Indeed, the Company's own materials support the shareholder primacy side of this debate.[27]

The most important of these was the famous *Revlon* case decided by the Delaware

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[25] Frederick Alexander, BENEFIT CORPORATION LAW AND GOVERNANCE: PURSUING PROFIT WITH PURPOSE (2018) at 21-26.
[26] Joan MacLeod Heminway, *Corporate Purpose and Litigation Risk in Publicly Held U.S. Benefit Corporations*, 40 Seattle Univ. L. Rev. 611, 613 (2017) ("Delaware decisional law is arguably particularly unfriendly to for-profit corporate boards that fail to place shareholder financial wealth maximization first in every decision they make.")
[27] *Supra,* n.2 ("In order to achieve this fundamental principle, the role of the board is to carry out its responsibilities in the best long-term interest of the company and its shareholders.")

Supreme Court in 1985.[28] Other Delaware authority has established that corporations exist primarily to generate shareholder value.[29] *eBay Domestic Holdings, Inc. v. Newmark*[30] is a more recent example of the focus on shareholder wealth maximization, even outside the sale context. The court embraced shareholder primacy, finding that it was a violation of the directors' fiduciary duties to make decisions primarily for the benefit of users of the corporation's platform:

> *Having chosen a for-profit corporate form, the craigslist directors are bound by the fiduciary duties and standards that accompany that form. Those standards include acting to promote the value of the corporation for the benefit of its stockholders. The "Inc." after the company name has to mean at least that. Thus, I cannot accept as valid . . . a corporate policy that specifically, clearly, and admittedly seeks not to maximize the economic value of a for-profit Delaware corporation for the benefit of its stockholders.*[31]

Toward the end of the twentieth century, many jurisdictions in the United States adopted "constituency statutes," fully or partially opting out of shareholder primacy.[32] None of those states mandates consideration of stakeholder interests, however.[33]

Shareholder primacy has caused great consternation regarding the harm that it poses to stakeholders and the public.[34] In response, a new corporate form, the "benefit corporation," was created to provide an option to ensure directors would prioritize interests other than those of shareholders. Beginning in 2010, U.S. jurisdictions began to adopt these provisions. The Chief Justice of the Supreme Court of Delaware described this as a "movement:"

> *[T]he benefit corporation movement represents a refreshing and substantial step forward for those who believe that corporations—and all business entities—not only can, but should both do well by their investors, but also their workers and the societies in which*

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[28] *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc*., 506 A.2d 173 (Del. 1986) (holding that when a corporation is to be sold in a cash-out merger, the directors' duty is to maximize the cash value to shareholders, regardless of the interests of other constituencies, because there is no long term for the shareholders).

[29] *See Katz v. Oak Indus. Inc*., 508 A.2d 873, 879 (Del. Ch. 1986) ("It is the obligation of directors to attempt, within the law, to maximize the long-run interests of the corporation's stockholders; that they may sometimes do so 'at the expense' of others [*e.g.*, debtholders] . . . does not . . . constitute a breach of duty."); Leo E. Strine, Jr., *The Social Responsibility of Boards of Directors and Stockholders in Change of Control Transactions: Is There Any "There" There?*, 75 S. Cal. L. Rev. 1169, 1170 (2002) ("The predominant academic answer is that corporations exist primarily to generate stockholder wealth, and that the interests of other constituencies are incidental and subordinate to that primary concern.")

[30] 16 A.3d 1 (Del. Ch. 2010).

[31] *Id*. at 34-35 (referring to corporate justification for shareholder rights plan meant to forestall a change in control that might threaten platform users' interests).

[32] Alexander, *supra* n.2, at 135–148.

[33] *Id.*

[34] *See generally,* Lynn Stout*,* THE SHAREHOLDER VALUE MYTH: HOW PUTTING SHAREHOLDERS FIRST HARMS INVESTORS, CORPORATIONS AND THE PUBLIC (2012).

> *they operate.*[35]

The clearest signal of the significance of the policy issue is legislative action to address the issue around the nation and the world. Legislatures have acted in 39 U.S. jurisdictions, the Canadian province of British Columbia, and the countries of Italy, Colombia, Rwanda, and Ecuador[36] over the last decade to make this new form available. In addition, legislation was introduced in the last U.S. Congress in both houses that would have imposed benefit corporation duties on the directors of all billion-dollar companies.[37] The issue even surfaced in the most recent U.S. presidential election, as one candidate decried "the era of shareholder capitalism."[38]

b. Trust Law

This policy issue has also appeared in recent regulatory and legislative activity relating to trustees for retirement plans and other investment advisors. The Department of Labor (the "DOL") recently proposed a Rule that would have made it more difficult for trustees to account for environmental and social costs, but, after receiving public comments, revised the final rule in a manner that gives trustees the ability to address corporate activity that imposes the type of social costs described in the Proposal when the trustees believe that those costs would affect their diversified portfolios—exactly the type of costs on which the Proposal seeks a report:

> *In addition, Final Rules should also permit stewardship that discourages portfolio companies from engaging in behaviour that harms society and the environment, and consequently the value of shareholders' diversified portfolios (For example, plan fiduciaries might vote to encourage all companies to lower their carbon footprint, not because it will necessarily increase return at each and every company, but because it will promote a strong economy and thus increase the return of their diversified portfolio).*[39]

The Company Letter in fact acknowledges the relevance of this controversy to the Proposal, citing the DOL action.

Moreover, in 2020, a bill was introduced in the U.S. House of Representatives that included an express finding that plan fiduciaries should consider the costs that corporations in

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[35] Leo Strine, *Forward,* in Alexander, *supra,* n.2.

[36] These totals represent our own hand count based in part on the data available from *The Social Enterprise Tracker,* available at https://socentlawtracker.org/#/map.

[37] Copies of the legislation are available here: https://www.congress.gov/bill/116th-congress/senate-bill/3215?q=%7B%22search%22%3A%5B%22accountable+capitalism+act%22%5D%7D&s=1&r=1 (Senate) and here: House: https://www.congress.gov/bill/116th-congress/house-bill/6056?q=%7B%22search%22%3A%5B%22accountable+capitalism+act%22%5D%7D&s=2&r=2 (House)

[38] *Biden says investors 'don't need me,' calls for end of 'era of shareholder capitalism',* (CNBC) (July 9, 2020), available at https://www.cnbc.com/2020/07/09/biden-says-investors-dont-need-me-calls-for-end-of-era-of-shareholder-capitalism.html.

[39] Frederick Alexander, *The Final DOL Rules Confirm That Fiduciary Duty Includes 'Beta Activism,'* RESPONSIBLE INVESTOR (December 15, 2020) available at https://www.responsible-investor.com/articles/the-final-dol-rules-confirm-that-fiduciary-duty-includes-beta-activism.

their portfolios impose on the financial system:

> *The Congress finds the following:*
>
> *(1) Fiduciaries for retirement plans should*
> . . . .
> *(D) consider the impact of plan investments on the stability and resilience of the financial* system; . . .[40]

While the bill specifically related to costs to the financial system, it was clearly focused on the same policy concern: costs that a company's profit-seeking activities impose on stakeholders—including shareholders in other companies.

c. The Statement of the Purpose of a Corporation

In addition to the activity noted in the prior section regarding political and legislative activity around the issue of external costs to stakeholders, the business community has addressed the importance of the consideration of stakeholder interests through the Business Roundtable's Statement on the Purpose of a Corporation (the "Statement"), which purports to make significant commitments to stakeholders.[41] Here we quote the Statement, which eloquently describes the critical nature of the social policy issue raised by the Proposal:

> *Americans deserve an economy that allows each person to succeed through hard work and creativity and to lead a life of meaning and dignity. We believe the free-market system is the best means of generating good jobs, a strong and sustainable economy, innovation, a healthy environment and economic opportunity for all. . . .*
>
> *While each of our individual companies serves its own corporate purpose, we share a fundamental commitment to all of our stakeholders. We commit to:*
>
> - *Delivering value to our customers. We will further the tradition of American companies leading the way in meeting or exceeding customer expectations. . . .*
>
> - *Supporting the communities in which we work. We respect the people in our communities and protect the environment by embracing sustainable practices across our businesses. . . .*

[40] H.R. 8959 (116th): Retirees Sustainable Investment Policies Act of 2020
[41] https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans.

- *Each of our stakeholders is essential. We commit to deliver value to all of them, for the future success of our companies, our communities and our country.*[42]

Thus, the Statement explains exactly why the Proposal is a critical policy question: it asks the Company to report on the failure to consider costs externalized by its portfolio companies, which fall upon "Americans," "customers," "people in our community," and "our country," just as they fall upon its clients.

The reaction to the Statement's issuance (as well as the number of companies signing on) in August 2019 demonstrated the policy significance of addressing external costs. One dubious commentator noted that "For many of the BRT signatories, truly internalizing the meaning of their words would require rethinking their whole business."[43] Others noted the importance of the change, but also that it was meaningless without ending shareholder primacy:

> *Ensuring that our capitalist system is designed to create a shared and durable prosperity for all requires this culture shift. But it also requires corporations, and the investors who own them, to go beyond words and take action to upend the self-defeating doctrine of shareholder primacy.*[44]

Other commentators were worried not that the Statement failed to go far enough, but rather that it went too far:

> *Asking corporate managers to focus more on improving society and less on making profits may sound like a good strategy. But it's a blueprint for ineffective and counterproductive public policy on the one hand, and blame-shifting and lack of accountability on the other. This is a truth Milton Friedman recognized nearly five decades ago — and one that all corporate stakeholders ignore today at their peril.*[45]

The author was referring to Friedman's famous article, which stated:

> *[T]he doctrine of 'social responsibility' taken seriously would extend the scope of the political mechanism to every human activity. It does not differ in philosophy from the most explicitly collectivist doctrine. It differs only by professing to believe that collectivist ends can be attained without collectivist means. That is why, in my book Capitalism and Freedom, I have called it a 'fundamentally subversive doctrine' in a free society, and have said*

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[42] *Supra,* n. 1 (emphasis added).
[43] Andrew Winston, *Is the Business Roundtable Statement Just Empty Rhetoric?* HARVARD BUSINESS REVIEW (August 30, 2019).
[44] Jay Coen-Gilbert, Andrew Kassoy, and Bart Houlihan, *Don't Believe the Business Roundtable Until It's CEO's Actions Match Their Words,* FAST COMPANY (August 22, 2019).
[45] Karl Smith *Corporations Can Shun Shareholders, But Not Profits,* BLOOMBERG OPINION (August 27, 2019).

> *that in such a society, 'there is one and only one social responsibility of business—to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud.*[46]

Showing that the controversy is long-lived, the 50th anniversary of the essay in 2020 set off another round of commentary.[47]

d. The Proposal Addresses the Policy Issue of Stakeholder Interests

The outpouring of legislative activity around benefit corporations, regulatory and legislative activity around trustee obligations to consider external corporate costs, and commentary around the Statement raises two related but distinct significant policy issues: first, should corporations focus more on stakeholders' interests and if so, how? The Proposal addresses these issues. All of the Company's positions, from its focus on maximizing shareholder value to its use of SASB materiality metrics to its most recent letter to boards, show a continued prioritization of shareholder value.

Shareholder primacy is clearly an issue of great policy significance being addressed in legislatures around the country and the world, and even in the latest race for the U.S. presidency. Moreover, Company actions that prioritize shareholders over stakeholders and systems matter deeply to all of us. The Schroders Report determined that publicly listed companies imposed social and environmental costs on the economy with a value of $2.2 trillion annually—more than 2.5% of global GDP and more than half of the profits those companies earned.[48] This is a shocking statistic that represents a problem that far transcends the Company's ordinary business.

By participating in this common corporate practice of prioritizing the financial return at companies above all stakeholder concerns, the Company is contributing to a shareholder primacy culture. While corporations may increase their isolated return to shareholders under the rule of shareholder primacy, their diversified shareholders—and the company's clients and its own shareholders—will ultimately pay these costs through a damaged economy and the consequent reduction in equity values. Such investors (along with the world's population and economy) would benefit from stewardship that enabled corporations to prioritize social and environmental systems and the stakeholders to whom the Statement refers.

e. The Committee analysis

The Committee analysis of the ordinary business question described in the Company Letter demonstrates the failure of the Company to address the significant policy issues raised by

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[46] Milton Friedman, *The Social Responsibility of Business Is to Increase Its Profits* N.Y. TIMES, Sept. 13, 1970 (magazine).
[47] See, e.g., *Friedman 50 Years later,* PROMARKET (collecting 27 essays about Friedman's article and its legacy) (Stigler Center for the Study of the Economy and the State).
[48] *Supra,* n.11.

the Proposal. For example, the analysis points to the "roll-out of R-Factor" as integral to the Committee's "delta analysis . . . [that] does not identify gaps that present a significant policy issue." Yet, as discussed above, the R-Factor system is built on the SASB model, which is expressly designed only to address the effect that a company's ESG behavior has on the financial returns of the company, and not the effect that such behavior has on society, the environment, or other companies. This distinction is the essence of the policy issue raised by benefit corporation law, trust law, and the Statement. Thus, R-Factor is the strongest evidence that there is a gap between Company practice and the Proposal, and that the gap presents a critical policy issue.[49]

Furthermore, the Committee's conclusion that the policy issue presented by the Proposal is unsupported by shareholders belies the fact that the PRI—the world's largest alliance of investors (including the Company itself)—has focused its new "Active Ownership 2.0" initiative on exactly this distinction.[50] It also may be the case that the motivating factor behind some of the shareholder engagements with the Company was in fact a concern that the Company's portfolio companies should reduce their negative externalities, even if they did not propose a study of the broad issue. There is simply no way for us to know.

The Proposal will confront this issue directly by asking the Company to evaluate the external costs that its portfolio companies impose on stakeholders, including its clients. Thus, the Proposal's request for a report on how the Company externalizes social costs addresses the significant policy issue of whether corporations should account for stakeholder interests and is therefore not excludable for purposes of Rule 14a-8(i)(7).

f. The Proposal does not attempt to micromanage the Company

The Company Letter claims that the Proposal would micromanage the Company and should thus be excluded even though it relates to a significant policy issue. However, the Proposal simply does not do so. The Company Letter correctly states the test, but makes no real attempt to show how the Proposal would constitute micromanagement under that standard:

> *When considering whether a proposal micromanages a company, SLB 14K indicates that the Staff looks at "whether the proposal seeks intricate detail or imposes a specific strategy, method, action, outcome or timeline for addressing an issue, thereby supplanting the judgment of management and the board." In addition, SLB 14K notes that "if the method or strategy for implementing the action requested by the proposal is overly prescriptive, thereby potentially limiting the judgment and discretion of the board and management, the proposal may be viewed as micromanaging the company." The Staff also noted in*

[49] We note again that it is difficult to reconcile the conclusion of the Committee "that the difference, or delta, *if any,* between what the Proposal requests and what the Company already does is minor," with the Company's extensive argument that "implementation of the Proposal would cause the company to violate law" (emphasis added).
[50] *Supra,* n.13.

> *SLB 14K that "[w]hen a proposal prescribes specific actions that the company's management or the board must undertake without affording them sufficient flexibility or discretion in addressing the complex matter presented by the proposal, the proposal may micromanage the company to such a degree that exclusion of the proposal would be warranted."* (Emphasis added.)

The Proposal does not propose any "strategy, method, action, outcome or timeline," let alone "intricate detail" with respect to the tension between shareholder value and systemic activism: it simply requests a study on the effect of focusing on the latter to the exclusion of the former. Nor is it "overly prescriptive," because it prescribes nothing, at least nothing beyond examining this significant policy issue, and how it affects the Company and its clients and shareholders. Even with respect to the report itself, the Proposal does not ""prescribe[] specific actions that the company . . . must take without affording [it] sufficient flexibility or discretion." In fact, as is completely appropriate, the Proposal leaves the details of the report in the hands of the board and management, whose detailed understanding of the business will afford them the ability to design this important task.[51]

* * * * *

Effecting the Proposal will leave problem-solving firmly in the hands of the board and management—it does not address any particular product, service, or decision. Instead, it asks the Company, through disclosure, to address a significant policy issue by providing its shareholders with sufficient context to understand how the Company's business fits into the policy debate around corporate responsibility to stakeholders. As the 1998 Release quoted above says:

> *However, proposals relating to such [day-to-day] matters but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable, 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 Company's business sits squarely in the center of that debate, as the media covers matters such as "greenwashing" by its funds,[52] gender discrimination against its own

[51] Once again, the internal inconsistency of the Company Letter is jarring: in Section B.2, it asks that the Proposal be excluded for using "an inherently vague and indefinite term that could implicate a [*sic*] myriad of [*sic*] social, economic, political or other considerations without providing any detail to what is specifically contemplated" and for not suggesting "specific considerations or metrics to evaluate potential harm to the economy," while in Section B.3, the Company Letter requests exclusion because the Proposal "seeks to dictate the standards . . without affording [the Company] sufficient flexibility or discretion in addressing the complex matter." One is reminded of the diner who complained the food was inedible and the portions too small.

[52] *State Street's greenwash ethical ETF (E200) could struggle in Australia,* ETF Stream (August 10, 2020) available at https://www.etfstream.com/features/state-street-s-greenwash-ethical-etf-e200-could-struggle-in-australia/.

employees,[53] and whether its ESG rhetoric is more marketing than practice.[54] The controversy over responsibility for such social costs of business activity[55] surely transcends the Company's ordinary business and is not excludable under Rule 14a-8(i)(7).

C. The Proposal has not been substantially implemented and thus should not be excluded under Rule 14a-8(i)(10).

As is made clear throughout this letter, the Company Letter fails to acknowledge the simple distinction made in the PRI's Active Ownership 2.0 initiative: the difference between the effects that ESG issues have on companies (including on companies composing an entire industry) and the effect that companies have on ESG issues. The Proposal is concerned entirely with the latter:

> *If corporate practices reduce demand or GDP, decreased diversified portfolio returns result.*

In Appendix B, the Company provides more than five pages of internal material that purports to show that the Proposal has been substantially implemented. *But none of that material addresses the issue of how corporate ESG practices affect the environment, society, stakeholders, or the economy.* Instead, it is all focused on how corporate practice affects the performing companies. For example:

- "Thematic environmental, social, and governance (ESG) issues that the team identifies as potential risk facing investee companies." *Rather than on risks created by investee companies.*

- "We explored ways in which companies communicate the value of investing in their workforce." *Rather than the cost to the economy of failure to do so.*

- "Our focus in recent years has been on good governance and other practices that affect a company's ability to generate positive returns for investors over the long-run." *Rather than on the social or environmental costs of creating those long-run financial returns.*

- "We focus on sectors that are meaningfully impacted by wider systemic challenges we

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[53] *Fearless Girl—a Hypocrite as well as a Shil! State Street Advisors Settles $5 Million Gender Discrimination Lawsuit* (October 7, 2017) available at https://hintsandechoes.com/2017/10/07/fearless-girl-a-hypocrite-as-well-as-a-shil-state-street-investors-settles-5-million-gender-discrimination-lawsuit/.

[54] *The firm behind Wall Street's Fearless Girl statue isn't as pro-woman as it could be,* Vox (April 3, 2019) ("according to a new report from the investment research company Morningstar, State Street might not be putting its money — or rather, its shareholder votes — where its mouth is on promoting women in the upper echelons of corporations.") available at https://www.vox.com/business-and-finance/2019/4/3/18293611/fearless-girl-state-street-etf-she-nyse.

[55] *See, e.g., Dana Peterson and Catherine Mann, Closing the Racial Inequality Gaps: The Economic Cost of Black Inequality in the U.S.* (2020) (closing racial gaps could lead to $5 trillion in additional GDP over next five years) available at https://ir.citi.com/%2FPRxPvgNWu319AU1ajGf%2BsKbjJjBJSaTOSdw2DF4xynPwFB8a2jV1FaA3Idy7vY59bOtN2lxVQM%3D; *Inequality is Slowing U.S. Economic Growth,* Economic Policy Institute (December 12, 2017) (Inequality reduces den=mand by 2-4% annually) available at https://www.epi.org/publication/secular-stagnation/.

observe in the market." *Rather than on the impact of those sectors on the systemic challenges.*

The focus on systemic impacts on companies rather than on company impacts on systems is of course consistent with the Company material not cited in Appendix B that clearly links the Company's philosophy with the doctrine of shareholder primacy.[56] The Company has not even partially implemented the Proposal, and it should not be excluded under Rule 14a-8(i)(10).

CONCLUSION

Based on the foregoing, we believe it is clear that the Company has provided no basis for the conclusion that the Proposal is excludable from the 2021 proxy statement pursuant to Rule 14a-8. As such, we respectfully request that the Staff inform the Company that it is denying the no-action letter request. If you have any questions, please contact me at rick@theshareholdercommons.com or 302-593-0917.

Sincerely,

Frederick Alexander

Frederick Alexander

cc: Lillian Brown
James McRitchie

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[56] *Supra, n.2 & 4.*

PROPOSAL

RESOLVED, shareholders ask that the board provide a report as to how its voting and engagement policies, which focus solely on individual corporation materiality to the exclusion of capital markets materiality, affect the majority of its clients and shareholders, who rely primarily on overall stock market performance for their returns, rather than upon the returns of individual companies.

Our Company provides investment management services and has more than $3 trillion in assets under management, primarily weighted towards indexed strategies. Its clients, like its shareholders, are almost all broadly diversified. (Indeed, as of September 2020, the Company itself, along with Vanguard and BlackRock, two asset owners with similarly diversified client bases, own more than 20% of the Company's shares.)

Such diversified shareholders, like the Company's diversified clients, rely on healthy social, economic, and environmental systems to support all corporations. If corporate practices reduce demand[1] or GDP,[2] decreased diversified portfolio returns result.[3] As manager for more than $3 trillion in assets, the Company's stewardship activities—engaging with portfolio companies and voting their shares—could significantly affect overall market performance by ensuring that corporations do not seek profit from activities that degrade the global commons.

However, the Company's position on environmental, social and governance matters focuses largely on "materiality," which only takes into account how those matters affect an individual company.[4] This means that portfolio companies are stewarded to improve ESG performance only if it improves their individual performances. Thus, where a portfolio company can profit through irresponsible social and environmental practices, the Company's stewardship policy may fail to advance the interests of both its clients and its shareholders.

Because the Company's engagement strategy is only focused on company-by-company materiality, it allows corporations in its portfolio to continue practices that externalize costs (thereby harming overall market performance) without harming the individual corporation. The Company's clients and shareholders should be provided with information about corporate practices that harm the economy while increasing individual corporate financial returns.

The difference between company materiality and market materiality is an issue of great social importance. A study would help shareholders determine whether to seek a change in corporate direction, structure, or form in order to better serve their interests.

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[1] See, e.g., https://www.epi.org/publication/secular-stagnation/ (inequality has reduced demand by 2-4% of GDP.)
[2] See, e.g., *Closing the Racial Inequality Gaps: The Economic Cost of Black Inequality in the U.S.*, available at http://citi.us/3olxWH0 (closing racial disparity would add $5 trillion to the US economy over the next five years).
[3] See *Universal Ownership: Why Environmental Externalities Matter to Institutional Investors,* Appendix IV (demonstrating linear relationship between GDP and a diversified portfolio) available at https://www.unepfi.org/fileadmin/documents/universal_ownership_full.pdf; cf. https://www.advisorperspectives.com/dshort/updates/2020/11/05/market-cap-to-gdp-an-updated-look-at-the-buffett-valuation-indicator (total market capitalization to GDP "is probably the best single measure of where valuations stand at any given moment") (quoting Warren Buffet).
[4] https://www.ssga.com/library-content/pdfs/ic/global-Proxy-Voting-and-engagement-guidelines-es-issues.pdf

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January 15, 2021

Via E-mail to shareholderproposals@sec.gov

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

Re: State Street Corporation
Exclusion of Shareholder Proposal of James McRitchie

Ladies and Gentlemen:

We are writing on behalf of our client, State Street Corporation (the "Company"), to inform you of the Company's intention to exclude from its proxy statement and proxy for its 2021 annual meeting of shareholders (the "Proxy Materials") the enclosed shareholder proposal and supporting statement (collectively, the "Proposal") submitted by James McRitchie (together with his designated representative, John Chevedden, the "Proponent") requesting that the Company's board of directors (the "Board") "provide a report as to how its voting and engagement policies, which focus solely on individual corporation materiality to the exclusion of capital markets materiality, affect the majority of its clients and shareholders, who rely primarily on overall stock market performance for their returns, rather than upon the returns of individual companies."

The Company believes it may properly exclude the Proposal from its Proxy Materials for the reasons discussed below. The Company respectfully requests that the staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission" or "SEC") advise the Company that it will not recommend any enforcement action to the Commission if the Company excludes the Proposal from its Proxy Materials.

Pursuant to Exchange Act Rule 14a-8(j) and Staff Legal Bulletin No. 14D (November 7, 2008) ("SLB 14D"), the Company is submitting electronically to the Commission this letter, and the 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 Proxy Materials with the Commission.

***FISMA & OMB Memorandum M-07-16

I. Company Background

State Street Corporation

State Street Corporation is a financial holding company organized under the laws of the Commonwealth of Massachusetts. Through its subsidiaries, including its principal banking subsidiary, State Street Bank and Trust Company, State Street Corporation provides a broad range of financial products and services to institutional investors worldwide. State Street Corporation's operations are organized into two lines of business: Investment Servicing and Investment Management, which are defined based on products and services provided. The Proposal relates to State Street's Investment Management line of business, which is conducted by State Street Global Advisors (SSGA)[1], the third largest investment manager in the world with over $3.14 trillion in assets under management as of September 30, 2020.

State Street Global Advisors' Corporate Engagement and Proxy Voting Practices

SSGA operates a globally integrated multi-asset class investment advisory business, offering services to clients in nearly every corner of the world, with employees in 31 global offices and more than 500 investment professionals worldwide. SSGA provides investment management services to both institutional and retail investors through investment products ranging from separate accounts and private funds to publicly offered mutual funds and exchange traded funds (ETFs). With nearly 40 years of experience in the Defined Contribution (DC) market, SSGA manages more than $557 billion in DC assets around the world, of which over $413 billion belong to participants in the United States.[2]

From its founding over 40 years ago, SSGA has been a pioneer in index investing and its index or "beta" investment strategies remain a core focus for the firm. On a global basis, as of September 30, 2020, approximately 60% of its $3.14 trillion in assets under management are equity investments held in client accounts that follow an index investment strategy, and the number of indexes and sub-indexes tracked is over 400. As a result of this breadth, SSGA invests in over 10,000 public companies around the world and its corporate engagement and proxy voting obligations are significant. In 2019, for example, SSGA voted over 17,300 proxies and

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[1] SSGA refers to the entirety of the Company's asset management business, an enterprise that operates global asset management through multiple global entities.
[2] As of September 30, 2020.

engaged with 726 individual companies,[3] and as of the end of the second quarter in 2020, SSGA had voted over 10,200 proxies and engaged with 409 individual companies.[4]

The primary manner in which SSGA seeks to meet the investment objectives of its equity index funds and accounts is to invest in and hold the shares of the companies included in the applicable index in the same proportion that those companies' shares are included in that index. As long as a company's shares are included in the index, they will be held by SSGA in accounts that track that index. This means that, unlike "active" investment strategies, SSGA cannot divest from a company, or "vote with its feet" if SSGA believes that a company is likely to underperform or is taking unreasonable business risks.

SSGA has acknowledged that the obligation to own index constituent companies makes SSGA a long-term investor and heightens the need for SSGA to engage with the companies it owns on issues that enhance long term value and mitigate risk. SSGA's Chief Executive Officer, Cyrus Taraporevala has noted:

> On the index side of our business, our portfolio managers don't have that luxury [to sell a stock they don't like]. As long as the company is in the index it's going to be in their portfolios. So in that side of our business, a large part of our business, we're as close to permanent capital as it comes. We have to engage with the companies and with the boards to drive value.[5]

In furtherance of this obligation, SSGA has, for many years, devoted significant resources and attention to corporate engagement activities and has focused increasingly on engagement around non-company specific issues of sustainability, corporate governance and culture and diversity at the board and executive management level. For example, beginning in 2017, SSGA launched a multi-year engagement program focused on gender-diversity at the board level, which was announced publicly with the placement of the "Fearless Girl" statue in opposition to the famous Charging Bull statue in New York City's Bowling Green Park near Wall Street. SSGA has subsequently broadened this campaign to focus on racial and ethnic diversity in addition to gender diversity.[6]

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[3] SSGA Q4 2019 Stewardship Report, https://www.ssga.com/library-content/products/esg/stewardship-activity-report-q4-2019.pdf

[4] SSGA Q2 2020 Proxy Season Review, https://www.ssga.com/library-content/products/esg/asset-stewardship-report-q2-2020.pdf

[5] Corporate Board Member Magazine 2019, https://boardmember.com/state-street-ceo-cyrus-taraporevala/4/

[6] See, e.g., https://www.ssga.com/library-content/pdfs/global/letterhead_racial_equity_guidance.pdf, SSGA Q2 2020 Proxy Season Review, https://www.ssga.com/library-content/products/esg/asset-stewardship-report-q2-2020.pdf, SSGA CEO's Letter on Our 2021 Proxy Voting Agenda, https://www.ssga.com/us/en/institutional/etfs/insights/ceo-

In 2019, SSGA introduced a proprietary environmental/social/governance or "ESG" scoring system called "R-Factor™" or Responsibility-Factor that measures the performance of a company's business operations and governance as it relates to financially material ESG issues facing the company's industry. The scoring methodology analyzes data from four leading data providers and leverages the Sustainability Accounting Standards Board (SASB) materiality framework. R-Factor generates unique ESG scores for over 6,000 listed companies globally and allows SSGA to evaluate a company's performance against both regional and global industry peers.

Beginning in 2020, SSGA began using companies' R-Factor scores as an important tool in its corporate engagement activities and continued its longstanding efforts to encourage greater transparency and commitment to addressing ESG issues that detract from long term performance and value. In SSGA's February 2020 CEO Letter on SSGA's 2020 Proxy Voting Agenda, Mr. Taraporevala stated:

> Beginning this proxy season, we will take appropriate voting action against board members at companies in the S&P 500, FTSE 350, ASX 100, TOPIX 100, DAX 30, and CAC 40 indices that are laggards based on their R-Factor scores and that cannot articulate how they plan to improve their score. Beginning in 2022, we will expand our voting action to include those companies who have been consistently underperforming their peers on their R-Factor scores for multiple years, unless we see meaningful change. We believe doing so is in the best interests of investors and companies alike.[7]

In September 2020, SSGA published an overarching document outlining its engagement strategy about driving action on climate change and sustainability across all the companies it invests in on behalf of clients.[8] This document charts SSGA's significant engagement efforts on the environment and sustainability historically and lays out its engagement agenda on these issues going forward.

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letter-2021-proxy-voting-agenda, and Guidance on Enhancing Racial & Ethnic Diversity Disclosures, https://www.ssga.com/library-content/pdfs/asset-stewardship/racial-diversity-guidance-article.pdf.

[7] SSGA CEO's Letter on Our 2020 Proxy Voting Agenda, https://www.ssga.com/us/en/institutional/etfs/insights/informing-better-decisions-with-esg. See also *State Street vows to turn up the heat on ESG standards*, https://www.ft.com/content/cb1e2684-4152-11ea-a047-eae9bd51ceba.

[8] Driving Action on Climate Change, https://www.ssga.com/library-content/products/esg/driving-action-on-climate-change.pdf

In January 2021, SSGA published additional guidance regarding the expansion of its engagement efforts focused on diversity to include race and ethnicity, in addition to gender diversity.[9]

In addition to these engagement efforts, SSGA is also a thought leader regarding sustainable investing principles. It is a signatory to the Principles of Responsible Investing (PRI) and was recognized as part of PRI's Leaders Group for its efforts to advance corporate disclosure around the impact of climate change. In the U.S., SSGA is a founding member and signatory to the Investor Stewardship Group.[10] As noted above, SSGA is an explicit proponent of SASB. SSGA has also recently joined Climate Action 100+.[11] Additionally, SSGA supports the Task Force on Climate-related Financial Disclosures (TCFD)[12] and has held leadership roles with the Council of Institutional Investors (CII) as a member of the Corporate Governance Advisory Council, including most recently as the chair in 2020. SSGA has also participated in a multi-stakeholder working group that published baseline and evolving practices for improving virtual shareholder meetings.[13]

SSGA provides detailed reporting to its clients and the public, including through an annual Stewardship Report and quarterly Asset Stewardship Activity Reports.

II. The Proposal

On December 9, 2020, the Company received the Proposal from the Proponent, which states as follows:

ITEM 4* Market Materiality Disclosure

> **RESOLVED, shareholders ask that the board provide a report as to how its voting and engagement policies, which focus solely on individual corporation materiality to the exclusion of capital markets materiality, affect the majority of its clients and shareholders, who rely primarily on overall stock market**

[9] SSGA CEO's Letter on Our 2021 Proxy Voting Agenda, https://www.ssga.com/us/en/institutional/etfs/insights/ceo-letter-2021-proxy-voting-agenda, and Guidance on Enhancing Racial & Ethnic Diversity Disclosures, https://www.ssga.com/library-content/pdfs/asset-stewardship/racial-diversity-guidance-article.pdf. See also *State Street to insist companies disclose diversity data*, https://www.ft.com/content/2e512c76-4733-4821-8425-136ab9b98426 (discussing SSGA's new voting policy, to be implemented in 2022, that focuses on diversity in board composition).

[10] https://isgframework.org/

[11] https://www.climateaction100.org/

[12] https://www.ssga.com/library-content/products/esg/statement-of-suppot-for-the-tcfd.pdf

[13] https://cclg.rutgers.edu/news/report-of-the-2020-multi-stakeholder-working-group-on-practices-for-virtual-shareholder-meetings/

performance for their returns, rather than upon the returns of individual companies.

Our Company provides investment management services and has more than $3 trillion in assets under management, primarily weighted towards indexed strategies. Its clients, like its shareholders, are almost all broadly diversified. (Indeed, as of September 2020, the Company itself, along with Vanguard and BlackRock, two asset owners with similarly diversified client bases, own more than 20% of the Company's shares.)

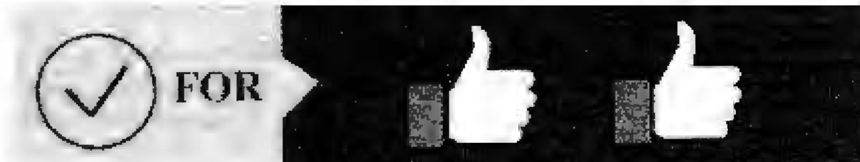
Such diversified shareholders, like the Company's diversified clients, rely on healthy social, economic, and environmental systems to support all corporations. If corporate practices reduce demand[1] or GDP,[2] decreased diversified portfolio returns result.[3] As manager for more than $3 trillion in assets, the Company's stewardship activities – engaging with portfolio companies and voting their shares – could significantly affect overall market performance by ensuring that corporations do not seek profit from activities that degrade the global commons.

However, the Company's position on environmental, social and governance matters focuses largely on "materiality," which only takes into account how those matters affect an individual company.[4] This means that portfolio companies are stewarded to improve ESG performance only if it improves their individual performances. Thus, where a portfolio company can profit through irresponsible social and environmental practices, the Company's stewardship policy may fail to advance the interests of both its clients and its shareholders.

Because the Company's engagement strategy is only focused on company-by-company materiality, it allows corporations in its portfolio to continue practices that externalize costs (thereby harming overall market performance) without harming the individual corporation. The Company's clients and shareholders should be provided the information about corporate practices that harm the economy while increasing individual corporate financial returns.

The difference between company materiality and market materiality is an issue of great social importance. A study would help shareholders determine whether to seek a change in corporate direction, structure or form in order to better serve their interests.

Please vote for: Market Materiality Disclosure – Proposal [4*]



[1] See, e.g., https://www.epi.org/publication/secular-stagnation/(inequality has reduced demand by 2-4% of GDP.)
[2] See, e.g., *Closing the Racial Inequality Gaps: The Economic Cost of Black Inequality in the U.S.,* available at http://citi.us/3olxWHO (closing racial disparity would add $5 trillion to the U.S. economy over the next five years).
[3] See *Universal Ownership: Why Environmental Externalities Matter to Institutional Investors,* Appendix IV (demonstrating linear relationship between GDP and a diversified portfolio) available at https://www.unepfi.org/fileadmin/documents/universal_ownership_full.pdf;cf. https://www.advisorperspectives.com/dshort/updates/2020/11/05/market-cap-to-gdp-an-updated-look-at-the-buffett-valuation-indicator (total market capitalization to GDP "is probably the best single measure of where valuations stand at any given moment") (quoting Warren Buffet).
[4] https://www.ssga.com/library-content/pdfs/ic/global-Proxy-Voting-and-engagement-guidelines-es-issues.pdf

III. Reasons for Excluding the Proposal

As described in more detail below, the Company believes that the Proposal may be properly excluded from the Proxy Materials under (i) Rule 14a-8(i)(2) and Rule 14a-8(i)(6) because if the Proposal is implemented, fundamental aspects of the Proposal would cause the Company to violate federal and state law, and the Company therefore lacks the power or authority to implement the proposal; (ii) Rule 14a-8(i)(3) because the Proposal is materially false and misleading in violation of Rule 14a-9; (iii) Rule 14a-8(i)(7) because the subject of the Proposal relates to the Company's ordinary business operations; and (iv) Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal.

IV. Analysis

A. The Proposal May Be Excluded Pursuant to Rule 14a-8(i)(2) and Rule 14a-8(i)(6) Because If the Proposal Is Implemented, Fundamental Aspects of the Proposal Would Cause the Company to Violate Federal and State Law, and the Company Therefore Lacks the Power or Authority to Implement the Proposal

Rule 14a-8(i)(2) permits a company to exclude a proposal from its proxy materials if implementation of the proposal would cause the company to violate law and Rule 14a-8(i)(6) permits a company to exclude a proposal from its proxy materials if the company lacks the power or authority to implement the proposal. While the Proposal purports to seek a report, its underlying goal is to influence the practices of the Company, as described below. The ultimate

effect of implementing the Proposal would cause SSGA to violate both state and federal law. In addition, because the implementation of the Proposal would violate federal and state law, the Company and the Board do not have the legal power or authority to impose the requirements of the Proposal on SSGA, and SSGA does not have the legal power or authority to violate federal or state law even if directed to do so by the Company or the Board. As such, the Proposal may be excluded pursuant to Rule 14a-8(i)(2) because it would cause the Company to violate the law and pursuant to Rule 14a-8(i)(6) because the Company lacks the power or authority to implement the Proposal.

1. Rule 14a-8(i)(2) permits a company to exclude a proposal from its proxy materials if implementation of the proposal would cause the company to violate law.

SSGA's investment management operations in the United States are carried out through two operating entities: SSGA Funds Management, Inc. (SSGAFM), a Delaware corporation and a SEC-registered investment adviser, and State Street Global Advisors Trust Company (SSGATC), a Massachusetts chartered trust company. SSGAFM's investment advisory activities, including its corporate engagement and proxy voting obligations for client accounts, are governed primarily by the Investment Advisers Act of 1940 (the Advisers Act), while SSGATC's investment advisory activities, including its corporate engagement and proxy voting obligations, are governed by both the laws of the Commonwealth of Massachusetts, including the Massachusetts Uniform Trust Code (Mass. General Laws, Part II, Title II, Chapter 203A) and applicable federal law, most notably the Employee Retirement Income Security Act (ERISA).[14] As discussed more fully below, if the underlying goal of the Proposal is implemented it would cause SSGA to violate its fiduciary obligations under each of these laws and regulations.[15]

The Proposal is premised on an assumption that it would be permissible for SSGA to conduct its corporate engagement with companies it invests in for client accounts ("portfolio companies") and proxy voting obligations with a goal of improving "overall stock market performance" by "ensuring that corporations do not seek profit from activities that degrade the global commons." This assumption fundamentally conflicts with SSGA's obligations under law and regulation, to the extent it suggests SSGA can or should, in its engagement and voting activities on behalf of clients, place the interests of the "global commons" before the interests of its clients.

[14] A substantial percentage of the assets advised by SSGATC are retirement plan assets subject to the requirements of ERISA. Accordingly, the investment advisory activities of SSGATC are conducted in a manner designed to comply with ERISA and Department of Labor regulations thereunder.

[15] The vast majority of SSGA's global AUM is managed by its U.S. operating entities and subject to fiduciary obligations under U.S. law, and many of SSGA's non-U.S. client accounts managed by its foreign operating entities are governed by foreign laws and regulation that have similar constraints.

Section 206 of the Advisers Act, as interpreted by the U.S. Supreme Court in *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 191 (1963) ("*Capital Gains*"), imposes a fiduciary duty on investment advisers, including SSGAFM. The SEC has historically and repeatedly emphasized that an investment adviser's fiduciary duty of loyalty under the Advisers Act requires the adviser to place its client's interest before its own or the interests of others.[16] In its September 2019 interpretive release on the proxy voting obligations of investment advisers, the SEC reiterated that, "to satisfy its fiduciary duty in making any voting determination, the investment adviser must make the determination in the best interest of the client."[17] What flows from this requirement is that, absent direction and/or agreement from a client to the contrary, an investment adviser that engages with a portfolio company and votes a proxy in a manner that is not intended to further its client's interest in a portfolio company violates the fiduciary duty of loyalty to the client. This can subject the adviser to SEC enforcement action and contractual liability to the client.[18]

Similarly, Massachusetts fiduciary and trust law imposes precisely the same obligations on SSGATC to place its clients' interests before its own or others' interests. The Massachusetts Uniform Trust Code's first enumerated duty of loyalty is to "administer the trust solely in the interests of the beneficiaries."[19] Accordingly, if SSGATC engaged portfolio companies in discussions regarding the interests of the "global commons" ahead of the direct interests of the beneficiaries, it would be in violation of its first duty of loyalty under Massachusetts state law.[20]

In addition to the aforementioned federal and state law considerations applicable to the

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[16] The SEC has stated that "the fundamental obligation of the adviser to act in the best interest of his client also generally precludes the adviser from using client assets for the adviser's own benefit or the benefit of other clients, at least without client consent." Commission Guidance Regarding Client Commission Practices Under Section 28(e) of the Securities Exchange Act of 1934, Exchange Act Rel. No. 54165 (July 18, 2006) (emphasis added). The same fundamental obligation precludes an adviser from using client assets for the benefit of third parties absent informed consent.

[17] *Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers*, Investment Advisers Act Release No.5325 (September 21, 2019) (the "Proxy Voting Release") (stating that an adviser has a duty to vote proxies in its clients' best interest).

[18] The Proposal acknowledges that SSGA may engage with specific portfolio companies to encourage the company to "improve ESG performance" to the extent it is profitable to the portfolio company to do so and, indeed, SSGA's corporate engagement strategy focuses in large measure on ensuring that portfolio companies are appropriately considering improvement in governance, environmental, and societal practices that can enhance long term profitability and viability. However, this acknowledgement indicates that the Proposal is seeking SSGA to engage with portfolio companies and vote proxies to encourage the companies to take actions to support the "global commons" even where the broader benefits of those actions are not, or have not been evaluated as being, in the best interests of its clients.

[19] Mass. General Laws, Part II, Title II, Chapter 203E, Art.8, Section 802(a)(emphasis added).

[20] To the extent that the bases for exclusion discussed herein are premised on matters of Massachusetts state law, this letter also represents the opinion of Wilmer Cutler Pickering Hale and Dorr LLP as to such state law matters.

Company's fiduciary obligations to its clients' interests in portfolio companies, regulation under ERISA governs SSGATC's actions as an investment fiduciary to a large percentage of its client base. Federal courts have consistently recognized that ERISA's duty of loyalty is "the highest known to the law,"[21] imposing an obligation to administer ERISA plan assets for the "exclusive benefit" of plan beneficiaries. In the context of proxy voting and engagement activities, the Department of Labor (DOL) has consistently emphasized that plan fiduciaries "shall consider only those factors that relate to the economic value of the plan's investment and shall not subordinate the interests of the participants and beneficiaries in their retirement income to unrelated objectives. Votes shall only be cast in accordance with a plan's economic interests." *Interpretive Bulletin Relating to Exercise of Shareholder Rights (Oct. 17, 2008), 29 C.F.R. pt. 2509*.

Moreover, as recently as December 16, 2020, the DOL reiterated this longstanding principle in adopting a new rule governing the exercise of shareholder rights (*i.e.*, engagement activities) and the voting of proxies for retirement plan investors. The new rule, 29 CFR §2550.404a-1(e)(2)(i), which became effective on January 12, 2021, unambiguously sets forth an ERISA fiduciary's obligation:

> When deciding whether to exercise shareholder rights and when exercising such rights, including the voting of proxies, fiduciaries must carry out their duties prudently and solely in the interests of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and beneficiaries and defraying the reasonable expenses of administering the plan.

The newly amended rule provides further clear guidance under the current formulation of 29 CFR §2550.404a-1(e)(2)(ii), including that to fulfill their fiduciary obligations, when deciding whether to exercise shareholder rights and when exercising shareholder rights, plan fiduciaries must: (A) act solely in accordance with the economic interest of the plan and its participants and beneficiaries; (B) consider any costs involved; and (C) **not subordinate the interests of the participants and beneficiaries in their retirement income or financial benefits under the plan to any nonpecuniary objective, or promote nonpecuniary benefits or goals unrelated to those financial interests of the plan's participants and beneficiaries**….(emphasis added). The Proposal assumes that the Company, through its subsidiary SSGATC, is able to subordinate the interests of participants and beneficiaries to the interests of the "global commons."

Notably, the Shareholder Commons ("Shareholder Commons"), the organization copied on the submission of the Proposal to the Company, has publicly recognized and conceded that legal

[21] Donovan v. Bierwirth, 680 F.2d 263, 272 n. 8 (2d Circuit, 1982).

regulatory reform related to fiduciary duties of directors and investors is needed in order to achieve the goals set forth in the Proposal.[22] Shareholder Commons policies call for "the rules governing capital markets [to] be revised to reflect the importance to investors of a company's impact on the market as a whole, and particularly how it affects diversified portfolios."[23] The call for regulatory reform of fiduciary obligations by Shareholder Commons further bolsters the Company's assertion that the Proposal's apparent goal is to influence the practices of large investors to subordinate their fiduciary obligations under federal and state law in a way that would cause the Company to violate the law.

As described above, the ultimate effect of the Proposal, if implemented, would cause SSGA, SSGAFM and SSGATC to violate federal and Massachusetts law. Therefore, Rule 14a-8(i)(2) permits the Company to exclude the Proposal from its Proxy Materials because implementation of the Proposal would cause the company to violate law.

2. Rule 14a-8(i)(6) permits a company to exclude a shareholder proposal if the company lacks the power or authority to implement the proposal.

Because the ultimate effect of the Proposal would cause SSGA, SSGAFM and SSGATC to violate federal and state law, neither the Company nor the Board has the legal power or authority to impose the requirements of the Proposal on SSGA, SSGAFM or SSGATC. Moreover, the Company is not the investment advisor to SSGA's clients, and the Company could face regulatory liability for imposing its judgment on how SSGA should exercise its fiduciary duties if it imposed the requirements of the Proposal on SSGA. Furthermore, even if directed to do so by the Company or the Board, none of these subsidiaries have the legal power or authority to violate federal or state law and each would be legally required to disregard such direction.

The Staff has consistently concurred in exclusion of proposals under circumstances where implementation of the proposal would cause the company to violate law and, therefore, the company would have neither the power nor the authority to implement the proposal. For example, in *eBay Inc.* (April 1, 2020) the Staff concurred in exclusion pursuant to Rule 14a-8(i)(2) and (i)(6) of a proposal to allow employees to elect 20% of board members, where implementation of the proposal would have caused the company to violate Section 211(b) of the Delaware General Corporation Law. *See also Trans World Entertainment Corporation* (May 2, 2019), in which the SEC staff concurred in exclusion pursuant to Rule 14a-8(i)(2) and (i)(6) of a

[22] *See* https://theshareholdercommons.com/opportunities/#policymakers, which states that "the Shareholder Commons believes that state and federal lawmakers must ensure that the fiduciary duties of both corporate directors and investment professionals allow them to take broader societal concerns into account when it is important to investors that they do so."

[23] *See* https://theshareholdercommons.com/opportunities/#policymakers

proposal requesting that the company's bylaws be amended to provide for an elevated quorum requirement and implementation of such request would have caused the company to violate Section 608(a) of the New York Business Corporation Law.[24]

Neither the Board nor the Company has the legal power or authority to impose engagement activities and proxy voting policies and procedures on SSGA, SSGAFM and SSGATC that, as described in Section IV.A.1., are inconsistent with each such subsidiary's legal and fiduciary obligations to its clients. Accordingly, the Proposal may be excluded pursuant to Rule 14a-8(i)(2) and Rule 14a-8(i)(6) because if the Proposal is implemented, fundamental aspects of the Proposal would cause the Company to violate federal and state law. The Company is not an investment advisor to SSGA's clients, and the Company would be subject itself to potential regulatory liability if it imposed its judgment on how SSGA should exercise its fiduciary duties, and the Company therefore lacks the power or authority to implement the Proposal.

B. The Shareholder Proposal May Be Excluded Pursuant to Rule 14a-8(i)(3) Because It Is Materially False and Misleading in Violation of Rule 14a-9

Rule 14a-8(i)(3) permits a company to exclude all or portions of a shareholder proposal "[i]f the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials." Specifically, Rule 14a-9 provides that no solicitation may be made by means of any proxy materials "containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading." Further, the Staff takes the view that a proposal may be excluded pursuant to Rule 14a-8(i)(3) on the basis that the proposal is so vague and indefinite as to be misleading where "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." Staff Legal Bulletin No. 14B (September 15, 2004). A proposal may be materially misleading as vague and indefinite when the "meaning and application of

[24] We believe the Proposal is distinguishable from the proposal at issue in *Franklin Resources, Inc.* (November 24, 2015) (denying the company's no-action request pursuant to Rule 14a-8(i)(2) and Rule 14a-8(i)(6) with respect to a proposal asking that the company list all instances of proxy votes cast against a climate proposal that are inconsistent with the company's policy positions regarding climate change). Unlike in *Franklin Resources, Inc.*, in which the proposal's apparent goal was transparency and congruency between the company's voting practices and its policy positions, the Proposal's apparent goal is to influence the practices of large investors to subordinate their fiduciary obligations under federal and state law in a way that would cause the Company to violate the law, including the current formulation of 29 CFR §2550.404a-1(e)(2)(ii).

terms and conditions . . . in the proposal would have to be made without guidance from the proposal and would be subject to differing interpretations" such that "any action ultimately taken by the company upon implementation [of the proposal] could be significantly different from the actions envisioned by shareholders voting on the proposal." *See Fuqua Industries, Inc.* (March 12, 1991).

1. A number of statements in the Proposal, including the statements set forth below, are objectively and materially false or misleading in violation of Rule 14a-9.

    i. *Contrary to the assertion in the Resolved clause in the Proposal, the Company's policies do not focus solely on individual companies.*

The Proposal asserts that the Company's "voting and engagement policies, [] focus solely on individual corporation materiality to the exclusion of capital markets materiality." This statement is materially misleading because, as discussed above, SSGA's engagement policies do not focus solely on individual companies. Rather, SSGA engages on numerous industry-wide and market-wide ESG issues, such as gender diversity, racial diversity and sustainability.

    ii. *Contrary to the assertion in the Resolved clause in the Proposal, there is no evidence to support that a majority of the Company's shareholders rely primarily on one particular measure of overall stock market performance.*

The Proposal states that "the majority of [the Company's] clients and shareholders, [] rely primarily on overall stock market performance for their returns, rather than upon the returns of individual companies" without substantiating such assertion. This statement is materially misleading because clients and shareholders have a variety of objectives and time-horizons, and there is no evidence to support the Proponent's statement that a majority rely on any one particular measure of overall stock market performance. As noted above, SSGA's equity index strategy client accounts track more than 400 indexes and sub-indexes which, in certain cases, relate only to a small part of the "overall stock market." This means that those clients are not relying on overall stock market performance. As a result, the Proposal misleadingly implies that "the majority" of SSGA's clients care more about overall stock market performance than the performance of their individual investment portfolio.

    iii. *Contrary to the assertion in paragraph 3 of the supporting statement in the Proposal, portfolio companies are not stewarded to improve ESG performance only if it improves their individual performance.*

Paragraph 3 of the supporting statement in the Proposal states that the Company's "portfolio companies are stewarded to improve ESG performance only if it improves their individual performances." For the reasons set forth in Section IV.B.1.(i) above and elsewhere in this letter, this statement is materially misleading because the Company's engagements address a number of industry-wide and market-wide issues and are focused on long-term value enhancement.

iv. Contrary to the assertion in paragraph 4 of the supporting statement in the Proposal, the Company's engagement strategy is not only focused on company-by-company materiality.

Paragraph 4 of the supporting statement in the Proposal is premised on the assumption that "the Company's engagement strategy is only focused on company-by-company materiality…" This premise is materially misleading because, as we have discussed above, the Company's engagement strategy is not so limited. Moreover, while company materiality is an important part of the consideration, SSGA determines the particular ESG issues about which to engage based on research and analysis that includes the impact of these ESG issues across industries and market sectors and not only on the impact of these ESG issues on an individual company. Accordingly, the Proposal is misleading in its characterization of the Company's engagement and proxy voting activities.

For the reasons set forth above, each of the Proposal's assertions described in this Section IV.B.1. is materially false or misleading. The Staff has previously concurred that a shareholder proposal was excludable pursuant to Rule 14a-8(i)(3) because it contained statements that were materially false or misleading in violation of Rule 14a-9. For example, in *Ferro Corporation* (March 17, 2015), the Staff concurred in exclusion of a proposal requesting that the company reincorporate in Delaware based on misstatements of Ohio law, which suggested that the shareholders would have increased rights if Delaware law governed the company instead of Ohio law. *See also General Electric Company* (January 6, 2009) (concurring in exclusion of a proposal regarding director service on board committees as false and misleading where the proposal repeatedly referred to "withheld" votes and incorrectly implied that the company offered shareholders the ability to withhold votes in elections of directors) *and Johnson & Johnson* (January 31, 2007) (concurring in exclusion of a proposal as materially false or misleading where the proposal involved an advisory vote to approve the company's compensation committee report but contained misleading implications about the contents of the report in light of SEC disclosure requirements). Accordingly, and consistent with prior no-action letters, the Proposal is properly excludable pursuant to Rule 14a-8(i)(3) because it contains several assertions that are materially false or misleading in violation of Rule 14a-9.

2. <u>The Proposal includes terms, such as the terms set forth below, that are so inherently vague or indefinite that neither the shareholders voting on it, 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.</u>

   i. *The Proposal's key terms "market materiality" and "capital markets materiality" are undefined and subject to differing interpretations.*

The Proposal asks the Board to evaluate how the Company's voting and engagement policies exclude "capital markets materiality." However, it is unclear on the face of the Proposal what the reference point would be for assessing "market materiality." In conducting such an assessment, the Board's definition of the "market" would affect the related assessment of materiality. For example, if the Board focused on any of the S&P 500, S&P 1500, Russell 3000 or some other collection of companies to determine the "market" in contrast to the others, materiality would vary significantly. Moreover, while the Proposal asks for a report on how market materiality and capital markets materiality affect "the majority of [the Company's] clients and shareholders," each client and shareholder has its own definition of what it would consider to be its market.[25]

   ii. *"Global commons" in paragraph 2 of the supporting statement in the Proposal is undefined.*

The Proposal suggests that the Company's engagement with portfolio companies could ensure that corporations "do not seek profit from activities that degrade the global commons." The "global commons" is undefined in the Proposal and is an inherently vague and indefinite term that could implicate a myriad of social, economic, political or other considerations without providing any detail as to what is specifically contemplated. Because "global commons" is inherently vague and indefinite, the Board and shareholders would not be able to identify what the Proposal is specifically requiring the Board to consider in its evaluation of the Company's voting and engagement policies.

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[25] As noted above, SSGA's equity index client accounts track many distinct and varying indexes that may focus on different sectors of the economy. It would be an erroneous conclusion to think that clients' interests in the overall markets are aligned as a result. For example, a client whose account tracks the U.S. oil and gas industry may not have the same market interest as an investor whose account tracks the renewable energy sector.

iii. The Proposal's request for information about corporate practices that harm the economy is vague and indefinite and unrelated to the Proposal's focus on the Company's voting and engagement policies.

Paragraph 4 of the supporting statement in the Proposal states that "[t]he Company's clients and shareholders should be provided the information about corporate practices that harm the economy while increasing individual corporate financial returns." This statement is vague and indefinite in that it does not suggest specific considerations or metrics to evaluate potential harm to the economy and further does not specify which "economy" the Proposal refers to – this could refer to the U.S. economy or the global economy – a distinction that would drastically impact how the Company would go about seeking to implement the Proposal. Moreover, this statement appears to be asking for information about the businesses of the portfolio companies, while the Proposal otherwise seems to be asking for a report on how the Company's polices affect clients and shareholders. Accordingly, the statement is vague and indefinite such that neither the shareholders voting on it, 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.

iv. The Proposal suggests that a study would help shareholders ascertain whether to seek a change in corporate direction, which is unrelated to the Proposal's focus on the Company's voting and engagement policies.

Paragraph 5 of the supporting statement in the Proposal states that "[a] study would help shareholders determine whether to seek a change in corporate direction, structure or form in order to better serve their interests." As described in the immediately preceding subsection, it is unclear if the purpose of the report is to get information about the Company or about its portfolio companies. Furthermore, it is unclear whether the report should provide information that could be relevant to changing the Company's direction, the structure or form of the Company, or the direction, structure or form of the Company's portfolio companies. Therefore, this statement is vague and indefinite such that neither the shareholders voting on it, 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.

v. The "Thumbs Up" graphic at the end of the supporting statement is irrelevant to the Proposal.

At the end of the supporting statement in the Proposal, the Proponent includes an image that appears to consist of a check mark located in the center of a circle, followed to the right by

> the capitalized word "FOR," and finally concluding with two emoji of a "thumbs up" sign with a strong resemblance to the "like" icon used on the social media platform Facebook (collectively, the "Image"). There is no relationship between the Image and the Proposal's focus on the Company's voting and engagement policies. Therefore, the Image should be excluded from the 2021 Proxy Materials as "irrelevant to a consideration of the subject matter of the proposal."

For the reasons set forth above, each of the Proposal's key terms and the Image described in this Section IV.B.2. are vague or indefinite (and in the case of the Image, irrelevant to the topic of the Proposal) such that neither the Company, nor its shareholders, would be able to determine with any certainty what actions the Proposal is seeking from the Company. Accordingly, and consistent with precedent no-action letters, the Staff has concurred that the proposal may be properly excluded from a company's proxy materials. *See, e.g., Philip Morris International Inc.* (January 8, 2021) (concurring in exclusion of a proposal requesting that the company significantly strengthen its balance sheet while failing to explain what measures it would require); *Apple, Inc.* (December 6, 2019) (concurring in exclusion of a proposal requesting that the company "improve guiding principles of executive compensation," while failing to define many key terms and leaving room for multiple interpretations) *and eBay Inc.* (April 10, 2019) (concurring in exclusion of a proposal requesting that the company "reform [its] executive compensation committee" without further instruction as to how to do so or in what regard it should be "reformed"). The Staff has also concurred in the exclusion of shareholder proposals where no specific measures required to be implemented were specified in such proposals. *See, e.g., Cisco Systems, Inc.* (October 7, 2016) (concurring in exclusion of a proposal requesting that "[t]he board shall not take any action whose primary purpose is to prevent the effectiveness of shareholder vote without a compelling justification for such action" without further specifying what actions or measures were required to implement the proposal *and United Continental Holdings, Inc.* (March 6, 2014) (concurring in exclusion of a proposal requesting the adoption of a bylaw providing that preliminary voting results would be unavailable for solicitations made for "other purposes" but would be available for solicitations made for "other proper purposes"). The Staff has also issued specific guidance regarding the use of images in stockholder proposals in Staff Legal Bulletin No. 14I (November 1, 2017) ("SLB 14I"). Noting the potential for abuse in the use of images in stockholder proposals, SLB 14I provides that exclusion of such images is appropriate where the images are "irrelevant to a consideration of the subject matter of the proposal, such that there is a strong likelihood that a reasonable shareholder would be uncertain as to the matter on which he or she is being asked to vote." *See, e.g., General Electric Co.* (March 6, 2019) (concurring in exclusion of charts purporting to showcase aspects of the company's financial performance which had no relationship to the proposal's request for the adoption of cumulative voting); *General Electric Co.* (March 1, 2018) (concurring in exclusion of a chart, some text and questions, and emoji which had no relationship to the proposal's request

for the adoption of cumulative voting); *and General Electric Co.* (February 3, 2017, recon. granted February 23, 2017) (concurring in exclusion of images consisting of detailed charts, graphs, equations and emoji that had no relationship to the proposal's request for the adoption of cumulative voting).

Because the Proposal includes terms and an irrelevant image that are so inherently vague or indefinite that neither the shareholders voting on it, 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 Proposal may properly be excluded from the Proxy Materials.

C. The Shareholder Proposal May Be Excluded Pursuant to Rule 14a-8(i)(7) Because the Subject Matter of the Shareholder Proposal Relates to the Company's Ordinary Business Operations

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." There are two "central considerations" underlying the ordinary business exclusion. One consideration is that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." The other consideration is that a proposal should not "seek[] to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." The Proposal implicates both of these considerations.

1. The Proposal seeks to affect the day-to-day management of the Company.

As described in Section I. of this letter, the Company provides investment management services to both institutional and retail investors through investment products ranging from separate accounts and private funds to publicly offered mutual funds and ETFs. The Company's voting and engagement policies are a fundamental component of its interaction with portfolio companies, and these portfolio companies are a central aspect of the investment management services and products that the Company provides. The Proposal ultimately seeks to influence the services and products that the Company provides by affecting the Company's voting and engagement policies with respect to its portfolio companies and therefore the subject of the Proposal is clearly within the scope of the day-to-day management functions of the Company.

The Staff has consistently granted no-action relief pursuant to Rule 14a-8(i)(7) for shareholder proposals that, like the Proposal, relate to the day-to-day operations of the company at issue, including in the context of proposals addressing proxy voting policies and practices. For

example, in *Franklin Resources, Inc.* (December 1, 2014), the Staff concurred in exclusion of a proposal requesting a review of "proxy voting policies and practices, taking into account Franklin's own corporate responsibility and environmental positions and the fiduciary and economic case for the shareholder resolutions presented, and report the results of the review to investors," under Rule 14a-8(i)(7), on the basis that it related to Franklin's ordinary business operations. In *State Street Corp* (February 24, 2009), the Staff concurred in exclusion of this same proposal on the same basis. Additionally, the SEC staff has repeatedly concurred in exclusion of proposals concerning decisions about a company's services, products or manner of doing business. *See, e.g., Amazon.com, Inc.* (March 27, 2015) (concurring in exclusion of a proposal requesting disclosure of potential reputational and financial risks that could result from negative public opinion pertaining to the treatment of animals used to produce products sold by the company on the basis that the proposal related to "the products and services offered for sale by the company"); *Papa John's International, Inc.* (February 13, 2015) (concurring in exclusion of a proposal requesting that the company expand its menu offerings to include vegan cheeses and vegan meats on the basis that the proposal related to "the products offered for sale by the company and does not focus on a significant policy issue"); *Wal-Mart Stores, Inc.* (March 20, 2014) (concurring in exclusion of a proposal requesting board oversight of determinations whether to sell certain products that endanger public safety and well-being, could impair the reputation of the company and/or would be offensive to family and community values on the basis that the proposal related to "the products and services offered for sale by the company"), affirmed and cited in Trinity Wall Street v. Wal-Mart Stores, Inc., 1-14-cv-00405, at *18 (3d Cir. July 6, 2015); *Pepco Holdings, Inc.* (February 18, 2011) (concurring in exclusion of a proposal requesting that the company pursue the solar market on the basis that the proposal related to "the products and services offered for sale by the company"); *Dominion Resources, Inc.* (February 3, 2011) (concurring in exclusion of a proposal requesting that the company initiate a program to provide financing to home and small business owners for installation of rooftop solar or wind power renewable generation on the basis that the proposal related to "the products and services offered for sale by the company"); *General Electric Company* (January 7, 2011) (concurring in exclusion of a proposal requesting that the company focus on defining, growing and enhancing aviation, medical, energy, transportation, power generation, lighting, appliances and technology businesses and deemphasize and reduce the role and influence of GE Capital on the basis such proposal "relates to the emphasis that the company places on the various products and services it offers for sale"). Similarly, the Proposal is directing the Company to evaluate the emphasis it places on various ESG matters and to influence SSGA's engagement with portfolio companies on the basis of such evaluation. For the foregoing reasons and consistent with the letters cited, the Proposal may be excluded in reliance on Rule 14a-8(i)(7) because the Company's voting and engagement policies relate to the day-to-day management of the Company.

2. <u>The Proposal does not implicate a significant policy issue that transcends the Company's ordinary business operations.</u>

As explained in Securities Exchange Act Release No. 34-40018 (May 21, 1998), a proposal that otherwise concerns ordinary business matters may nonetheless be appropriate for a shareholder vote if the proposal raises a policy issue that is sufficiently significant to transcend day-to-day business matters. The Staff explained in SLB 14I that the applicability of the significant policy exception "depends, in part, on the connection between the significant policy issue and the company's business operations." The Staff noted further that whether a policy issue is of sufficient significance to a particular company to warrant inclusion of a proposal that touches upon that issue may involve a "difficult judgment call," which the company's board of directors (or a committee thereof) "is generally in a better position to determine." A well-informed board, the Staff said, exercising its fiduciary duty to oversee management and the strategic direction of the company, "is well situated to analyze, determine and explain whether a particular issue is sufficiently significant because the matter transcends ordinary business and would be appropriate for a shareholder vote."

Where a board concludes that the proposal does not raise a policy issue that transcends the company's ordinary business operations, the company's letter notifying the Staff of the company's intention to exclude the proposal should set forth the board's analysis of "the particular policy issue raised and its significance" and describe the "processes employed by the board to ensure that its conclusions are well-informed and well-reasoned." *See also* Staff Legal Bulletin No. 14J (October 23, 2018) (reiterating Staff's belief that a "well-developed discussion of the board's analysis . . . can assist the Staff in evaluating a company's no-action request") *and* Staff Legal Bulletin No. 14K (October 16, 2019) ("<u>SLB 14K</u>") (noting that "the board's analysis will describe in sufficient detail the specific substantive factors the board considered in arriving at its conclusion, and set forth a non-exclusive list of such factors.").

In SLB 14K, the SEC staff clarified that it takes a "company-specific approach to evaluating significance, rather than recognizing particular issues or categories of issues as universally 'significant'." The SLB also reiterated the staff's position that a well-developed discussion of the board's analysis on whether the particular policy issue raised by a proposal is sufficiently significant in relation to the company can assist the staff in evaluating a proposal. To the extent the Proposal seeks something that the Company is not already doing (and to the extent what the Proposal seeks is not unlawful as described in Section IV.A. of this letter) that aspect of the Proposal does not present a significant policy issue for the Company, as described in further

detail below.

Nominating and Corporate Governance Committee Process

The Proposal seeks to ascertain whether and how the Company's "portfolio companies are stewarded to improve ESG performance" through the Company's voting and engagement strategy. As described in more detail in Sections I. and IV.D. of this letter, the Company has devoted significant resources and attention to corporate engagement activities and has focused increasingly on engagement around non-company specific issues of sustainability, corporate governance and culture and diversity at the board and executive management level.[26]

The Company's Nominating and Corporate Governance Committee (the "Committee") reviews SSGA's voting and engagement strategy at least annually and most recently in December 2020. In January 2021, the Committee reviewed the Proposal against SSGA's current voting and engagement practices including its stewardship of portfolio companies, taking into consideration the Committee's own substantial knowledge of the Company, its ongoing review of SSGA's voting and engagement policies, and the Company's significant investment in climate change, sustainability, gender and racial diversity at the board level and other ESG matters.

Based on this ongoing familiarity and knowledge, and following consideration of numerous factors (including those set forth below), the Committee concluded that the Proposal does not present an issue that transcends the Company's ordinary business operations and therefore the Proposal is not appropriate for inclusion in the Company's Proxy Statement.

Nominating and Corporate Governance Committee Analysis & Factors Considered

In reaching its conclusion that the Proposal does not present an issue that transcends the Company's ordinary business operations, the Committee considered numerous factors, including those set forth below.

As the Committee is aware though its ongoing review of SSGA's voting and engagement policies, SSGA has devoted significant resources and attention to portfolio company engagement activities, including the recent development and rollout of R-Factor, and SSGA provides regular and detailed reporting to its clients and the public regarding stewardship activities.

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[26] *See also* https://www.ssga.com/us/en/institutional/ic/capabilities/esg/asset-stewardship for a discussion of SSGA's active thought leadership to ESG thematic topics, including climate, governance & compensation and diversity & stewardship.

SSGA's engagement with companies on ESG issues is intended to promote long term value and risk avoidance. This engagement has focused increasingly on non-company specific issues of sustainability, corporate governance and culture and diversity at the board and executive management level.

SSGA is a recognized thought leader in promoting sustainable investing principles, a signatory to the Principles of Responsible Investing, a founding member and signatory to the Investor Stewardship Group and an explicit proponent of SASB, TCFD and other ESG-related organizations.

Through the Committee, the Board informs itself regarding how SSGA is addressing ESG and other issues with portfolio companies at least annually. Consequently, the Board is well informed on these topics and is engaged with SSGA on its practices to the extent permitted by SSGA's fiduciary responsibilities.

Accordingly, the delta analysis of what the Proposal appears to be requesting against what SSGA is already doing with respect to promoting long-term value and risk avoidance for the benefit of its clients does not identify gaps that present a significant policy issue for the Company, particularly in light of SSGA's engagement with portfolio companies, and related thought leadership, around non-company specific issues of sustainability, corporate governance, culture and diversity. The Committee therefore determined that the difference, or delta, if any, between what the Proposal requests and what the Company already does is minor, and in any case this delta does not present a significant policy issue.

Additionally, while the Proposal relates to the Company's core business activities because developing and implementing voting and engagement policies on behalf of clients is a core business activity and SSGA's legal duty, the policy issue presented by the Proposal would not have a clear impact on the Company's current voting and engagement policies because it is already undertaking significant efforts in this regard. Any potential impact of expressly addressing the voting and engagement policies of the Company is necessarily speculative and likely immaterial.

Finally, the Company has received objective indications that its shareholders do not have a significant interest in the issue presented by the Proposal, and the Company is not aware of any

shareholder other than the Proponent requesting the type of action or information sought by the Proposal. Moreover, the Proponent did not approach the Company with concerns in this area prior to submitting the Proposal. The Company conducts an extensive, ongoing engagement program with its shareholders (which the Committee reviews) and in 2020, it reached out to the holders of approximately 76% of its common shares and had meetings with the holders of approximately 40% of its common shares. None of the shareholders that the Company reached out to or with which the Company engaged raised the subject matter of the Proposal. Additionally, the Company is not aware of any other shareholder requests that SSGA pursue a strategy that places overall "capital markets materiality" ahead of protecting and promoting the long-term economic value of an individual client's particular investments. This general lack of shareholder feedback on this topic is an objective indication that the issue raised by the Proposal is not one widely viewed by the Company's shareholders as significant to the Company's business.

Based on all of the foregoing, the Committee determined that the Proposal does not relate to a significant policy issue for the Company.

The SEC staff has recently concurred in exclusion of three proposals requesting a report on risks associated with omitting "viewpoint" and "ideology" from the company's written equal employment opportunity policy. *See Alphabet, Inc.* (April 9, 2020), *salesforce.com, inc.* (April 9, 2020), *and Apple, Inc.* (December 20, 2019). In each of the foregoing letters, the company included a board analysis (or board committee analysis) focused on the delta between the company's existing policies and the change the proposal requested, and in each the Staff concurred that the proposal could be excluded as related to the company's ordinary business operations. In particular, the Staff's response in *Apple, Inc.* (December 20, 2019) cited the company's delta analysis as useful to its evaluation of whether the proposal presented a significant policy issue for the company.

For the foregoing reasons and consistent with the above letters, the Proposal may be excluded pursuant to Rule 14a-8(i)(7) on the basis that it relates to the Company's ordinary business operations and does not present a significant policy issue for the Company.

3. The Proposal micromanages the Company.

In addition to interfering with management's day-to-day operations, the Proposal seeks to micromanage the Company by probing too deeply into matters of a complex nature upon

which shareholders, as a group, would not be in a position to make an informed judgment. In SLB 14K, the Staff elaborated on the framework for the micromanagement prong of the ordinary business exclusion, underscoring that the analysis focuses on evaluating the manner in which a proposal seeks to address the subject matter raised. When considering whether a proposal micromanages a company, SLB 14K indicates that the Staff looks at "whether the proposal seeks intricate detail or imposes a specific strategy, method, action, outcome or timeline for addressing an issue, thereby supplanting the judgment of management and the board." In addition, SLB 14K notes that "if the method or strategy for implementing the action requested by the proposal is overly prescriptive, thereby potentially limiting the judgment and discretion of the board and management, the proposal may be viewed as micromanaging the company." The Staff also noted in SLB 14K that "[w]hen a proposal prescribes specific actions that the company's management or the board must undertake without affording them sufficient flexibility or discretion in addressing the complex matter presented by the proposal, the proposal may micromanage the company to such a degree that exclusion of the proposal would be warranted."

In this instance, the Proposal seeks to dictate the standards to be used in developing engagement and voting policies, thereby seeking to supplant SSGA's judgment. By prescribing specific standards without affording SSGA sufficient flexibility or discretion in addressing the complex matter presented by the Proposal, the proposal micromanages SSGA to such a degree that exclusion of the proposal is warranted. The Staff has consistently concurred in exclusion of shareholder proposals that similarly seek to micromanage the Company. *See, e.g., Exxon Mobil Corporation* (March 6, 2020) (concurring in exclusion of a proposal requesting that the board charter a new board committee on climate risk because the proposal "micromanages the Company by dictating that the board charter a new board committee on climate risk"); *and The Goldman Sachs Group, Inc.* (March 12, 2019) (concurring in exclusion of a proposal requesting that the company adopt a policy to reduce the carbon footprint of its loan and investment portfolios). *See also Gilead Sciences, Inc.* (December 3, 2020), *AbbVie Inc.* (February 15, 2019) *and Johnson & Johnson* (February 14, 2019) (each concurring in exclusion of proposals involving senior executive compensation); *Royal Caribbean Cruises Ltd.* (March 14, 2019) (concurring in exclusion of a proposal requesting that any stock buybacks adopted by the board after approval of the proposal not become effective until approved by shareholders); *Walgreens Boots Alliance, Inc.* (November 20, 2018) (concurring in exclusion of a proposal requesting that stock buybacks adopted by the board not become effective until approved by shareholders); *and JPMorgan Chase & Co.* (March 30, 2018) (concurring in exclusion of a proposal requesting the company establish a "Human and Indigenous Peoples' Rights Committee").

The Proposal relates to the Company's ordinary business operations because, consistent with the Committee's analysis, it does not present a significant policy issue and therefore interferes with management's ability to run ordinary day-to-day business operations. Additionally, the Proposal seeks to micromanage the Company by seeking to dictate the standards to be used in developing engagement and voting policies. Accordingly, under either prong of the ordinary business operation exclusion, the Proposal may properly be excluded pursuant to Rule 14a-8(i)(7).

D. The Shareholder Proposal May Be Excluded Pursuant to Rule 14a-8(i)(10) Because the Company Has Substantially Implemented the Proposal

To the extent that what the Proposal seeks is not unlawful as described in Section IV.A. of this letter, the Company has substantially implemented the Proposal because it has taken actions that compare favorably with the guidelines of the Proposal and satisfy its essential objective.

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 (August 16, 1983) and Commission Release No. 34-40018 (May 21, 1998). 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." *See also Texaco, Inc.* (March 6, 1991, *recon. granted* March 28, 1991). In addition, when a company can demonstrate that it already has taken actions that address the "essential objective" of a shareholder proposal, the Staff has concurred that the proposal has been "substantially implemented" and may be excluded as moot, even where the company's actions do not precisely mirror the terms of the shareholder proposal.

In the current instance, to the extent the focus of the Proposal is on having the Company take into consideration and report on ESG issues that are of general importance to society (and therefore to the long-term interests of companies, clients and investors), the Company already takes significant actions to educate SSGA portfolio companies about these issues and provides extensive reporting to clients and investors (and the public) about its approach to stewardship, the reasons for its approach and the outcome of its engagement efforts. As demonstrated in the Company's public statements (see Exhibit B for examples of such statements), the Company's engagement focus is not solely on individual companies, but rather identifies important ESG issues on which the Company engages and on which it already reports to its clients and investors.

As the Company's stewardship efforts make clear, given its focus on preserving long-term economic value, the concepts of company materiality and market materiality with respect to ESG issues are often more intertwined than different, which is why the Company's engagements focus on promoting consideration of societal factors as these societal issues drive long-term value. For example, as described in Section I., SSGA is a signatory to the Principles of Responsible Investing (PRI) and was recognized as part of PRI's Leaders Group for their efforts to advance corporate disclosure on the impact of climate change, it is a founding member and signatory to the Investor Stewardship Group and it is an explicit proponent of SASB. SSGA has also recently joined Climate Action 100+. Accordingly, to the extent the Proposal is focused on considering ESG issues, the Company's policies and engagement strategy already contemplate such issues.

The Staff has consistently permitted the exclusion of shareholder proposals pursuant to Rule 14a-8(i)(10) 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. The Staff recently took this approach in *Apple Inc.* (October 16, 2020), in which the Staff concurred in exclusion of a proposal requesting that the board prepare a report based on a review of whether the company's governance and management systems should be altered to implement a BRT Statement of the Purpose of a corporation signed by the CEO. Apple argued that its core values aligned with the Statement of Purpose, that its core values were disclosed on website and in filings with the SEC, and that the company "has been transparent about its [v]alues and its governance and management systems to implement them." Additionally, in *JPMorgan Chase & Co.* (February 5, 2020), the Staff concurred in exclusion of a proposal requesting that the board provide oversight and guidance as to how the Statement of Purpose should alter the company's governance practices and publish recommendations regarding implementation. The company argued that a committee had already reviewed the Statement of Purpose and determined that the company operates in accordance with the principles set forth in the Statement of Purpose. In granting the no-action request, the Staff noted that the "board's actions compare[d] favorably" with the guidelines of the proposal. *See also The Wendy's Company* (April 10, 2019), in which the Staff concurred in exclusion of a proposal requesting that the Board prepare a report on the Company's process for identifying and analyzing potential and actual human rights risks of operations and supply chain pertaining to ESG issues. In that instance, the company argued that it already had a code of conduct applicable to suppliers and other policies and public disclosures that achieved the proposal's essential objective. The Staff noted that the company's public disclosures "compare[d] favorably" with the guidelines of the proposal.

Therefore, because the Company has substantially implemented the Proposal (to the extent that what the Proposal seeks is not unlawful as described in Section IV.A.), the Proposal is excludable pursuant to Rule 14a-8(i)(10).

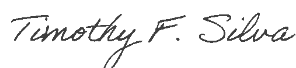
V. Conclusion

For the foregoing reasons, and consistent with the Staff's prior no-action letters, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its Proxy Materials on the bases set forth herein.

If the Staff has any questions with respect to the foregoing, or if for any reason the Staff does not agree that the Company may exclude the Proposal from its Proxy Materials, please do not hesitate to contact Lillian Brown at lillian.brown@wilmerhale.com or (202) 663-6743, Timothy Silva at timothy.silva@wilmerhale.com or (617) 526-6502, or Jeremy Kream, Head of Legal, Corporate and Global Delivery, State Street Corporation at JKream@StateStreet.com. In addition, should the Proponent choose to submit any response or other correspondence to the Commission, we request that the Proponent concurrently submit 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



Timothy F. Silva

Enclosures

cc: David C. Phelan
Jeremy Kream
John Chevedden

EXHIBIT A

From:	John Chevedden ***
Sent:	Monday, December 7, 2020 8:27 PM
To:	jcarp@statestreet.com
Cc:	Stanley, Shannon C; Sara E. Murphy
Subject:	[External] Rule 14a-8 Proposal (STT)``
Attachments:	07122020_5.pdf

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

I expect to forward a broker letter soon so if you acknowledge this proposal in an email message it may very well save you from requesting a broker letter from me.

Sincerely,
John Chevedden

***

Jeffrey N. Carp
Office of the Secretary
State Street Corporation
One Lincoln Street
Boston, Massachusetts 02111
jcarp@statestreet.com

Dear Secretary Carp,

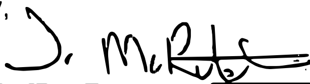
I am submitting the attached shareholder proposal requesting **Market Materiality Disclosure** for a vote at the next annual shareholder meeting. I will meet Rule 14a-8 requirements including the continuous ownership of the required stock value until after the date of the respective shareholder meeting. My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

This is my delegation to John Chevedden and/or his designee to act as my agent regarding this Rule 14a-8 proposal, and/or modification and presentation of it before and during the forthcoming shareholder meeting. This delegation does not cover proposals that are not rule 14a-8 proposals and does not grant the power to vote.

Please direct all future communications regarding our rule 14a-8 proposal to John Chevedden (PH: *** at: *** to facilitate prompt and verifiable communications. Please identify this proposal as my proposal exclusively.

Your consideration and the consideration of the Board of Directors is appreciated in responding to this proposal. *We are open to negotiating possible changes to the proposal or withdrawal. We expect to forward a broker letter soon. Therefore, if you simply acknowledge my proposal in an email message to *** , it may not be necessary for you to request such evidence of ownership.*

Sincerely,



James McRitchie

December 7, 2020

Date

cc: Sara E. Murphy, Chief Strategy Officer, The Shareholder Commons
sara@theshareholdercommons.com

CorpGov.net

[This line and any below are *not* for publication]
Number 4* to be assigned by the Company

The "FOR"graphic above is intended to be published with the rule 14a-8 proposal.
The graphic would be the same size as the largest management graphic (and accompanying bold or highlighted management text with a graphic) or any highlighted management executive summary used in conjunction with a management proposal or a rule 14a-8 shareholder proposal in the 2021 proxy.

The proponent is willing to discuss the in unison elimination of both shareholder graphic and management graphic in the proxy in regard to specific proposals.

Reference SEC Staff Legal Bulletin No. 14I (CF)
[16] Companies should not minimize or otherwise diminish the appearance of a shareholder's graphic. For example, if the company includes its own graphics in its proxy statement, it should give similar prominence to a shareholder's graphics. If a company's proxy statement appears in black and white, however, the shareholder proposal and accompanying graphics may also appear in black and white.

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

> Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(i)(3) in the following circumstances:
>
> - the company objects to factual assertions because they are not supported;
> - the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
> - the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
> - the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.
>
> **We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.**

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

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

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[STT: Rule 14a-8 Proposal, December 7, 2020]
[This line and any line above it – *Not* for publication.]
ITEM 4* – Market Materiality Disclosure

RESOLVED, shareholders ask that the board provide a report as to how its voting and engagement policies, which focus solely on individual corporation materiality to the exclusion of capital markets materiality, affect the majority of its clients and shareholders, who rely primarily on overall stock market performance for their returns, rather than upon the returns of individual companies.

Our Company provides investment management services and has more than $3 trillion in assets under management, primarily weighted towards indexed strategies. Its clients, like its shareholders, are almost all broadly diversified. (Indeed, as of September 2020, the Company itself, along with Vanguard and BlackRock, two asset owners with similarly diversified client bases, own more than 20% of the Company's shares.)

Such diversified shareholders, like the Company's diversified clients, rely on healthy social, economic, and environmental systems to support all corporations. If corporate practices reduce demand[1] or GDP,[2] decreased diversified portfolio returns result.[3] As manager for more than $3 trillion in assets, the Company's stewardship activities—engaging with portfolio companies and voting their shares—could significantly affect overall market performance by ensuring that corporations do not seek profit from activities that degrade the global commons.

However, the Company's position on environmental, social and governance matters focuses largely on "materiality," which only takes into account how those matters affect an individual company.[4] This means that portfolio companies are stewarded to improve ESG performance only if it improves their individual performances. Thus, where a portfolio company can profit through irresponsible social and environmental practices, the Company's stewardship policy may fail to advance the interests of both its clients and its shareholders.

Because the Company's engagement strategy is only focused on company-by-company materiality, it allows corporations in its portfolio to continue practices that externalize costs (thereby harming overall market performance) without harming the individual corporation. The Company's clients and shareholders should be provided with information about corporate practices that harm the economy while increasing individual corporate financial returns.

The difference between company materiality and market materiality is an issue of great social importance. A study would help shareholders determine whether to seek a change in corporate direction, structure or form in order to better serve their interests.

Please vote for: Market Materiality Disclosure – Proposal [4*]

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[1] See, e.g., https://www.epi.org/publication/secular-stagnation/ (inequality has reduced demand by 2-4% of GDP.)
[2] See, e.g., *Closing the Racial Inequality Gaps: The Economic Cost of Black Inequality in the U.S.*, available at http://citi.us/3olxWH0 (closing racial disparity would add $5 trillion to the US economy over the next five years).
[3] See *Universal Ownership: Why Environmental Externalities Matter to Institutional Investors,* Appendix IV (demonstrating linear relationship between GDP and a diversified portfolio) available at https://www.unepfi.org/fileadmin/documents/universal_ownership_full.pdf; cf. https://www.advisorperspectives.com/dshort/updates/2020/11/05/market-cap-to-gdp-an-updated-look-at-the-buffett-valuation-indicator (total market capitalization to GDP "is probably the best single measure of where valuations stand at any given moment") (quoting Warren Buffet).
[4] https://www.ssga.com/library-content/pdfs/ic/global-Proxy-Voting-and-engagement-guidelines-es-issues.pdf

From: John Chevedden ***
Sent: Monday, December 07, 2020 8:31 PM
To: Jeffrey N. Carp <jcarp@statestreet.com>
Cc: Stanley, Shannon C <scstanley@statestreet.com>
Subject: [External] Graphic (STT)

Mr. Carp,
This is a better copy of the graphic in the just submitted Rule 14a-8 Proposal.
John Chevedden

From:	Stanley, Shannon C
To:	John Chevedden
Cc:	Sara E. Murphy; DCPhelan@statestreet.com
Subject:	RE: [External] Rule 14a-8 Proposal (STT)``

Information Classification: ●● Confidential

Mr. Chevedden,

I hope that you are managing well in these unusual times. I am writing to let you know that yesterday I received the email you sent which included the Rule 14a-8 shareholder proposal submitted to State Street. In addition, I received your email related to the preferred graphic for the proposal. I note that the emails you sent were addressed to Jeff Carp, our former Chief Legal Officer and Corporate Secretary. David Phelan, copied here, is the General Counsel and Corporate Secretary effective July 16, 2020. Going forward, please include David in correspondence intended for the Corporate Secretary and you can always copy me.

Please forward your broker letter as noted below.

Many thanks,

Shannon

Shannon C. Stanley, Managing Director and Senior Counsel

State Street | Legal Division | One Lincoln Street, 2nd Floor, Boston, MA 02111

P +617.664.0589 | scstanley@statestreet.com

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Limited Access

From: John Chevedden ***

Sent: Monday, December 07, 2020 8:27 PM

To: Jeffrey N. Carp <jcarp@statestreet.com>

Cc: Stanley, Shannon C <scstanley@statestreet.com>; Sara E. Murphy <sara@theshareholdercommons.com>

Subject: [External] Rule 14a-8 Proposal (STT)``

Mr. Carp,

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

I expect to forward a broker letter soon so if you acknowledge this proposal in an email message it may very well save you from requesting a broker letter from me.

Sincerely,

John Chevedden

From:	John Chevedden
To:	DCPhelan@statestreet.com
Cc:	Stanley, Shannon C
Subject:	[External] Rule 14a-8 Proposal (STT) blb
Date:	Thursday, December 10, 2020 11:18:23 PM
Attachments:	10122020_10.pdf

Mr. Phelan,
Please see the attached broker letter.
Please confirm receipt.
Sincerely,
John Chevedden

12/10/2020

James McRitchie
***

Re: Your TD Ameritrade Account Ending in ***

Dear James McRitchie,

Thank you for allowing me to assist you today. Pursuant to your request, this letter is to confirm that as of the date of this letter, James McRitchie held and had held continuously for at least 13 months, 50 common shares of State Street Corporation (STT) in an account ending in *** at TD Ameritrade. The DTC clearinghouse number for TD Ameritrade is 0188.

If we can be of any further assistance, please let us know. Just log in to your account and go to the Message Center to write us. You can also call Private Client Services at 800-400-4078. We're available 24 hours a day, seven days a week.

Sincerely,

Jennifer Hickman

Jennifer Hickman
Resource Specialist
TD Ameritrade

This information is furnished as part of a general information service and TD Ameritrade shall not be liable for any damages arising out of any inaccuracy in the information. Because this information may differ from your TD Ameritrade monthly statement, you should rely only on the TD Ameritrade monthly statement as the official record of your TD Ameritrade account.

Market volatility, volume, and system availability may delay account access and trade executions.

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200 S. 108th Ave,
Omaha, NE 68154

EXHIBIT B

Examples of Public Statements Made By The Company

Global Proxy Voting and Engagement Principles (March 2020) (available at https://www.ssga.com/library-content/pdfs/ic/proxy-voting-and-engagement-guidelines-principle.pdf)

"As an investment manager, State Street Global Advisors has discretionary proxy voting authority over most of its client accounts, and State Street Global Advisors votes these proxies in the manner that we believe will most likely protect and promote the long-term economic value of client investments as described in this document."

"We maximize our voting power and engagement by maintaining a centralized proxy voting and active ownership process covering all holdings, regardless of strategy. Despite the vast investment strategies and objectives across State Street Global Advisors, the fiduciary responsibilities of share ownership and voting for which State Street Global Advisors has voting discretion are carried out with a single voice and objective."

"In conducting our engagements, we also evaluate the various factors that influence the corporate governance framework of a country, including the macroeconomic conditions and broader political system, the quality of regulatory oversight, the enforcement of property and shareholder rights, and the independence of the judiciary. We understand that regulatory requirements and investor expectations relating to governance practices and engagement activities differ from country to country. As a result, we engage with issuers, regulators, or a combination of the two depending upon the market. We are also a member of various investor associations that seek to address broader corporate governance related policy at the country level as well as issuer specific concerns at a company level."

"As a fiduciary, State Street Global Advisors takes a comprehensive approach to engaging with our portfolio companies about material environmental and social (sustainability) issues. We use our voice and our vote through engagement, proxy voting, and thought leadership in order to communicate with issuers and educate market participants about our perspective on important sustainability topics."

State Street Global Advisors' Issuer Engagement Protocol (March 2020) (available at https://www.ssga.com/library-content/pdfs/ic/state-street-global-advisors-issuer-engagement-protocol.pdf)

State Street Global Advisors' engagement activities are driven exclusively by our goal to maximize and protect the long-term value of our clients' assets. These guidelines are utilized by State Street Global Advisors' proxy voting and engagement team, known as the Asset Stewardship team, to develop annual engagement objectives and priorities based upon an assessment of the greatest risks and opportunities within our clients' funds. The protocol clearly defines instances in which the Asset Stewardship team is willing to participate in reactive

engagement, thereby allowing the team to focus on active, thematic, or sector specific engagement across our global portfolios."

"Each year, as part of its strategic review process, the Asset Stewardship team develops an annual engagement strategy, and it identifies a target list of companies that we intend to engage with during the year. Factors considered in developing the target list include:

…

• Thematic environmental, social, and governance (ESG) issues that the team identifies as potential risks facing investee companies"

Letter dated August 27, 2020 from SSGA to Board Chairs (available at https://www.ssga.com/library-content/pdfs/global/letterhead_racial_equity_guidance.pdf)

"The ongoing issue of racial equity has caused us to focus more closely on the ways in which racial and ethnic diversity impacts us as investors. As such, we are writing to inform you that starting in 2021, State Street Global Advisors will ask companies in our investment portfolio to articulate their risks, goals and strategy as related to racial and ethnic diversity, and to make relevant disclosure available to shareholders.

. . .

These topics will be part of our engagement conversations. As always, our primary tool is engagement with management and the board with the objective of understanding a company's plan and how the board is carrying out its oversight role. However, if required, we are prepared to use our proxy voting authority to hold companies accountable for meeting our expectations."

Guidance on Enhancing Racial & Ethnic Diversity Disclosures (available at https://www.ssga.com/library-content/pdfs/asset-stewardship/racial-diversity-guidance-article.pdf)

"We have expanded our firm's longstanding focus on gender diversity to include race and ethnicity, and this essential dimension of ESG risk management will be a priority for our Asset Stewardship team in 2021."

Proxy Season Review (Q2 2020) (available at https://www.ssga.com/library-content/products/esg/asset-stewardship-report-q2-2020.pdf)

"The global health, social and economic impacts of COVID-19 intensified during the 2020 proxy season. As a result, many of our discussions with investee companies focused on immediate ESG issues, including employee health, human capital, serving and protecting customers and ensuring the overall safety of supply chains. We also focused on near-term survival issues such as business continuity and resilience (including C-suite succession planning), financial stability, capital allocation and liquidity. That being said, as long-term investors we continued to engage

with our investee companies on long-term issues. To manage a crisis of this magnitude successfully we believe companies need to strike the right balance between managing short-term priorities and staying focused on long-term goals."

Stewardship Report 2018-19 (available at https://www.ssga.com/library-content/products/esg/annual-asset-stewardship-report-2018-19.pdf)

"Overall Engagement and Core Campaigns

In 2018, we engaged with 1,533 companies, which accounts for about 70% of our AUM in equities. Some of the highlights in this report include updates on our core multi-year campaigns of gender diversity and climate change, which will continue to be focus areas until portfolio companies effectively address these issues. I am especially pleased to announce that as of June 30, 2019, 43% or over 580 of the 1,350 companies identified as part of our Fearless Girl campaign responded to our call by either adding a female director or committing to do so. On climate change, we have conducted more than 365 engagements since we began engaging on the issue in 2014. This year, we found that while boards are starting to see climate change as a risk that needs to be mitigated, they are responding in a short-term tactical manner to a long-term strategic challenge. We believe that this is partly due to the time horizon mismatch between a typical three-year strategy-setting process and a longer time horizon over which companies expect climate risk to materialize."

"Social Issues: The Next Frontier of ESG

In 2018, we observed that social issues such as gender diversity, pay equality, wage strategies, sexual harassment in the workplace and worker retraining are raising in prominence as emerging ESG issues facing companies. Overseeing and mitigating these risks are the next frontier of challenges facing boards. Consequently, one of our key collaborative efforts in 2018 was the Embankment Project for Inclusive Capitalism (EPIC) (see page 72). As a member on the Human Capital Deployment Working Group, we explored ways in which companies communicate the value of investing in their workforce and recommended that companies monitor and consider reporting on relevant metrics in this area. Our stewardship team will continue to explore how social issues are challenging our portfolio companies and have identified Human Capital Management as a thematic priority for 2019. We look forward to sharing our insights with you in the coming years."

"In 2019, State Street Global Advisors launched R- Factor™, a new ESG scoring system. The R-Factor™ or the Responsibility Factor Score measures the performance of a company's business operations and governance as it relates to financially material ESG challenges facing the company's industry. It was designed to address market infrastructure challenges around ESG data quality and give companies a road map to implement and improve disclosure of financially material ESG data to all investors, thereby helping build more sustainable capital markets. The

score draws on data from four ESG data providers and leverages widely accepted, transparent materiality frameworks (SASB and corporate governance codes) to generate a unique ESG score for listed companies."

"As near-perpetual holders of the constituents of the world's primary indices, we use our voice and vote to influence companies on long-term governance and sustainability issues. Our approach to stewardship focuses on making an impact. Accordingly, our stewardship program proactively identifies companies for engagement and voting in order to mitigate ESG risks in our portfolios."

"[In] order to maximize our impact, we publish thought leadership, to both inform companies and educate market participants."

"Stewardship Program Philosophy and Objectives

Through our overarching stewardship philosophy of protecting and promoting the long-term economic value of client investments and in an effort to fully embrace our commitment to external initiatives such as the PRI (see page 23), our stewardship objectives are as follows:

Clearly communicate our commitment to responsible investing on behalf of our clients and report on the impact of our stewardship activities We aim to achieve this objective through honest evaluation, continuous enhancement and increased transparency of our stewardship practices.

Develop effective proxy voting and engagement guidelines that enhance and evolve ESG practices in the market We aim to achieve this objective by applying higher voting standards in markets where governance and sustainability practices are below global investors' expectations, and by clearly identifying engagement priorities that focus on sector, thematic and/or market-specific issues. We collaborate with other investors in markets where we believe collective action is needed."

"Our Beliefs

Our approach to proxy voting and issuer engagement is premised on the belief that companies that adopt robust and progressive governance and sustainability practices are better positioned to generate long-term value and manage risk. As near-perpetual holders of the constituents of the world's primary indices, the informed exercise of voting rights coupled with targeted and value-driven engagement is the most effective mechanism of creating value for our clients.

Therefore, we engage as long-term investors through our asset stewardship program on those issues that impact long-term value. Our focus in recent years has been on good governance and other practices that affect a company's ability to generate positive returns for investors over the long run. Those issues span a variety of ESG topics material to sustainable performance. We approach these issues from the perspective of long-term investment value, not from a political or social agenda (aka "values")."

"Market-Level Successes

We track the broader adoption of the thematic ESG issues that we have been championing by assessing the number of market participants that have embraced positions consistent with our thought leadership. Over the years, the following issues are examples of ESG topics where we have published robust thought leadership that has influenced market participants:

• Need for Board Refreshment (US market)

• Effective Independent Board Leadership (Global)

• Incorporating Sustainability into Long-Term Strategy (Global) • Gender Diversity — Fearless Girl Campaign (Global)

• Effective Climate Change Disclosure in High-Impact Sectors (Global)

• Increasing Board Accountability (Europe)

• Aligning Corporate Culture with Long-Term Strategy (Global)

• Monitoring Compliance with Investor Stewardship Group Principles (US market)"

"Selecting Our Sector Focus

Reviewing our global holdings within a sector allows us to identify the business and ESG trends that are impacting our holdings. This strengthens our ability to provide inputs to the board and management when they seek feedback or guidance from large institutional investors. We select focused sectors based on a variety of factors, including:

• **Identification of Emerging Systemic Challenges** We focus on sectors that are meaningfully impacted by wider systemic challenges we observe in the market

• **Timing of Previous Selection for Sector Focus** We revisit sectors we have focused on in the past when sufficient time has passed such that progress has been made and the sector faces new challenges and opportunities

• **Alignment to Our Thematic Priorities** We seek some overlap, in order to be able to leverage viewpoints that we have developed"

"Selecting Our Thematic Priorities

In our view, focusing on thematic topics with the largest material impact on the long-term value of our portfolio companies is a key strength of our asset stewardship program as these topics typically require a multi year approach to effect change, drive impact and create long-term value."

“In our 2017 annual proxy letter to large portfolio companies, we reinforced the importance of considering the impact of environmental and social sustainability issues on long-term performance.”

“Our asset stewardship program is aimed at engaging our portfolio companies on ESG issues that have a long-term impact on value creation. Our approach to proxy voting and issuer engagement is premised on the belief that companies that adopt robust and progressive governance and sustainability practices will be better positioned to generate long-term value and to manage risk. As a near-perpetual holder of the constituents of the world’s primary indices, our informed exercise of voting rights, in accordance with in-house voting guidelines, coupled with targeted and value-driven engagement, is the most effective mechanism for creating value for our clients.”