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February 7, 2020

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549
via email: shareholderproposals@sec.gov

Ladies and Gentlemen:

On behalf of Exxon Mobil Corporation, a New Jersey corporation (the "**Company**"), we are writing to (a) respond to the letter from Steven J. Milloy (the "**Proponent**") dated January 22, 2020 (the "**Proponent Response Letter**") with respect to the request from the Company, dated January 17, 2020 (the "**No-Action Letter**") and (b) supplement the No-Action Letter regarding the exclusion of a shareholder proposal (the "**Proposal**") submitted by the Proponent from the Company's proxy statement for its 2020 Annual Meeting of Shareholders (the "**2020 Proxy Materials**"). Capitalized terms not defined herein are used as defined in the No-Action Letter. A copy of both the No-Action Letter and the Proponent Response Letter are included with this letter as Exhibit A.

As explained in the No-Action Letter, the Company believes that the Proposal may be properly omitted from the 2020 Proxy Materials pursuant to Rule 14a-8(i)(3), because the Proposal is so inherently vague and indefinite as to be materially misleading in violation of Rule 14a-9; Rule 14a-8(i)(7), because the Proposal relates to the Company's ordinary business operations; and Rule 14a-8(i)(10), because the Proposal has been substantially implemented. This letter focuses primarily on the assertions in the Proponent Response Letter that the Company does not disclose the benefits of its environment-related activities and also provides additional support for the Company's belief that it may omit the Proposal pursuant to Rule 14a-8(i)(10) because it has been substantially implemented. The Company has advised us as to the factual matters set forth below.

The Company has made clear that addressing the risks of climate change through "emission cuts" results in benefits to its business and its shareholders.

The Proponent Response Letter claims that the Company has not disclosed how reducing emissions benefit "anyone or anything," and questions whether it has resulted in "financial benefits" to shareholders. The Proponent has failed to consider all of the available disclosures that the Company has made regarding the business reasons that it is addressing carbon emissions. As the Company has extensively disclosed, these initiatives are integral to the Company's strategy to help meet growing energy demand by addressing features of its current products that impact today's demand for these products and enhancing future product offerings to respond to future demand trends. These efforts benefit its shareholders in supporting current sales and the Company's strategy for business growth.

The Company's publicly disclosed Outlook for Energy: A perspective to 2040 (the "**Energy Outlook**") projects energy demand and supply through 2040, and "has helped inform ExxonMobil's long term business strategies, investment plans and research programs."[1] The Company reports that "policy choices, consumer preferences and technology play a role in balancing energy supply and demand and the impact on emissions."[2] As the Energy Outlook discloses, each of these three drivers (policy changes, consumer preferences and new technology) are expected to affect the global demand for energy in the next twenty years and support a trend toward lower carbon technologies and products.

Since the Company's forecast shows a strong growth in sources of energy that center on products which generate less emissions as part of "society's energy and climate objectives,"[3] the Company's strategies and business activities embrace research, innovation and experimentation in providing products with a reduced environmental impact. It is important for the Company, and to the benefit of its shareholders, for the Company to develop and refine product offerings that continue to meet consumer expectations for its products while also responding to anticipated growth in global energy demand. These efforts are also necessary to position the Company to succeed in a highly competitive energy supply marketplace.

Policy changes. The Energy Outlook discloses that government policies will spur efforts for increased technological efficiency and "aim for a lower-carbon energy mix in pursuit of national climate policy goals," and "[b]y 2040 the combined effects of lower energy intensity and less carbon-intensive energy sources [will] result in nearly 45 percent reduction in the carbon intensity of the global economy."[4]

Consumer preferences. The Energy Outlook discloses that consumer preferences can shift "as new technology enables options that better meet a consumer's needs, such as lower energy costs and *lower emissions*" (emphasis added).[5] There is an interplay between government policy and consumer preferences, which can "also be altered…by policies that incentivize choices, like a carbon tax that encourages more lower carbon electricity supply."[6] Consumers are becoming more "environmentally aware,"[7] which is driving not only the global energy demand but also the energy supply, as businesses shift production to meet changing consumer preferences.

New technology. The Company must meet the challenges posed by new technology. The trend in technology is focused on "more efficient fuel use and lower emissions intensity across all

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[1] https://corporate.exxonmobil.com/Energy-and-environment/Looking-forward/Outlook-for-Energy/Outlook-for-Energy-A-perspective-to-2040
[2] https://corporate.exxonmobil.com/Energy-and-environment/Looking-forward/Outlook-for-Energy/Emissions
[3] *Id.*
[4] https://corporate.exxonmobil.com/Energy-and-environment/Looking-forward/Outlook-for-Energy/Global-energy-fundamentals
[5] https://corporate.exxonmobil.com/Energy-and-environment/Looking-forward/Outlook-for-Energy/Energy-demand#threeDrivers
[6] *Id.*
[7] https://corporate.exxonmobil.com/Energy-and-environment/Looking-forward/Outlook-for-Energy/Energy-supply

sources of supply," while "[l]ower carbon energy sources – including wind/solar, biofuels and nuclear – increase at the fastest pace."[8]

In terms of the energy supply and demand for specific products, the Company anticipates global energy mix shifting to "lower-carbon fuels," with natural gas growing the most of any energy type, renewables and nuclear energy sources seeing strong growth and coal dropping, as "China and OECD nations transition toward lower-carbon sources like renewables, nuclear and natural gas."[9]

The Energy Outlook is based on "likely trends in technology, policy, consumer preferences, geopolitics and economic development."[10] There is no question that it is part of management's responsibility to anticipate and understand all of those factors as it manages its business in the best interest of shareholders. Those trends predict that "[b]y 2040 efficiency and emissions intensity reduction are expected to contribute to a nearly 45 percent decline in the carbon intensity of the global economy."[11] Developing and refining product offerings is a laborious and time-intensive process that requires significant work in the present to meet anticipated future energy demand.

The Company's recently published Energy and Carbon Summary (the "**2020 ECS**")[12] explains that the Company's "businesses are well positioned for the continuing evolution of the energy system," which involve "near-term actions" that include expanding supply and production of certain products, engaging in policy discussions and "mitigating emissions from our own operations."[13] Longer term, the Company's "business strategies are consistent with the evolving energy landscape," which include "developing alternative energy solutions with lower-carbon intensity" and "achiev[ing] technology breakthroughs for scalable GHG emission reductions."[14] The Company's business strategy as disclosed in the 2020 ECS includes understanding global energy fundamentals, one of which is "GHG emissions."[15]

As part of this business strategy, the Company continues taking steps to achieve near-term actions and to prepare for longer-term developments. Forecasts of demand show that a combination of policy changes, consumer preferences and new technologies are expected to cause shifts to lower carbon-intense products. The Company is taking actions to develop and deploy the new technologies that will meet evolving energy demand consistent with potential policy changes and consumer preferences. In addition, the Company is taking actions to reduce its own emissions and help consumers lower their emissions to make its current products more resilient to these anticipated trends.[16] Anticipating trends, and undertaking actions in alignment with its own projections, are business decisions that enhance the Company's current and future product offerings while laying the

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[8] *Id.*
[9] *See* Note 4.
[10] *See* Note 1.
[11] *See* Note 2.
[12] https://corporate.exxonmobil.com/-/media/Global/Files/energy-and-carbon-summary/Energy-and-carbon-summary.pdf
[13] *Id.* at page 2.
[14] *Id.*
[15] *Id.* at page 7.
[16] *Id.* at page 25.

groundwork for the continued growth of the business, which produces the financial benefits that the Proposal seeks.

The 2020 ECS provides further proof that the Company may omit the Proposal pursuant to Rule 14a-8(i)(10) as it has been substantially implemented.

As noted in the No-Action Letter, in 2019 the Company published its Energy and Carbon Summary (the "**2019 ECS**"), which included a number of disclosures regarding the subject matter of the Proposal that demonstrate the Company has already substantially implemented the Proposal. After the date of the No-Action Letter, the Company published the 2020 ECS. While we believe that the 2019 ECS and the other Company public disclosures cited in the No-Action Letter demonstrate substantial implementation, we are submitting this letter to include the ways in which the 2020 ECS, which updates and enhances the 2019 ECS and other intervening Company disclosures in a single comprehensive report, strengthens this substantial implementation argument.

The 2020 ECS describes benefits to the public health and the environment:

- The 2020 ECS notes that as energy demand rises over the next two decades, there is "the potential for greater environmental impact, including greenhouse gas (GHG) emissions and the risks of climate change. As a global community, we need to manage environmental impacts as we meet this growth in demand. This is society's dual challenge."[17] Exxon is taking steps "to responsibly develop new resources to ensure the world has the energy it needs while also minimizing environmental impacts."[18]

- "ExxonMobil believes it has an important role to play in helping reduce climate risks through its commitment to manage operational emissions, produce cleaner, more advanced products, conduct fundamental research into new technology solutions, and engage in climate policy discussions."[19]

The 2020 ECS describes benefits in terms of meeting shifting consumer demand:

- As an example of the Company meeting evolving consumer demand for efficient energy sources, the 2020 ECS notes that over the next two decades "[n]atural gas will expand its role to more than 25 percent of total primary energy, led by growth in electricity generation and industrial output." and that "[n]atural gas is expected to grow the most of any energy type, reaching a quarter of all demand."[20] Elsewhere, the report notes that "[n]atural gas demand is expected to grow more than 35 percent from 2017 to 2040… As one of the largest natural gas producers in the U.S., and a significant producer of LNG [low-cost liquefied natural gas] around the world, we are well positioned to support the projected demand shift from coal to natural gas for power generation and industrial use."[21]

- As another example, "[c]hemical industry growth is forecast to outpace growth in global GDP and energy demand for the next two decades. We are progressing 13 new facilities that are expected to support a 30-percent growth in sales, and for performance products to deliver approximately 60 percent of [chemical] earnings by 2025. Many of our chemical

[17] *Id.* at page 1.
[18] *Id.*
[19] *Id.* at 35.
[20] *Id*. at 2, 8.
[21] *Id.* at 17.

> products help our customers reduce their GHG emissions, particularly in high-performance products as advanced materials that make cars lighter and more fuel efficient, and packaging materials that extend products' shelf life and reduce the energy needed to ship goods around the world."[22]

The Company's public reporting is distinguishable from other companies' disclosures that have not been found to substantially implement the Proposal.

The Proponent Response Letter cited two prior examples of companies where the Staff did not concur in excluding the Proposal.[23] We believe that the Company's existing reports, as cited in the No-Action Letter and this letter, can be distinguished as providing detailed business reasons for its climate-related actions such as reducing carbon emissions, and those business decisions are made in order to provide "actual benefits" to the Company's financial results and shareholders:

- The 2019 ECS notes that as a result of its environment-related activities, the Company is well-positioned for the continuing evolution of human energy systems and as a producer of more environmentally friendly products than many of its competitors, Exxon has a strong market position in every business line in which it operates, including ExxonMobil Chemical Company's annual earnings of more than $4 billion in 2017.[24]

- The Company reports that the Company's voluntary compliance with energy efficiency standards not only meet evolving consumer demand, but also that these investments benefit shareholders in terms of the Company's competitive positioning. For example, the 2019 ECS notes that Exxon's investment in its chemical products has allowed the Company to become a world-leading producer of specific products, such as advanced halobutyl rubber and weight-reducing packaging materials.[25] The MD&A section of the Company's 2018 Form 10-K reports that the Company's environment-related activity is conducted in response to its projections on consumer demand, i.e., that total renewable energy will likely exceed 15% of global energy by 2040, and that total energy supplied from wind, solar, and biofuels will grow nearly 250%.[26]

- As explained above, the Company's actions are taken with its competitive positioning, and financial results, in mind. The 2020 ECS describes how the Company is investing in environment-related activities in order to competitively position itself in the changing energy landscape.[27] The MD&A explains how the Company's investment in technologies like natural gas is designed to enhance the Company's own financial performance, which is in the best interest of shareholders. The Company's Sustainability Report notes that using energy more efficiently enables companies to reduce their costs and that according to the Solomon Refining Industry Survey, Exxon is among the world's most energy-efficient refining companies.[28]

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[22] *Id*.
[23] *Exelon Corporation* (March 12, 2019) (proposal by Proponent seeking a report of the costs and benefits that have accrued to shareholders, the public health and the environment, from the company's environment-related activities) and *Duke Energy Corporation* (March 12, 2019) (same).
[24] 2019 ECS at 2, 16.
[25] *Id.* at 22.
[26] https://www.sec.gov/Archives/edgar/data/34088/000003408819000010/xom10k2018.htm
[27] 2020 ECS at 2.
[28] https://corporate.exxonmobil.com/en/Community-engagement/sustainability-report

- The Company's actions and reporting on its environment-related activity focuses on the direct positive impact such investments have on the performance of the Company, which benefits shareholders.

For these reasons as well as those stated in the No-Action Letter, we believe that the Company may exclude the Proposal because it has been substantially implemented by the Company, and the Company's practices, policies and procedures compare favorably to the Proposal.

Respectfully yours,

Louis L. Goldberg

Attachment

cc w/ att: James E. Parsons, Exxon Mobil Corporation

Steven J. Milloy

Exhibit A

No-Action Letter

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January 17, 2020

Office of Chief Counsel
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via email: shareholderproposals@sec.gov

Ladies and Gentlemen:

On behalf of Exxon Mobil Corporation, a New Jersey corporation (the "**Company**"), and in accordance with Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), we are filing this letter with respect to the shareholder proposal (the "**Proposal**") submitted by Steven J. Milloy (the "**Proponent**") for inclusion in the proxy materials the Company intends to distribute in connection with its 2020 Annual Meeting of Shareholders (the "**2020 Proxy Materials**"). The Proposal is attached hereto as Exhibit A.

We hereby request confirmation that the Staff of the Division of Corporation Finance (the "**Staff**") will not recommend any enforcement action if, in reliance on Rule 14a-8, the Company omits the Proposal from the 2020 Proxy Materials. The Company has advised us as to the factual matters set forth below.

Pursuant to Staff Legal Bulletin No. 14D (CF), Shareholder Proposals (November 7, 2008), Question C, we have submitted this letter and any related correspondence via email to shareholderproposals@sec.gov. Also, in accordance with Rule 14a-8(j), a copy of this submission is being sent simultaneously to the Proponent as notification of the Company's intention to omit the Proposal from the 2020 Proxy Materials. Pursuant to Rule 14a-8(j), we are submitting this letter not less than 80 days before the Company intends to file its definitive 2020 proxy statement. This letter constitutes the Company's statement of the reasons it deems the omission of the Proposal to be proper.

THE PROPOSAL

The Proposal states:

RESOLVED: Shareholders request that, beginning in 2020, ExxonMobil publish an annual report of the incurred costs and associated significant and actual benefits that have accrued to shareholders, the public health and the environment, including the global climate, from the company's environment-related activities that are voluntary and that exceed U.S. and foreign compliance and regulatory requirements. The report should be prepared at reasonable cost and omit proprietary information.

REASONS FOR EXCLUSION OF THE PROPOSAL

The Company believes that the Proposal may be properly omitted from the 2020 Proxy Materials pursuant to:

- Rule 14a-8(i)(3), because the Proposal is so inherently vague and indefinite as to be materially misleading in violation of Rule 14a-9;
- Rule 14a-8(i)(7), because the Proposal relates to the Company's ordinary business operations; and
- Rule 14a-8(i)(10), because the Proposal has been substantially implemented.

1. The Company may omit the Proposal pursuant to Rule 14a-8(i)(3) because the Proposal is so inherently vague and indefinite as to be materially misleading under Rule 14a-9.

Under Rule 14a-8(i)(3), a proposal may be excluded if the resolution or supporting statement is contrary to any of the Commission's proxy rules or regulations. The Staff has consistently taken the view that shareholder proposals that are "so inherently vague or indefinite that neither the shareholders 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" are materially false and misleading. Staff Legal Bulletin No. 14B (CF) (September 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 shareholders at large to comprehend precisely what the proposal would entail.").

A proposal may be vague, and thus materially misleading, when it fails to address essential aspects of its own implementation. For example, the Staff has allowed the exclusion of executive compensation proposals where a crucial term relevant to implementing the proposal was not clear. *See Apple Inc.* (December 6, 2019) (proposal seeking to improve "the guiding principles of executive compensation" was vague because it lacked sufficient description about the proposed changes, actions or ideas and failed to describe the nature of the improvements); *eBay Inc.* (April 10, 2019) (proposal recommending that the company "reform its executive compensation committee" was vague because neither shareholders nor the company would be able to determine with reasonable certainty the nature of the reform requested); *The Boeing Company* (January 28, 2011, recon. granted March 2, 2011) (concurring with the exclusion of a proposal requesting, among other things, that senior executives relinquish certain "executive pay rights" because the proposal did not sufficiently explain the meaning of the phrase); and *General Electric Company* (January 21, 2011) (proposal requesting that the compensation committee make specified changes was vague because, when applied to the company, neither the shareholders nor the company would be able to determine exactly what actions or measures the proposal required).

Like *Apple*, the Proposal fails to provide sufficient description about the proposed changes, actions and ideas necessary to implement its request that the Company publish an annual report (the "**Report**"). The Report is intended to provide the costs and "associated significant and actual benefits" accruing to shareholders, the public health and the environment from the Company's "environment-related" activities, but Proposal does not define those key terms and lacks any guidance or clarity on the scope of the Company's activities, and the related benefits, or the manner in which such significant and actual benefits should be measured, that are intended to be covered by the Report. Accordingly, the Company is left unclear on how to implement the Proposal and shareholders will likely be uncertain about exactly what they are voting for the Company to do.

Environment-related activities. The Proposal fails to define the scope of the "environment-related activities." The Proposal indicates that these are voluntary activities that have exceeded legal and regulatory requirements, and the examples cited in the Supporting Statement are the operations and costs from the Company's reduction in emissions as reported in its 2019 Energy and Carbon Summary. But the purpose of the Proposal is obscured by connecting the Report to "greenwashing." The Proposal's title and the supporting statement both refer to "greenwashing," which the Proposal defines as expenditures spent on "ostensibly environment-related activities" but are "merely for the purpose of improving . . . public image." The Proposal targets environment-related activities that are "touted" as protecting the public health and environment but represent "insincere 'green' posturing."

The Company's day-to-day operations have resulted in reducing emissions as the Company adopts new technologies and has made investments in alternative products or improved its practices, and the efforts that have led to reducing emissions are part of the Company's business plan. The Proposal is unclear whether "environment-related" activities should include activities which are the by-product of the Company's established operations and business decisions, or whether the "greenwashing" references means the focus of the Report should be limited to activities that the Proposal suspects of being designed to burnish the Company's public relations and image.

Benefits. The Proposal asks the Company to discuss the "associated significant and actual benefits" to shareholders as well as to "the public health and the environment, including the global climate" from the Company's environment-related activities. The Proposal does not define the scope of the "benefits" to be measured and reported, especially as they accrue to multiple stakeholders. Some of the benefits to shareholders may be tangible, such as cost savings and efficiency gains or additional revenue or cash flow. Other benefits to shareholders that arise from these activities may be more complex and may include the avoidance of liability, improvement to the Company's brand, improved employee satisfaction that reduces turnover and goodwill with regulators. The Proposal also does not address the manner in which the significant and actual benefits should be measured.

The absence of a sufficient description to provide the Company with clear guidance on the nature of the "benefits" that should be included is particularly stark with respect to the Proposal's directive to report on benefits that would emanate to the public health and the environment. There are innumerable ways that the Company, when seeking to implement the Proposal, and shareholders, when voting on the Proposal, could interpret the Proposal's request. Neither the Proposal nor the supporting statement offer any clarity on whether the Company is supposed to measure the open-ended extent to which, for example, emissions reductions have improved both public health and the environment, or take a more targeted action to measure and report on the benefits. Understanding the "benefits" of the Company's activities is central to the Report, and each shareholder voting on the Proposal could be expecting a different accounting of such benefits for the public benefit and the environment.

For all the reasons stated above, the Company believes the Proposal is properly excludable under Rule 14a-8(i)(3).

2. The Proposal may be excluded under Rule 14a-8(i)(7) because the Proposal deals with matters related to the Company's ordinary business operations.

Rule 14a-8(i)(7) allows a company to omit a shareholder proposal from its proxy materials if such proposal deals with a matter relating to the company's ordinary business operations. The general policy underlying the "ordinary business" exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at annual shareholders meetings." Exchange Act Release No. 34-40018 (May 21, 1998) (the "**1998 Release**"). This general policy reflects two central considerations: (i) "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight" and (ii) the "degree to which the proposal seeks to 'micromanage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." A proposal generally will not be excludable under Rule 14a-8(i)(7) where it raises a significant policy issue. Staff Legal Bulletin 14E (October 27, 2009). However, the Staff has indicated that even proposals relating to social policy issues may be excludable in their entirety if they do not "transcend the day-to-day business matters" discussed in the proposals. 1998 Release.

In line with the 1998 Release, the Staff has consistently concurred that a proposal may be excluded in its entirety when it addresses ordinary business matters, even if it also addresses a significant social policy issue. For instance, in *Apache Corporation* (March 5, 2008), the Staff concurred that a company could exclude a proposal requesting that the company "implement equal employment opportunity policies based on principles specified in the proposal prohibiting discrimination based on sexual orientation and gender identity." Even though the proposal in *Apache Corporation* referenced discrimination issues based on sexual orientation and gender identity, the company argued that the proposal and the principles "did not transcend the core ordinary business matters" of the company. The Staff concurred in its exclusion under Rule 14a-8(i)(7), stating "that some of the principles [mentioned in the proposal] related to [the company's] ordinary business operations." *See also FedEx Corporation* (July 14, 2009); *The Walt Disney Company* (November 30, 2007).

A shareholder proposal that requests a report does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the issuer. *See* Exchange Act Release No. 20091 (August 16, 1983) (the "**1983 Release**"). *See also Johnson Controls, Inc.* (October 26, 1999) ("[Where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under [R]ule 14a-8(i)(7)."). According to Legal Bulletin No. 14E (October 27, 2009), a proposal's request for a review of certain risks also does not preclude exclusion if the underlying subject matter of the proposal to which the risk pertains or that gives rise to the risk is ordinary business.

A. The Proposal Relates to the Company's Choice of Technologies.

The Staff has concurred that proposals related to a company's choice of technologies are generally excludable under Rule 14a-8(i)(7). *See Dominion Resources, Inc.* (February 14, 2014) (proposal requesting report on the risks faced by company in trying to develop solar power generation); *FirstEnergy Corporation* (March 8, 2013) (proposal requesting report on the diversification of the company's energy resources to include increased energy efficiency and renewable energy resources); *PG&E Corporation* (March 10, 2014) (proposal requesting the company revise its smart meter policy in specific ways); *AT&T Inc.* (February 13, 2012) (proposal requesting cable and Internet provider to publish a report disclosing actions it was taking to address the inefficient consumption of electricity by its set-top boxes, including the company's efforts to accelerate the development and deployment of new energy-efficient set-top boxes); and *CSX Corporation* (January 24, 2011) (proposal requesting the company develop a kit that would allow it to convert the majority of its locomotive fleet to a more efficient system).

The supporting statement questions the benefits from the Company's decision to invest in "efforts to reduce emissions." Yet, as explained on the ExxonMobil website (the "**Company Website**"),[1] the innovative use and deployment of advances in technology is crucial to the commercial success of the Company's business, including technologies such as carbon capture, deepwater drilling, exploration and production, energy efficiency, natural gas operations and the technologies used in advanced motor vehicles like electric cars. Management is continually seeking new opportunities to invest in leading-edge, new technologies, which are key to positioning the Company for growth and financial success over the long term as the Company anticipates future changes in the global demand for energy. Given the complex nature of these varying technologies and of the Company's business, the choice of technology and business strategies that affect determining and implementing these choices are fundamental business matters that are core to management's functions, and upon which shareholders are not well positioned to make informed judgments.

B. The Proposal Relates to the Company's Marketing of Its Business and Products.

The Staff has permitted the exclusion of proposals under Rule (i)(7) that are directed at specific resource allocation choices by management. *See Walgreens Boots Alliance, Inc.* (November 20, 2018) (proposal requesting that any open market share repurchase or stock buybacks must be approved by shareholders); *Comcast Corporation* (March 2, 2017) (proposal requesting report on the company's use of funds on politicized news media); *The Walt Disney Company* (November 20, 2014) (proposal requesting company continue acknowledging the Boy Scouts of America as a charitable organization); and *The Home Depot, Inc.* (March 18, 2011) (proposal requesting that the company list the recipients of corporate charitable contributions of $5,000 or more on the company website).

Even a proposal that is ostensibly general in scope may be excludable where its supporting statement makes clear that the proponent is seeking to influence the company's financial choices with respect to specific projects. *See Pfizer, Inc.* (February 12, 2007) (proposal requesting that the company publish all charitable contributions on its website, where the supporting statement specifically mentioned Planned Parenthood and other charitable groups involved in abortions and same-sex marriages). Relatedly, the Staff has also recognized that management's choices on marketing and public relations are core ordinary business activities and therefore excludable under Rule 14a-8(i)(7). *See Johnson & Johnson* (January 12, 2004) (proposal requesting report on how the company intended to respond to public pressure to reduce drug prices) and *FedEx Corporation* (July 14, 2009) (proposal requesting report addressing company's efforts to disassociate from products or symbols that disparage Native Americans).

The Company has disclosed the costs and benefits related to its business decisions that respond to climate change in a number of ways, both in response to legal requirements and with supplemental information that the Company believes is important to its shareholders and other stakeholders. The manner in which management chooses to communicate with investors and the public regarding issues that affect the way the Company is perceived by the public, including its

[1] http://corporate.exxonmobil.com/.

customers, such as actions the Company is taking to address matters relating to changes in global energy demand, emission-reduction technologies and addressing the risks of climate change, are fundamental to the role of management. The open-ended scope of steps sought by the Proponent to measure costs and benefits would involve significant additional spending by the Company. Management's decisions and strategies on how best to make investment decisions or tailor its marketing and public relations efforts are part of its day-to-day management of the Company.

C. The Proposal Does Not Relate to a Social Policy Issue.

The principal concern of the Proposal is not about the risks of climate change, but instead focuses on management's ordinary business decisions about investments in research and development opportunities that are necessary for the Company to compete in its markets and pursue shareholder returns. The Proposal questions the benefits of the Company's environmental efforts and the resulting public relations impact on the Company. The Proposal would rather the Company focus on the Proponent's preferred corporate strategy rather than, for example, focus on emission reductions. For this reason, the Proposal implicates ordinary business issues and fails to transcend the Company's ordinary business operations.

Accordingly, the Company believes the Proposal is properly excludable under Rule 14a-8(f)(7).

3. The Company may omit the Proposal pursuant to Rule 14a-8(i)(10) as it has been substantially implemented.

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal if the company has already substantially implemented the proposal. The Commission has stated that "substantial" implementation under the rule does not require implementation in full or exactly as presented by the proponent. *See SEC Release No. 34-40018* (May 21, 1998, n.30). The Staff has provided no-action relief under Rule 14a-8(i)(10) when a company has substantially implemented and therefore satisfied the "essential objective" of a proposal, even if the company did not take the exact action requested by the proponent, did not implement the proposal in every detail, or exercised discretion in determining how to implement the proposal. *See Wal-Mart Stores, Inc.* (March 25, 2015) (proposal requesting an employee engagement metric for executive compensation where a "diversity and inclusion metric related to employee engagement" was already included in the company's management incentive plan); *Entergy Corporation* (February 14, 2014) (proposal requesting a report "on policies the company could adopt . . . to reduce its greenhouse gas emissions consistent with the national goal of 80% reduction in greenhouse gas emissions by 2050" where the requested information was already available in its sustainability and carbon disclosure reports); *Duke Energy Corporation* (February 21, 2012) (shareholder proposal requesting that the company assess potential actions to reduce greenhouse gas and other emissions where the requested information was available in the Form 10-K and its annual sustainability report); and *Exelon Corporation* (February 26, 2010) (proposal that requested a report on different aspects of the company's political contributions when the company had already adopted its own set of corporate political contribution guidelines and issued a political contributions report that, together, provided "an up-to-date view of the [c]ompany's policies and procedures with regard to political contributions"). "[A] determination that the company has substantially implemented the proposal depends upon whether [the Company's] particular policies, practices, and procedures compare favorably with the guidelines of the proposal." *Texaco, Inc.* (March 28, 1991) (proposal requesting that the company adopt the Valdez Principles where the company had already adopted policies, practices and procedures regarding the environment).

The Proposal asks the Company to report on "the incurred costs and associated significant and actual benefits . . . from the company's environment-related activities," that may have accrued to "shareholders, the public health and the environment." The Company's public reports and websites that are described below demonstrate that the Company has substantially implemented the Proposal by satisfying this essential objective, and thus the Proposal is excludable under Rule 14a-8(i)(10).

The Company reports on the costs and benefits of its environment-related activities in its:

- 2019 Energy & Carbon Summary (the "**2019 ECS**")[2], as published on February 4, 2019, the 2020 updated edition of which is anticipated to be published on the Company's website in the near future (the "**2020 ECS**");
- The Company's most recent 10-K for the year ended 2018 (the "**Form 10-K**")[3]
- 2018 Sustainability Report Highlights, as published on December 20, 2019 (the "**Sustainability Report**")[4]; and
- The "Innovating energy solutions: Research and development highlights" section of the Company Website, as published on July 15, 2019 (the "**R&D Highlights**")[5].

A. The Company Reports on the Costs.

The following include some of the Company's descriptions of the costs incurred with respect to its environment-related activities:

- In the ECS, the Company forecasts electrification and gradual decarbonization to be significant global trends, along with strong growth in renewables and nuclear energy. Accordingly, since 2010 the Company has invested more than $9 billion in its facilities and research to develop and deploy lower-emission energy solutions.
- In the Form 10-K, the Company discusses the "new and ongoing measures" to "prevent and minimize the impact of our operations on air, water and ground," including "significant investment in refining infrastructure and technology to manufacture clean fuels, as well as projects to monitor and reduce nitrogen oxide, sulfur oxide and greenhouse gas emissions." Using the definitions and guidelines established by the American Petroleum Institute, the Company disclosed that its "2017 world environmental expenditures for all such preventative and remediation steps . . . were $4.7 billion" and the total cost is expected to increase to approximately $5 billion in 2018 and 2019.
- In the Sustainability Report, the Company describes how it has invested over $10 billion since 2000 to develop commercially viable lower-emission energy solutions. This includes $4 billion invested in the Company's upstream facilities around the world on energy efficiency and product preservation efforts, such as flare mitigation, that enhance the Company's returns while reducing emissions; $3 billion at the Company's refining and chemical facilities

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[2] https://corporate.exxonmobil.com/-/media/Global/Files/energy-and-carbon-summary/Energy-and-carbon-summary.pdf.
[3] https://www.sec.gov/Archives/edgar/data/34088/000003408819000010/xom10k2018.htm.
[4] https://corporate.exxonmobil.com/en/Community-engagement/sustainability-report.
[5] http://corporate.exxonmobil.com/en/energy/research-and-development/innovating-energy-solutions/research-and-development-highlights#/section/5-chemicals-process-breakthrough.

and enabling research to improve energy efficiency while reducing greenhouse gas emissions; and $3 billion in support of Upstream, Downstream and Chemical cogeneration facilities since 2001 to produce electricity more efficiently and reduce greenhouse gas emissions.

- The R&D Highlights note that the Company spends $1 billion per year on research and development to help address the dual challenge of meeting growing demand for energy while also reducing environmental impacts. According to the R&D Highlights, the Company invests in research and development related to "environment-related" business areas, such as natural gas technology, carbon capture and storage, fuel cell technology, and plastics process greenhouse gas emissions technology, among others.

B. The Company Reports on the Benefits.

The following include some of the Company's descriptions of the benefits that have accrued to shareholders, the public health and the environment in connection with its environment-related activities:

- In the ECS, the Company describes several of its environment-related activities that make the Company well-positioned for the continuing evolution of human energy systems. According to the ECS, in the near-term the Company is expanding the supply of cleaner-burning natural gas; transitioning its refining facilities to increase production of higher-value distillates, lubricants and chemical feedstocks; mitigating emissions from its own operations through energy efficiency, cogeneration, carbon capture, and reduced flaring, venting and fugitive emissions; supplying products that enable others to reduce their emissions, such as premium lubricants and fuels, lightweight materials, and special tire liners; and engaging on policy to address the risks of climate change at the lowest cost to society.

  In the longer-term, the Company explains that it is managing its business strategy consistent with the evolving energy landscape, including by researching breakthroughs that make carbon capture and storage technology more economic for power generation, industrial applications and hydrogen production; developing technologies to reduce energy requirements of refining and chemical manufacturing facilities; progressing advanced biofuels for transportation and chemicals; and advancing fundamental science and applying technologies in a number of areas that could lead to breakthroughs, redefining its manufacturing processes and products.

  Furthermore, the ECS notes that ExxonMobil Chemical Company is not only a producer of environmentally friendly products, but also has a strong market position in every business line in which it operates, with annual earnings of more than $4 billion in 2017. Many of the Company's chemical products help its customers reduce their greenhouse gas emissions, particularly in high-performance products such as advanced materials that make cars lighter and more fuel efficient and materials for packaging that reduce the energy needed to ship goods around the world.

  As another example of a benefit of the Company's environment-related activities, the Company explains in the ECS how it is responding to the expected new demand for affordable, reliable energy and hydrocarbon-based products. To that end, the Company notes that it is one of the largest producers of natural gas, which can be used to help decarbonize energy production in multiple sectors, and is also a leader in liquefied natural gas. The Company is also the global leader in producing advanced halobutyl rubber, which is used to make synthetic innerliners that keep tires inflated longer, improving air retention in a way that increases fuel economy and lowers emissions; this application in motor vehicles could avoid up to 30 million tonnes per year in carbon dioxide emissions. The Company also states in the ECS that it produces weight-reducing materials resulting in an estimated seven percent fuel economy improvement for every 10 percent reduction in vehicle weight, and produces differentiated fuels and lubricants that help minimize operational costs through improved energy efficiency and extended equipment life.

- The Company explains in the MD&A section of its 2018 Form 10-K (the "**Long-Term Business Outlook**"), and the risk factors sections, its expectations regarding the future global demand for its products, and how those demands are expected to change to include more energy-efficient technologies, natural gas, nuclear power, and renewables. For example, the Company anticipates that total renewable energy is likely to exceed 15 percent of global energy by 2040, and total energy supplied from wind, solar, and biofuels will grow nearly 250 percent from 2016 to 2040. The Company also anticipates that international accords and underlying regional and national regulations covering greenhouse gas emissions will also affect oil and gas supply and demand and other aspects of the Company's business. With this backdrop, the Company explains how it is investing and developing solutions to the business challenges it faces in the future to enhance the Company's own financial performance in the best interest of its shareholders that could also help address the risks of climate change.

- In the Sustainability Report, the Company states that among its performance highlights, it is on track to reduce methane emissions by 15% by 2020, compared with 2016; has avoided 162 million metric tons of greenhouse gas emissions over the past 10 years and 21.5 million metric tons in 2018 alone through its actions; has eliminated or captured and stored 400 million metric tons of carbon dioxide, which is equivalent to the energy-related carbon dioxide emissions associated with about 55 million homes; has interests in approximately 5,400 megawatts of cogeneration capacity in more than 100 installations around the world, which helps generate power more efficiently and leads to reduced greenhouse gas emissions; and maintains a working interest in more than one-fifth of the world's total carbon capture capacity. The Sustainability Report also notes that using energy more efficiently is a powerful tool to reduce emissions, as well as costs, and that according to the Solomon Refining Industry Survey, ExxonMobil is among the world's most energy-efficient refining companies.

- The R&D Highlights list multiple benefits of the $1 billion per year that the Company invests in research and development. These include "$250 million on biofuels research in the last decade," including biofuels made from algae to provide a commercial "renewable, lower-emission fuel for transportation." This website also notes that the Company "has committed $145 million to fund breakthrough energy research" at various universities, which provides the Company with knowledge of significant innovations for commercial use and strategic planning, to "develop new solutions to the world's energy challenges."

Substantial implementation does not require implementation in full or exactly as presented by the Proposal. The Staff has found proposals related to climate change excludable pursuant to 14a-8(i)(10) even if the Company's actions were not identical to the guidelines of the proposal. Both *Entergy Corporation* and *Duke Energy Corporation* permitted exclusion of a shareholder proposal pursuant to 14a-8(i)(10), even though the requested disclosures were not made in precisely the manner contemplated by the proponent. Numerous other letters reinforce this approach. *See Merck & Company, Inc.* (March 14, 2012) (proposal requesting a report on the safe and humane treatment of animals because the company had already provided information on its website and further information was publicly available through disclosures made to the United States Department of Agriculture); *ExxonMobil Corporation* (March 17, 2011) (proposal requesting a report on the steps the company had taken to address ongoing safety concerns where the company's "public disclosures compare[d] favorably with the guidelines of the proposal"); and *ExxonMobil Corporation* (January 24, 2001) (proposal requesting the review of a pipeline project, the development of criteria for involvement in the project and a report to shareholders because it was substantially implemented by prior analysis of the project and publication of such information on the company's website).

The essential objective of the Proposal is for the Company to report "the incurred costs and associated significant and actual benefits . . . from the company's environment-related activities," and this has been substantially implemented by the Company as explained by the Company reports and website summarized above. The existing Company materials compare favorably with the essence of the Proposal, and the Proposal is excludable under Rule 14a-8(i)(10).

C. Supplemental Notification.

This no-action request is being submitted now to address the timing requirements of Rule 14a-8(j). We will notify the Staff and the Proponent supplementally after publication of the 2020 ECS on the Company's website, which is expected to occur in the near future.

CONCLUSION

The Company requests confirmation that the Staff will not recommend any enforcement action if, in reliance on the foregoing, the Company omits the Proposal from its 2020 Proxy Materials. If you should have any questions or need additional information, please contact the undersigned at (212) 450-4539 or louis.goldberg@davispolk.com. If the Staff does not concur with the Company's position, we would appreciate an opportunity to confer with the Staff concerning these matters prior to the issuance of its response.

Respectfully yours,

L. Goldberg

Louis L. Goldberg

Attachment

cc w/ att: James E. Parsons, Exxon Mobil Corporation

Steven J. Milloy

Steven J. Milloy
12309 Briarbush Lane
Potomac, MD 20854
E: [redacted] T: [redacted]

January 22, 2020

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F St, NE
Washington DC 20549
via email: shareholderproposals@sec.gov

Ladies and Gentlemen,

I am responding to the letter of ExxonMobil Corporation (ExxonMobil) dated January 17, 2020 requesting permission from the Staff of the Division of Corporation Finance (Staff) to exclude my shareholder proposal (Proposal) from ExxonMobil's 2020 proxy materials.

ExxonMobil's request is without factual or legal basis and should be denied.

1. The Staff has already denied requests to exclude the same proposal.

I filed the same or substantially similar proposal last year with Duke Energy, Exelon Corporation and ExxonMobil.

The Staff refused to agree with the exclusion requests of Duke Energy[1] or Exelon[2] on the substance of the proposal.

Although the Staff agreed with ExxonMobil's request last year, that agreement was expressly based on the timeliness of providing evidence of ownership and NOT on the substance of the proposal.[3]

So the Staff has already determined that the Proposal is proper under the proxy rules.

[1] https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2019/stevenmilloy031219-14a8.pdf.
[2] https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2019/milloyexelon031219-14a8.pdf.
[3] https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2019/stevenmilloy032819-14a8.pdf.

2. The Proposal is NOT vague or indefinite.

The Staff already specifically decided in the previously cited requests by Duke Energy and Exelon that the Proposal is NOT vague or indefinite. The Staff did NOT consider the issue with last year's ExxonMobil request.

Contrary to ExxonMobil's assertions, the Proposal is straightforward and readily understandable. It explains in plain English its purpose and even provides examples of ExxonMobil's touting and the sort of reporting requested.

ExxonMobil boasts in official reports that it is spending billions of dollars in its "essential role in protecting the environment and addressing the risks of climate change." ExxonMobil boasts that it has spent $9 billion since 2000 to reduce carbon dioxide (CO2) emissions by an average of about 20 MILLION tons per year.

However, ExxonMobil produces about 1.4 BILLION barrels of oil per year, which when burned, produce about 588 MILLION tons of CO2 emissions — almost 30 times greater than its claimed annual emissions reduction. Moreover, global CO2 emissions were 55.3 BILLION tons, according to the United Nations Environment Programme (UNEP). So ExxonMobil's emissions amount to a mere one percent (1%) of global emissions.

The Proposal merely requests that ExxonMobil explain to shareholders what is being accomplished and how much it is costing to reduce emissions, especially in light of the company's business and global emissions.

ExxonMobil's request to the Staff is disingenuous as it merely pretends not to understand what has been requested. The reality is more likely that ExxonMobil does not want to be embarrassed or accountable to shareholders for its unsubstantiated claims.

3. The Proposal does NOT try to manage ExxonMobil's ordinary business operations.

The Staff already decided in the previously cited requests by Duke Energy and Exelon that the Proposal does NOT try to manage ExxonMobil's ordinary business operations. The Staff did NOT consider the issue with last year's ExxonMobil request.

The Proposal merely requests that ExxonMobil report to shareholders. Disclosure to shareholders is a fundamental pillar of the securities laws. Disclosure is not micromanagement. Disclosure does not limit ExxonMobil's technology choices. The purpose of disclosure is to inform shareholders so as to prevent mismanagement and fraud.

The Staff has previously and numerous times rejected arguments that reports to shareholders are efforts to inappropriately interfere in ordinary business operations, including reports calling for disclosure of political contributions, charitable contributions, cost-and benefits of climate-related activities, and many more. The Proposal is no different than any of those.

The environment, especially the climate aspect, are significant policy issues - as the Commission has previously determined with many previous shareholder proposals.

4. The Proposal has <u>NOT</u> already been substantially implemented.

Taking action is <u>NOT</u> the same thing as assessing and reporting on whether the action taken has produce any benefit to anyone.

ExxonMobil's CO2 emissions cuts are not required by law or regulation. They are voluntary. They cost money and require management's attention and efforts. But there is no mention of how anyone or anything (e.g., shareholders, ratepayers, local communities, the climate, the environment) may have benefited from them.

If voluntarily CO2 emissions cuts have actual and tangible benefits, ExxonMobil should disclose to shareholders precisely what those benefits are. Have financial benefits accrued to shareholders? How? How has the climate or environment improved, for example? If there are no benefits, then that should be candidly disclosed.

If the benefits are hypothetical, imaginary or controversial, then that should be disclosed. ExxonMobil has apparently made no such assessments, much less disclosed them, in any report. How are shareholders supposed to monitor and evaluate the use of corporate resources with the sort of unsubstantiated claims presented in various ExxonMobil's reports.

In none of the reports or documents cited by ExxonMobil in its January 17 letter has the company specified what the actual and tangible benefits of its voluntary activities are. <u>It is not clear how merely cutting emissions is a benefit to anyone or anything.</u>

ExxonMobil expects applause for spending billions to merely cut emissions without any obvious benefits. What are the actual and tangible benefits brought about by cutting emissions? Shareholders want to know. If there are none, that should be disclosed, too.

Conclusion: ExxonMobil's request for permission to omit the Proposal from its 2020 proxy materials should be denied.

If you have any questions, I may be contacted at 240-205-1243. *A* copy of this letter has been sent to ExxonMobil and its counsel.

Sincerely,

Steve Milloy

Steven J Milloy

Attachment: Milloy shareholder proposal entitled, "Greenwashing Audit"

Greenwashing Audit

Resolved:

Shareholders request that, beginning in 2020, ExxonMobil publish an annual report of the incurred costs and associated significant and actual benefits that have accrued to shareholders, the public health and the environment, including the global climate, from the company's environment-related activities that are voluntary and that exceed U.S. and foreign compliance and regulatory requirements. The report should be prepared at reasonable cost and omit proprietary information.

Supporting Statement:

The resolution is intended to help shareholders monitor and evaluate whether the company's voluntary activities and expenditures touted as protecting the public health and environment are producing actual and meaningful benefits to shareholders, the public health and the environment, including global climate.

Corporate managements sometimes engage in the practice of "greenwashing," which is defined as the expenditure of shareholder assets on ostensibly environment-related activities but actually undertaken merely for the purpose of improving the company's or management's public image.

Such insincere "green" posturing and associated touting of hypothetical or imaginary benefits to public health and the environment may harm shareholders by wasting corporate assets, and deceiving shareholders and the public by accomplishing nothing real and significant for the public health and environment.

For example, ExxonMobil claimed in its 2019 "Energy and Carbon Summary" report that it:

- Plays "an essential role in protecting the environment and addressing the risks of climate change";
- Reduced its operational emissions by an average of about 20 MILLION tons annually since 2000.
- Spent $9 billion since 2000 on efforts to reduce emissions.

None of these emissions reduction activities are required by law or regulation.

But in 2018 alone:

- Exxon produced about 1.4 BILLION barrels of oil which, when burned, produced about 588 MILLION tons of carbon dioxide (CO_2).

- Global emissions of CO2-equivalents in 2018 were about 55.3 BILLION tons.

So:

- While ExxonMobil touts its operational reductions in CO2, it sells products that, when burned by consumers, emit almost 30 times more CO2.

- ExxonMobil's products when burned produce CO2 emissions that amount to a mere one percent (1%) of global manmade emissions.

Although ExxonMobil's operational emissions cuts and the emissions from its products are both meaningless in larger context ExxonMobil bizarrely, if not falsely claims that it plays "an essential role in… addressing the risks of climate change."

So, what are the actual benefits to shareholders and the climate of ExxonMobil's multibillion-dollar bid to reduce its CO2 emissions. By how much, in what way, and when will any of these activities reduce, alter or improve climate change, for example?

The information and honesty requested by this proposal is not already contained in any ExxonMobil report. As none of them present the actual and significant cost-benefit details requested here, they may all be reasonably suspected of being examples of don't-look-behind-the-curtain corporate greenwashing propaganda.

ExxonMobil should report to shareholders what are the actual benefits being produced by its voluntary and highly touted environmental activities. Are they real and worthwhile, or just greenwashing?