



January 22, 2020  
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: Shareholder Proposal to The Goldman Sachs Group, Inc. Regarding Statement of Purpose of the Corporation by John Harrington, President, Harrington Investments, Inc.

Ladies and Gentlemen:

I am the beneficial owner of common stock of The Goldman Sachs Group, Inc. (the "Company") and have submitted a shareholder proposal (the "Proposal") to the Company. I am in receipt of a letter dated December 30, 2019 ("Company Letter") sent to the Securities and Exchange Commission by Beverly L. O'Toole of Goldman Sachs. In that letter, the Company contends that the Proposal may be excluded from the Company's 2020 proxy statement. A copy of this reply is being emailed concurrently to Beverly L. O'Toole.

### SUMMARY

Proponent submitted a shareholder proposal to Goldman Sachs requesting the following:

**Resolved**, that shareholders request our Board of Directors, in exercise of their fiduciary duties of care and loyalty, review the Statement of the Purpose of a Corporation signed by our Chairman and Chief Executive Officer, and provide oversight and guidance as to how our Company's full implementation of this new Statement should alter our Company's governance or management systems, such as long term plans, goals, metrics, executive and Board compensation, and/or representation of stakeholders in governance of our Company, and publish recommendations regarding implementation.

The full proposal is attached as Exhibit 1.

The Company argues for exclusion of the Proposal on the basis of Rules 14a-8(i)(3) and 14a-8(i)(7).

The Proposal is not vague or misleading within the meaning of Rule 14a-8(i)(3); it clearly describes the essence of the commitment made by our CEO in endorsing the Statement of Purpose of a Corporation without requiring shareholders to know or have read that document. As such, the Proposal is not excludable on the basis of Rule 14a-8(i)(3).

Nor does the proposal address ordinary business. Instead it addresses a high-profile controversy in which the Company's CEO has, in his endorsement of the Statement of the Purpose of the Corporation, created an obvious inference that the Statement is salient to the Company's own operations. The controversy created by the Statement has to do with the degree to which a corporation is responsible to its stakeholders, beyond its investors. The Business Roundtable articulated the statement in its unequivocal commitment to stakeholder interests, as going "beyond shareholder primacy".

Furthermore, in its focus on the relationship between the Statement of Purpose and the Company's governance documents, the Proposal does not focus on the day-to-day management of the company or its relationships with stakeholders. Instead its purpose is to encourage the board and management to more rigorously consider, at a governance level, how to address the major policy issues for the Company that are raised by the statement the CEO endorsed, the controversial Statement of Purpose of the Corporation. Accordingly, we do not believe the Proposal is excludable on the basis of Rule 14a-8(i)(7).

## ANALYSIS

### I. Rule 14a-8(i)(3)

The Company Letter argues that the Proposal is vague, because it cannot be understood without referring to materials outside the Proposal. In particular, the Company argues that because the Statement is a central aspect of the Proposal, "it is necessary for shareholders to understand what is contained in the "Statement of the Purpose of a Corporation" in order to reasonably determine what actions or measure the Proposal requires". *Company Letter*, page 20.

However, the Proposal clearly enough references the thrust of the Business Roundtable Statement that is relevant for the Proposal itself, specifically that:

- Our Company's CEO "signed a "Statement an the Purpose of a Corporation", committing our Company to serve *all* stakeholders, including shareholders as stakeholders"; (emphasis included in original)
- There is no guidance in the statement related to implementation; "the statement, in and of itself, is vague and indistinct in how such statement shall be implemented by our Company." And;
- There is no indication that our Board of Directors has acted to "determine what specific actions the board needs to take to implement the stakeholder theory underlying the statement, to promote the best interests of the corporation."

The question of vagueness in this context is whether shareholders would have a reasonable idea of what is being discussed, and what they are being asked to vote on in the Proposal. **The language of the Proposal clearly explains that our CEO has made a new commitment on**



**behalf of our Company by signing a public statement, and that the commitment to “serve all stakeholders” with the novel approach of considering shareholders as simply a category of “stakeholders” indicates commitment to a new “stakeholder theory”; a “new approach” for the Company in contrast to the longstanding corporate governance practice of shareholder primacy.** The Company’s Articles of Incorporation, at present, describe the purpose of the corporation as:

“To engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law”. Goldman Sachs Articles of Incorporation, Paragraph 2, Third Section.

The Articles of Incorporation, as do those of most corporations, describe the powers of the Board and the rights of shareholders, but make no mention of stakeholders, sustainability or the environment.

It is evident that the description of the Statement contained in the Proposal is complete enough to allow shareholders to vote on whether or not they want the Board to engage in further review of the Statement, and provide guidance on how full implementation of this new approach should alter the Company’s long term plans, goals, metrics, compensation practices and approaches to representation within the Company - all vital matters of corporate governance.

Shareholders need not have read the full Statement, or even have any familiarity with the Business Roundtable, to understand what is at issue in the Proposal. The Proposal clearly explains that our CEO has publicly committed the Company to a new approach to business that takes away shareholder primacy, that there has been no disclosure by the Board regarding how the Company will implement this new approach, and asks shareholders to vote upon whether they want the Board to explain how it will implement this new approach while promoting the best interests of the Company. Since shareholders are able to determine what actions or measures the Proposal requires without reference to outside materials, the Proposal is not excludable on the basis of Rule 14a-8(i)(3).

## **II. Rule 14a-8(i)(7)**

The Company Letter asserts that the issues raised by the proposal constitute ordinary business, excludable for purposes of Rule 14a-8(i)(7). However, as shown below, the Proposal addresses a current, significant policy issue that transcends ordinary business, one which is clearly significant to the Company. Therefore, the Proposal is not excludable for purposes of Rule 14a-8(i)(7).

The Company misrepresents the Proposal's core request as relating to the “systems that the Company has implemented to manage its relations with employees, customers, suppliers, shareholder and the communities in which the Company operates”, *Company Letter*, page 5, and requesting a “broad review of the Company's relations with a broad category of stakeholders”, *Company Letter*, page 8, by asking how the Company may address each of the five commitments of the Statement. In the Background section of the its Letter, the Company offers numerous examples of how it has already acted to implement various aspects of the five core tenets of the

Statement through existing business strategy, policies and programs. *Company Letter*, pages 3-5. Elsewhere, the Company describes how the review requested in the Proposal entails a review of each of the Statement's five areas of commitment, and provides example of why a review of each of these five areas would be a matter of ordinary business for the Company. *Company Letter*, pages 8-15

The Company misses the mark here, because the Proposal does not concern the five categories of stakeholder interest that are the *content* of the letter. Nor does the Proposal concern the broad topic of sustainability practices. Instead, the Proposal focuses on *the significant policy issue of the Company's sign-on to the Statement, and what this commitment means for the Company*. An immense outpouring of media commentary, academic research, analysis, journalism and debate followed the August 2019 issuance of the Statement, demonstrating the significance of so many major companies' sign-ons as a national policy issue concerning the future of corporate practice. It is shocking that the Company writes, "There is nothing more quintessentially ordinary business than asking the Company to review its purpose as a corporation and corporate citizen", *Company Letter*, page 18, given the intensity of this current debate, described in detail below.

### ***The Newly Changed Purpose of the Corporation, Promulgated by the BRT Statement of Purpose of the Corporation, is a Significant Policy Issue***

The August 2019 issuance of the Business Roundtable's new Statement on the Purpose of the Corporation quickly gained high visibility in the media and garnered significant positive response from the public, while simultaneously generating a cloud of confusion and controversy. The Statement reignited a long-simmering debate regarding the public and private purposes of the Corporation, and raised this debate to a topic of transcendent policy focus.

The Business Roundtable has had a long-standing practice of issuing Principles of Corporate Governance, beginning in 1997, when those principles articulated the theory of shareholder primacy – that corporations exist principally to serve shareholders, and relegating the interests of any other stakeholders to positions that were strictly derivative of the duty to shareholders. But the new statement, which supersedes prior BRT statements, seems to imply that the duty to stakeholders is no longer derivative of the duty to stockholders.<sup>1</sup>

As many commentators have long observed, the firm's balancing act between interests of shareholders and other stakeholders can be in alignment, but it can also be in conflict. For instance, Law Professor Jill E. Fisch, considering the role of shareholder primacy in consideration of economic efficiency has noted:

Within a framework of welfare economics in which the goal is societal wealth maximization, firm value is conceptually distinct from shareholder value. Corporations provide value to a variety of nonshareholder groups, including managers, employees, creditors, customers, and suppliers. A corporation provides value to its creditors in the form of interest on and repayment of its debt. It provides value to managers and other employees through jobs that yield compensation, fringe benefits, perquisites, and, in some cases, the development of specialized skills or marketable reputations. A corporation provides value

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<sup>1</sup> *How Will Companies and CEOs Meet the Challenges of Corporate Social Responsibility*. Cydney Posner, [Mondaq.com](http://www.mondaq.com/unitedstates/x/878330/Shareholders/How+Will+Companies+And+CEOs+Meet+The+Challenges+Of+Corporate+Social+Responsibility). December 20, 2019.  
<http://www.mondaq.com/unitedstates/x/878330/Shareholders/How+Will+Companies+And+CEOs+Meet+The+Challenges+Of+Corporate+Social+Responsibility>



to its customers and its suppliers through voluntary surplus-producing market transactions.

Firm value will, by its nature, exceed shareholder value because most or all of the value provided to nonshareholder stakeholders, in the form of salaries, interest payments, and so forth, is explicitly excluded from shareholder-oriented concepts of firm value such as corporate profit. Similarly, because it is distributed to nonshareholder stakeholders, this excess does not affect shareholder returns and ultimately will not be reflected in stock price....

Surprisingly, little research demonstrates a correlation between doing well and doing good, that is, a correlation between corporate performance and decisions that favor the interests of nonshareholder stakeholders or the public at large. Despite the existence of an extensive literature arguing for increased corporate social responsibility, there is scant evidence that corporate decisions favoring the interests of workers, customers, or the community actually increase the size of the pie, as opposed to reflecting transfers of wealth from one group of stakeholders to another.

Even if the interests of corporate stakeholders are, in many cases, aligned, sometimes they are not. In at least a subset of corporate decisions, there is a true conflict between the interests of different stakeholders, and a decision that benefits one class of stakeholders will harm another. Moreover, many of the corporate rules ... are addressed to these types of intra-capital structure battles. Takeover regulation, the scope of director and officer liability, board structure, and executive compensation all have the potential to affect wealth transfers between stakeholders.<sup>2</sup>

Numerous legal and corporate scholars have written articles and reports addressing the new statement, arguing that the statement itself violates the fiduciary duties of directors, that it involves misleading communications and that it unlawfully attempts to supplant shareholder primacy.

For instance, an article in *Fiduciary News* asked outright, “Did Business Roundtable Just Break a Fiduciary Oath?”<sup>3</sup> In this article, the author explained:

“The issue of which constituency – or “stakeholder” – has the highest priority has long been a classic corporate governance conundrum. Still, the prevailing consensus, as espoused by Milton Friedman in his September 13, 1970 New York Times Magazine article, has been corporate executives work for their owners (i.e., shareholders) and have a responsibility to do what those owners desire, which is to make as much money as (legally) possible. That all changed on August 19, 2019.”

While exploring the laudable aspects of commitments to corporate social responsibility, the author of the article returned to the principles put forth by Milton Friedman, in which Friedman noted that;

“the 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

<sup>2</sup> Fisch, Jill E., "Measuring Efficiency in Corporate Law: The Role of Shareholder Primacy" (2006). *Faculty Scholarship*. Paper 1043. [http://scholarship.law.upenn.edu/faculty\\_scholarship/1043](http://scholarship.law.upenn.edu/faculty_scholarship/1043)

<sup>3</sup> Christopher Carosa, “Did Business Roundtable Just Break A Fiduciary Oath?”, *FiduciaryNews.com*. August 27, 2019. <http://fiduciarynews.com/2019/08/did-business-roundtable-just-break-a-fiduciary-oath/>.

Capitalism and Freedom, I have called it a ‘fundamentally subversive doctrine’ in a free society, and have said 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 fraud.’

But the author of the article concluded;

“With this in mind, the next question might be: What potential fiduciary liability might an investment adviser have by knowingly using client assets to purchase shares of companies whose CEOs are on record of subordinating shareholder interest?”

This same concern about subordination of investor interests was also raised by an array of respected voices on corporate governance, from the Council of Institutional Investors to Delaware law expert Charles Elson, in coverage by *Pensions and Investments*:

“In its own statement, the Council of Institutional Investors — whose pension fund, endowment and foundation members hold a collective \$4 trillion in assets — warned the policy shift would diminish shareholder rights and, in the absence of new mechanisms to assure accountability of boards and management, would lead to "accountability to no one."

Long-term views and strategies are important, CII officials said in the statement, but "if 'stakeholder governance' and 'sustainability' become hiding places for poor management," the economy or public equity markets will suffer.

### **‘Very bad results’**

Charles M. Elson, the Edgar S. Woolard Jr. Chair of Corporate Governance and director of the John L. Weinberg Center for Corporate Governance at the University of Delaware, Newark, views the new Business Roundtable policy as "a mistake."

Before Business Roundtable members adopted the shareholder-first policy in 1997, companies trying to appeal to all stakeholders "led to very bad management and very bad results — for their investors and their employees. The folks who are ultimately hurt are working men and women" whose pension funds invest in the companies, Mr. Elson said.

Returning to that policy "will come back to haunt" company executives, especially if shareholder value drops, Mr. Elson warned. He said he hopes the CEOs will soften their approach as they move to implement the change, and take care to keep shareholders at the front of the line.

"The point is, these people invested in you. What happens the next time you ask for their money?" he said."<sup>4</sup>

The driving force behind the new Statement appears to be a groundswell of sentiment from the

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<sup>4</sup> Hazel Bradford, “CEOs face pushback over stakeholder refocus”, *Pensions and Investments*, September 02, 2019. <https://www.pionline.com/governance/ceos-face-pushback-over-stakeholder-refocus>.



public, and particularly employees, that companies must have a purpose beyond profiteering. As reported in *Fortune Magazine's* coverage of the BRT statement, the driver for this new initiative of BRT was widespread public and employee unrest regarding the purpose of the corporation and the need for a public mission:

"More and more CEOs worry that public support for the system in which they've operated is in danger of disappearing.

"Society gives each of us a license to operate," [IBM](#) CEO Ginni Rometty told me this August. "It's a question of whether society trusts you or not. We need society to accept what it is that we do."

...

*Public interest in corporate responsibility is unusually high:* A July survey of 1,026 adults for Fortune by polling firm New Paradigm Strategy Group found that nearly three-quarters (72%) agree that public companies should be "mission driven" as well as focused on shareholders and customers. *Today, as many Americans (64%) say that a company's "primary purpose" should include "making the world better" as say it should include "making money for shareholders."*

*But CEOs invariably say the constituency that's truly driving their newfound social activism is their employees. Younger workers expect even more from employers on this front. Though, according to the poll, fewer than half of Americans overall (46%) say that CEOs should take a stance on public issues, support for such action is overwhelming among those ages 25 to 44. Millennials, in particular, may be driving the change more than anyone—and, more important, they're choosing to work at companies that are driving change too. Among those ages 25 to 34 in the Fortune/NP Strategy poll, 80% say they want to work for "engaged companies."*<sup>5</sup> (Emphasis added).

Those who are longtime observers and participants in the debate on corporate social responsibility, such as Nell Minow of Value Edge Investors, have suggested that the Statement is really more of an attempt to avoid rather than to create accountability:

**"We've seen this before.** The last time the BRT deployed stakeholder rhetoric it was during the 1980's era of hostile takeovers, when a feint to the interests of anyone other than shareholders was the best way to entrench management. The CEOs who signed this statement know that accountability to everyone is accountability to no one. It's like a shell game where the pea of any kind of obligation is always under the shell you didn't pick. It's shoot an arrow at the wall and then draw a bull's-eye around it goal-setting.

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<sup>5</sup> Alan Murray, "America's CEOs Seek a New Purpose for the Corporation", *Fortune*, August 19, 2019. <https://fortune.com/longform/business-roundtable-ceos-corporations-purpose/>

There is also a serious credibility problem here. Barry Ritholtz notes dryly, “Scan the list of 181 signatories to the recent memo and it’s a Who’s Who of corporate behavior that has burdened and disadvantaged the very stakeholders they will now champion.” His exhaustive lists include many specific examples of opposition to unions, health, environmental, consumer protection and safety rules, and efforts to reduce shareholder oversight.”<sup>6</sup>

Value Edge Investors has compiled responses to the Statement, collecting all manner of sources, from reader responses to top news publication commentary. For instance, it notes *Fortune* reader responses, like this one:

*“Every CEO focuses extensively on the “needs of society” ... until they have a bad quarter.”*<sup>7</sup>

Similarly, on *Bloomberg*:

*“It certainly sounds enlightened — and if Dimon’s goal is merely to sound enlightened and thereby improve JP Morgan’s image, then his move is a smart one. If, however, he genuinely means what he says, then his proposal is misguided. Its implementation will be at best wasteful and at worst harmful to investors, workers and society.... 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.”*<sup>8</sup>

A commentator at *Slate* demonstrates critique:

*“Now, you might be tempted to think that, by issuing a feel good PR statement about how corporations really have society’s best interests at heart, and aren’t just cold-blooded profit machines, America’s CEOs are trying to put a warm face on U.S. capitalism and beat back demands for more fundamental reforms, such as Warren’s, that might actually give workers a voice in corporate decision-making. But that would be cynical, wouldn’t it?”*<sup>9</sup>

And authors at the *Wall Street Journal*, explain:

“While 181 CEOs say they are committed to serving ‘all stakeholders,’ when it comes to

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<sup>6</sup> Nell Minow, “Six Reasons We Don’t Trust the New “Stakeholder” Promise from the Business Roundtable”, ValueEdge Advisors, September 2, 2019. <https://corpgov.law.harvard.edu/2019/09/02/six-reasons-we-dont-trust-the-new-stakeholder-promise-from-the-business-roundtable/>.

<sup>7</sup> <https://fortune.com/2019/08/20/feedback-on-the-business-roundtable-shift-ceo-daily>

<sup>8</sup> <https://www.bloomberg.com/opinion/articles/2019-08-22/corporations-should-keep-their-focus-on-profit-not-on-doing-good>

<sup>9</sup> Jordan Weissman, “America’s Most Powerful CEOs Say They No Longer Only Care About Shareholder Value. Here’s How They Can Prove It.”, *Slate*, August 21, 2019. <https://slate.com/business/2019/08/ceos-shareholder-value-investors-business-roundtable.html>.





assessing their own performance, there is really only one master.

Now, even as investor interests are increasingly cast as the root of many social problems, I offer this word of encouragement to shareholders: You may be unpopular, but you are still king.

How do I know this? The regulatory disclosures of most of the companies at the Business Roundtable represents tell me that senior leaders get paid for performance, and by "performance" we mean stock price. Almost all of their CEOs issue financial guidance, buy back sums of stock that dwarf capital spending and equate a healthy share price with a healthy payday."<sup>10</sup>

As well as:

"The Business Roundtable's statement was a significant step in the right direction. But for those who signed—and, by extension, for all American corporations—now comes the hard part: turning this vision into something measurably meaningful."<sup>11</sup>

The debate portrayed in the examples above — which offer only a small slice of the total research, writing and commentary on this current, high profile controversy— demonstrates that the Proposal in fact addresses a significant policy issue that transcends ordinary business. Thus, the Proposal is not excludable for purposes of Rule 14a-8(i)(7).

### CONCLUSION

In conclusion, the Company has failed to demonstrate that the Proposal is excludable on the basis of Rule 14a-8(i)(3) or 14a-8(i)(7). Accordingly, we request that the Company's petition for no-action on the basis of Rule 14a-8 be declined.

Sincerely,



John Harrington

President

Harrington Investments Inc.

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<sup>10</sup> John Stoll, "A Reminder for CEOs Considering a Shift in Focus: Shareholders Are Still King", *Wall Street Journal*, Sept. 6, 2019. <https://www.wsj.com/articles/a-reminder-for-ceos-considering-a-shift-in-focus-shareholders-are-still-king-11567791772>.

<sup>11</sup> Rick Wartzman and Kelly Tang, "The Business Roundtable's Model of Capitalism Does Pay Off," *Wall Street Journal*, Oct. 27, 2019. <https://www.wsj.com/articles/the-business-roundtables-model-of-capitalism-does-pay-off-11572228120>.

## **Exhibit 1**

### **The Proposal**

#### **Goldman Sachs – 2020**

**Whereas**, Our Company’s management has pledged our Company to policies that may be inconsistent with our governance documents. There needs to be congruity between corporate management policies and our Board’s fiduciary duties reflected in our Company’s bylaws, Articles of Incorporation and Committee Charters.

**Whereas**, in 2016 through 2018, our Company financed the fossil fuel industry with over \$106 billion in loans; and

**Whereas**, according to *Banking on Climate Change: Fossil Fuel Report Card 2019*, our bank was among the top banks funding one hundred key oil, gas and coal companies expanding fossil fuels; and

**Whereas**, our Company financed tar sands production companies, Arctic and ultra- deep-water oil and gas companies, fracked oil and gas producers and transporters and liquefied natural gas companies, mining companies and coal power companies;

**Whereas**, our Company’s Chairman and Chief Executive Officer, in August 2019, signed a ‘Statement on the Purpose of a Corporation’, committing our Company to *all* stakeholders, supporting “... the communities in which we work... respect[ing] the people in our communities and protect[ing] the environment by embracing sustainability practices across our businesses”; and

**Whereas**, however, there is no indication of how that public statement will be implemented in policy, or even if such commitment was considered by our Board of Directors, as a policy to be implemented by amending our Company’s governance documents;

**Resolved**, that shareholders request our Board of Directors, acting as responsible fiduciaries, review the Statement of the Purpose of a Corporation to determine if such statement is reflected in our Company’s current governance documents, policies, long term plans, goals, metrics and sustainability practices and publish its recommendations on how any incongruities may be reconciled by changes to our Company’s governance documents, policies or practices.



## Supporting Statement

In the proponent's opinion, there is a disconnect between the public statement endorsed by our Chairman and Chief Executive Officer, and other actions of the Company, including the lack of a necessary framework to advance this commitment through our Company's governance documents. Our Board of Directors, as responsible fiduciaries, need to reconcile these incongruities.





Beverly L. O'Toole  
Managing Director  
Associate General Counsel

Goldman  
Sachs

December 30, 2019

**VIA E-MAIL**

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

Re: *The Goldman Sachs Group, Inc.*  
*Shareholder Proposal of John C. Harrington*  
*Securities Exchange Act of 1934 ("Exchange Act")—Rule 14a-8*

Ladies and Gentlemen:

This letter is to inform you that The Goldman Sachs Group, Inc. (the "Company") intends to omit from its proxy statement and form of proxy for its 2020 Annual Meeting of Shareholders (collectively, the "2020 Proxy Materials") a shareholder proposal (the "Proposal") and statements in support thereof received from John C. Harrington (the "Proponent").

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

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the Company intends to file its definitive 2020 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D") provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the "Staff").

Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to this Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

## THE PROPOSAL

The Proposal states:

**Resolved**, that shareholders request our Board of Directors, in exercise of their fiduciary duties of care and loyalty, review the Statement of the Purpose of a Corporation signed by our Chairman and Chief Executive Officer, and provide oversight and guidance as to how our Company's full implementation of this new Statement should alter our Company's governance or management systems, such as long term plans, goals, metrics, executive and Board compensation, and/or representation of stakeholders in governance of our Company, and publish recommendations regarding implementation.

The supporting statement further provides:

Our Company's Chairman and Chief Executive Officer is to be congratulated in his leadership and courage to commit our Company to all stakeholders and to the future. All shareholders should appreciate and encourage our Board of Directors to implement this change, including by amending our Company's governance documents to fully embrace the new approach.

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

## BASES FOR EXCLUSION

For the reasons discussed below, we believe the Proposal may properly be excluded from the 2020 Proxy Materials pursuant to:

- Rule 14a-8(i)(7) because the Proposal addresses the Company's general business practices and policies, and therefore deals with matters relating to the Company's ordinary business operations; and
- Rule 14a-8(i)(3) because the Proposal is impermissibly vague and indefinite so as to be inherently misleading.

## BACKGROUND

The Proposal's request is framed by reference to the Statement on the Purpose of a Corporation (the "Statement") issued by the Business Roundtable in August 2019.<sup>1</sup> Founded in 1972, the Business Roundtable is an association of the chief executives of leading U.S. companies employing more than 15 million people and generating annual revenues in excess of \$7 trillion.<sup>2</sup> The Statement was signed by 181 corporate chief executive officers, including the Company's Chairman and Chief Executive Officer. As signatories to the Statement, each chief executive officer committed to lead their companies for the benefit of all stakeholders – customers, employees, suppliers, communities and shareholders. In acknowledging their "fundamental commitment" to all of their company's stakeholders, the signatories pledged their support to the Statement's five core commitments: (1) delivering value to customers; (2) investing in employees; (3) dealing fairly and ethically with suppliers; (4) supporting the communities in which the company works; and (5) generating long-term value for shareholders.

The Company is proud to endorse the Statement and appreciates the Proponent's support of the Company's Chairman and Chief Executive Officer's decision to sign the Statement. The framework of good governance and corporate citizenship articulated in the Statement is consistent with the Company's long-standing commitment to building long-term value for its shareholders by managing the Company in a responsible way in consideration of a broader group of stakeholders, including its employees and clients as well as the communities in which the Company's people live and work. To build strong, long-term value for both its shareholders and its stakeholders, the Company and its Board of Directors (the "Board") have developed over time carefully tailored policies and procedures designed to implement its 14 Business Principles, which are key to articulating the Company's longstanding values and beliefs. Key themes include a client and customer-centric approach, a commitment to the Company's people (who are among the Company's chief assets), and a focus on profitability to ensure long-term success.

One example of this is the firm's commitment to sustainability, including as described in the Company's 2018 Sustainability Report (the "Sustainability Report"). As discussed in the Sustainability Report, in order to achieve successful integration of sustainability across the Company's business, and in keeping with the principles of the Statement, the Company follows a framework of five key imperatives: (1) driving sustainable growth; (2) increasing financial empowerment;

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<sup>1</sup> The Statement is available at <https://opportunity.businessroundtable.org/wp-content/uploads/2019/12/BRT-Statement-on-the-Purpose-of-a-Corporation-with-Signatures.pdf> and is attached hereto as Exhibit B.

<sup>2</sup> See Business Roundtable, About Us, available at <https://www.businessroundtable.org/about-us>.

(3) advancing environmental progress; (4) investing in its people; and (5) managing responsibly.<sup>3</sup> The Sustainability Report details many of the policies and programs that the Board and Company management have implemented in furtherance of the Company's sustainable governance framework and general corporate strategy. Furthermore, during 2019 the Company announced the formation of the Sustainable Finance Group<sup>4</sup> and discussed, in an Op-Ed by David Solomon,<sup>5</sup> the Company's Chairman and Chief Executive Officer, how the next stage in the firm's commitment to sustainable finance is centered around two themes - inclusive growth and climate transition.

As discussed in the Sustainability Report and embodied in various policies and practices, including the Company's Environmental Policy Framework (the "GS Environmental Policy"), the Company has a long-standing commitment to environmental progress.<sup>6</sup> The Company also is committed to fair, ethical and responsible business practices, as addressed and reflected in various policies and practices, including the GS Environmental Policy, Business Principles, Code of Business Conduct and Ethics, Statement on Human Rights, Vendor Code of Conduct and Vendor Diversity Program.<sup>7</sup> Since 2008, the Company has also committed in excess of \$1.6 billion to philanthropic initiatives through its corporate engagement programs, including *10,000 Small Businesses* and *10,000 Women*.

The Company also has demonstrated a commitment to its people and has a wide range of initiatives aimed at recruiting and retaining the best, most diverse talent; increasing awareness of the diverse backgrounds and experiences of the Company's employees; enhancing the experience of the Company's diverse professionals; and sponsoring global affinity networks for employees.<sup>8</sup> In addition, the Company is committed to measuring its success by adopting meaningful diversity targets across an intersection of social categories. For example, the Company has publicly committed to the

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<sup>3</sup> The Goldman Sachs 2018 Sustainability Report is available at <https://www.goldmansachs.com/s/sustainability-report/index.html>.

<sup>4</sup> See Press Release, including an Email to Goldman Sachs Employees from David Solomon, John Waldron and Stephen Scherr (July 24, 2019), available at <https://www.goldmansachs.com/media-relations/press-releases/current/announcement-24-JUL-2019.html>.

<sup>5</sup> Available at: <https://www.linkedin.com/pulse/our-commercially-driven-plan-sustainability-david-m-solomon/>.

<sup>6</sup> The GS Environmental Policy is available at <https://www.goldmansachs.com/s/environmental-policy-framework/>.

<sup>7</sup> Each available at [www.gs.com](http://www.gs.com).

<sup>8</sup> See <https://www.goldmansachs.com/our-firm/people-and-culture/index.html>. See also examples of the firm's training programs available at <https://www.goldmansachs.com/careers/training.html> and the firm's recent announcement of enhanced parental leave policies available at <https://news.efinancialcareers.com/us-en/3002558/goldman-sachs-paternity-leave>.



goal of having women represent 50% of the Company's global workforce<sup>9</sup> and has specific goals for racial and ethnic diversity.<sup>10</sup>

Being transparent and having engaging relationships with shareholders and stakeholders are also a priority.<sup>11</sup> As set forth in the Business Principles, the Company's goal is to provide superior returns,<sup>12</sup> and it engages on a year-round basis with a wide range of constituents, including shareholders, ESG rating firms, fixed income investors, proxy advisory firms, prospective shareholders and thought leaders, among others.<sup>13</sup> The Company is proud to have a longstanding history of commitment to its stakeholders and the communities in which its people work, and remains dedicated to the guiding principles outlined in the Statement.

## ANALYSIS

### **I. The Proposal May Be Excluded Pursuant To Rule 14a-8(i)(7) Because It Involves Matters Related To The Company's Ordinary Business Operations.**

The Proposal relates to the "governance or management systems" that the Company has implemented to manage its relations with employees, customers, suppliers, shareholders and the communities in which the Company operates. In asking the Board to review the Statement and provide guidance as to how the Company can fully implement the Statement, through its five core tenets, the Proposal sweepingly implicates many core day-to-day aspects of the Company's operations, including its long-term plans, goals, policies, and practices relating to its relations with employees, customers, suppliers, shareholders, and communities. Given the breadth and scope both of the Statement and the Proposal, and because the Proposal seeks "full implementation of this new Statement" without regard to any specific concerns or policy matters, the Proposal does not raise a significant policy issue that transcends the Company's ordinary business operations. Accordingly, the Proposal may properly be excluded under Rule 14a-8(i)(7) as involving the Company's ordinary business operations.

#### *A. Background*

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<sup>9</sup> See Press Release, including an Email to Goldman Sachs Employees from Lloyd Blankfein and David Solomon (Mar. 15, 2018), available at <https://www.goldmansachs.com/media-relations/press-releases/archived/2018/announcement-march-2018.html>.

<sup>10</sup> See Sustainability Report at 28.

<sup>11</sup> See example <http://www.goldmansachs.com/media-relations/press-releases/current/announcement-05-nov-2019.html> regarding the Company's announcement of its inaugural Investor Day.

<sup>12</sup> See <https://www.goldmansachs.com/our-firm/people-and-culture/index.html>.

<sup>13</sup> See [https://www.goldmansachs.com/s/2019-proxy-statement/images/Goldman\\_Sachs-Proxy2019.pdf](https://www.goldmansachs.com/s/2019-proxy-statement/images/Goldman_Sachs-Proxy2019.pdf).

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company's "ordinary business" operations. According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" "refers to matters that are not necessarily 'ordinary' in the common meaning of the word," but instead the term "is rooted in the corporate law concept [of] providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release").

In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting," and identified two central considerations that underlie this policy. As relevant here, one of these considerations was 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." Examples of the tasks cited by the Commission include "management of the workforce, such as the hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers." 1998 Release.

The 1998 Release further distinguishes proposals pertaining to ordinary business matters from those involving "significant social policy issues." *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)). While "proposals . . . focusing on sufficiently significant social policy issues (*e.g.*, significant discrimination matters) generally would not be considered excludable," the Staff has indicated that proposals relating to both ordinary business matters and significant social policy issues may be excludable in their entirety in reliance on Rule 14a-8(i)(7) if they do not "transcend the day-to-day business matters" discussed in the proposals. 1998 Release. In this regard, when assessing proposals under Rule 14a-8(i)(7), the Staff considers "both the proposal and the supporting statement as a whole." *See* Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005).

*B. The Proposal Relates to the Company's General Business Practices and Policies.*

The "Resolved" clause of the Proposal seeks two things: (i) the Board's review of the Statement; and (ii) "guidance" as to whether the Company should "alter [the] Company's 'governance or management systems'" to fully implement the Statement, including the five core commitments recited therein. The Proposal then recommends a non-exhaustive list of ways in which the Board could consider altering the Company's governance or management systems with a view to implementing the Statement, such as "long-term plans, goals, metrics, executive and Board compensation, and/or representation of stakeholders in governance of [the] Company." As such, the Proposal asks that the Board assess Company-wide systems, practices and policies, without regard to any particular issue other than to provide guidance on how the Company can demonstrate its commitment to serve all stakeholders consistent with the spirit of the Statement. Accordingly, the Proposal addresses the Company's

business strategies, policies and practices generally, and does not focus on any particular issue that transcends the Company's ordinary business.

The Staff previously has concurred that proposals focusing on a company's business strategies, policies, and programs may be properly excluded under Rule 14a-8(i)(7). In *CVS Corp.* (avail. Feb. 1, 2000) ("*CVS*"), the proposal requested that the company prepare an annual strategic plan report describing "the [c]ompany's goals, the strategic initiatives ... and the accompanying range of corporate policies and programs," detailing "the roles of the corporate constituents, such as shareholders, employees, customers, suppliers, and the community," and describing how such company programs and policies are "designed to ensure the contribution of important corporate constituents to the long-term success of the [c]ompany." The Staff concurred that the proposal could be excluded, stating "there appears to be some basis for your view that CVS may exclude the proposal under rule 14a-8(i)(7) as relating to its ordinary business operations (i.e., business practices and policies)." Given the similarities between the instant Proposal and *CVS*, the Company believes that the Proposal is likewise excludable.

Like in *CVS*, the Company here is being asked to review its corporate strategies, practices and policies with a view to their impact on all stakeholders and to demonstrate the Company's commitment "to all stakeholders and to the future." The Proposal seeks a review of the general principles outlined in the Statement and further information from the Company in order "to determine what specific actions the [B]oard needs to take to implement the stakeholder theory underlying the [S]tatement." Similar to the Proposal's request, which requires consideration of the Company's relations with employees, customers, suppliers, shareholders and the communities in which the Company operates, all of which focus on ordinary business operations, the *CVS* proposal asked the company to address ordinary business matters such as "growth strategies, research and development initiatives, expansion plans, workplace practices, community involvement initiatives, [and] capital expenditure programs" and specifically requested that the strategic plan report include "[c]onstituent [r]eports related to shareholders, employees, the communities where the [c]ompany operates, customers, and key suppliers." As was the case in *CVS*, the instant Proposal broadly addresses the Company's corporate practices and policies and requires that the Company consider the same five corporate constituencies, such that it is properly excludable under Rule 14a-8(i)(7) as relating to the Company's ordinary business operations.

More recently, in *Amazon.com, Inc.* (avail. Mar. 16, 2018) ("*Amazon 2018*"), the Staff concurred with exclusion under Rule 14a-8(i)(7) of a proposal that similarly sought a broad report on risks arising from the public debate over the company's growth and societal impact and how the company is managing or mitigating those risks. In *Amazon 2018*, the requested report would have required the company to review company-wide risks as a function of its growth, including the company's "role in providing physical and digital infrastructure, use of and control over data about customers and competitors, increasing reliance on automation and influence on the quality and diversity of content." In short, the *Amazon 2018* proposal addressed the company's day-to-day ordinary business operations,

and all manner of general and ordinary risks attendant thereto. Likewise, here the Proposal requests a broad review of the Company's relations with a broad category of stakeholders and a comprehensive review of its governing documents, management systems, policies and practices with a view to considering how it is implementing its commitment to stakeholders in furtherance of the Statement. Like in *Amazon 2018*, this kind of broad request is excludable under Rule 14a-8(i)(7). The foregoing letters reflect decades of precedent reflecting that proposals addressing generally a company's business strategies and policies are excludable. *See also Westinghouse Electric Corp.* (avail. Jan. 27, 1993) (concurring with the exclusion under the predecessor to Rule 14a-8(i)(7) of a proposal requesting the company issue a comprehensive and detailed report of the company's business practices and operations noting that the proposal addressed "the conduct of the ordinary business operations of the [c]ompany (i.e., business practices and operations)").

Moreover, and as discussed below, the Proposal does not focus on any issue that transcends the Company's ordinary business operations. Instead, each of the five commitments of the Statement that the Proposal requests the Company address implicates the Company's ordinary business operations.

1. The Company's Customer Relations Are Ordinary Business.

The first commitment set forth in the Statement provides that in "[d]elivering value to [its] customers" a company must "lead[] the way in meeting or exceeding customer expectations." Thus, the Proposal would require the Board to evaluate the Company's customer relations policies and practices, which are part of the Company's "management systems." Further, the Proposal requires that the Board provide guidance as to how the Company's governance or management systems should be altered to bring the Company's policies and practices relating to its customers in line with the Statement, including providing guidance as to how full implementation of the Statement related to customer relations would "alter our Company's long-term plans, goals, metrics, executive and board compensation, and representation of stakeholders."

The Staff has routinely concurred that shareholder proposals dealing with customer relations, including customer service and satisfaction, relate to ordinary business matters and, accordingly, are excludable under Rule 14a-8(i)(7). Recent precedent makes clear that the Staff views a wide spectrum of issues as customer relations matters, including the creation of reports evaluating customer relations policies. For example, in *Wells Fargo & Co. (Harrington Investments, Inc.)* (avail Feb. 27, 2019) ("*Wells Fargo*"), the proposal requested that the board commission an independent study and then report to shareholders on "options for the board[] to amend [the] [c]ompany's governance documents to enhance fiduciary oversight of matters relating to customer service and satisfaction." The *Wells Fargo* proposal went on to list a number of events concerning the company's customer relations, services and satisfaction. The Staff concurred that the company could exclude the proposal under Rule 14a-8(i)(7) because the proposal "relate[d] to decisions concerning the [c]ompany's customer relations." Similarly, in *The Coca-Cola Co.* (avail. Jan. 21, 2009, *recon. denied* Apr. 21, 2009), the proposal, concerned about the "company's reputation with consumers" and stating that "[g]ranting consumers



access to better information about [the company's] products can boost consumer confidence," requested that the company prepare a report evaluating new or expanded policy options to further enhance transparency of information to consumers of bottled beverages produced by the company. The Staff concurred that the company could "exclude the proposal under Rule 14a-8(i)(7), as relating to Coca-Cola's ordinary business operations (i.e., marketing and consumer relations)." *See also Bank of America Corp.* (avail. Mar. 3, 2005) (proposal requesting that the company take action and adopt a "Customer Bill of Rights" and create the position of "Customer Advocate" was excludable because it concerned customer relations); *Consolidated Edison, Inc.* (avail. Mar. 10, 2003) (proposal relating to the management of employees, interaction with customers and customer relations was excludable because it concerned customer relations); *BellSouth Corp.* (avail. Jan. 9, 2003) (proposal to correct personnel and computer errors relating to customers was excludable because it concerned management of employees and customer relations).

The review requested in the Proposal entails a review of the Statement's first commitment relating to the Company's relations with its customers and customer service and satisfaction, all of which are ordinary business matters for the Company. Under the Company's sustainable growth framework, the Company is focused on enabling its clients and customers to manage their lives and businesses for the long term. In support of this focus, the Company has implemented programs to attract and serve a broad and diverse set of clients and customers and committed considerable time and resources to develop suitable and appropriately priced investment and other products, services and opportunities that meet individual client and customer needs.<sup>14</sup> As the Staff has consistently recognized in the precedents above, decisions like these related to the Company's customer relations, including customer service and satisfaction and related Company practices and policies, are a core aspect of management's ability to run the Company and are not an appropriate matter for shareholder oversight. Therefore, as in *Wells Fargo* and *The Coca-Cola Co.*, the Proposal is excludable under Rule 14a-8(i)(7).

## 2. How The Company Manages Its Workforce Is An Ordinary Business Matter.

The second commitment set forth in the Statement provides that the signatories commit to "[i]nvesting in [their] employees," which includes "compensating them fairly and providing important benefits . . . supporting them through training and education that help develop new skills [and] foster[ing] diversity and inclusion, dignity and respect." Thus, the Proposal would require the Board to evaluate how the Company manages its workforce, including assessing its comprehensive practices and policies related to, among other things, general employee compensation, benefits, talent recruitment and retention, management, and training. Further, the Proposal requires the Board to provide guidance as to how the Company's governance or management systems should be altered to bring the Company's policies and practices relating to its workforce in line with the Statement, including providing guidance as to how full implementation of the Statement related to the Company's management of its workforce and

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<sup>14</sup> See Sustainability Report at 5.

employee relations would “alter our Company’s long-term plans, goals, metrics, executive and board compensation, and representation of stakeholders in governance.”

The Commission and Staff have long held that a shareholder proposal may be excluded under Rule 14a-8(i)(7) if it, like the Proposal, relates to a company’s management of its workforce, including its relationship with employees. The Commission recognized in the 1998 Release that “management of the workforce” is “fundamental to management’s ability to run a company on a day-to-day basis.” Consistent with the 1998 Release, the Staff has recognized that proposals pertaining to the management of a company’s workforce are excludable under Rule 14a-8(i)(7). For example, in *Bank of America Corp.* (avail. Feb. 14, 2012) (“*Bank of America 2012*”), the Staff concurred with the exclusion of a proposal requesting that a company policy be amended to include “protection to engage in free speech outside the job context, and to participate freely in the political process without fear of discrimination or other repercussions on the job” because the proposal related to the company’s policies concerning its employees. *See also Yum! Brands, Inc.* (avail. Mar. 6, 2019) (concurring with the exclusion of a proposal relating to adopting a policy not to engage in any inequitable employment practice, as relating “generally to the [c]ompany’s policies concerning its employees and does not focus on an issue that transcends ordinary business matters”); *Donaldson Company, Inc.* (avail. Sept. 13, 2006) (concurring with the exclusion of a proposal requesting the establishment of “appropriate ethical standards related to employee relations”); *Wal-Mart Stores, Inc.* (avail. Mar. 16, 2006) (concurring with the exclusion of a proposal requesting an amendment to a company policy barring intimidation of company employees exercising their right to freedom of association).

By way of further example, in *The Walt Disney Co.* (avail. Nov. 24, 2014, *recon. denied* Jan. 5, 2015), the Staff permitted exclusion of a proposal requesting that the company “consider the possibility of adopting anti-discrimination principles that protect employees’ human right[s]” relating to engaging in political and civic expression without retaliation in the workplace. There, the company argued that the adoption of anti-discrimination principles involved “decisions with respect to, and modifications of the way the company manages its workforce and employee relations” that were “multi-faceted, complex and based on a range of factors beyond the knowledge and expertise of the shareholders.” *See also Deere & Co.* (avail. Nov. 14, 2014, *recon. denied* Jan. 5, 2015) (concurring with the exclusion of a proposal requesting that the company adopt an employee code of conduct that included an anti-discrimination policy “that protects employees’ human right to engage in the political process, civic activities and public policy of his or her country without retaliation”). Thus it is clear that even those proposals that touch upon discrimination or diversity and inclusion in the context of management relations with employees are nonetheless properly excludable under ordinary business. In allowing exclusion in each of the foregoing, the Staff again affirmed that “policies concerning [the companies’] employees” relate to companies’ ordinary business operations covered by Rule 14a-8(i)(7) and are thus excludable.

Recently, the Staff has concurred in the exclusion of a proposal requesting that the board take steps to allow the company’s stakeholder advisory council, which provides feedback to the company’s board

from a stakeholder perspective, to appoint an employee representative, as relating to ordinary business. *See Wells Fargo & Co. (AFL-CIO Reserve Fund)* (avail. Feb 27, 2019) (“*Wells Fargo II*”). In its request, the company stated that the council was formed to represent the interests of stakeholders, including representatives from the communities where the company operated, on ordinary business matters under consideration by the company’s board and management. In concurring that the proposal was properly excludable, the Staff noted that the proposal “concerns employee relations.” Likewise, the instant Proposal relates to “representation of stakeholders,” but also specifically invokes, through reference to the Statement, communication and relations with the Company’s employees, which are reflected in the Statement’s second commitment. Thus, the Company’s employees are necessarily one of the stakeholder groups addressed by the Statement. Similar to *Wells Fargo II*, the Proposal requests that the Board review the Statement, including its commitment to employees, and provide guidance on how the Company’s governance or management systems should be altered to align its management of and relations with employees with the principles set forth in the Statement’s second commitment. Thus, like in *Wells Fargo II*, the Proposal is excludable under ordinary business as concerning employee relations.

The review requested in the Proposal entails a review of the Statement’s second commitment relating to management of the Company’s workforce and policies concerning its employees, each of which is an ordinary business matter for the Company. As described above in “Background,” the Company has developed and implemented a wide-range of policies and initiatives to foster diversity and inclusion and to provide opportunities for development and empowerment for its employees. Moreover the Company has established measurable targets to achieve meaningful diversity across the Company’s businesses.<sup>15</sup> As the Staff has consistently recognized in the precedent above, decisions related to the Company’s management of its workforce, including its employee relations, are fundamental to management’s ability to run the Company and are not an appropriate matter for shareholder oversight. Therefore, as in *Bank of America 2012*, *The Walt Disney Co.* and the other established precedents described above, the Proposal is excludable under Rule 14a-8(i)(7).

### 3. The Company’s Relationship With Its Suppliers Is An Ordinary Business Matter.

The third commitment set forth in the Statement is focused on company and supplier relationships, stating that companies should “deal fairly and ethically” with suppliers. Thus, the Proposal would require the Board to evaluate how the Company manages its relations with its suppliers, as well as the Company’s general ethics policies, in order to determine whether the Company’s supplier and ethics policies are consistent with the standards set forth in the Statement’s third policy commitment. Further, the Proposal requires the Board to provide guidance as to how the Company’s governance or management systems should be altered to bring the Company’s policies and practices relating to its suppliers and standards of ethics in line with the Statement, including providing guidance as to how full implementation of the Statement related to supplier relationships would “alter our Company’s

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<sup>15</sup> See Sustainability Report at 28-29.



long-term plans, goals, metrics, executive and board compensation, and representation of stakeholders.”

In the 1998 Release, the Commission specifically included supplier relationships as a type of ordinary business matter excludable under Rule 14a-8(i)(7). Further, the Staff has concurred with the exclusion of proposals under Rule 14a-8(i)(7) in numerous instances on the basis that they concerned decisions relating to supplier or vendor relationships. *See, e.g., Walmart Inc.* (avail. Mar. 8, 2018) (concurring with the exclusion of a proposal seeking a report outlining the requirements suppliers must follow regarding engineering ownership and liability as relating to the company’s ordinary business matters); *Foot Locker, Inc.* (avail. Mar. 3, 2017) (concurring with the exclusion of a proposal seeking a report on steps taken by the company to monitor overseas apparel suppliers’ use of subcontractors as relating “broadly to the manner in which the company monitors the conduct of its suppliers and their subcontractors”); and *Kraft Foods Inc.* (avail. Feb. 23, 2012) (concurring with the exclusion of a proposal that sought a report detailing the ways the company “is assessing water risk to its agricultural supply chain and action it intends to take to mitigate the impact on long-term shareholder value,” noting that the “proposal relates to decisions relating to supplier relationships”).

Similarly, the Staff also has consistently concurred with the exclusion of shareholder proposals related to a company’s adherence to ethical business practices and policies. For example, in *Verizon Communications, Inc.* (avail. Jan. 10, 2011), the company sought exclusion of a proposal directing the board to form a Corporate Responsibility Committee charged with monitoring the company’s commitment to integrity, trustworthiness, and reliability—and the extent to which it lived up to its Code of Business Conduct. The Staff concurred that it would not recommend enforcement action if Verizon omitted the proposal because “[p]roposals that concern general adherence to ethical business practices” are generally excludable. *See also The Walt Disney Co.* (avail. Dec. 12, 2011) (concurring with the exclusion of a proposal asking the board to report on board compliance with Disney’s Code of Business Conduct and Ethics for directors); and *International Business Machines Corp.* (avail. Jan. 7, 2010, *recon. denied* Feb. 22, 2010) (proposal directing officers to restate and enforce certain standards of ethical behavior was excludable because it related to general adherence to ethical business practices).

The review requested in the Proposal entails a review of the Statement’s third commitment relating to the Company’s supplier relationships and general adherence to ethical business practices, each of which is an ordinary business matter for the Company. The fifth imperative underpinning the Company’s sustainable governance framework is to manage responsibly, which includes adhering to fair, ethical and responsible business practices. The Company’s commitment to ethical practices is embodied in a number of policies and practices, including the Company’s Code of Business Conduct and Ethics, Vendor Diversity Program, and Vendor Code of Conduct, which set forth the Company’s standards for dealing fairly with suppliers, vendors and other service providers. As the Staff has recognized in the precedents above, decisions related to the Company’s supplier relations and the Company’s general adherence to ethical business practices are fundamental to management’s ability to

run the Company and are not an appropriate matter for shareholder oversight. Therefore, as in *Walmart Inc.* and *Verizon Communications, Inc.*, the Proposal is excludable under Rule 14a-8(i)(7) for requiring the Board to evaluate and provide guidance on how the Company should alter its governance or management systems, including its long-term plans, goals, metrics, executive and board compensation, and representation of stakeholders in order to align its relations with suppliers and standards of ethics with the principles set forth in the Statement.

4. The Company's Community Relations And Community Impact Are Ordinary Business Matters.

The fourth commitment set forth in the Statement commits signatories to "[s]upporting the communities in which [the company] work[s]" and provides that a company should "respect the people in [its] communities and protect the environment by embracing sustainable practices." Thus, the Proposal would require the Board to evaluate the societal impacts of the Company's operations, as well as its existing sustainability strategy, and publish its recommendations as to how the Company's policies and practices should be changed to further support the communities in which it works, consistent with the Statement's fourth commitment. Further, the Proposal requires the Board to provide guidance as to how full implementation of the Statement related to our community impacts would "alter our Company's long-term plans, goals, metrics, executive and board compensation, and representation of stakeholders."

The Staff has consistently held that proposals focused on the community impacts of a company's operations, like the Proposal, implicate a company's ordinary business considerations and, thus, are excludable under Rule 14a-8(i)(7). For example, in *Amazon.com, Inc. (Domini Impact Equity Fund and the New York State Common Retirement Fund)* (avail. Mar. 28, 2019) ("*Amazon 2019*"), the Staff concurred with the exclusion of a proposal that requested the board annually report to shareholders its analysis of the community impacts of the company's operations, "considering near- and long-term economic and social outcomes, including risks . . . and opportunities arising from its presence in communities." Although the *Amazon 2019* proposal touched upon social inequality in the communities where the company operates as well as raising concerns tenuously related to the topic of sustainability (implications for "green space"), the Staff concurred with the proposal's exclusion under Rule 14a-8(i)(7), noting that the proposal related "generally to 'the community impacts' of the Company's operations and [did] not appear to focus on an issue that transcends ordinary business matters." Similarly, in implementing the instant Proposal, in order to evaluate what changes, if any, the Company should make to its governance or management systems with a view to supporting the communities in which we work and considering representation of stakeholders, the Company would be required to evaluate a wide array of economic and social issues, including but not limited to matters regarding local employment, housing markets, transportation, sustainability, and physical locations of Company office space. Like in *Amazon 2019*, none of the foregoing community concerns transcend ordinary business matters, and the instant Proposal is likewise excludable under Rule 14a-8(i)(7). See also *Amazon 2018*.

Relatedly, recognizing that decisions regarding the location of company operations involve numerous detailed operational considerations that implicate management's ability to run the company on a day-to-day basis, the Staff has consistently held that proposals that address considerations related to the location of a company's facilities are excludable under Rule 14a-8(i)(7). For example, in *The Boeing Company (Gladstein)* (avail. Jan 9, 2018, *recon. denied* Mar. 9, 2018), the Staff concurred in the exclusion, under Rule 14a-8(i)(7), of a proposal requesting that the board "include certain criteria in the [c]ompany's process for selecting new or expanding existing sites for the [c]ompany's new models of aircraft production locations." Just as in the Statement's fourth commitment, in *The Boeing Company* the proponent was focused on how the company's operations would impact local communities. In its proposal, the proponent listed several "important factors" it believed the company should consider, including the "[s]upporting infrastructure of the locality," "[t]he qualities of life for the region," and the "[t]ax structures and economic incentives offered in a specific region."

The review requested in the Proposal entails a review of the Statement's fourth commitment relating to how the company supports the communities in which it operates, which is an ordinary business matter for the Company. The Company has long been committed to helping the communities where the Company has its operations, where its people live, and where its ideas, people and resources can make a difference. To this end, the Company has, for example, utilized its people and capital to help women build businesses, entrepreneurs create jobs and volunteers improve their communities, and to help solve environmental issues, including through its philanthropic programs such as *10,000 Small Businesses* and *10,000 Women* and various sustainability commitments, as further described above in "Background." As such, as part of its overall ordinary business operations, the Company invests considerable time and expense in considering and determining where its capital should be deployed, where its operations should be located and how the Company can engage with the communities where the Company operates. As the Staff has recognized in the precedents above, decisions relating to the "community impacts" of the Company's ordinary business operations are fundamental to management's ability to run the Company and are not an appropriate matter for shareholder oversight. Therefore, as in *Amazon 2019* and *The Boeing Company*, the Proposal is excludable under Rule 14a-8(i)(7).

5. The Company's Strategies For Enhancing Shareholder Value Are Ordinary Business Matters.

The fifth commitment set forth in the Statement commits companies to the standard of "[g]enerating long-term value for shareholders" and stresses "transparency and effective engagement with shareholders." Thus, the Proposal would require the Board to evaluate whether the Company's policies and practices are consistent with the goal of generating shareholder value, and provide guidance as to whether the Company's "governance or management systems" affecting shareholder value and shareholder engagement should be altered to fully implement the Statement's final commitment. Further, the Proposal requires the Board to provide guidance as to how full implementation of the Statement related to enhancing shareholder value would "alter our Company's



long-term plans, goals, metrics, executive and board compensation, and representation of stakeholders.”

As noted above, the Staff has previously indicated that proposals broadly directed at a company’s business strategies, policies, and programs may be properly excluded under Rule 14a-8(i)(7). *See CVS*. Similarly, the Staff has held that proposals relating to the determination and implementation of a company’s strategies for enhancing shareholder value are matters relating to the conduct of the company’s ordinary business operations and are therefore excludable under Rule 14a-8(i)(7). For example, in *Ford Motor Co.* (avail. Feb. 27, 2007), the proposal requested that the company’s chairman “honor his commitments to shareholders to increase stock performance.” In concurring with the proposal’s exclusion of the proposal, the Staff noted that the proposal appeared to relate to the company’s “ordinary business operations (i.e., strategies for enhancing shareholder value).” *See also Ford Motor Co.* (avail. Mar. 8, 2006) (concurring with the exclusion of a proposal requesting the company’s chairman and board of directors “honor their commitment to enhance shareholder value” as relating to the company’s “strategies for enhancing shareholder value”). Similar to each of the foregoing letters, the Proposal seeks consideration of how the Company’s existing governance or management systems are generating long-term value for shareholders and is properly excludable under ordinary business as relating to strategies for enhancing shareholder value.

The review requested in the Proposal entails a review of the Statement’s fifth commitment relating to delivering long-term value to shareholders, which is an ordinary business matter for the Company. As discussed more thoroughly in the Sustainability Report, the Company has committed considerable time and expense to implementing policies and procedures designed to facilitate sustainable growth and deliver long-term value to the Company’s shareholders as part of the Company’s overall business strategies and sustainable governance framework. In order to execute these policies and the Company’s broader business strategy, the Board and Company management review various complex criteria. As the Staff has recognized in the precedent above, decisions related to the Company’s strategies for enhancing shareholder value are fundamental to management’s ability to run the Company and are not an appropriate matter for shareholder oversight. Therefore, by addressing how the Company generates shareholder value, the Proposal is excludable under Rule 14a-8(i)(7).

C. *The Proposal Does Not Focus On Any Significant Policy Issue That Transcends The Company’s Ordinary Business Operations.*

The well-established precedent set forth above demonstrates that the Proposal squarely addresses ordinary business matters and, therefore, is excludable under Rule 14a-8(i)(7). Even if the Proposal also touches upon a significant policy issue, by arguably implicating sustainability, executive compensation and diversity, the Proposal is nonetheless excludable under Rule 14a-8(i)(7) because it fails to sufficiently focus on any significant policy issue.

Here, the Proposal refers to broad questions as to the Board's oversight of the Company's "governance or management systems" and does not otherwise focus on any policy issue, let alone a significant policy issue, that transcends the Company's ordinary business operations. Instead, as discussed above, the Proposal's principal focus is on the Company's "full implementation" of principles and policies covering a wide range of ordinary business matters, including the Company's relationship with its customers, employees, shareholders, suppliers, and communities.

The Proposal's focus on ordinary business matters is not negated by the single reference in the recitals to "protect[ing] the environment by embracing sustainability practices," the "Resolved" clause's one-off reference to "executive and Board compensation," or the Statement's brief mention of diversity in the workforce. Likewise, although the Proposal refers to the Board's oversight role, generally, the Proposal does not address risk management and rather uses the Board's oversight function as a means to drive the review and implementation of the general corporate principles underpinning the Statement. Additionally, the Proposal asks the Board to consider "amending our Company's governance documents to fully embrace the new approach," without any mention of the kind of amendments that might be required or what aspects, in particular, of the broad-reaching Statement the Proposal believes should be documented in the Company's governance documents. As in *Wells Fargo*, simply using the phrase "governance documents" in and of itself, without further context, does not automatically invoke a significant corporate governance issue or shareholder right that transcends ordinary business.

Consistent with long-established Staff precedent, merely referencing topics in passing that might raise significant policy issues, but which do not define the scope of actions addressed in a proposal and which have only tangential implications for the issues that constitute the central focus of a proposal, does not transform an otherwise ordinary business proposal into one that transcends ordinary business. Notably, the Staff recently confirmed this approach to the ordinary business exclusion in the context of proposals that touch upon executive compensation matters. See Staff Legal Bulletin No. 14J (Oct. 23, 2018). There, the Staff noted that the Rule 14a-8(i)(7) framework is intended to "ensure[] that form is not elevated over substance, and that a proposal is not included simply because it addresses an excludable matter in a manner that is connected to or touches upon senior executive or director compensation matters."

To this end, the Staff has frequently concurred that a proposal that touches, or may touch, upon significant policy issues is nonetheless excludable if the proposal does not focus on such issues. For example, in *Wells Fargo*, the proposal raised multiple issues at the company that may arguably have been of significance to the company (e.g., payment of billions of dollars in penalties, opening of fictitious or unauthorized customer accounts, forcing customers to take out redundant auto insurance, enforcement actions by the DOJ, SEC, CFPB and the Federal Reserve, failure to manage risk, employee retention, and reputation). While it is possible that one or more of the foregoing related to policy issues that transcend ordinary business and may have been significant to the company, the proposal failed to focus on any of them. Instead, the "Resolved" clause's focus was on customer service, and the Staff concurred that the proposal was excludable under Rule 14a-8(i)(7).

Here, the Proposal presents an even stronger case for exclusion than *Wells Fargo* because the Proposal's passing reference to issues which might, but do not necessarily, raise significant policy issues, are used so generically and sparingly that the Proposal cannot be said to focus on any one of them. Instead, the Proposal is fatally overbroad because it seeks guidance from the Board on implementation of the Statement, which relates primarily to ordinary business matters (relationships with employees, customers, suppliers, shareholders and communities and core management decisions regarding how to run the business in order to create value for shareholders). In addition, the Proposal does not appear to seek reform of the Company's sustainability or executive compensation policies or practices, nor does it utter the word "diversity" once within the four corners of the Proposal (other than implicitly by reference to the Statement, which considers "diversity" in a list amongst other qualities relevant to employee relations, such as "inclusion, dignity and respect"). Merely referencing the phrases "protecting the environment," "sustainability practices" and "executive and Board compensation" once in the Proposal, without further context, does not transform an otherwise ordinary business proposal into one that transcends this Company's ordinary business.

Likewise, in *Amazon 2019*, as discussed above, although the proposal might have touched on sustainability concerns, the proposal was so broadly worded that the Staff concurred that the proposal did not focus on any single issue that transcended the company's ordinary business. In its no-action request, the company successfully argued that "[e]ven if some of [the] issues that would be addressed in the report requested by the [p]roposal could touch upon significant policy issues within the meaning of the Staff's interpretation, the [p]roposal is not focused on those issues, but instead encompasses a wide range of issues implicating the [c]ompany's ordinary business operations within the meaning of Rule 14a-8(i)(7), and therefore may properly be excluded under Rule 14a-8(i)(7)." The Staff concurred and granted no-action relief under Rule 14a-8(i)(7) noting that "the [p]roposal relates generally to 'the community impacts' of the [c]ompany's operations and does not appear to focus on an issue that transcends ordinary business matters." Similar to *Amazon 2019*, here the Proposal merely touches upon sustainability practices and, instead, focuses on the comprehensive, Company-wide steps that may be required to alter the Company's governing or management systems in order to give effect to the broad corporate principles articulated in the Statement. Thus, similar to *Wells Fargo* and *Amazon 2019*, the Proposal fails to focus on any one issue that might rise to the level of significance that would preclude exclusion here.

By way of further example, in *PetSmart, Inc.* (avail. Mar. 24, 2011), the proposal requested that the board require its suppliers to certify they had not violated "the Animal Welfare Act, the Lacey Act, or any state law equivalents," the principal purpose of which related to preventing animal cruelty. The Staff granted no-action relief under Rule 14a-8(i)(7) and stated, "[a]lthough the humane treatment of animals is a significant policy issue, we note your view that the scope of the laws covered by the proposal is 'fairly broad in nature from serious violations such as animal abuse to violations of administrative matters such as record keeping.'" See also *JPMorgan Chase & Co.* (avail. Mar. 9, 2015) (concurring with the exclusion of a proposal requesting the company amend its human rights-related policies "to address the right to take part in one's own government free from retribution")



because the proposal related to “[the company’s] policies concerning its employees”); *Mattel, Inc.* (avail. Feb. 10, 2012) (concurring with the exclusion of a proposal that requested the company require its suppliers to publish a report detailing their compliance with the International Council of Toy Industries Code of Business Practices, noting that the ICTI encompasses “several topics that relate to ... ordinary business operations and are not significant policy issues”); *JPMorgan Chase & Co.* (avail. Mar. 12, 2010) (concurring with the exclusion of a proposal that requested the adoption of a policy banning future financing of companies engaged in a particular practice that impacted the environment because the proposal addressed “matters beyond the environmental impact of JPMorgan Chase’s project finance decisions”); *Apache Corp.* (avail. Mar. 5, 2008) (concurring with the exclusion of a proposal requesting the implementation of equal employment opportunity policies based on certain principles and noting that “some of the principles relate to Apache’s ordinary business operations”); and *General Electric Co.* (avail. Feb. 10, 2000) (concurring with the exclusion of a proposal relating to the accounting and use of funds for the company’s executive compensation program because it both touched upon the significant policy issue of senior executive compensation, and involved the ordinary business matter of choice of accounting method).

Here, the Proposal requests Board-issued guidance on whether the Company’s “governance or management systems” should be altered to reflect how it implements its general corporate policies in fulfillment of its corporate purpose. Thus, the Proposal relates broadly to the Company’s business strategies, practices, and policies. Although the Proposal requests the Board to review the Statement’s commitments that reference “embracing sustainable practices” and “[f]oster[ing] diversity” among a company’s workforce, the Proposal’s focus is not limited to, or even primarily centered on, the issues of sustainability and diversity. Notably, the term “diversity” is never mentioned in the Proposal. Accordingly, the glancing references to such issues are insufficient to preclude exclusion under Rule 14a-8(i)(7) because, as in *Wells Fargo, Amazon 2019, Bank of America 2014* and *Apache Corp.*, they do not cause the focus of the Proposal to transcend the Company’s ordinary business operations.

Moreover, given the scope of the Statement, the Proposal relates primarily to ordinary business matters: the Company’s customer relations; how the Company manages its workforce; the Company’s relations with its suppliers and general adherence to ethical business practices; the community impacts of the Company’s operations; and the Company’s strategies for enhancing shareholder value. There is nothing more quintessentially ordinary business than asking the Company to review its purpose as a corporation and corporate citizen, generally, with a view to comprehensively evaluating and altering all of its “governance or management systems.” As in *CVS* and the other extensive precedents cited above, the Proposal therefore may be properly excluded under Rule 14a-8(i)(7) as relating to the Company’s ordinary business operations.

## **II. The Proposal May Be Excluded Under Rule 14a-8(i)(3) Because It Is Impermissibly Vague And Indefinite So As To Be Inherently Misleading.**

Rule 14a-8(i)(3) permits the exclusion of a shareholder proposal if the proposal or supporting statement is contrary to any of the Commission's proxy rules or regulations, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials. The Staff consistently has taken the position that vague and indefinite stockholder proposals are inherently misleading and therefore excludable under Rule 14a-8(i)(3) because "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 (Sept. 15, 2004). *See also Dyer v. SEC*, 287 F.2d 773, 781 (8th Cir. 1961) ("[I]t appears to us that the proposal, as drafted and submitted to the company, is so vague and indefinite as to make it impossible for either the board of directors or the stockholders at large to comprehend precisely what the proposal would entail."); *Capital One Financial Corp.* (avail. Feb. 7, 2003) (concurring with the exclusion of a stockholder proposal where the company argued that its stockholders "would not know with any certainty what they are voting either for or against"). As further described below, the Proposal is so vague and indefinite that neither the Company's Board nor the Company's shareholders can comprehend precisely what the Proposal would entail and, therefore, is excludable under Rule 14a-8(i)(3).

Under this standard, the Staff has routinely concurred with the exclusion of proposals that fail to define key terms or otherwise fail to provide sufficient clarity or guidance to enable either shareholders or the company to understand how the proposal would be implemented. For example, the Staff recently concurred that a company could exclude, as vague and indefinite, a proposal requesting that a company "reform the company's executive compensation committee." *eBay Inc.* (avail. April 10, 2019). The supporting statement for the proposal did not request any specific reforms, but instead made observations about various elements of executive compensation. These statements did not indicate whether those elements of the company's executive compensation program needed reform or how they should or could be affected by reform of the compensation committee. In its response, the Staff noted that "neither shareholders nor the Company would be able to determine with any reasonable certainty the nature of the 'reform' the [p]roposal is requesting. Thus, the [p]roposal, taken as a whole, is so vague and indefinite that it is rendered materially misleading." More recently, in *Apple Inc. (Zhao)* (avail. Dec. 6, 2019), the company sought exclusion of a proposal under Rule 14a-8(i)(3) because the proposal recommended the company "improve guiding principles of executive compensation" but failed to define or explain what improvements the proponent sought to the "guiding principles." The Staff noted that the proposal "lack[ed] sufficient description about the changes, actions or ideas for the [c]ompany and its shareholders to consider that would potentially improve the guiding principles" and concurred with exclusion of the proposal as "vague and indefinite."

Here as well, the Proposal refers to a broad and multifaceted issue – a corporation's purpose – with a request for a review on how the Company's "governance or management systems" should be altered in

order to implement the Statement. Notably, and in the Proposal's own words, the Statement is "in and of itself, vague and indistinct in how such statement shall be implemented by our Company." Clearly, the Statement is a central aspect of the Proposal. Therefore, it is necessary for shareholders to understand what is contained in the "Statement of the Purpose of a Corporation" in order to reasonably determine what actions or measure the Proposal requires. However, the Proposal fails to define or provide any context around the term "Statement on the Purpose of a Corporation," nor does it explain the topics addressed thereby. In fact, based on the four corners of the Proposal, shareholders would not have any idea that the Statement relates to five distinct commitments, nor that such commitments relate to a company's relations with its customers, employees, suppliers, shareholders and the communities in which it operates. Neither the "Resolved" clause nor the "Supporting Statement" provides sufficient clarity or direction as to what the Statement entails, which aspects of the Statement the Proposal is focused upon, which Company systems, procedures and policies should be reviewed, and against what standard the Company should consider altering its "long-term plans, goals, metrics, executive and board compensation, and representation of stakeholders in governance" in order to fully implement the Statement.

Instead, the Proposal merely makes cursory references to "the statement" without providing any explanation or point of reference for its content or what the standard or standards set forth in the referenced statement would require the Company to do. In this regard, the Proposal is similar to *Apple* and *eBay*, as based on the language in the Proposal, neither the Company nor its shareholders would be able to determine with any reasonable certainty which "governance or management systems" the Proposal aims at reforming, nor how and to what degree such systems, policies and procedures would need to be altered, if at all, in order to implement the Statement. As such, the Proposal lacks sufficient specificity to indicate to the Company and to its shareholders the nature and scope of review, report and reform requested by the Proposal. This is not a question of marginal ambiguity that the Company's Board could, in exercising its discretion, resolve. Rather, it is an inherent vagueness in the underlying guidelines that form the cornerstone of the Proposal's request. Similar to *eBay*, when a proposal fails to define a term that is essential to an understanding and execution of the proposal, the Proposal is excludable.

The Company is aware that the Staff has, in the past, been unable to concur with the exclusion of a proposal that refers to external guidelines or an external source for a concept central to the understanding of the proposal, but which fails to describe such standard. See, e.g., *Bloomin' Brands, Inc.* (avail. Feb. 9, 2018). In *Bloomin' Brands*, the company sought exclusion of a proposal requesting the company adopt a policy to require that the board's chair be held by an independent director "as defined in accordance with the applicable requirements of The NYSE." The company argued that because the proposal referenced external requirements (the applicable NYSE requirements) without providing any additional information to define or explain those requirements as they would apply to the independence standard applicable to the company's directors, the proposal was impermissibly vague and indefinite. Moreover, the company was listed on the Nasdaq Global Select Market and therefore not subject to NYSE requirements. The Staff declined to concur with the company's request



for exclusion explaining that it was “unable to conclude that the [p]roposal, taken as a whole, is so vague or indefinite that it is rendered materially misleading.” *See also Sears Holdings Corp.* (avail. Feb. 9, 2018) (same). However, unlike the foregoing letters, where it was readily apparent that the standard at issue related to determining independence of directors, here it is not at all apparent what the Statement addresses; yet, the entire Proposal is predicated on whether or not shareholders are in favor of having the Board review a “statement” and provide guidance as to how to alter the Company’s policies and procedures in order to implement such “statement.” Here, some understanding of the scope of the Statement is critical to an understanding of the Proposal, and, as discussed above, the Proposal fails to sufficiently describe the substantive provisions of that central, external guideline such that exclusion is appropriate.

As in *eBay* and *Apple*, and for the reasons discussed above, because of the Proposal’s failure to explain what is meant by a “review [of] the Statement of the Purpose of a Corporation,” the Proposal is vague and indefinite as neither shareholders nor the Company would be able to determine with reasonable certainty exactly what actions or measures the Proposal requires and the Proposal as a whole is thus rendered materially misleading. Therefore, the Proposal may properly be excluded under Rule 14a-8(i)(3) as vague and indefinite.

\*\*\*\*\*

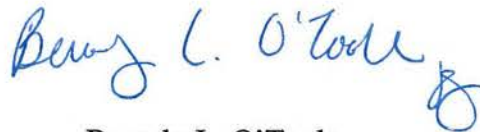
Office of Chief Counsel  
Division of Corporation Finance  
December 30, 2019  
Page 22

### CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2020 Proxy Materials.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to Beverly.OToole@gs.com. Should you have any questions or if you would like any additional information regarding the foregoing, please do not hesitate to contact me (212-357-1584; Beverly.OToole@gs.com) or Jamie Greenberg (212-902-0254; Jamie.Greenberg@gs.com). Thank you for your attention to this matter.

Sincerely,



Beverly L. O'Toole

Enclosures

cc: John C. Harrington

**EXHIBIT A**



**HARRINGTON**  
INVESTMENTS, INC.

November 7, 2019

Corporate Secretary  
The Goldman Sachs Group, Inc.  
200 West Street  
New York, NY 10282

**RE: Shareholder Proposal**

Dear Corporate Secretary,

As a shareholder in The Goldman Sachs Group, Inc. (GS), I am filing the enclosed shareholder resolution pursuant to Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934 for inclusion in the Citigroup, Inc. Proxy Statement for the 2020 annual meeting of shareholders.

I am the beneficial owner of at least \$2,000 worth of The Goldman Sachs Group, Inc. stock. I have held the requisite number of shares for over one year, and plan to hold sufficient shares in The Goldman Sachs Group, Inc. through the date of the annual shareholders' meeting. In accordance with Rule 14a-8 of the Securities Exchange Act of 1934, verification of ownership is included. I or a representative will attend the stockholders' meeting to move the resolution as required by SEC rules.

If you have any questions, I can be contacted at (707) 252-6166.

Sincerely,



John C. Harrington

President and C.E.O.  
Harrington Investments, Inc.

## **GOLDMAN SACHS – 2020**

**Whereas**, our Company's Chairman and Chief Executive Officer, in August 2019, signed a "Statement on the Purpose of a Corporation", committing our Company to serve **all** stakeholders, including shareholders as stakeholders; and

**Whereas**, while each of the companies making the pledge stated that each has its own corporate purposes, our Company notwithstanding, made a commitment to support "... the communities in which we work... respect[ing] the people in our communities and protect[ing] the environment by embracing sustainability practices across our businesses"; and

**Whereas**, such public statements may be beneficial to the image of our financial institution from a marketing and public relations standpoint and enhance our management's standing in many communities, however, the statement, in and of itself, is vague and indistinct in how such statement shall be implemented by our Company, and as is most often the case, there has been no prior indication that our Board of Directors, have exercised their duty of care and loyalty, to be informed fully, utilizing good and independent external and internal resources and experts, and acting in a judicious and independent manner, to determine what specific actions the board needs to take, to implement the stakeholder theory underlying statement, to promote the best interests of the corporation; therefore, be it

**Resolved**, that shareholders request our Board of Directors, in exercise of their fiduciary duties of care and loyalty, review the Statement of the Purpose of a Corporation signed by our Chairman and Chief Executive Officer, and provide oversight and guidance as to how our Company's full implementation of this new Statement should alter our Company's long term plans, goals, metrics, executive and board compensation, and representation of stakeholders in governance of our Company, and publish recommendations regarding implementation.

### **Supporting Statement**

Our Company's Chairman and Chief Executive Officer is to be congratulated in his leadership and courage to commit our Company to all stakeholders and to the future. All shareholders should appreciate and encourage our Board of Directors to implement this change, including by amending our Company's governance documents to fully embrace the new approach.



November 7, 2019

John Harrington  
1001 2nd Street Suite 325  
Napa, CA 94559

Account number ending in:

\*\*\*

Questions: Contact your advisor or  
call Schwab Alliance at  
1-800-515-2157.

---

**Important information regarding shares in your account.**

---

Dear John Harrington,

We're writing to confirm information about the account listed above, which Charles Schwab & Co., Inc. holds as custodian. This account holds in trust 100 shares of Goldman Sachs Group GS common stock. These shares have been held in the account continuously for at least one year prior to and including November 7, 2019.

These shares are held at Depository Trust Company under the nominee name of Charles Schwab & Co., Inc., which serves as custodian for the registration listed above.

**Thank you for choosing Schwab.** If you have questions, please contact your advisor or Schwab Alliance at 1-800-515-2157. We appreciate your business and look forward to serving you in the future.

Sincerely,

Vanessa Balma  
Associate, Institutional  
MID MARKET WESTLAKE SERVICE  
4700 Alliance Gateway Freeway  
FORT WORTH, TX 76177

Independent investment advisors are not owned by, affiliated with, or supervised by Charles Schwab & Co., Inc. ("Schwab").



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to schedule a pickup or find a drop off location near you.

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- To qualify for the Letter rate, UPS Express Envelopes may only contain correspondence, urgent documents, and/or electronic media, and must weigh 8 oz. or less. UPS Express Envelopes containing items other than those listed or weighing more than 8 oz. will be billed by weight.

**International Shipments**

- The UPS Express Envelope may be used only for documents of value. Certain countries consider electronic media as documents. Visit [ups.com/importexport](http://ups.com/importexport) to verify if your shipment is classified as a document.
- To qualify for the Letter rate, the UPS Express Envelope must weigh 8 oz. or less. UPS Express Envelopes weighing more than 8 oz. will be billed by weight.

**Note:** Express Envelopes are not recommended for shipments of containing sensitive personal information or breakable items. Do not use for cash equivalent.

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<b>SHIPMENT FROM</b>		<b>WEIGHT</b>	
UPS ACCOUNT NO. <b>F74780</b>		L T R	
REFERENCE NUMBER		<b>DIMENSIONAL WEIGHT</b>	
Brianna Harrington		LARGE AIR PACKAGE	
HARRINGTON INVESTMENTS, INC.		<b>SHIPPER RELEASE</b>	
1001 2ND STREET SUITE 325		<input type="checkbox"/> 1+ <input type="checkbox"/> 1+	
NAPA		<small>The shipper authorizes UPS to act as forwarding agent for export control and customs purposes. The shipper certifies that these commodities, technology or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to U.S. law is prohibited.</small>	
CA 94559		<b>SATURDAY DELIVERY</b> <input type="checkbox"/>	
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010195101 1/15 TO United Parcel Service

**From:** Brianna Harrington <[brianna@harringtoninvestments.com](mailto:brianna@harringtoninvestments.com)>  
**Sent:** Friday, November 22, 2019 3:42 PM  
**To:** Greenberg, Jamie [Legal] <[Jamie.Greenberg@ny.email.gs.com](mailto:Jamie.Greenberg@ny.email.gs.com)>; O'Toole, Beverly L [Legal] <[Beverly.OToole@ny.email.gs.com](mailto:Beverly.OToole@ny.email.gs.com)>  
**Cc:** John Harrington: <[john@harringtoninvestments.com](mailto:john@harringtoninvestments.com)>; Sanford Lewis <[sanfordlewis@strategiccounsel.net](mailto:sanfordlewis@strategiccounsel.net)>  
**Subject:** Amended Shareholder Resolution  
**Importance:** High

Good afternoon,

Please see the attached documents regarding our amended shareholder resolution for inclusion in the Goldman Sachs 2020 shareholder ballot and proxy material. Please confirm receipt.

Thank you.

---

**Brianna Harrington**

~

Shareholder Advocacy Coordinator  
Research Analyst

~

**Harrington Investments, Inc.**  
1001 2nd Street Suite 325, Napa, CA 94559  
**Tel:** 707-252-6166 | **Toll-free:** 800-788-0154  
**Fax:** 707-257-7923



<http://harringtoninvestments.com>

oo

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November 22, 2019

Corporate Secretary  
The Goldman Sachs Group, Inc.  
200 West Street  
New York, NY 10282

**RE: Shareholder Proposal**

Dear Corporate Secretary,

As a shareholder in The Goldman Sachs Group, Inc. (GS), I am filing the enclosed amended shareholder resolution pursuant to Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934 for inclusion in the Citigroup, Inc. Proxy Statement for the 2020 annual meeting of shareholders.

I am the beneficial owner of at least \$2,000 worth of The Goldman Sachs Group, Inc. stock. I have held the requisite number of shares for over one year, and plan to hold sufficient shares in The Goldman Sachs Group, Inc. through the date of the annual shareholders' meeting. In accordance with Rule 14a-8 of the Securities Exchange Act of 1934, verification of ownership was included in my initial submission, dated November 7, 2019. I or a representative will attend the stockholders' meeting to move the resolution as required by SEC rules.

If you have any questions, I can be contacted at (707) 252-6166.

Sincerely,

A handwritten signature in black ink, appearing to read "John C. Harrington", is written over a printed name.

John C. Harrington

President and C.E.O.  
Harrington Investments, Inc.

## **GOLDMAN SACHS – 2020**

**Whereas**, our Company's Chairman and Chief Executive Officer, in August 2019, signed a "Statement on the Purpose of a Corporation", committing our Company to serve *all* stakeholders, including shareholders as stakeholders; and

**Whereas**, while each of the companies making the pledge stated that each has its own corporate purposes, our Company notwithstanding, made a commitment to support "... the communities in which we work... respect[ing] the people in our communities and protect[ing] the environment by embracing sustainability practices across our businesses"; and

**Whereas**, such public statements may be beneficial to the image of our financial institution from a marketing and public relations standpoint and enhance our management's standing in many communities, however, the statement, in and of itself, is vague and indistinct in how such statement shall be implemented by our Company, and as is most often the case, there has been no prior indication that our Board of Directors, have exercised their duty of care and loyalty, to be informed fully, utilizing good and independent external and internal resources and experts, and acting in a judicious and independent manner, to determine what specific actions the board needs to take, to implement the stakeholder theory underlying statement, to promote the best interests of the corporation; therefore, be it

**Resolved**, that shareholders request our Board of Directors, in exercise of their fiduciary duties of care and loyalty, review the Statement of the Purpose of a Corporation signed by our Chairman and Chief Executive Officer, and provide oversight and guidance as to how our Company's full implementation of this new Statement should alter our Company's governance or management systems, such as long term plans, goals, metrics, executive and Board compensation, and/or representation of stakeholders in governance of our Company, and publish recommendations regarding implementation.

### **Supporting Statement**

Our Company's Chairman and Chief Executive Officer is to be congratulated in his leadership and courage to commit our Company to all stakeholders and to the future. All shareholders should appreciate and encourage our Board of Directors to implement this change, including by amending our Company's governance documents to fully embrace the new approach.



**EXHIBIT B**

### **Statement on the Purpose of a Corporation**

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.

Businesses play a vital role in the economy by creating jobs, fostering innovation and providing essential goods and services. Businesses make and sell consumer products; manufacture equipment and vehicles; support the national defense; grow and produce food; provide health care; generate and deliver energy; and offer financial, communications and other services that underpin economic growth.

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.
- Investing in our employees. This starts with compensating them fairly and providing important benefits. It also includes supporting them through training and education that help develop new skills for a rapidly changing world. We foster diversity and inclusion, dignity and respect.
- Dealing fairly and ethically with our suppliers. We are dedicated to serving as good partners to the other companies, large and small, that help us meet our missions.
- 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.
- Generating long-term value for shareholders, who provide the capital that allows companies to invest, grow and innovate. We are committed to transparency and effective engagement with shareholders.

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.

August 2019