



DIVISION OF  
CORPORATION FINANCE

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

March 24, 2023

Louis Goldberg  
Davis Polk & Wardwell LLP

Re: Exxon Mobil Corporation (the "Company")  
Incoming letters dated January 13, 2023

Dear Louis Goldberg:

This letter is in response to your correspondence concerning the shareholder proposals (the "Proposals") submitted to the Company by Andrew Behar and Anna Marie Lyles (each a "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

We are unable to concur in your view that the Company may exclude the Proposals under Rule 14a-8(c). In our view, neither Proponent submitted more than one of the Proposals, directly or indirectly, to the Company.

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2022-2023-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Danielle Fugere  
As You Sow

Anna Marie Lyles

January 13, 2023

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549  
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 Andrew Behar, delegating Danielle Fugere as his agent (the “**Proponent**”) for inclusion in the proxy materials the Company intends to distribute in connection with its 2023 Annual Meeting of Shareholders (the “**2023 Proxy Materials**”). The Proposal and related correspondence 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 2023 Proxy Materials.

Pursuant to Staff Legal Bulletin No. 14D (CF), Shareholder Proposals (Nov. 7, 2008), Question C, we have submitted this letter 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 2023 Proxy Materials. This letter constitutes the Company’s statement of the reasons it deems the omission of the Proposal to be proper. We have been advised by the Company as to the factual matters set forth herein.

## **THE PROPOSAL**

The Proposal states:

RESOLVED: Shareholders request that ExxonMobil, at reasonable cost and omitting proprietary information, disclose a recalculated emissions baseline that excludes the aggregated GHG emissions from material asset divestitures occurring since 2016, the year ExxonMobil uses to baseline its emissions.

## **REASON FOR EXCLUSION OF THE PROPOSAL**

The Company believes that the Proposal may be properly omitted from the 2023 Proxy Materials pursuant to Rule 14a-8(c) and Rule 14a-8(f)(1) because the Proponent has exceeded the one-proposal limitation.

## BACKGROUND

The Company received two proposals for inclusion in the 2023 Proxy Materials that it believes are each indirectly submitted by As You Sow (“**AYS**”). In addition, AYS is acting as a representative in connection with a third proposal submitted for inclusion in the 2023 Proxy Materials. According to the AYS website, AYS “represents investors across a broad range of ESG issue areas, empowering shareholders through the use of shareholder resolutions.”<sup>1</sup>

On December 5, 2022, the Company received the Proposal. According to the AYS website, the Proponent is the CEO of AYS, and his agent is the President and Chief Counsel of AYS.<sup>2</sup> Because the Proposal did not demonstrate any proof of ownership, on December 19, 2022, within 14 days of the date the Company received the Proposal, the Company sent the Proponent a deficiency notice (the “**First Deficiency Notice**”), noting that the Proponent had not demonstrated that he owned the requisite shares for the applicable period of time in order to be eligible to submit the Proposal pursuant to Rule 14a-8(b)(2). The Proponent responded on December 28, 2022 and included documentation satisfying Rule 14a-8(b)(2).

On December 8, 2022, the Company received a proposal from AYS as a representative of the Meyer Memorial Trust (the “**Second Proposal**”), which, along with related correspondence, is attached hereto as Exhibit B.

Also on December 8, 2022, the Company received a proposal submitted by Anna Marie Lyles (the “**Third Proposal**”), which, along with related correspondence, is attached hereto as Exhibit C.

After the Proponent responded to the First Deficiency Notice, the Company, in connection with its preparation for potential engagement with Ms. Lyles, the proponent of the Third Proposal, became aware that the AYS website lists Ms. Lyles (identified therein and in other professional contexts as “Annarie Lyles”) as a member of the board of directors and the treasurer of AYS.<sup>3</sup> The Company determined that AYS, as an entity with the Proponent, his agent and Ms. Lyles under its control as employees (within the meaning of the 2020 Release as defined and discussed below), had indirectly submitted more than one proposal, in violation of Rule 14a-8(c). The Company was not initially aware of Ms. Lyles’ employment by AYS because the Third Proposal was not submitted on AYS letterhead, does not make any direct reference to AYS’ involvement in the submission and Ms. Lyles, in her submission of the Third Proposal, used a variation (Anna Marie Lyles) of the name that she is known by in her capacity as a director and the treasurer of AYS (Annarie Lyles).<sup>4</sup> On January 6, 2023, as soon as it became aware of this deficiency, the Company sent the Proponent a second deficiency notice (the “**Second Deficiency Notice**”), expressly identifying the multiple proposal deficiency and explaining the steps the Proponent could take to cure such deficiency.

To date, the Proponent has not responded to the Second Deficiency Notice. Pursuant to Rule 14a-8(j), if a company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The Company is filing this letter based on its current expectation with respect to when it may be filing its definitive proxy statement, in order to comply with Rule 14a-8(j).

<sup>1</sup> <https://www.asyousow.org/resolutions-tracker>.

<sup>2</sup> <https://www.asyousow.org/about-us/staff>.

<sup>3</sup> <https://www.asyousow.org/about-us/staff/board-of-directors>.

<sup>4</sup> A public social media profile identifies “Annarie Lyles” as a managing director at Bio-Gist Ventures, LLC and a member of the board of directors and the treasurer of AYS, while public listing websites for the business Bio-Gist Ventures, LLC identify “Anna Marie Lyles” as an employee and list the same address provided by the Proponent in connection with the Proposal. See <https://www.linkedin.com/in/annarielyles>; <https://www.allbiz.com/business/bio-gist-ventures-llc-609-497-0340>; <https://www.buzzfile.com/business/bio-gist-ventures-llc-609-497-0340>.

The Company notes that it also sent the Second Deficiency Notice to Ms. Lyles, with respect to the Third Proposal. The Company is separately requesting to exclude the Third Proposal through another no-action request letter.

***The Proposal May Be Excluded Under Rule 14a-8(c) and Rule 14a-8(f)(1) Because the Proponent, Through AYS, Has Exceeded the One-Proposal Limitation.***

The Company believes that it may exclude the Proposal pursuant to Rule 14a-8(c) and Rule 14a-8(f)(1) because it was indirectly submitted by AYS, in violation of the one-proposal limitation.

In 2020, Rule 14a-8(c) was amended to provide that “[e]ach *person* may submit no more than one proposal, *directly or indirectly*, to a company for a particular shareholders’ meeting. A person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders’ meeting” (emphasis added). The Commission first adopted this rule over 40 years ago, noting in Release No. 12999 (Nov. 22, 1976) (the “**1976 Release**”) that it was responding to the concern that some “proponents ... [exceed] the bounds of reasonableness ... by submitting excessive numbers of proposals” and that “[s]uch practices are inappropriate under Rule 14a-8 not only because they constitute an unreasonable exercise of the right to submit proposals at the expense of other shareholders but also because they tend to obscure other material matters in the proxy statements of issuers, thereby reducing the effectiveness of such documents.” The Commission explained in Release No. 34-89964 (Sept. 23, 2020) (the “**2020 Release**”) that, for the purposes of Rule 14a-8(c), “entities and all persons under their control, including employees will be treated as a ‘person’ for purposes of the amendment.”

The Company recognizes that the 2020 Release discusses the scope of the term “person” in the context of the example provided of different employees of an investment advisor submitting multiple proposals as a representative on behalf of more than one shareholder. Although AYS is not, according to one of its affiliate websites, an investment adviser,<sup>5</sup> the AYS website also makes clear that the firm frequently submits shareholder proposals on behalf of clients.<sup>6</sup> In fact, AYS’s own publicly available tracker of its shareholder proposals advertises that both the Proposal<sup>7</sup> and the Second Proposal<sup>8</sup> are proposals “on which As You Sow represents investors.”

As of the date of this letter, AYS’ tracker does not list the Third Proposal as one of its shareholder proposals.<sup>9</sup> Nonetheless, given that the proponent, Ms. Lyles, just like the Proponent of the Proposal, is (based on AYS’ website) an employee of an entity that routinely submits shareholder proposals on behalf of clients, the submission of the Proposal fits squarely within the intent of the 2020 Release with respect to limiting such “persons” to one shareholder proposal submission. Just like the example used in the 2020 Release regarding employees of an investment adviser under common control, here, AYS employees have submitted more than one proposal to the Company.

In *Consolidated Freightways, Inc. (Recon. avail. Feb. 23, 1994)*, the Staff concurred that proposals submitted by two different shareholders had violated the predecessor to Rule 14a-8(c), stating that “the one proposal limitation applies in those instances where a person (or entity) attempts to avoid the one proposal

<sup>5</sup> <https://fossilfreefunds.org/legal>.

<sup>6</sup> <https://www.asyousow.org/resolutions-tracker>.

<sup>7</sup> <https://www.asyousow.org/resolutions/2022/12/9-exxon-petrochemical-risk-single-use-plastic>.

<sup>8</sup> <https://www.asyousow.org/resolutions/2022/12/6-exxonmobil-report-asset-transfers-ghg-emissions>.

<sup>9</sup> However, the Company notes that for the 2022 proxy season, AYS’ tracker advertised that it represented investors in two shareholder proposals submitted to The Kraft Heinz Company, one of which listed the lead filer as AYS, with the other listing the lead filer as “Anna Marie Lyles,” the name used by the Proponent in connection with the Proposal. See <https://www.asyousow.org/resolutions/2021/11/23-kraft-heinz-pesticide-use-in-agricultural-supply-chain-yrsrs>; <https://www.asyousow.org/resolutions/2021/11/24-kraft-heinz-sustainable-packaging-policies-for-plastics>.



limitation through maneuvers, such as having persons they control submit a proposal.” See *also BankAmerica Corp.* (Feb. 8, 1996) (concurring in the exclusion of a proposal where the company also received proposals by proponents under “substantial influence” of the first proponent given that they were either related to or employed by the first proponent); and *Weyerhaeuser Co.* (Dec. 20, 1995) (concurring in the exclusion of multiple proposals where the son of a proponent who had submitted another proposal was determined to be “acting on behalf of, under the control of, or alter ego of the [proponent]”). Likewise, the Staff has consistently concurred in excluding proposals where a shareholder has coordinated with family members, friends, and associates to submit proposals to contravene the one-proposal limit rule. See, e.g., *General Electric Co.* (Jan. 10, 2008) and *Staten Island Bancorp, Inc.* (Feb. 27, 2002).

Here, given that the Proponent is the CEO of AYS, the Company believes, pursuant to the 2020 Release, he is a person (i.e., an employee) under the control of AYS. Just as in *Weyerhaeuser*, the Proponent is “acting on behalf of, under the control of, or alter ego of” AYS. Pursuant to the 2020 Release, the Company believes that he should be treated together with AYS as a “person.” Thus, with respect to the Proposal, AYS has indirectly submitted more than one proposal to the Company to be included in its 2023 Proxy Materials.

The Company notes that this situation, of related persons employing a strategy to submit multiple proposals under different proponent names, has been one that the Commission has sought to avoid since the adoption of the one-proposal restriction in 1976, when the Commission stated that it was “aware of the possibility that some proponents may attempt to evade the new limitations through various maneuvers, such as having other persons whose securities they control submit ... proposals each in their own names.” 1976 Release. Further, the 2020 Release indicates that it is the Commission’s intent to prohibit a “person,” which for an entity like AYS that is in the business of advising clients on the submission of shareholder proposals, would include all persons under its control, including employees, from submitting more than one proposal to a company. Because AYS has indirectly submitted more than one proposal to be included in the 2023 Proxy Materials, the Company believes that the Proposal violates the one-proposal limitation under Rule 14a-8(c).

Under Rule 14a-8(f)(1), it is permissible to exclude proposals submitted by a proponent who fails to satisfy the eligibility requirements under Rule 14a-8(c). Therefore, pursuant to Rules 14a-8(c) and 14a-8(f)(1), the Company believes that it may exclude the Proposal from its 2023 Proxy Materials.

## CONCLUSION

For the reasons set forth above, the Company believes that the Proposal may be excluded from its 2023 Proxy Materials pursuant to Rule 14a-8(c) and Rule 14a-8(f)(1). The Company respectfully requests the Staff’s concurrence with its decision to exclude the Proposal from its 2023 Proxy Materials and further requests confirmation that the Staff will not recommend enforcement action to the SEC if it so excludes the Proposal.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this request. Please do not hesitate to call me at (212) 450-4539 or James Parsons at james.e.parsons@exxonmobil.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,



Louis Goldberg

Attachment

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

Danielle Fugere

**WHEREAS:** The economic risks associated with climate change exist in the real world rather than on company balance sheets. Transferring emissions from one company to another may reduce balance sheet emissions but does not mitigate company or stakeholder exposure to climate risk or contribute to the goal of limiting global temperature rise to 1.5 degrees Celsius. In the aggregate, upstream oil and gas assets are moving from operations with stronger climate commitments to operators with weaker climate targets and disclosures.<sup>1</sup>

The Glasgow Financial Alliance for Net Zero states that "divestment of carbon-intensive assets can be ineffective and even lead to real-world increases in emissions."<sup>2</sup> As such, these divestments should not be counted as emissions reductions.

To accurately account for greenhouse gas (GHG) emissions reductions, the Greenhouse Gas Protocol provides that companies should recalculate base year emissions in the event of a "transfer of ownership or control of emissions-generating activities."<sup>3</sup> Oil and gas industry association IPIECA similarly recommends "adjustments to the base year emissions" to account for asset divestiture, to avoid giving the appearance of "increases or decreases in emissions, when in fact . . . emissions would merely be transferred from one company to another."<sup>4</sup>

Since 2016, ExxonMobil reports absolute Scope 1 and 2 emissions reductions of roughly 10% on both equity and operated bases.<sup>5</sup> However, between 2017 and 2021, ExxonMobil sold more assets than any other American oil and gas company except Chevron, ranking fourth globally among sellers.<sup>6</sup> It is unclear how ExxonMobil accounts for these divestitures in its emissions reporting. Therefore, shareholders cannot determine whether ExxonMobil's reported GHG reductions are the result of operational improvements or of transferring emissions off its books.

In contrast, peer company Devon Energy recalculates its baseline when asset divestitures or investments result in "a change to its emissions baseline of 5% or higher" to ensure accuracy and comparability of emissions reporting.<sup>7</sup> Devon notes that this "recalculation methodology affirms our commitment to structurally drive down emissions, rather than divesting assets as a means to achieve our ambitious emissions reduction targets."<sup>8</sup> Investors deserve the same transparency from ExxonMobil.

**RESOLVED:** Shareholders request that ExxonMobil, at reasonable cost and omitting proprietary information, disclose a recalculated emissions baseline that excludes the aggregated GHG emissions from material asset divestitures occurring since 2016, the year ExxonMobil uses to baseline its emissions.

**SUPPORTING STATEMENT:** Proponents recommend disclosing, at management's discretion:

<sup>1</sup> <https://business.edf.org/files/Transferred-Emissions-How-Oil-Gas-MA-Hamper-Energy-Transition.pdf> p. 4

<sup>2</sup> [https://assets.bbhub.io/company/sites/63/2021/11/G\\_FANZ-Progress-Report.pdf](https://assets.bbhub.io/company/sites/63/2021/11/G_FANZ-Progress-Report.pdf) p. 52

<sup>3</sup> <https://ghgprotocol.org/sites/default/files/standards/ghg-protocol-revised.pdf> p. 35

<sup>4</sup> <https://www.ipieca.org/resources/good-practice/petroleum-industry-guidelines-for-reportinggreenhouse-gas-emissions-2nd-edition/> p. 39

<sup>5</sup> <https://corporate.exxonmobil.com/-/media/global/files/advancing-climate-solutions-progressreport/2022-july-update/exxonmobil-advancing-climate-solutions-2022-progressreport.pdf?la=en&hash=3A2B299463CES0DCDD6A9595E49AC3030CFF4350>

<sup>6</sup> <https://business.edf.org/files/Transferred-Emissions-How-Oil-Gas-MA-Hamper-Energy-Transition.pdf> p.22

<sup>7</sup> [https://dvnweb.azureedge.net/assets/documents/Sustainability/DVN\\_2022\\_SustainabilityReport.pdf](https://dvnweb.azureedge.net/assets/documents/Sustainability/DVN_2022_SustainabilityReport.pdf) p. 20

<sup>8</sup> Ibid.

- The emissions associated with ExxonMobil's material asset divestments since 2016;
- What portion, if any, of ExxonMobil's current emissions reduction targets relies on accounting for asset transfers as emissions reductions;
- A base year emissions recalculating policy establishing a threshold for future recalculations related to divestitures.

## Englande, Sherry M

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**From:** Andrew Behar [REDACTED]  
**Sent:** Monday, December 05, 2022 8:37 PM  
**To:** Shareholder Relations /SM  
**Cc:** [REDACTED]  
**Subject:** ExxonMobil Climate Shareholder Proposal  
**Attachments:** Exxon Mobil Climate Shareholder Proposal Lead Filing Packet.pdf

December 5, 2022

Craig S. Morford  
Vice President, Corporate Secretary, and General Counsel  
ExxonMobil Corporation  
[REDACTED]  
[REDACTED]

Cc: Investor Relations, [REDACTED]  
Danielle Fugere, [REDACTED]

Dear Mr. Morford,

I am submitting the attached shareholder proposal, which I support, for a vote at ExxonMobil's 2023 annual shareholder meeting requesting ExxonMobil's Board to report on the impact of asset transfers on disclosed greenhouse gas emissions. I will meet Rule 14a-8 requirements including the continuous ownership of the required stock value until after the date of the Company's next annual shareholder meeting in 2023. These shares are held by myself, Andrew Behar.

My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

I am available to meet with Exxon Mobil Corporation's representative at the following times:

- December 16, 2022 at 4:00pm Central
- December 16, 2022 at 4:30pm Central

**This letter confirms that I am delegating Danielle Fugere to act as my agent** regarding this Rule 14a-8 proposal, including negotiations and/or modification, and presentation at the forthcoming shareholder meeting. Please direct all future communications regarding my rule 14a-8 proposal to Danielle Fugere at [REDACTED] to facilitate prompt communication. Please send all correspondence with a copy to [REDACTED].

Your consideration and that of the Board of Directors is appreciated in support of the long-term performance of our company. You can avoid the time and expense of filing a deficiency letter to verify ownership by simply acknowledging receipt of my proposal promptly by email to [REDACTED]. That will prompt me to request the required letter from my broker and to submit it to you.

Sincerely,  
*Andrew Behar*  
Shareholder  
Enclosures

- Shareholder Proposal

**VIA FEDEX & EMAIL**

December 5, 2022

Craig S. Morford  
Vice President, Corporate Secretary, and General Counsel  
ExxonMobil Corporation

[REDACTED]  
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Sincerely,



Andrew Behar  
Shareholder

Enclosures

- Shareholder Proposal

**WHEREAS:** The economic risks associated with climate change exist in the real world rather than on company balance sheets. Transferring emissions from one company to another may reduce balance sheet emissions but does not mitigate company or stakeholder exposure to climate risk or contribute to the goal of limiting global temperature rise to 1.5 degrees Celsius. In the aggregate, upstream oil and gas assets are moving from operators with stronger climate commitments to operators with weaker climate targets and disclosures.<sup>1</sup>

The Glasgow Financial Alliance for Net Zero states that “divestment of carbon-intensive assets can be ineffective and even lead to real-world increases in emissions.”<sup>2</sup> As such, these divestments should not be counted as emissions reductions.

To accurately account for greenhouse gas (GHG) emissions reductions, the Greenhouse Gas Protocol provides that companies should recalculate base year emissions in the event of a “transfer of ownership or control of emissions-generating activities.”<sup>3</sup> Oil and gas industry association IPIECA similarly recommends “adjustments to the base year emissions” to account for asset divestiture, to avoid giving the appearance of “increases or decreases in emissions, when in fact. . . emissions would merely be transferred from one company to another.”<sup>4</sup>

Since 2016, ExxonMobil reports absolute Scope 1 and 2 emissions reductions of roughly 10% on both equity and operated bases.<sup>5</sup> However, between 2017 and 2021, ExxonMobil sold more assets than any other American oil and gas company except Chevron, ranking fourth globally among sellers.<sup>6</sup> It is unclear how ExxonMobil accounts for these divestitures in its emissions reporting. Therefore, shareholders cannot determine whether ExxonMobil’s reported GHG reductions are the result of operational improvements or of transferring emissions off its books.

In contrast, peer company Devon Energy recalculates its baseline when asset divestitures or investments result in “a change to its emissions baseline of 5% or higher” to ensure accuracy and comparability of emissions reporting.<sup>7</sup> Devon notes that this “recalculation methodology affirms our commitment to structurally drive down emissions, rather than divesting assets as a means to achieve our ambitious emissions reduction targets.”<sup>8</sup> Investors deserve the same transparency from ExxonMobil.

**RESOLVED:** Shareholders request that ExxonMobil, at reasonable cost and omitting proprietary information, disclose a recalculated emissions baseline that excludes the aggregated GHG emissions from material asset divestitures occurring since 2016, the year ExxonMobil uses to baseline its emissions.

**SUPPORTING STATEMENT:** Proponents recommend disclosing, at management’s discretion:

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<sup>1</sup> <https://business.edf.org/files/Transferred-Emissions-How-Oil-Gas-MA-Hamper-Energy-Transition.pdf> p. 4

<sup>2</sup> <https://assets.bbhub.io/company/sites/63/2021/11/GFANZ-Progress-Report.pdf> p. 52

<sup>3</sup> <https://ghgprotocol.org/sites/default/files/standards/ghg-protocol-revised.pdf> p. 35

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<sup>5</sup> <https://corporate.exxonmobil.com/-/media/global/files/advancing-climate-solutions-progress-report/2022-july-update/exxonmobil-advancing-climate-solutions-2022-progress-report.pdf?la=en&hash=3A2B299463CE50DCDD6A9595E49AC3030CFF4350>

<sup>6</sup> <https://business.edf.org/files/Transferred-Emissions-How-Oil-Gas-MA-Hamper-Energy-Transition.pdf> p. 22

<sup>7</sup> [https://dvnweb.azureedge.net/assets/documents/Sustainability/DVN\\_2022\\_SustainabilityReport.pdf](https://dvnweb.azureedge.net/assets/documents/Sustainability/DVN_2022_SustainabilityReport.pdf) p. 20

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RECEIVED

DEC 07 2022

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VIA FEDEX & EMAIL

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<sup>1</sup> <https://business.edf.org/files/Transferred-Emissions-How-Oil-Gas-MA-Hamper-Energy-Transition.pdf> p. 4

<sup>2</sup> <https://assets.bbhub.io/company/sites/63/2021/11/GFANZ-Progress-Report.pdf> p. 52

<sup>3</sup> <https://ghgprotocol.org/sites/default/files/standards/ghg-protocol-revised.pdf> p. 35

<sup>4</sup> <https://www.ipieca.org/resources/good-practice/petroleum-industry-guidelines-for-reporting-greenhouse-gas-emissions-2nd-edition/> p. 39

<sup>5</sup> <https://corporate.exxonmobil.com/-/media/global/files/advancing-climate-solutions-progress-report/2022-july-update/exxonmobil-advancing-climate-solutions-2022-progress-report.pdf?la=en&hash=3A2B299463CE50DCDD6A9595E49AC3030CFF4350>

<sup>6</sup> <https://business.edf.org/files/Transferred-Emissions-How-Oil-Gas-MA-Hamper-Energy-Transition.pdf> p. 22

<sup>7</sup> [https://dvnweb.azureedge.net/assets/documents/Sustainability/DVN\\_2022\\_SustainabilityReport.pdf](https://dvnweb.azureedge.net/assets/documents/Sustainability/DVN_2022_SustainabilityReport.pdf) p. 20

<sup>8</sup> *Ibid.*

- The emissions associated with ExxonMobil's material asset divestments since 2016;
- What portion, if any, of ExxonMobil's current emissions reduction targets relies on accounting for asset transfers as emissions reductions;
- A base year emissions recalculation policy establishing a threshold for future recalculations related to divestitures.



Express

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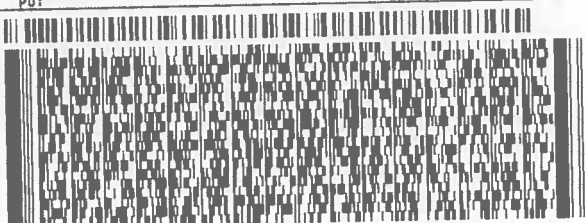
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Central Mail  
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EXXONMOBIL CORP



(000) 000-0000  
INU:  
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DEPT:



FedEx  
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TUE - 06 DEC 10:30A  
PRIORITY OVERNIGHT

AD DALA

75039  
TX-US DFW



## Englande, Sherry M

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**From:** Thomas Peterson [REDACTED]  
**Sent:** Thursday, December 15, 2022 3:07 PM  
**To:** Englande, Sherry M  
**Cc:** Danielle Fugere  
**Subject:** Re: Exxon - Transferred Emissions Disclosure

**Categories:** External Sender

### External Email - Think Before You Click

Ms. Englande,

I hope this message finds you well. We would like to follow up on our request for a meeting to discuss ExxonMobil's approach to disclosing the greenhouse gas emissions associated with its asset divestitures, and to ensuring that its emissions reduction efforts result in real-world reductions. These concerns are outlined in greater detail in the letter attached to my previous email.

Would you or relevant members of your team be available to discuss these issues in January?

Thank you, and happy holidays,

Thomas Peterson

Thomas Peterson  
Say on Climate Associate  
*As You Sow*

[REDACTED]  
[REDACTED] | [www.asyousow.org](http://www.asyousow.org)



-Empowering Shareholders to Change Corporations for Good-

---

**From:** Thomas Peterson [REDACTED]  
**Sent:** Monday, November 28, 2022 2:37 PM  
**To:** [REDACTED]  
**Cc:** Danielle Fugere [REDACTED]  
**Subject:** Exxon - Transferred Emissions Disclosure

Sherry Englande,

I hope this message finds you well. We are interested in discussing shareholder concerns regarding ExxonMobil's approach to disclosing the greenhouse gas emissions associated with its asset divestitures, and

to ensuring that its emissions reduction efforts result in real-world reductions. Please see the attached letter, which outlines our specific concerns and recommendations.

We would like to set up a meeting with relevant company representatives in the next few weeks to discuss the company's approach to these issues. We look forward to hearing from you.

Best wishes,

Thomas Peterson  
Say on Climate Associate  
*As You Sow*


[Redacted]  
[Redacted] | [www.asyousow.org](http://www.asyousow.org)



-Empowering Shareholders to Change Corporations for Good-



November 28, 2022

Sherry Englande  
Manager, ESG Engagement  
ExxonMobil Corporation  


Sherry Englande,

We at *As You Sow* would like to request a dialogue with ExxonMobil representatives to discuss the company's approach to disclosing its transferred greenhouse gas emissions and to ensuring that its divestitures do not result in real-world increases in emissions.

Recent [research](#) from the Environmental Defense Fund (EDF) shows that, in aggregate, upstream oil and gas assets are moving from operators with strong climate commitments to operators with weak climate standards and disclosure practices, posing a real risk to the energy transition.

The Glasgow Financial Alliance for Net Zero, representing over 450 finance firms with \$130 trillion in assets, has [asserted](#) that "divestment of carbon-intensive assets can be ineffective and even lead to real-world increases in emissions" if assets flow from responsible to irresponsible owners.

In the period between 2017 and 2021, ExxonMobil sold more assets than almost any other American oil and gas company (second only to Chevron) and ranked fourth globally among sellers, according to EDF's recent report.

Absent disclosure of the material impact of divestitures on ExxonMobil's greenhouse gas emissions, it is unclear to what extent ExxonMobil's reported emissions reductions since 2016 resulted in real-world emissions decreases. Furthermore, without this disclosure, investors also lack insight into the extent to which ExxonMobil's forward-looking emissions targets and aspirations will yield genuine emissions reductions.

We therefore seek greater clarity on the material impact of divestments on ExxonMobil's reported greenhouse emissions since 2016. We would like to set up a meeting with relevant company representatives in the next few weeks to discuss the company's approach to these risks. We look forward to hearing from you.

Sincerely,



Danielle Fugere  
President and Chief Counsel  
*As You Sow*

## Englande, Sherry M

---

**From:** Englande, Sherry M on behalf of Shareholder Relations /SM  
**Sent:** Monday, December 19, 2022 3:15 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED] Andrew Behar  
**Subject:** RE: ExxonMobil Climate Shareholder Proposal  
**Attachments:** 2022-1214 Ack Ltr Fugere.pdf; Attachments\_SEC Rule 14a-8\_Nov-4-2020 and SLB 14F\_Oct-18-2011.pdf; Attachments\_SEC Rule 14a-8\_SLB 14\_July-13-2001.pdf

**Sent on behalf of Jennifer Driscoll:**

Dear Ms. Fugere -

Please see the attached letter regarding the shareholder proposal submitted by Mr. Behar.

Thank you  
The ExxonMobil Shareholder Relations Team

---

**From:** Andrew Behar [REDACTED]  
**Sent:** Monday, December 05, 2022 8:37 PM  
**To:** Shareholder Relations /SM [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** ExxonMobil Climate Shareholder Proposal

December 5, 2022

Craig S. Morford  
Vice President, Corporate Secretary, and General Counsel  
ExxonMobil Corporation

[REDACTED]  
Cc: Investor Relations, [REDACTED]  
Danielle Fugere, [REDACTED]

Dear Mr. Morford,

I am submitting the attached shareholder proposal, which I support, for a vote at ExxonMobil's 2023 annual shareholder meeting requesting ExxonMobil's Board to report on the impact of asset transfers on disclosed greenhouse gas emissions. I will meet Rule 14a-8 requirements including the continuous ownership of the required stock value until after the date of the Company's next annual shareholder meeting in 2023. These shares are held by myself, Andrew Behar.

My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

I am available to meet with Exxon Mobil Corporation's representative at the following times:

- December 16, 2022 at 4:00pm Central
- December 16, 2022 at 4:30pm Central

**This letter confirms that I am delegating Danielle Fugere to act as my agent** regarding this Rule 14a-8 proposal, including negotiations and/or modification, and presentation at the forthcoming shareholder meeting. Please direct all future communications regarding my rule 14a-8 proposal to Danielle Fugere at [REDACTED] to facilitate prompt communication. Please send all correspondence with a copy to [REDACTED]

Your consideration and that of the Board of Directors is appreciated in support of the long-term performance of our company. You can avoid the time and expense of filing a deficiency letter to verify ownership by simply acknowledging receipt of my proposal promptly by email to [REDACTED]. That will prompt me to request the required letter from my broker and to submit it to you.

Sincerely,  
**Andrew Behar**  
Shareholder  
Enclosures

- Shareholder Proposal



**VIA EMAIL**

December 19, 2022

Danielle Fugere  
President & Chief Counsel  
Andrew Behar  
[REDACTED]  
[REDACTED]

Dear Ms. Fugere:

Thank you for your interest in ExxonMobil. This will acknowledge receipt of the proposal concerning an adjustment to greenhouse gas reporting (the "Proposal"), for which you are acting as representative of Andrew Behar (the "Proponent") in connection with ExxonMobil's 2023 annual meeting of shareholders.

We wanted to let you know that the Proposal contains certain procedural deficiencies, which the Securities and Exchange Commission ("SEC") regulations require us to bring to your attention. Let me elaborate on them for your benefit.

#### *Ownership Eligibility*

In order to be eligible to submit a shareholder proposal, Rule 14a-8, as amended (copy enclosed), requires that each proponent must have continuously held, as of the date the proposal was submitted, at least (i) \$2,000 in market value of the company's securities entitled to vote on the proposal at the meeting for at least three years, (ii) \$15,000 in market value of the company's securities entitled to vote on the proposal at the meeting for at least two years or (iii) \$25,000 in market value of the company's securities entitled to vote on the proposal at the meeting for at least one year, for the applicable period through and including the date the shareholder proposal was submitted.

For this Proposal, the date of submission is December 5, 2022, which is the date the Proposal was received electronically by email.

Note that the SEC rules do not permit a shareholder to aggregate the Proponent's share holdings with those of another shareholder or group of shareholders to meet the ownership eligibility requirement.

#### *Method for Demonstrating Proof of Ownership*

Mr. Behar does not appear in our records as a registered shareholder. Moreover, to date we have not received proof that he has satisfied these ownership requirements. To remedy this deficiency, he, or you as his representative, must submit sufficient proof verifying his continuous

ownership of the requisite number of ExxonMobil shares for the applicable time period preceding and including December 5, 2022.

As explained in Rule 14a-8(b) and SEC staff guidance, sufficient proof must be in the form of:

- a written statement from the "record" holder of Mr. Behar's shares (usually a broker or a bank) verifying that he continuously held the requisite number of ExxonMobil shares for the applicable time period preceding and including December 5, 2022; or
- if Mr. Behar has filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting his ownership of the requisite number of ExxonMobil shares as of or before the date on which the required holding period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that he continuously held the requisite number of ExxonMobil shares for the applicable time period preceding and including December 5, 2022.

If you, as Mr. Behar's representative, intend to demonstrate ownership by submitting a written statement from the "record" holder of the shares as set forth in the first bullet point above, please note that most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company ("DTC"), a registered clearing agency that acts as a securities depository (DTC is also known through the account name of Cede & Co.). Such brokers and banks are often referred to as "participants" in DTC. In Staff Legal Bulletin No. 14F (October 18, 2011) (copy enclosed), the SEC staff has taken the view that only DTC participants should be viewed as "record" holders of securities that are deposited with DTC. As the SEC adopted amendments to Rule 14a-8 that became effective in 2021, please note that Staff Legal Bulletin No. 14F does not reflect those amendments and to the extent any provisions are inconsistent, Rule 14a-8 governs in all respects.

You can confirm whether Mr. Behar's broker or bank is a DTC participant by asking his broker or bank or by checking the listing of current DTC participants, which is available on the internet at: <https://www.dtcc.com/client-center/dtc-directories>. In these situations, shareholders need to obtain proof of ownership from the DTC participant through which the securities are held, as follows:

- If Mr. Behar's broker or bank is a DTC participant, then you need to submit a written statement from his broker or bank verifying that he continuously held the requisite number of ExxonMobil shares for the applicable time period preceding and including December 5, 2022.
- If Mr. Behar's broker or bank is not a DTC participant, then you need to submit proof of ownership from the DTC participant through which the securities are held verifying that he continuously held the requisite number of ExxonMobil shares for the applicable time period preceding and including December 5, 2022. You should be able to find out who this DTC participant is by asking Mr. Behar's broker or bank. If his broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through his account statements because the clearing broker identified on his account statements will generally be a DTC participant. If the DTC participant that holds his shares knows his broker's or bank's holdings, but does not know his holdings, you need to satisfy the proof of

ownership requirement by obtaining and submitting two proof of ownership statements verifying that for the applicable period preceding and including December 5, 2022, the required amount of securities were continuously held – one from Mr. Behar’s broker or bank, confirming his ownership, and the other from the DTC participant, confirming the broker or bank’s ownership.

In the event there are co-filers for this Proposal, Rule 14a-8 requires that all co-filers must either agree to the same dates and times of availability or identify a single lead filer who will provide dates and times of the lead filer’s availability to engage on behalf of all co-filers.

The SEC’s rules require that this deficiency we have identified be remedied, and any response to this letter must be postmarked or transmitted electronically to us no later than 14 calendar days from the date this letter is received. Please mail any response to me at ExxonMobil at the address shown above. Alternatively, you may send your response to me via facsimile at [REDACTED] or by email to [REDACTED]. The failure to correct the deficiencies within this time period will provide the company with a basis to exclude the Proposal from the company’s proxy statement for the 2023 annual meeting.

You should note that, if the Proposal is not withdrawn or excluded, you or your representative, who is qualified under New Jersey law to present the Proposal on your behalf, must attend the annual meeting in person to present the Proposal. Under New Jersey law, only shareholders or their duly constituted proxies are entitled as a matter of right to attend the meeting.

If you intend for a representative to present the Proposal, you must provide documentation that specifically identifies your intended representative by name and specifically authorizes the representative to act as Mr. Behar’s proxy at the annual meeting. To be a valid proxy entitled to attend the annual meeting, the representative must have the authority to vote Mr. Behar’s shares at the meeting. A copy of this authorization meeting state law requirements should be sent to my attention in advance of the meeting. The authorized representative should also bring an original signed copy of the proxy documentation to the meeting, together with photo identification if requested, so that our counsel may verify the representative’s authority to act on your behalf prior to the start of the meeting.

In the event there are co-filers for this Proposal and in light of the guidance in SEC Staff Legal Bulletin No. 14F dealing with co-filers of shareholder proposals, it is important to ensure that, you as Mr. Behar’s representative, have clear authority to act on behalf of all co-filers, including with respect to any potential negotiated withdrawal of the Proposal. Unless the lead filer can represent that it holds such authority on behalf of all co-filers, and considering SEC staff guidance, it will be difficult for us to engage in productive dialogue concerning this Proposal.

Note that under Staff Legal Bulletin No. 14F, the SEC will distribute no-action responses under Rule 14a-8 by email to companies and proponents. We encourage all proponents and any co-filers to include an email contact address on any additional correspondence to ensure timely communication in the event the Proposal is subject to a no-action request.

Danielle Fugere  
Page 4

I hope that's helpful to you.

Last, we are interested in discussing this Proposal and will contact you in the near future.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Dutton". The signature is written in a cursive style with a large initial "J".

JKD/sme

Enclosures

c: Andrew Behar



## Englande, Sherry M

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**From:** Danielle Fugere [REDACTED]  
**To:** Englande, Sherry M  
**Sent:** Tuesday, December 20, 2022 9:11 AM  
**Subject:** Read: ExxonMobil Climate Shareholder Proposal

Your message

To:  
Subject: ExxonMobil Climate Shareholder Proposal  
Sent: Tuesday, December 20, 2022 9:10:48 AM (UTC-06:00) Central Time (US & Canada)

was read on Tuesday, December 20, 2022 9:10:36 AM (UTC-06:00) Central Time (US & Canada).

Englande, Sherry M

---

**From:** Andrew Behar [REDACTED]  
**Sent:** Monday, December 19, 2022 9:20 PM  
**To:** Shareholder Relations /SM  
**Subject:** Re: ExxonMobil Climate Shareholder Proposal

[REDACTED]

[Sent from AT&T Yahoo Mail for iPad](#)

On Monday, December 19, 2022, 1:18 PM, Shareholder Relations /SM [REDACTED] wrote:

*Sent on behalf of Jennifer Driscoll:*

Dear Ms. Fugere -

Please see the attached letter regarding the shareholder proposal submitted by Mr. Behar.

Thank you

The ExxonMobil Shareholder Relations Team

---

**From:** Andrew Behar [REDACTED]  
**Sent:** Monday, December 05, 2022 8:37 PM  
**To:** Shareholder Relations /SM [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** ExxonMobil Climate Shareholder Proposal

December 5, 2022

Craig S. Morford

Vice President, Corporate Secretary, and General Counsel

ExxonMobil Corporation

[REDACTED]

[REDACTED]

Cc: Investor Relations, [REDACTED]

Danielle Fugere, [REDACTED]

Dear Mr. Morford,

I am submitting the attached shareholder proposal, which I support, for a vote at ExxonMobil's 2023 annual shareholder meeting requesting ExxonMobil's Board to report on the impact of asset transfers on disclosed greenhouse gas emissions. I will meet Rule 14a-8 requirements including the continuous ownership of the required stock value until after the date of the Company's next annual shareholder meeting in 2023. These shares are held by myself, Andrew Behar.

My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

I am available to meet with Exxon Mobil Corporation's representative at the following times:

- December 16, 2022 at 4:00pm Central
- December 16, 2022 at 4:30pm Central

**This letter confirms that I am delegating Danielle Fugere to act as my agent** regarding this Rule 14a-8 proposal, including negotiations and/or modification, and presentation at the forthcoming shareholder meeting. Please direct all future communications regarding my rule 14a-8 proposal to Danielle Fugere at [REDACTED] to facilitate prompt communication. Please send all correspondence with a copy to [REDACTED].

Your consideration and that of the Board of Directors is appreciated in support of the long-term performance of our company. You can avoid the time and expense of filing a deficiency letter to verify ownership by simply acknowledging receipt of my proposal promptly by email to [REDACTED]. That will prompt me to request the required letter from my broker and to submit it to you.

Sincerely,

*Andrew Behar*

Shareholder

Enclosures

- Shareholder Proposal

## Englande, Sherry M

---

**From:** Andrew Behar [REDACTED]  
**Sent:** Wednesday, December 28, 2022 6:38 PM  
**To:** Englande, Sherry M; Shareholder Relations /SM; [REDACTED]; [REDACTED]  
**Subject:** ExxonMobil Climate Shareholder Proposal - Proof of Ownership  
**Attachments:** 23.XOM.2 Exxon Climate Change - Proof of Ownership Request\_Andrew Behar.pdf

Please see my attached proof of ownership.  
I would greatly appreciate if you could confirm receipt of this email and that all deficiencies are satisfied.

Best,  
Andrew Behar

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**From:** Englande, Sherry M [REDACTED] on behalf of Shareholder Relations /SM  
**Sent:** Monday, December 19, 2022 1:17 PM  
**To:** Danielle Fugere [REDACTED]  
**Cc:** Shareholder Engagement [REDACTED]; Andrew Behar [REDACTED]  
**Subject:** RE: ExxonMobil Climate Shareholder Proposal

*Sent on behalf of Jennifer Driscoll:*

Dear Ms. Fugere -

Please see the attached letter regarding the shareholder proposal submitted by Mr. Behar.

Thank you

**The ExxonMobil Shareholder Relations Team**

**From:** Andrew Behar [REDACTED]  
**Sent:** Monday, December 05, 2022 8:37 PM  
**To:** Shareholder Relations /SM [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** ExxonMobil Climate Shareholder Proposal

December 5, 2022

Craig S. Morford

Vice President, Corporate Secretary, and General Counsel

ExxonMobil Corporation

[REDACTED]

[REDACTED]

Cc: Investor Relations, [REDACTED]

Danielle Fugere, [REDACTED]

Dear Mr. Morford,

I am submitting the attached shareholder proposal, which I support, for a vote at ExxonMobil's 2023 annual shareholder meeting requesting ExxonMobil's Board to report on the impact of asset transfers on disclosed greenhouse gas emissions. I will meet Rule 14a-8 requirements including the continuous ownership of the required stock value until after the date of the Company's next annual shareholder meeting in 2023. These shares are held by myself, Andrew Behar.

My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

I am available to meet with Exxon Mobil Corporation's representative at the following times:

- December 16, 2022 at 4:00pm Central
- December 16, 2022 at 4:30pm Central

**This letter confirms that I am delegating Danielle Fugere to act as my agent** regarding this Rule 14a-8 proposal, including negotiations and/or modification, and presentation at the forthcoming shareholder meeting. Please direct all future communications regarding my rule 14a-8 proposal to Danielle Fugere at [REDACTED] to facilitate prompt communication. Please send all correspondence with a copy to [REDACTED].

Your consideration and that of the Board of Directors is appreciated in support of the long-term performance of our company. You can avoid the time and expense of filing a deficiency letter to verify ownership by simply acknowledging receipt of my proposal promptly by email to [REDACTED]. That will prompt me to request the required letter from my broker and to submit it to you.

Sincerely,

***Andrew Behar***

Shareholder

Enclosures

- Shareholder Proposal



**Wealth  
Management**

12/27/2022

Andrew Behar  
[REDACTED]  
[REDACTED]

Dear Andrew,

RBC Capital Markets, LLC, acts as custodian for Andrew Behar.

We are writing to verify that our books and records reflect that, Andrew Behar, owns 40 shares of Exxon Mobil Corp (Cusip#30231G102) representing a market value of approximately \$4370 and that, Andrew Behar, has owned such shares continuously since 10/05/2015. We are providing this information at the request of Andrew Behar in support of its activities pursuant to rule 14a-8(a)(1) of the Securities Exchange Act of 1934.

In addition, we confirm that we are a DTC participant.

Should you require further information, please contact me directly at [REDACTED]

Sincerely,

A handwritten signature in black ink, appearing to read 'J Klueger', followed by a horizontal line.

Justin Klueger  
Vice President – Financial Advisor



## Englande, Sherry M

---

**From:** Englande, Sherry M on behalf of Shareholder Relations /SM  
**Sent:** Friday, January 06, 2023 9:05 PM  
**To:** [REDACTED]  
**Cc:** Shareholder Engagement  
**Subject:** Shareholder Proposal Filings  
**Attachments:** 2023-0106 As You Sow Response Letter.pdf

**Sent on behalf of Jennifer Driscoll:**

Dear Ms. Fugere and Ms. Lyles –

Please see the attached letter regarding your shareholder proposal submissions.

Thank you

Sherry M. Englande  
ESG Manager  
Investor Relations

**Exxon Mobil Corporation**  
[REDACTED]

This document may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If you are not the intended recipient, you are on notice that any unauthorized disclosure, copying, distribution, or taking of any action in reliance on the contents of this document is prohibited.



**VIA EMAIL**

January 6, 2023

As You Sow Control Group

Danielle Fugere  
President & Chief Counsel  
As representative for:  
Andrew Behar

Anna Marie Lyles, Ph.D.

Dear Ms. Fugere and Ms. Lyles:

I am writing to you in relation to Ms. Lyles' proposal concerning a report on current environment-related litigation (the "Lyles Proposal") that you submitted on December 8, 2022, and Mr. Behar's proposal concerning an adjustment to greenhouse gas reporting (the "Behar Proposal" and, together with the Lyles Proposal, the "Proposals") that you submitted on December 5, 2022, in connection with ExxonMobil's 2023 annual meeting of shareholders. See Attachment 1 and Attachment 2 for full text of the Proposals.

Subsequent to our letter of December 21, 2022 to Ms. Lyles acknowledging receipt of the Lyles Proposal, we became aware that, in other professional capacities, your colleague refers to herself as Annarie Lyles.<sup>1</sup> We also learned that, as Annarie Lyles, Ms. Lyles is currently serving as a member of the board of directors and treasurer of As You Sow.<sup>2</sup> We are sending this letter now as none of these facts were apparent or disclosed in your December 8, 2022 submission of the Lyles Proposal.<sup>3</sup> Separately, Andrew Behar is the chief executive officer of As You Sow and served in this role at the time the Behar Proposal was submitted shortly before the submission of the Lyles Proposal.

<sup>1</sup> See <https://www.linkedin.com/in/annarielyles>. This profile for Annarie also lists Bio-Gist Ventures, LLC. See also information for Bio-Gist Ventures, LLC, using the Anna Marie Lyles names: <https://www.allbiz.com/business/bio-gist-ventures-llc-609-497-0340> and <https://www.buzzfile.com/business/Bio~Gist-Ventures-LLC-609-497-0340>. All use the same address as the submission of 253 Jefferson Road, Princeton, NJ 08540.

<sup>2</sup> See <https://www.asyousow.org/about-us/staff/board-of-directors>.

<sup>3</sup> We further note that, for some reason, As You Sow does not list the Lyles Proposal on its website: <https://www.asyousow.org/resolutions-tracker>. Nor was As You Sow listed or referenced in your Proposal.

On the basis of these new facts, we wanted to notify you that each of the Proposals contain a deficiency under the regulations of the Securities and Exchange Commission ("SEC"). We elaborate below for your benefit.

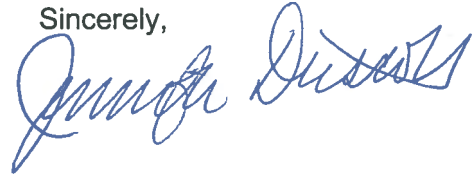
*As Controlled Persons of As You Sow, Each of the Lyles Proposal and Behar Proposal has the Same Proponent as Another Proposal Submitted by Another Controlled Person of As You Sow*

Rule 14a-8(c) states that each person may submit no more than one proposal to a company. This includes both direct and indirect submissions. An organization such as As You Sow may indirectly submit a proposal where the proposal is submitted by someone with whom they have a control relationship, including employment relationships.<sup>4</sup> Ms. Lyles' work as a director and treasurer of As You Sow and Mr. Behar's work as chief executive officer of As You Sow each qualify as control relationships. Therefore, the submission of both of the Proposals causes each of the Lyles Proposal and Behar Proposal to violate the one-proposal limit. Therefore, one of the Proposals must be withdrawn.

We wanted to make you aware that the SEC's rules require that the deficiency we have identified be remedied, and your response must be postmarked or transmitted electronically to us no later than 14 calendar days from the date this letter is received. Please mail any response to me at ExxonMobil at the address shown above. Alternatively, you may send your response to me via facsimile at [REDACTED] or by email to [REDACTED]. The failure to correct the deficiencies within this time period will provide the company with a basis to exclude both Proposals from the company's proxy statement for the company's 2023 annual meeting of shareholders.

Please contact us with any questions.

Sincerely,



JKD/tlb

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<sup>4</sup> See final release, page 61: "[W]e note that under the final amendment, **entities and all persons under their control, including employees, will be treated as a 'person'** for purposes of the amendment." Full release: <https://www.sec.gov/rules/final/2020/34-89964.pdf>.

Attachment 1

**Anna Marie Lyles Proposal**

**RESOLVED:** Shareholders request an actuarial assessment, omitting confidential information and prepared at a reasonable cost, of the potential cumulative risk to Exxon Mobil Corporation (“ExxonMobil” or the “Company”) from current environment-related litigation against the Company and its affiliates.

***SUPPORTING STATEMENT***

Environment-related litigation poses an increasing risk to oil and gas investments. For instance, BP paid more than \$60bn in criminal and civil penalties and remediation costs following the Macondo blowout, and Shell has been ordered by a Dutch court to reduce its CO2 emissions by 45% by 2030.

In addition, we have observed a recent trend of courts cancelling energy production permits (e.g. in Australia, South Africa, Brazil), which poses a particular risk for investments in new production. These cancellations allegedly result from non-compliance with environmental laws and the incompatibility of new production with climate goals. Notably, we believe that courts may now use as a point of reference the International Energy Agency's assessment in its 2021 report Net Zero by 2050 that no new oil, gas, or thermal coal projects can be approved by relevant licensing authorities in order to meet Paris Agreement emissions goals.

These environment-related lawsuits are often lengthy and we believe that the direct and indirect risks posed to the business and shareholder value in case of losing some of these lawsuits appear substantial, and shareholders deserve proper disclosure of these risks.

Media reports indicate that ExxonMobil also faces environment-related lawsuits with potentially material impacts on the business. For example:

- Multiple climate lawsuits brought by states and attorneys general alleging failures to adequately address climate risks, an obligation to pay damages for climate harms, and misleading consumers and investors regarding greenhouse gas emissions.<sup>1</sup> Individually and cumulatively, losing these cases could have a direct financial and/or reputational impact on ExxonMobil.
- Multiple lawsuits alleging non-compliance with legal requirements by ExxonMobil's major investment in Guyana. A court has cut two of ExxonMobil's Guyana subsidiary's environmental permits from over 20 years to 5 years.
- Ongoing lawsuits seek cancellation of more permits, enforcement regarding safety conditions amid reports of spills, and unlimited parent company indemnities to cover the risk of a major spill that could impact many Caribbean countries. Constitutional litigation demands that Guyana's government halt oil and gas production entirely due to its alleged impact on the environment.

Clearly, ExxonMobil is not immune to risks of environment-related litigation. However, it discloses what we believe is insufficient information on these risks, leaving shareholders with an inadequate means to assess the future value of their investments. Therefore, the shareholders believe the board of directors of the Company should take the steps necessary to direct the Company to provide additional disclosure regarding these risks so that the shareholders are able to properly evaluate potential impact such risks may have on the shareholder value.

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<sup>1</sup> See e.g., *City and County of Honolulu v. ExxonMobil et al.* 1CCV-20-0000380; *Matthew Platkin Attorney General of New Jersey v. ExxonMobil Corporation et al.* MER-L-001797-22; *Commonwealth of Massachusetts v. ExxonMobil Corporation* No. 19-12430-WGY.RESOL"

Attachment 2

**Andrew Behar Proposal**

Representative: Danielle Fugere (As You Sow President and Chief Counsel)

**“WHEREAS:** The economic risks associated with climate change exist in the real world rather than on company balance sheets. Transferring emissions from one company to another may reduce balance sheet emissions but does not mitigate company or stakeholder exposure to climate risk or contribute to the goal of limiting global temperature rise to 1.5 degrees Celsius. In the aggregate, upstream oil and gas assets are moving from operators with stronger climate commitments to operators with weaker climate targets and disclosures.<sup>1</sup>

The Glasgow Financial Alliance for Net Zero states that “divestment of carbon-intensive assets can be ineffective and even lead to real-world increases in emissions.”<sup>2</sup> As such, these divestments should not be counted as emissions reductions.

To accurately account for greenhouse gas (GHG) emissions reductions, the Greenhouse Gas Protocol provides that companies should recalculate base year emissions in the event of a “transfer of ownership or control of emissions-generating activities.”<sup>3</sup> Oil and gas industry association IPIECA similarly recommends “adjustments to the base year emissions” to account for asset divestiture, to avoid giving the appearance of “increases or decreases in emissions, when in fact. . . emissions would merely be transferred from one company to another.”<sup>4</sup>

Since 2016, ExxonMobil reports absolute Scope 1 and 2 emissions reductions of roughly 10% on both equity and operated bases.<sup>5</sup> However, between 2017 and 2021, ExxonMobil sold more assets than any other American oil and gas company except Chevron, ranking fourth globally among sellers.<sup>6</sup> It is unclear how ExxonMobil accounts for these divestitures in its emissions reporting. Therefore, shareholders cannot determine whether ExxonMobil’s reported GHG reductions are the result of operational improvements or of transferring emissions off its books.

In contrast, peer company Devon Energy recalculates its baseline when asset divestitures or investments result in “a change to its emissions baseline of 5% or higher” to ensure accuracy and comparability of emissions reporting.<sup>7</sup> Devon notes that this “recalculation methodology affirms our commitment to structurally drive down emissions, rather than divesting assets as a means to achieve our ambitious emissions reduction targets.”<sup>8</sup> Investors deserve the same transparency from ExxonMobil.

**RESOLVED:** Shareholders request that ExxonMobil, at reasonable cost and omitting proprietary information, disclose a recalculated emissions baseline that excludes the aggregated GHG emissions from material asset divestitures occurring since 2016, the year ExxonMobil uses to baseline its emissions.

**SUPPORTING STATEMENT:** Proponents recommend disclosing, at management’s discretion:

- The emissions associated with ExxonMobil’s material asset divestments since 2016;
- What portion, if any, of ExxonMobil’s current emissions reduction targets relies on accounting for asset transfers as emissions reductions;
- A base year emissions recalculation policy establishing a threshold for future recalculations related to divestitures.

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<sup>1</sup> <https://business.edf.org/files/Transferred-Emissions-How-Oil-Gas-MA-Hamper-Energy-Transition.pdf> p. 4

<sup>2</sup> <https://assets.bbhub.io/company/sites/63/2021/11/GFANZ-Progress-Report.pdf> p. 52

<sup>3</sup> <https://ghgprotocol.org/sites/default/files/standards/ghg-protocol-revised.pdf> p. 35

<sup>4</sup> <https://www.ipieca.org/resources/good-practice/petroleum-industry-guidelines-for-reporting-greenhouse-gas-emissions-2nd-edition/> p. 39

<sup>5</sup> <https://corporate.exxonmobil.com/-/media/global/files/advancing-climate-solutions-progress-report/2022-july-update/exxonmobil-advancing-climate-solutions-2022-progress-report.pdf?la=en&hash=3A2B299463CE50DCDD6A9595E49AC3030CFF4350>

<sup>6</sup> <https://business.edf.org/files/Transferred-Emissions-How-Oil-Gas-MA-Hamper-Energy-Transition.pdf> p. 22

<sup>7</sup> [https://dvnweb.azureedge.net/assets/documents/Sustainability/DVN\\_2022\\_SustainabilityReport.pdf](https://dvnweb.azureedge.net/assets/documents/Sustainability/DVN_2022_SustainabilityReport.pdf) p. 20

<sup>8</sup> Ibid.”

**Englande, Sherry M**

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**From:** Microsoft Outlook  
**To:** Shareholder Engagement; [REDACTED]  
**Sent:** Friday, January 06, 2023 9:09 PM  
**Subject:** Relayed: Shareholder Proposal Filings

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

[Shareholder Engagement](#) [REDACTED]

[REDACTED]

[REDACTED]

Subject: Shareholder Proposal Filings



Shareholder  
Proposal Filings







**VIA FEDEX & EMAIL**

December 7, 2022

Craig S. Morford  
Vice President, Corporate Secretary,  
and General Counsel  
ExxonMobil Corporation  


**RECEIVED**  
**DEC 08 2022**  
**CRAIG S. MORFORD**

Dear Mr. Morford,

*As You Sow* is filing a shareholder proposal on behalf of Meyer Memorial Trust (S) (“Proponent”), a shareholder of ExxonMobil Corporation, for inclusion in ExxonMobil Corporation’s 2023 proxy statement and for consideration by shareholders in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.

A letter from the Proponent authorizing *As You Sow* to act on its behalf is enclosed. The Proponent is available for a meeting with the Company regarding this shareholder proposal at the following days/times: November 19, 2022 at 4:00pm Central or November 19, 2022 at 4:30pm Central.

The Proponent is designating *As You Sow* as a representative for all issues in this matter. I am the contact person on behalf of *As You Sow*, Conrad MacKerron  **Please also send all correspondence regarding this proposal to **

A representative of the Proponent will attend the stockholder meeting to move the resolution as required.

We are available to discuss this issue and are optimistic that such a discussion could result in resolution of the Proponent’s concerns.

Sincerely,

Conrad MacKerron  
Senior Vice President

Enclosures

- Shareholder Proposal
- Shareholder Authorization

cc: 

**WHEREAS:** Plastic, with a lifecycle social cost at least ten times higher than its market price, actively threatens the world's oceans, wildlife, and public health.<sup>1</sup> Concern about the growing scale and impact of global plastic pollution has elevated the issue to crisis levels.<sup>2</sup> Of particular concern are single-use plastics (SUPs)<sup>3</sup> which make up the largest component of the 11 million metric tons of plastic ending up in waterways annually.<sup>4</sup> Without drastic action, this amount could triple by 2040.<sup>5</sup>

In response to the plastic pollution crisis, countries and major packaging brands are beginning to drive reductions in virgin plastic use.<sup>6,7</sup>

Several studies demonstrate that a significant absolute reduction in virgin plastic demand is critical to curbing the flow of plastic into oceans.<sup>8</sup> One of the most robust reduction pathways is presented in the widely-respected report, *Breaking the Plastic Wave*, which found that plastic leakage into the ocean can be feasibly reduced by 80% under its System Change Scenario (SCS), which is based on a significant absolute reduction of virgin SUPs.<sup>9,10</sup>

BP has recognized the potential disruption that global SUP reductions could have on the oil industry in its *2019 Outlook*, where it found a global SUP ban by 2040 would reduce oil demand growth by 60%.<sup>11</sup>

The future under the SCS – one built on recycled plastics and circular business models – looks drastically different than today's linear take-make-waste production model. Several implications of the SCS, including a one-third absolute demand reduction (mostly of virgin SUPs) and immediate reduction of new investment in virgin production, are at odds with Exxon's planned investments.<sup>12</sup>

Exxon was recently identified as the largest global producer of SUP-bound polymers (5.9 million metric tons in 2019, an estimated 50% of its total polymer production) and exposed for lobbying against plastic pollution laws.<sup>13,14</sup> While Exxon states it is acting to "address plastic waste," it fails to meaningfully address the potential for regulatory restrictions and/or significant disruption in demand for virgin plastic, both of which could result in stranded assets.<sup>15,16</sup>

<sup>1</sup> [https://wwfint.awsassets.panda.org/downloads/wwf\\_pactsee\\_report\\_english.pdf](https://wwfint.awsassets.panda.org/downloads/wwf_pactsee_report_english.pdf)

<sup>2</sup> <https://www.unep.org/resources/pollution-solution-global-assessment-marine-litter-and-plastic-pollution>

<sup>3</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L0904&from=EN#page=8>

<sup>4</sup> <https://www.minderoo.org/plastic-waste-makers-index/findings/executive-summary/>

<sup>5</sup> <https://www.nationalgeographic.com/science/article/plastic-trash-in-seas-will-nearly-triple-by-2040-if-nothing-done>

<sup>6</sup> <https://www.pbs.org/newshour/science/bold-single-use-plastic-ban-kicks-europes-plastic-purge-into-high-gear>

<sup>7</sup> <https://www.unilever.com/news/press-releases/2019/unilever-announces-ambitious-new-commitments-for-a-waste-free-world.html>

<sup>8</sup> <https://www.theguardian.com/environment/2021/jul/01/call-for-global-treaty-to-end-production-of-virgin-plastic-by-2040>

<sup>9</sup> [https://www.pewtrusts.org/-/media/assets/2020/07/breakingtheplasticwave\\_report.pdf](https://www.pewtrusts.org/-/media/assets/2020/07/breakingtheplasticwave_report.pdf)

<sup>10</sup> <https://www.science.org/doi/full/10.1126/science.aba9475>

<sup>11</sup> <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/energy-economics/energy-outlook/bp-energy-outlook-2019.pdf#page=18>

<sup>12</sup> <https://www.bloomberg.com/news/articles/2019-06-13/exxon-sabir-greenlight-new-texas-plant-to-process-shale-output?sref=TtrRgti9>

<sup>13</sup> <https://www.minderoo.org/plastic-waste-makers-index/data/flows/#/sankey/global/10>

<sup>14</sup> <https://gizmodo.com/we-now-know-how-exxon-secretly-fights-crackdowns-on-pla-1847220288>

<sup>15</sup> <https://corporate.exxonmobil.com/Sustainability/Sustainability-Report/Environment/Plastic-waste-management#Addressingplasticwaste>

<sup>16</sup> <https://www.forbes.com/sites/scottcarpenter/2020/09/05/why-the-oil-industrys-400-billion-bet-on-plastics-could-backfire/?sh=6e099bd843fe>

**RESOLVED:** Shareholders request the Board issue an audited report addressing, at reasonable cost and omitting proprietary information, whether and how a significant reduction in virgin plastic demand, as set forth in *Breaking the Plastic Wave's* System Change Scenario for reducing ocean plastic pollution, would affect the Company's financial position and assumptions underlying its financial statements.

**SUPPORTING STATEMENT:** Proponents recommend that, at Board discretion, the report include:

- Quantification (in tons and/or as a percentage of the total) of the Company's polymer production for SUP markets;
- A summary or list of the Company's existing and planned investments that may be materially impacted by the SCS;
- Plans or goals to shift Exxon's business model from virgin to recycled plastics and use of recycling technologies that are cost-effective, process and energy efficient, and environmentally sound.

11/8/2022 | 8:51:34 AM PST

Andrew Behar  
CEO  
As You Sow



**Re: Authorization to File Shareholder Resolution**

Dear Andrew Behar,

The undersigned (“Stockholder”) authorizes As You Sow to file a shareholder resolution on Stockholder’s behalf with the named Company for inclusion in the Company’s 2023 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934. The resolution at issue relates to the below described subject.

Stockholder: Meyer Memorial Trust (S)  
Company: Exxon Mobil Corp  
Subject: Petrochemical risks: single-use plastics

The Stockholder has continuously owned an amount of Company stock for a duration of time that enables the Stockholder to file a shareholder resolution for inclusion in the Company’s proxy statement. The Stockholder intends to hold the required amount of stock through the date of the Company’s annual meeting in 2023.

The Stockholder gives As You Sow the authority to address, on the Stockholder’s behalf, any and all aspects of the shareholder resolution, including drafting and editing the proposal, representing Stockholder in engagements with the Company, entering into any agreement with the Company, and designating another entity as lead filer and representative of the shareholder. The Stockholder understands that the Stockholder’s name and contact information will be disclosed in the proposal. The Securities and Exchange Commission has confirmed that they remove personally identifiable information from No-Action requests and related correspondence before making these materials publicly available on the Commission’s website. The Stockholder acknowledges that their name, however, may appear on the company’s proxy statement as the filer of the aforementioned resolution, and that the media may mention the Stockholder’s name in relation to the resolution. The Stockholder supports this proposal.

The Stockholder is available for a meeting with the Company regarding this shareholder proposal. The dates/times will be provided by As You Sow.

The Stockholder can be contacted at the following email address to schedule a dialogue during one of the above dates:  (client's asset manager)

Any correspondence regarding meeting dates must also be sent to my representative:



The Stockholder also authorizes As You Sow to send a letter of support of the resolution on Stockholder's behalf.

Sincerely,

DocuSigned by:  
*Sohel Hussain*  
1F86DDE0020F432...

Name: Sohel Hussain

Title: Interim Director of Investments



This Package Has  
Been X-Rayed By  
Central Mail

130-234

SHIP DATE: 07DEC22  
ACTWGT: 0.25 LB  
CAD: 103055598/INET4530

BILL SENDER

TO: [REDACTED]  
[REDACTED]  
[REDACTED] MORFORD, CORP SECRETARY  
[REDACTED] CORPORATION

581J3/9A97/FE2D

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Ship Manager - Print Your Label(s)

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ST 26  
4 10:00  
D 7002  
12.08

## Englande, Sherry M

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**From:** Shareholder Engagement [REDACTED]  
**Sent:** Thursday, December 08, 2022 4:07 PM  
**To:** Shareholder Relations /SM  
**Cc:** Conrad MacKerron; Kelly McBee; Gail Follansbee; Sophia Wilson; Rachel Lowy  
**Subject:** ExxonMobil - Petrochemicals - Shareholder Proposal Filing Document  
**Attachments:** REVISED 23.XOM.1 Exxon Mobil Petrochem - Lead Filing Packet.pdf

Dear Mr. Morford,

Attached please find the filing document packet submitting a shareholder proposal for inclusion in the company's 2023 proxy statement. A previous copy of these documents has been sent to your offices via FedEx and our records show it arrived today, December 8, 2022 at 9:35am. Please note that the attached is revised and is the correct version to review.

It would be much appreciated if you could please confirm receipt of this email.

Thank you and best regards,

Rachel Lowy

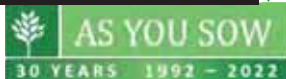
Rachel Lowy (she/her/hers)

Shareholder Relations Coordinator

*As You Sow*

[REDACTED]

[www.asyousow.org](http://www.asyousow.org)



~Empowering Shareholders to Change Corporations for Good~



VIA FEDEX & EMAIL

December 8, 2022

Craig S. Morford  
Vice President, Corporate Secretary,  
and General Counsel  
ExxonMobil Corporation  
[REDACTED]

Dear Mr. Morford,

*As You Sow* is filing a shareholder proposal on behalf of Meyer Memorial Trust (S) ("Proponent"), a shareholder of ExxonMobil Corporation, for inclusion in ExxonMobil Corporation's 2023 proxy statement and for consideration by shareholders in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.

A letter from the Proponent authorizing *As You Sow* to act on its behalf is enclosed. The Proponent is available for a meeting with the Company regarding this shareholder proposal at the following days/times: December 19, 2022 at 4:00pm Central or December 19, 2022 at 4:30pm Central.

The Proponent is designating *As You Sow* as a representative for all issues in this matter. I am the contact person on behalf of *As You Sow*, Conrad MacKerron [REDACTED] **Please also send all correspondence regarding this proposal to [REDACTED]**

A representative of the Proponent will attend the stockholder meeting to move the resolution as required.

We are available to discuss this issue and are optimistic that such a discussion could result in resolution of the Proponent's concerns.

Sincerely,



Conrad MacKerron  
Senior Vice President

Enclosures

- Shareholder Proposal
- Shareholder Authorization

cc: [REDACTED]

**WHEREAS:** Plastic, with a lifecycle social cost at least ten times higher than its market price, actively threatens the world's oceans, wildlife, and public health.<sup>1</sup> Concern about the growing scale and impact of global plastic pollution has elevated the issue to crisis levels.<sup>2</sup> Of particular concern are single-use plastics (SUPs)<sup>3</sup> which make up the largest component of the 11 million metric tons of plastic ending up in waterways annually.<sup>4</sup> Without drastic action, this amount could triple by 2040.<sup>5</sup>

In response to the plastic pollution crisis, countries and major packaging brands are beginning to drive reductions in virgin plastic use.<sup>6,7</sup>

Several studies demonstrate that a significant absolute reduction in virgin plastic demand is critical to curbing the flow of plastic into oceans.<sup>8</sup> One of the most robust reduction pathways is presented in the widely-respected report, *Breaking the Plastic Wave*, which found that plastic leakage into the ocean can be feasibly reduced by 80% under its System Change Scenario (SCS), which is based on a significant absolute reduction of virgin SUPs.<sup>9,10</sup>

BP has recognized the potential disruption that global SUP reductions could have on the oil industry in its *2019 Outlook*, where it found a global SUP ban by 2040 would reduce oil demand growth by 60%.<sup>11</sup>

The future under the SCS – one built on recycled plastics and circular business models – looks drastically different than today's linear take-make-waste production model. Several implications of the SCS, including a one-third absolute demand reduction (mostly of virgin SUPs) and immediate reduction of new investment in virgin production, are at odds with Exxon's planned investments.<sup>12</sup>

Exxon was recently identified as the largest global producer of SUP-bound polymers (5.9 million metric tons in 2019, an estimated 50% of its total polymer production) and exposed for lobbying against plastic pollution laws.<sup>13,14</sup> While Exxon states it is acting to "address plastic waste," it fails to meaningfully address the potential for regulatory restrictions and/or significant disruption in demand for virgin plastic, both of which could result in stranded assets.<sup>15,16</sup>

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<sup>1</sup> [https://wwfint.awsassets.panda.org/downloads/wwf\\_pctsee\\_report\\_english.pdf](https://wwfint.awsassets.panda.org/downloads/wwf_pctsee_report_english.pdf)

<sup>2</sup> <https://www.unep.org/resources/pollution-solution-global-assessment-marine-litter-and-plastic-pollution>

<sup>3</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L0904&from=EN#page=8>

<sup>4</sup> <https://www.minderoo.org/plastic-waste-makers-index/findings/executive-summary/>

<sup>5</sup> <https://www.nationalgeographic.com/science/article/plastic-trash-in-seas-will-nearly-triple-by-2040-if-nothing-done>

<sup>6</sup> <https://www.pbs.org/newshour/science/bold-single-use-plastic-ban-kicks-europes-plastic-purge-into-high-gear>

<sup>7</sup> <https://www.unilever.com/news/press-releases/2019/unilever-announces-ambitious-new-commitments-for-a-waste-free-world.html>

<sup>8</sup> <https://www.theguardian.com/environment/2021/jul/01/call-for-global-treaty-to-end-production-of-virgin-plastic-by-2040>

<sup>9</sup> [https://www.pewtrusts.org/-/media/assets/2020/07/breakingtheplasticwave\\_report.pdf](https://www.pewtrusts.org/-/media/assets/2020/07/breakingtheplasticwave_report.pdf)

<sup>10</sup> <https://www.science.org/doi/full/10.1126/science.aba9475>

<sup>11</sup> <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/energy-economics/energy-outlook/bp-energy-outlook-2019.pdf#page=18>

<sup>12</sup> <https://www.bloomberg.com/news/articles/2019-06-13/exxon-sabic-greenlight-new-texas-plant-to-process-shale-output?sref=TtrRgti9>

<sup>13</sup> <https://www.minderoo.org/plastic-waste-makers-index/data/flows/#/sankey/global/10>

<sup>14</sup> <https://gizmodo.com/we-now-know-how-exxon-secretly-fights-crackdowns-on-pla-1847220288>

<sup>15</sup> <https://corporate.exxonmobil.com/Sustainability/Sustainability-Report/Environment/Plastic-waste-management#Addressingplasticwaste>

<sup>16</sup> <https://www.forbes.com/sites/scottcarpenter/2020/09/05/why-the-oil-industrys-400-billion-bet-on-plastics-could-backfire/?sh=6e099bd843fe>

**RESOLVED:** Shareholders request the Board issue an audited report addressing, at reasonable cost and omitting proprietary information, whether and how a significant reduction in virgin plastic demand, as set forth in *Breaking the Plastic Wave's* System Change Scenario for reducing ocean plastic pollution, would affect the Company's financial position and assumptions underlying its financial statements.

**SUPPORTING STATEMENT:** Proponents recommend that, at Board discretion, the report include:

- Quantification (in tons and/or as a percentage of the total) of the Company's polymer production for SUP markets;
- A summary or list of the Company's existing and planned investments that may be materially impacted by the SCS;
- Plans or goals to shift Exxon's business model from virgin to recycled plastics and use of recycling technologies that are cost-effective, process and energy efficient, and environmentally sound.

11/8/2022 | 8:51:34 AM PST

Andrew Behar  
CEO  
As You Sow

[REDACTED]  
[REDACTED]

**Re: Authorization to File Shareholder Resolution**

Dear Andrew Behar,

The undersigned (“Stockholder”) authorizes As You Sow to file a shareholder resolution on Stockholder’s behalf with the named Company for inclusion in the Company’s 2023 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934. The resolution at issue relates to the below described subject.

Stockholder: Meyer Memorial Trust (S)  
Company: Exxon Mobil Corp  
Subject: Petrochemical risks: single-use plastics

The Stockholder has continuously owned an amount of Company stock for a duration of time that enables the Stockholder to file a shareholder resolution for inclusion in the Company’s proxy statement. The Stockholder intends to hold the required amount of stock through the date of the Company’s annual meeting in 2023.

The Stockholder gives As You Sow the authority to address, on the Stockholder’s behalf, any and all aspects of the shareholder resolution, including drafting and editing the proposal, representing Stockholder in engagements with the Company, entering into any agreement with the Company, and designating another entity as lead filer and representative of the shareholder. The Stockholder understands that the Stockholder’s name and contact information will be disclosed in the proposal. The Securities and Exchange Commission has confirmed that they remove personally identifiable information from No-Action requests and related correspondence before making these materials publicly available on the Commission’s website. The Stockholder acknowledges that their name, however, may appear on the company’s proxy statement as the filer of the aforementioned resolution, and that the media may mention the Stockholder’s name in relation to the resolution. The Stockholder supports this proposal.

The Stockholder is available for a meeting with the Company regarding this shareholder proposal. The dates/times will be provided by As You Sow.

The Stockholder can be contacted at the following email address to schedule a dialogue during one of the above dates: [REDACTED] (client’s asset manager)

Any correspondence regarding meeting dates must **also be sent to my representative:**

[REDACTED]

The Stockholder also authorizes As You Sow to send a letter of support of the resolution on Stockholder's behalf.

Sincerely,

DocuSigned by:  
*Soheil Hussain*  
1F86DDE0020F432...

Name: sohel hussain

Title: Interim Director of Investments

## Englande, Sherry M

---

**From:** Englande, Sherry M on behalf of Shareholder Relations /SM  
**Sent:** Tuesday, December 20, 2022 3:32 PM  
**To:** Shareholder Engagement  
**Cc:** Conrad MacKerron; Kelly McBee; Gail Follansbee; Sophia Wilson; Rachel Lowy  
**Subject:** RE: ExxonMobil - Petrochemicals - Shareholder Proposal Filing Document  
**Attachments:** 2022-1220 MacKerron Ack Ltr.pdf; Attachments\_SEC Rule 14a-8\_SLB 14\_July-13-2001.pdf; Attachments\_SEC Rule 14a-8\_Nov-4-2020 and SLB 14F\_Oct-18-2011.pdf

### Sent on behalf of Jennifer Driscoll:

Dear Mr. MacKerron –

Please see the attached letter regarding your shareholder proposal submission.

Thank you  
The ExxonMobil Shareholder Relations Team

---

**From:** Shareholder Engagement [REDACTED]  
**Sent:** Thursday, December 08, 2022 4:07 PM  
**To:** Shareholder Relations /SM [REDACTED]  
**Cc:** Conrad MacKerron [REDACTED]; Kelly McBee [REDACTED]; Gail Follansbee [REDACTED]; Sophia Wilson [REDACTED]; Rachel Lowy [REDACTED]  
**Subject:** ExxonMobil - Petrochemicals - Shareholder Proposal Filing Document

Dear Mr. Morford,

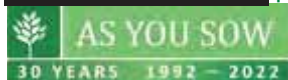
Attached please find the filing document packet submitting a shareholder proposal for inclusion in the company's 2023 proxy statement. A previous copy of these documents has been sent to your offices via FedEx and our records show it arrived today, December 8, 2022 at 9:35am. Please note that the attached is revised and is the correct version to review. It would be much appreciated if you could please confirm receipt of this email.

Thank you and best regards,  
Rachel Lowy

Rachel Lowy (she/her/hers)  
Shareholder Relations Coordinator

*As You Sow*

[REDACTED]  
[REDACTED] | [www.asyousow.org](http://www.asyousow.org)



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**VIA EMAIL**

December 20, 2022

Conrad MacKerron  
Senior Vice President  
As You Sow  
[REDACTED]  
[REDACTED]

Dear Mr. MacKerron:

Thank you for your interest in ExxonMobil. This will acknowledge receipt of the proposal concerning a report on plastic production (the "Proposal"), which you have submitted on behalf of the Meyer Memorial Trust (S) (the "Proponent") in connection with ExxonMobil's 2023 annual meeting of shareholders.

We wanted to let you know that the Proposal contains certain procedural deficiencies, which the Securities and Exchange Commission ("SEC") regulations require us to bring to your attention. Let me elaborate on them for your benefit.

*Ownership Eligibility*

In order to be eligible to submit a shareholder proposal, Rule 14a-8, as amended (copy enclosed), requires that each proponent must have continuously held, as of the date the proposal was submitted, at least (i) \$2,000 in market value of the company's securities entitled to vote on the proposal at the meeting for at least three years, (ii) \$15,000 in market value of the company's securities entitled to vote on the proposal at the meeting for at least two years or (iii) \$25,000 in market value of the company's securities entitled to vote on the proposal at the meeting for at least one year, for the applicable period through and including the date the shareholder proposal was submitted.

For this Proposal, the date of submission is December 7, 2022, which is the date the Proposal was first postmarked for delivery by certified mail service.

Note that the SEC rules do not permit a shareholder to aggregate the Proponent's share holdings with those of another shareholder or group of shareholders to meet the ownership eligibility requirement.

*Method for Demonstrating Proof of Ownership*

The Meyer Memorial Trust (S) does not appear in our records as a registered shareholder. Moreover, to date we have not received proof from you that the Proponent satisfies the applicable ownership requirements. To remedy this deficiency, you must submit sufficient proof

verifying the Proponent's continuous ownership of the requisite number of ExxonMobil shares for the applicable time period preceding and including December 7, 2022.

As explained in Rule 14a-8(b) and SEC staff guidance, sufficient proof must be in the form of:

- a written statement from the "record" holder of the Proponent's shares (usually a broker or a bank) verifying that the Proponent continuously held the requisite number of ExxonMobil shares for the applicable time period preceding and including December 7, 2022; or
- if the Proponent has filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting the Proponent's ownership of the requisite number of ExxonMobil shares as of or before the date on which the required holding period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that the Proponent continuously held the requisite number of ExxonMobil shares for the applicable time period preceding and including December 7, 2022.

If you, as the Proponent's representative, intend to demonstrate ownership by submitting a written statement from the "record" holder of the shares as set forth in the first bullet point above, please note that most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company ("DTC"), a registered clearing agency that acts as a securities depository (DTC is also known through the account name of Cede & Co.). Such brokers and banks are often referred to as "participants" in DTC. In Staff Legal Bulletin No. 14F (October 18, 2011) (copy enclosed), the SEC staff has taken the view that only DTC participants should be viewed as "record" holders of securities that are deposited with DTC. As the SEC adopted amendments to Rule 14a-8 that became effective in 2021, please note that Staff Legal Bulletin No. 14F does not reflect those amendments and to the extent any provisions are inconsistent, Rule 14a-8 governs in all respects.

You can confirm whether the Proponent's broker or bank is a DTC participant by asking that broker or bank or by checking the listing of current DTC participants, which is available on the internet at: <https://www.dtcc.com/client-center/dtc-directories>. In these situations, shareholders need to obtain proof of ownership from the DTC participant through which the securities are held, as follows:

- If the Proponent's broker or bank is a DTC participant, then you need to submit a written statement from such broker or bank verifying that the Proponent continuously held the requisite number of ExxonMobil shares for the applicable time period preceding and including December 7, 2022.
- If the Proponent's broker or bank is not a DTC participant, then you need to submit proof of ownership from the DTC participant through which the securities are held verifying that the Proponent continuously held the requisite number of ExxonMobil shares for the applicable time period preceding and including December 7, 2022. You should be able to find out who this DTC participant is by asking the Proponent's broker or bank. If the Proponent's broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through the Proponent's account statements because the clearing broker identified on the account statements will generally be a DTC participant. If the DTC participant that holds the Proponent's shares knows the broker's or bank's holdings, but



does not know the Proponent's holdings, you need to satisfy the proof of ownership requirement by obtaining and submitting two proof of ownership statements verifying that for the applicable period preceding and including December 7, 2022, the required amount of securities were continuously held – one from the Proponent's broker or bank, confirming its ownership, and the other from the DTC participant, confirming the broker or bank's ownership.

The SEC's rules require that this deficiency we have identified be remedied, and any response to this letter must be postmarked or transmitted electronically to us no later than 14 calendar days from the date this letter is received. Please mail any response to me at ExxonMobil at the address shown above. Alternatively, you may send your response to me via facsimile at [REDACTED] or by email to [REDACTED]. The failure to correct the deficiencies within this time period will provide the company with a basis to exclude the Proposal from the company's proxy statement for the 2023 annual meeting.

You should note that, if the Proposal is not withdrawn or excluded, you, on behalf of the Proponent, or your representative, who is qualified under New Jersey law to present the Proposal on your behalf, must attend the annual meeting in person to present the Proposal. Under New Jersey law, only shareholders or their duly constituted proxies are entitled as a matter of right to attend the meeting.

If you intend for a representative to present the Proposal, you must provide documentation that specifically identifies the intended representative by name and specifically authorizes the representative to act as your proxy at the annual meeting. To be a valid proxy entitled to attend the annual meeting, the representative must have the authority to vote the shares of the Proponent at the meeting. A copy of this authorization meeting state law requirements should be sent to my attention in advance of the meeting. The authorized representative should also bring an original signed copy of the proxy documentation to the meeting, together with photo identification if requested, so that our counsel may verify the representative's authority to act on your behalf prior to the start of the meeting.

Note that under Staff Legal Bulletin No. 14F, the SEC will distribute no-action responses under Rule 14a-8 by email to companies and proponents. We encourage all proponents and any co-filers to include an email contact address on any additional correspondence to ensure timely communication in the event the Proposal is subject to a no-action request.

I hope that's helpful to you.

Last, we are interested in discussing this Proposal and will contact you in the near future.

Sincerely,



JKD/sme

Enclosures

## Englande, Sherry M

---

**From:** Microsoft Outlook  
**To:** Gail Follansbee; Sophia Wilson; Rachel Lowy; Shareholder Engagement; Conrad MacKerron; Kelly McBee  
**Sent:** Tuesday, December 20, 2022 3:36 PM  
**Subject:** Relayed: RE: ExxonMobil - Petrochemicals - Shareholder Proposal Filing Document

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

[Gail Follansbee](#) [REDACTED]

[Sophia Wilson](#) [REDACTED]

[Rachel Lowy](#) [REDACTED]

[Shareholder Engagement](#) [REDACTED]

[Conrad MacKerron](#) [REDACTED]

[Kelly McBee](#) [REDACTED]

Subject: RE: ExxonMobil - Petrochemicals - Shareholder Proposal Filing Document



RE: ExxonMobil -  
Petrochemical...

## Englande, Sherry M

---

**From:** Conrad MacKerron [REDACTED]  
**To:** Englande, Sherry M  
**Sent:** Tuesday, December 20, 2022 4:47 PM  
**Subject:** Read: ExxonMobil - Petrochemicals - Shareholder Proposal Filing Document

Your message

To:  
Subject: ExxonMobil - Petrochemicals - Shareholder Proposal Filing Document  
Sent: Tuesday, December 20, 2022 4:47:16 PM (UTC-06:00) Central Time (US & Canada)

was read on Tuesday, December 20, 2022 4:47:06 PM (UTC-06:00) Central Time (US & Canada).

## Englande, Sherry M

---

**From:** Shareholder Engagement [REDACTED]  
**Sent:** Thursday, December 22, 2022 3:03 AM  
**To:** Shareholder Relations /SM  
**Cc:** Conrad MacKerron; Kelly McBee; Gail Follansbee; Sophia Wilson; Rachel Lowy  
**Subject:** Re: ExxonMobil - Petrochemicals - Shareholder Proposal Filing Document  
**Attachments:** 23.XOM.1 Exxon - Proof of Ownership\_Meyer Memorial.pdf

Hello,

Confirming receipt of this deficiency letter.

Please see attached the following proof of ownership:

Lead Filer            Meyer Memorial Trust (S)            11,225 shares

It would be greatly appreciated if you could confirm receipt and that all deficiencies are satisfied.

Thank you and happy holidays,

Rachel Lowy

Rachel Lowy (she/her/hers)

Shareholder Relations Coordinator

*As You Sow*



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---

**From:** Englande, Sherry M [REDACTED] on behalf of Shareholder Relations /SM

**Sent:** Tuesday, December 20, 2022 1:35 PM

**To:** Shareholder Engagement [REDACTED]

**Cc:** Conrad MacKerron <[REDACTED]>; Kelly McBee <[REDACTED]>; Gail Follansbee <[REDACTED]>; Sophia Wilson <[REDACTED]>; Rachel Lowy <[REDACTED]>

**Subject:** RE: ExxonMobil - Petrochemicals - Shareholder Proposal Filing Document

**Sent on behalf of Jennifer Driscoll:**

Dear Mr. MacKerron –

Please see the attached letter regarding your shareholder proposal submission.

Thank you

The ExxonMobil Shareholder Relations Team

---

From: Shareholder Engagement [REDACTED]  
Sent: Thursday, December 08, 2022 4:07 PM  
To: Shareholder Relations /SM [REDACTED]  
Cc: Conrad MacKerron <[REDACTED]>; Kelly McBee <[REDACTED]>; Gail Follansbee <[REDACTED]>; Sophia Wilson <[REDACTED]>; Rachel Lowy <[REDACTED]>  
Subject: ExxonMobil - Petrochemicals - Shareholder Proposal Filing Document

Dear Mr. Morford,

Attached please find the filing document packet submitting a shareholder proposal for inclusion in the company's 2023 proxy statement. A previous copy of these documents has been sent to your offices via FedEx and our records show it arrived today, December 8, 2022 at 9:35am. Please note that the attached is revised and is the correct version to review. It would be much appreciated if you could please confirm receipt of this email.

Thank you and best regards,

Rachel Lowy

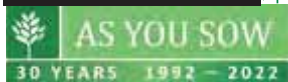
Rachel Lowy (she/her/hers)

Shareholder Relations Coordinator

*As You Sow*



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We, Northern Trust hereby certify that

MEYER - APERIO GROUP

Account Number – [REDACTED]

Account Name - MEYER - APERIO Meyer Memorial Trust (S)

CUSIP– 30231G102

**Meyer Memorial Trust (S):**

**Northern Trust**, a DTC participant, acts as the custodian for **Meyer Memorial Trust (S)**. As of the date of this letter, **Meyer Memorial Trust (S)** held, and has held continuously for at least **13 months, 11225 shares of EXXON MOBIL CORP** common stock, with a value of over **\$25,000**.

on 13th December 2022:

**Beena  
Bhalerao**

Digitally signed by Beena  
Bhalerao  
Date: 2022.12.13 15:41:20  
-06'00'

---

[authorized stamps and signatures of the financial institution]

Team Lead, Client Asset Servicing

NTAC:3NS-20

NTAC:3NS-20

NTAC:3NS-20

## Englande, Sherry M

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**From:** Englande, Sherry M on behalf of Shareholder Relations /SM  
**Sent:** Thursday, December 22, 2022 7:54 AM  
**To:** Shareholder Engagement; Shareholder Relations /SM  
**Cc:** Conrad MacKerron; Kelly McBee; Gail Follansbee; Sophia Wilson; Rachel Lowy  
**Subject:** RE: ExxonMobil - Petrochemicals - Shareholder Proposal Filing Document

Good morning Rachel –  
Thank you for your quick response to our letter.  
I wish you and everyone at As You Sow a very Happy Holiday!  
Sherry

---

From: Shareholder Engagement [REDACTED]  
Sent: Thursday, December 22, 2022 3:03 AM  
To: Shareholder Relations /SM [REDACTED]  
Cc: Conrad MacKerron <[REDACTED]>; Kelly McBee <[REDACTED]>; Gail Follansbee <[REDACTED]>; Sophia Wilson <[REDACTED]>; Rachel Lowy <[REDACTED]>  
Subject: Re: ExxonMobil - Petrochemicals - Shareholder Proposal Filing Document

Hello,

Confirming receipt of this deficiency letter.

Please see attached the following proof of ownership:  
Lead Filer Meyer Memorial Trust (S) 11,225 shares

It would be greatly appreciated if you could confirm receipt and that all deficiencies are satisfied.

Thank you and happy holidays,  
Rachel Lowy  
Rachel Lowy (she/her/hers)  
Shareholder Relations Coordinator  
*As You Sow*

[REDACTED]  
[REDACTED] | [www.asyousow.org](http://www.asyousow.org)



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---

From: Englande, Sherry M [REDACTED] on behalf of Shareholder Relations /SM  
Sent: Tuesday, December 20, 2022 1:35 PM  
To: Shareholder Engagement [REDACTED]  
Cc: Conrad MacKerron [REDACTED]; Kelly McBee [REDACTED]; Gail Follansbee [REDACTED]; Sophia Wilson [REDACTED]; Rachel Lowy [REDACTED]  
Subject: RE: ExxonMobil - Petrochemicals - Shareholder Proposal Filing Document



**Sent on behalf of Jennifer Driscoll:**

Dear Mr. MacKerron –

Please see the attached letter regarding your shareholder proposal submission.

Thank you  
The ExxonMobil Shareholder Relations Team

---

From: Shareholder Engagement [REDACTED]  
Sent: Thursday, December 08, 2022 4:07 PM  
To: Shareholder Relations /SM [REDACTED]  
Cc: Conrad MacKerron [REDACTED]; Kelly McBee [REDACTED]; Gail Follansbee [REDACTED]; Sophia Wilson [REDACTED]; Rachel Lowy [REDACTED]  
Subject: ExxonMobil - Petrochemicals - Shareholder Proposal Filing Document

Dear Mr. Morford,

Attached please find the filing document packet submitting a shareholder proposal for inclusion in the company's 2023 proxy statement. A previous copy of these documents has been sent to your offices via FedEx and our records show it arrived today, December 8, 2022 at 9:35am. Please note that the attached is revised and is the correct version to review. It would be much appreciated if you could please confirm receipt of this email.

Thank you and best regards,  
Rachel Lowy

Rachel Lowy (she/her/hers)  
Shareholder Relations Coordinator

*As You Sow*

[REDACTED]

[www.asyousow.org](http://www.asyousow.org)



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## Englande, Sherry M

---

**From:** Englande, Sherry M  
**Sent:** Monday, January 09, 2023 6:43 PM  
**To:** Conrad MacKerron  
**Cc:** 'Shareholder Engagement'  
**Subject:** Invitation to Engagement: Conrad MacKerron

Hi Conrad –

Happy New Year – I hope you are enjoying a great beginning to 2023!

It's been a while since we had a chance to talk, but it was good to hear from you. I hope you are doing well – and Josh Romo, too, if he's still with As You Sow.

We received your shareholder proposal on plastics submitted for our next annual shareholder meeting and are interested in hearing from you about your resolution.

Can you join our Vice President of Investor Relations, Jennifer Driscoll, for a telephone call on Tuesday, January 17 from 11:15-Noon Pacific Time / 1:15-2:00pm Central Time?

If this day/time works for your calendar, I'd be glad to send a meeting notice with Zoom link.

We look forward to talking with you soon.

Thank you

Sherry

Sherry M. Englande  
ESG Manager  
Investor Relations

**Exxon Mobil Corporation**



This document may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If you are not the intended recipient, you are on notice that any unauthorized disclosure, copying, distribution, or taking of any action in reliance on the contents of this document is prohibited.



## Englande, Sherry M

---

**From:** Kern, David A  
**Sent:** Friday, December 09, 2022 9:17 AM  
**To:** Englande, Sherry M  
**Subject:** FW: Shareholder proposal submitted pursuant to Rule 14a-8  
**Attachments:** Anna Marie Lyles - Exxon Mobil Corporation - Letter (December 8, 2022).pdf

**David A. Kern**  
**Senior Counsel, Corporate and Securities Law**  
Exxon Mobil Corporation

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

PRIVILEGED AND CONFIDENTIAL: This communication may contain information that is privileged and confidential and exempt from disclosure under applicable privileges. If you are not the intended recipient, please disregard this communication and contact sender.

---

**From:** Morford, Craig Stephen [REDACTED]  
**Sent:** Thursday, December 8, 2022 10:46 PM  
**To:** Kern, David A [REDACTED]  
**Subject:** Fwd: Shareholder proposal submitted pursuant to Rule 14a-8

I believe this was received by you and Jennifer through other means and is incorporated in the chart of 14 SH proposals but am forwarding these from my junk file to be safe so nothing is missed.

Sent from my iPhone

Begin forwarded message:

**From:** Annarie Lyles [REDACTED]  
**Date:** December 8, 2022 at 12:16:50 PM EST  
**To:** "Morford, Craig Stephen" [REDACTED]  
**Subject:** Shareholder proposal submitted pursuant to Rule 14a-8

**External Email - Think Before You Click**

Dear Mr. Morford,

Attached please find a shareholder proposal submitted pursuant to Rule 14a-8 promulgated under the Securities and Exchange Act of 1934, as amended, for inclusion in Exxon Mobil Corporation ("the Company") proxy statement for its next annual meeting of shareholders. A copy of the attached is being delivered to the Company's principal executive offices as well.

Kindly confirm receipt of this email.

Thank you,

Anna Marie Lyles



ANNA MARIE LYLES, PH. D.

December 8, 2022

**VIA HAND DELIVERY AND EMAIL TO CRAIG S. MORFORD, VICE PRESIDENT,  
GENERAL COUNSEL AND SECRETARY –**

Exxon Mobil Corporation  
Attention: Craig S. Morford, Vice President, General Counsel and Secretary

**Re: Exxon Mobil Corporation (“ExxonMobil” or the “Company”)**

Dear Mr. Morford,

In accordance with Rule 14a-8 promulgated under the Securities and Exchange Act of 1934, as amended (the “Exchange Act”), the undersigned (the “Proponent”) submits the following proposal for presentation to the Company’s shareholders at the Company’s next annual meeting of stockholders, anticipated to be held in May 2023, or any postponement or adjournment or special meeting held in lieu thereof (the “Meeting”).

The Proponent hereby represents that the Proponent has continuously owned the amount of common stock, without par value (“Common Stock”), of the Company with the market value over \$2,000 since June 2015 and intends to continue to hold the requisite amount of Common Stock through the date of the Meeting. A letter from Charles Schwab & Co., Inc., the Proponent’s broker, confirming the above ownership will be submitted under separate cover.

The Proponent’s proposal pursuant to Rule 14a-8 of the Exchange Act (the “Proposal”) is as follows:

***PROPOSAL***

**RESOLVED:** Shareholders request an actuarial assessment, omitting confidential information and prepared at a reasonable cost, of the potential cumulative risk to Exxon Mobil Corporation (“ExxonMobil” or the “Company”) from current environment-related litigation against the Company and its affiliates.

***SUPPORTING STATEMENT***

Environment-related litigation poses an increasing risk to oil and gas investments. For instance, BP paid more than \$60bn in criminal and civil penalties and remediation costs following the Macondo blowout, and Shell has been ordered by a Dutch court to reduce its CO2 emissions by 45% by 2030.

In addition, we have observed a recent trend of courts cancelling energy production permits (e.g. in Australia, South Africa, Brazil), which poses a particular risk for investments in new production. These cancellations allegedly result from non-compliance with environmental laws and the incompatibility of new production with climate goals. Notably, we believe that courts may now use as a point of reference the International Energy Agency's assessment in its 2021 report Net Zero by 2050 that no new oil, gas, or thermal coal projects can be approved by relevant licensing authorities in order to meet Paris Agreement emissions goals.

These environment-related lawsuits are often lengthy and we believe that the direct and indirect risks posed to the business and shareholder value in case of losing some of these lawsuits appear substantial, and shareholders deserve proper disclosure of these risks.

Media reports indicate that ExxonMobil also faces environment-related lawsuits with potentially material impacts on the business. For example:

- Multiple climate lawsuits brought by states and attorneys general alleging failures to adequately address climate risks, an obligation to pay damages for climate harms, and misleading consumers and investors regarding greenhouse gas emissions.<sup>1</sup> Individually and cumulatively, losing these cases could have a direct financial and/or reputational impact on ExxonMobil.
- Multiple lawsuits alleging non-compliance with legal requirements by ExxonMobil's major investment in Guyana. A court has cut two of ExxonMobil's Guyana subsidiary's environmental permits from over 20 years to 5 years.
- Ongoing lawsuits seek cancellation of more permits, enforcement regarding safety conditions amid reports of spills, and unlimited parent company indemnities to cover the risk of a major spill that could impact many Caribbean countries. Constitutional litigation demands that Guyana's government halt oil and gas production entirely due to its alleged impact on the environment.

Clearly, ExxonMobil is not immune to risks of environment-related litigation. However, it discloses what we believe is insufficient information on these risks, leaving shareholders with an inadequate means to assess the future value of their investments. Therefore, the shareholders believe the board of directors of the Company should take the steps necessary to direct the Company to provide additional disclosure regarding these risks so that the shareholders are able to properly evaluate potential impact such risks may have on the shareholder value.

***END OF PROPOSAL***

---

<sup>1</sup> See e.g., City and County of Honolulu v. ExxonMobil et al. ICCV-20-0000380; Matthew Platkin Attorney-General of New Jersey v. ExxonMobil Corporation et al. MER-L-001797-22; Commonwealth of Massachusetts v. ExxonMobil Corporation No. 19-12430-WGY.

In accordance with Rule 14a-8(b)(iii) of the Exchange Act, the Proponents represents that the Proponent is able to meet with ExxonMobil via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the Proposal. The Proponent will assume that the regular business hours of the Company's principal executive offices, which are located in New Jersey, are between 9:00 a.m. and 5:30 p.m. EST, unless otherwise notified by the Company. To that end, the Proponent is available to discuss the Proposal during the following business days and at the following times by teleconference:

- Wednesday, December 21, 2022, between 9:30 a.m. and 10:30 a.m. EST
- Tuesday, December 27, 2022 through Friday, December 30, 2022, between 9:00 a.m. and 5:30 p.m. EST
- Monday, January 2, 2023 through Friday, January 6, 2023, between 9:00 a.m. and 5:30 p.m. EST

The Proponent's contact information is as follows:

Anna Marie Lyles, Ph.D.



Please notify us as soon as possible if you would like any further information or if you believe this notice is deficient in any way or if additional information is required so that the Proponent may promptly provide it to you in order to cure any deficiency.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in blue ink that reads "Anna Marie Lyles".

---

Name: Anna Marie Lyles  
Date: December 8, 2022

cc: The Board of Directors of the Company



RECEIVED

DEC 08 2022

ANNA MARIE LYLES, PH. D.  
[REDACTED]

CRAIG S. MORFORD

December 8, 2022

VIA HAND DELIVERY AND EMAIL TO CRAIG S. MORFORD, VICE PRESIDENT,  
GENERAL COUNSEL AND SECRETARY –  
[REDACTED]

Exxon Mobil Corporation  
Attention: Craig S. Morford, Vice President, General Counsel and Secretary  
[REDACTED]

**Re: Exxon Mobil Corporation (“ExxonMobil” or the “Company”)**

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In addition, we have observed a recent trend of courts cancelling energy production permits (e.g. in Australia, South Africa, Brazil), which poses a particular risk for investments in new production. These cancellations allegedly result from non-compliance with environmental laws and the incompatibility of new production with climate goals. Notably, we believe that courts may now use as a point of reference the International Energy Agency's assessment in its 2021 report Net Zero by 2050 that no new oil, gas, or thermal coal projects can be approved by relevant licensing authorities in order to meet Paris Agreement emissions goals.

These environment-related lawsuits are often lengthy and we believe that the direct and indirect risks posed to the business and shareholder value in case of losing some of these lawsuits appear substantial, and shareholders deserve proper disclosure of these risks.

Media reports indicate that ExxonMobil also faces environment-related lawsuits with potentially material impacts on the business. For example:

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- Ongoing lawsuits seek cancellation of more permits, enforcement regarding safety conditions amid reports of spills, and unlimited parent company indemnities to cover the risk of a major spill that could impact many Caribbean countries. Constitutional litigation demands that Guyana's government halt oil and gas production entirely due to its alleged impact on the environment.

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## ***END OF PROPOSAL***

---

<sup>1</sup> See e.g., City and County of Honolulu v. ExxonMobil et al. ICCV-20-0000380; Matthew Platkin Attorney-General of New Jersey v. ExxonMobil Corporation et al. MER-L-001797-22; Commonwealth of Massachusetts v. ExxonMobil Corporation No. 19-12430-WGY.

In accordance with Rule 14a-8(b)(iii) of the Exchange Act, the Proponents represents that the Proponent is able to meet with ExxonMobil via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the Proposal. The Proponent will assume that the regular business hours of the Company's principal executive offices, which are located in New Jersey, are between 9:00 a.m. and 5:30 p.m. EST, unless otherwise notified by the Company. To that end, the Proponent is available to discuss the Proposal during the following business days and at the following times by teleconference:

- Wednesday, December 21, 2022, between 9:30 a.m. and 10:30 a.m. EST
- Tuesday, December 27, 2022 through Friday, December 30, 2022, between 9:00 a.m. and 5:30 p.m. EST
- Monday, January 2, 2023 through Friday, January 6, 2023, between 9:00 a.m. and 5:30 p.m. EST

The Proponent's contact information is as follows:

Anna Marie Lyles, Ph.D.



Please notify us as soon as possible if you would like any further information or if you believe this notice is deficient in any way or if additional information is required so that the Proponent may promptly provide it to you in order to cure any deficiency.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in cursive script that reads "Anna Marie Lyles".

---

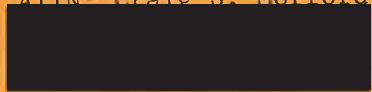
Name: Anna Marie Lyles  
Date: December 8, 2022

cc: The Board of Directors of the Company

Anna Marie Lyles, PH.D.



Exxon Mobil Corporation  
ATTN: Craig S. Morford, Vice President



## Englande, Sherry M

---

**From:** Englande, Sherry M on behalf of Shareholder Relations /SM  
**Sent:** Wednesday, December 21, 2022 5:06 PM  
**To:** [REDACTED]  
**Subject:** Shareholder Proposal Filing  
**Attachments:** 2022-1221 Ack Ltr - Lyles.pdf; Attachments\_SEC Rule 14a-8\_Nov-4-2020 and SLB 14F\_Oct-18-2011.pdf; Attachments\_SEC Rule 14a-8\_SLB 14\_July-13-2001.pdf

**Sent on behalf of Jennifer Driscoll:**

Dear Ms. Lyles –

Please see the attached letter regarding your shareholder proposal submission.

Thank you

Sherry M. Englande  
ESG Manager  
Investor Relations

**Exxon Mobil Corporation**

[REDACTED]

This document may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If you are not the intended recipient, you are on notice that any unauthorized disclosure, copying, distribution, or taking of any action in reliance on the contents of this document is prohibited.



**VIA EMAIL**

December 21, 2022

Anna Marie Lyles  
[REDACTED]  
[REDACTED]

Dear Ms. Lyles:

Thank you for your interest in ExxonMobil. This will acknowledge receipt of the proposal concerning a report on current environment-related litigation (the "Proposal"), which you (the "Proponent") have submitted in connection with ExxonMobil's 2023 annual meeting of shareholders.

We wanted to let you know that the Proposal contains certain procedural deficiencies, which the Securities and Exchange Commission ("SEC") regulations require us to bring to your attention. Let me elaborate on them for your benefit.

#### *Ownership Eligibility*

In order to be eligible to submit a shareholder proposal, Rule 14a-8, as amended (copy enclosed), requires that each proponent must have continuously held, as of the date the proposal was submitted, at least (i) \$2,000 in market value of the company's securities entitled to vote on the proposal at the meeting for at least three years, (ii) \$15,000 in market value of the company's securities entitled to vote on the proposal at the meeting for at least two years or (iii) \$25,000 in market value of the company's securities entitled to vote on the proposal at the meeting for at least one year, for the applicable period through and including the date the shareholder proposal was submitted.

For this Proposal, the date of submission is December 8, 2022, which is the date the Proposal was received for delivery by priority mail service.

Note that the SEC rules do not permit a shareholder to aggregate the Proponent's share holdings with those of another shareholder or group of shareholders to meet the ownership eligibility requirement.

#### *Method for Demonstrating Proof of Ownership*

You do not appear in our records as a registered shareholder. Moreover, to date we have not received proof that you satisfy the ownership requirements. To remedy this deficiency, you must submit sufficient proof verifying your continuous ownership of the requisite number of ExxonMobil shares for the applicable time period preceding and including December 8, 2022.

As explained in Rule 14a-8(b) and SEC staff guidance, sufficient proof must be in the form of:

- a written statement from the "record" holder of your shares (usually a broker or a bank) verifying that you continuously held the requisite number of ExxonMobil shares for the applicable time period preceding and including December 8, 2022; or
- if you have filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting your ownership of the requisite number of ExxonMobil shares as of or before the date on which the required holding period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that you continuously held the requisite number of ExxonMobil shares for the applicable time period preceding and including December 8, 2022.

If you intend to demonstrate ownership by submitting a written statement from the "record" holder of your shares as set forth in the first bullet point above, please note that most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company ("DTC"), a registered clearing agency that acts as a securities depository (DTC is also known through the account name of Cede & Co.). Such brokers and banks are often referred to as "participants" in DTC. In Staff Legal Bulletin No. 14F (October 18, 2011) (copy enclosed), the SEC staff has taken the view that only DTC participants should be viewed as "record" holders of securities that are deposited with DTC. As the SEC adopted amendments to Rule 14a-8 that became effective in 2021, please note that Staff Legal Bulletin No. 14F does not reflect those amendments and to the extent any provisions are inconsistent, Rule 14a-8 governs in all respects.

You can confirm whether your broker or bank is a DTC participant by asking your broker or bank or by checking the listing of current DTC participants, which is available on the internet at: <https://www.dtcc.com/client-center/dtc-directories>. In these situations, shareholders need to obtain proof of ownership from the DTC participant through which the securities are held, as follows:

- If your broker or bank is a DTC participant, then you need to submit a written statement from your broker or bank verifying that you continuously held the requisite number of ExxonMobil shares for the applicable time period preceding and including December 8, 2022.
- If your broker or bank is not a DTC participant, then you need to submit proof of ownership from the DTC participant through which the securities are held verifying that you continuously held the requisite number of ExxonMobil shares for the applicable time period preceding and including December 8, 2022. You should be able to find out who this DTC participant is by asking your broker or bank. If your broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through your account statements because the clearing broker identified on your account statements will generally be a DTC participant. If the DTC participant that holds your shares knows your broker's or bank's holdings, but does not know your holdings, you need to satisfy the proof of ownership requirement by obtaining and submitting two proof of ownership statements verifying that for the applicable period preceding and including December 8, 2022, the required amount of securities were continuously held – one from your broker or bank, confirming your ownership, and the other from the DTC participant, confirming the broker or bank's ownership.



The SEC's rules require that this deficiency we have identified be remedied, and any response to this letter must be postmarked or transmitted electronically to us no later than 14 calendar days from the date this letter is received. Please mail any response to me at ExxonMobil at the address shown above. Alternatively, you may send your response to me via facsimile at [REDACTED] or by email to [REDACTED]. The failure to correct the deficiencies within this time period will provide the company with a basis to exclude the Proposal from the company's proxy statement for the 2023 annual meeting.

You should note that, if the Proposal is not withdrawn or excluded, you or your representative, who is qualified under New Jersey law to present the Proposal on your behalf, must attend the annual meeting in person to present the Proposal. Under New Jersey law, only shareholders or their duly constituted proxies are entitled as a matter of right to attend the meeting.

If you intend for a representative to present the Proposal, you must provide documentation that specifically identifies their intended representative by name and specifically authorizes the representative to act as your proxy at the annual meeting. To be a valid proxy entitled to attend the annual meeting, the representative must have the authority to vote your shares at the meeting. A copy of this authorization meeting state law requirements should be sent to my attention in advance of the meeting. The authorized representative should also bring an original signed copy of the proxy documentation to the meeting, together with photo identification if requested, so that our counsel may verify the representative's authority to act on your behalf prior to the start of the meeting.

Note that under Staff Legal Bulletin No. 14F, the SEC will distribute no-action responses under Rule 14a-8 by email to companies and proponents. We encourage all proponents and any co-filers to include an email contact address on any additional correspondence to ensure timely communication in the event the Proposal is subject to a no-action request.

I hope that's helpful to you.

Last, we are interested in discussing this Proposal and will contact you in the near future.

Sincerely,



JKD/sme

Enclosures



**Englande, Sherry M**

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**From:** Microsoft Outlook  
**To:** [REDACTED]  
**Sent:** Wednesday, December 21, 2022 5:10 PM  
**Subject:** Relayed: Shareholder Proposal Filing

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

[REDACTED]

Subject: Shareholder Proposal Filing



Shareholder  
Proposal Filing

## Englande, Sherry M

---

**From:** Annarie Lyles [REDACTED]  
**Sent:** Friday, December 30, 2022 1:09 PM  
**To:** Shareholder Relations /SM  
**Cc:** Morford, Craig Stephen  
**Subject:** Shareholder Proposal Submission - documentation  
**Attachments:** Schwab\_Owner\_Letter\_XOM2022.pdf

Dear Ms. Jennifer Driscoll,

Attached is a written statement from Charles Schwab evidencing that I have held at least \$2,000 in market value of the company's securities entitled to vote on the proposal at the meeting for at least three years prior to the proposal's submission. As previously noted, I intend to continue to hold the requisite amount of stock through the date of the 2023 annual meeting. The attached statement confirms the validity of my submission and should be all you need, but please let me know if you have any follow-up.

With good wishes for the New Year,

Anna Marie Lyles, Ph.D.  
[REDACTED]  
[REDACTED]



December 19, 2022

Account # [REDACTED]

Anna Lyles  
[REDACTED]

## Here is the account information you requested.

Dear Anna Lyles,

I'm writing to confirm that 60 shares of Exxon Mobil Corp. (CUSIP 30231G102) are held in the above referenced account.

As of the date of this letter, shares have been continuously held in this account since June 15, 2015.

Please note: This letter is for informational purposes only and is not an official record of the account. Please refer to your statements and trade confirmations as they are the official record of your transactions.

**Thank you for choosing Schwab.** We appreciate your business and look forward to serving you in the future. If you have any questions, please call me or any Client Service Specialist at [REDACTED]

Sincerely,

*Donte Henton*

Donte Henton  
Manager, Escalation Support  
[REDACTED]

## Englande, Sherry M

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**From:** Englande, Sherry M on behalf of Shareholder Relations /SM  
**Sent:** Friday, January 06, 2023 9:05 PM  
**To:** [REDACTED]  
**Cc:** Shareholder Engagement  
**Subject:** Shareholder Proposal Filings  
**Attachments:** 2023-0106 As You Sow Response Letter.pdf

**Sent on behalf of Jennifer Driscoll:**

Dear Ms. Fugere and Ms. Lyles –

Please see the attached letter regarding your shareholder proposal submissions.

Thank you

Sherry M. Englande  
ESG Manager  
Investor Relations

**Exxon Mobil Corporation**  
[REDACTED]

This document may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If you are not the intended recipient, you are on notice that any unauthorized disclosure, copying, distribution, or taking of any action in reliance on the contents of this document is prohibited.



VIA EMAIL

January 6, 2023

As You Sow Control Group

Danielle Fugere  
President & Chief Counsel  
As representative for:  
Andrew Behar

Anna Marie Lyles, Ph.D.

Dear Ms. Fugere and Ms. Lyles:

I am writing to you in relation to Ms. Lyles' proposal concerning a report on current environment-related litigation (the "Lyles Proposal") that you submitted on December 8, 2022, and Mr. Behar's proposal concerning an adjustment to greenhouse gas reporting (the "Behar Proposal" and, together with the Lyles Proposal, the "Proposals") that you submitted on December 5, 2022, in connection with ExxonMobil's 2023 annual meeting of shareholders. See Attachment 1 and Attachment 2 for full text of the Proposals.

Subsequent to our letter of December 21, 2022 to Ms. Lyles acknowledging receipt of the Lyles Proposal, we became aware that, in other professional capacities, your colleague refers to herself as Annarie Lyles.<sup>1</sup> We also learned that, as Annarie Lyles, Ms. Lyles is currently serving as a member of the board of directors and treasurer of As You Sow.<sup>2</sup> We are sending this letter now as none of these facts were apparent or disclosed in your December 8, 2022 submission of the Lyles Proposal.<sup>3</sup> Separately, Andrew Behar is the chief executive officer of As You Sow and served in this role at the time the Behar Proposal was submitted shortly before the submission of the Lyles Proposal.

<sup>1</sup> See <https://www.linkedin.com/in/annarielyles>. This profile for Annarie also lists Bio-Gist Ventures, LLC. See also information for Bio-Gist Ventures, LLC, using the Anna Marie Lyles names: <https://www.allbiz.com/business/bio-gist-ventures-llc-609-497-0340> and <https://www.buzzfile.com/business/Bio~Gist-Ventures-LLC-609-497-0340>. All use the same address as the submission of [REDACTED]

<sup>2</sup> See <https://www.asyousow.org/about-us/staff/board-of-directors>.

<sup>3</sup> We further note that, for some reason, As You Sow does not list the Lyles Proposal on its website: <https://www.asyousow.org/resolutions-tracker>. Nor was As You Sow listed or referenced in your Proposal.

On the basis of these new facts, we wanted to notify you that each of the Proposals contain a deficiency under the regulations of the Securities and Exchange Commission ("SEC"). We elaborate below for your benefit.

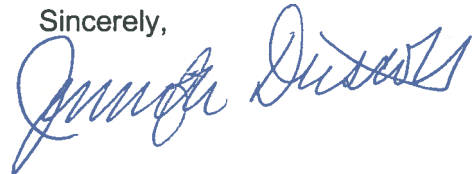
*As Controlled Persons of As You Sow, Each of the Lyles Proposal and Behar Proposal has the Same Proponent as Another Proposal Submitted by Another Controlled Person of As You Sow*

Rule 14a-8(c) states that each person may submit no more than one proposal to a company. This includes both direct and indirect submissions. An organization such as As You Sow may indirectly submit a proposal where the proposal is submitted by someone with whom they have a control relationship, including employment relationships.<sup>4</sup> Ms. Lyles' work as a director and treasurer of As You Sow and Mr. Behar's work as chief executive officer of As You Sow each qualify as control relationships. Therefore, the submission of both of the Proposals causes each of the Lyles Proposal and Behar Proposal to violate the one-proposal limit. Therefore, one of the Proposals must be withdrawn.

We wanted to make you aware that the SEC's rules require that the deficiency we have identified be remedied, and your response must be postmarked or transmitted electronically to us no later than 14 calendar days from the date this letter is received. Please mail any response to me at ExxonMobil at the address shown above. Alternatively, you may send your response to me via facsimile at [REDACTED] or by email to [REDACTED]. The failure to correct the deficiencies within this time period will provide the company with a basis to exclude both Proposals from the company's proxy statement for the company's 2023 annual meeting of shareholders.

Please contact us with any questions.

Sincerely,



JKD/tlb

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<sup>4</sup> See final release, page 61: "[W]e note that under the final amendment, **entities and all persons under their control, including employees, will be treated as a 'person'** for purposes of the amendment." Full release: <https://www.sec.gov/rules/final/2020/34-89964.pdf>.

Attachment 1

**Anna Marie Lyles Proposal**

**RESOLVED:** Shareholders request an actuarial assessment, omitting confidential information and prepared at a reasonable cost, of the potential cumulative risk to Exxon Mobil Corporation (“ExxonMobil” or the “Company”) from current environment-related litigation against the Company and its affiliates.

***SUPPORTING STATEMENT***

Environment-related litigation poses an increasing risk to oil and gas investments. For instance, BP paid more than \$60bn in criminal and civil penalties and remediation costs following the Macondo blowout, and Shell has been ordered by a Dutch court to reduce its CO2 emissions by 45% by 2030.

In addition, we have observed a recent trend of courts cancelling energy production permits (e.g. in Australia, South Africa, Brazil), which poses a particular risk for investments in new production. These cancellations allegedly result from non-compliance with environmental laws and the incompatibility of new production with climate goals. Notably, we believe that courts may now use as a point of reference the International Energy Agency's assessment in its 2021 report Net Zero by 2050 that no new oil, gas, or thermal coal projects can be approved by relevant licensing authorities in order to meet Paris Agreement emissions goals.

These environment-related lawsuits are often lengthy and we believe that the direct and indirect risks posed to the business and shareholder value in case of losing some of these lawsuits appear substantial, and shareholders deserve proper disclosure of these risks.

Media reports indicate that ExxonMobil also faces environment-related lawsuits with potentially material impacts on the business. For example:

- Multiple climate lawsuits brought by states and attorneys general alleging failures to adequately address climate risks, an obligation to pay damages for climate harms, and misleading consumers and investors regarding greenhouse gas emissions.<sup>1</sup> Individually and cumulatively, losing these cases could have a direct financial and/or reputational impact on ExxonMobil.
- Multiple lawsuits alleging non-compliance with legal requirements by ExxonMobil's major investment in Guyana. A court has cut two of ExxonMobil's Guyana subsidiary's environmental permits from over 20 years to 5 years.
- Ongoing lawsuits seek cancellation of more permits, enforcement regarding safety conditions amid reports of spills, and unlimited parent company indemnities to cover the risk of a major spill that could impact many Caribbean countries. Constitutional litigation demands that Guyana's government halt oil and gas production entirely due to its alleged impact on the environment.

Clearly, ExxonMobil is not immune to risks of environment-related litigation. However, it discloses what we believe is insufficient information on these risks, leaving shareholders with an inadequate means to assess the future value of their investments. Therefore, the shareholders believe the board of directors of the Company should take the steps necessary to direct the Company to provide additional disclosure regarding these risks so that the shareholders are able to properly evaluate potential impact such risks may have on the shareholder value.

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<sup>1</sup> See e.g., *City and County of Honolulu v. ExxonMobil et al.* 1CCV-20-0000380; *Matthew Platkin Attorney General of New Jersey v. ExxonMobil Corporation et al.* MER-L-001797-22; *Commonwealth of Massachusetts v. ExxonMobil Corporation* No. 19-12430-WGY.RESOL"



Attachment 2

**Andrew Behar Proposal**

Representative: Danielle Fugere (As You Sow President and Chief Counsel)

**“WHEREAS:** The economic risks associated with climate change exist in the real world rather than on company balance sheets. Transferring emissions from one company to another may reduce balance sheet emissions but does not mitigate company or stakeholder exposure to climate risk or contribute to the goal of limiting global temperature rise to 1.5 degrees Celsius. In the aggregate, upstream oil and gas assets are moving from operators with stronger climate commitments to operators with weaker climate targets and disclosures.<sup>1</sup>

The Glasgow Financial Alliance for Net Zero states that “divestment of carbon-intensive assets can be ineffective and even lead to real-world increases in emissions.”<sup>2</sup> As such, these divestments should not be counted as emissions reductions.

To accurately account for greenhouse gas (GHG) emissions reductions, the Greenhouse Gas Protocol provides that companies should recalculate base year emissions in the event of a “transfer of ownership or control of emissions-generating activities.”<sup>3</sup> Oil and gas industry association IPIECA similarly recommends “adjustments to the base year emissions” to account for asset divestiture, to avoid giving the appearance of “increases or decreases in emissions, when in fact. . . emissions would merely be transferred from one company to another.”<sup>4</sup>

Since 2016, ExxonMobil reports absolute Scope 1 and 2 emissions reductions of roughly 10% on both equity and operated bases.<sup>5</sup> However, between 2017 and 2021, ExxonMobil sold more assets than any other American oil and gas company except Chevron, ranking fourth globally among sellers.<sup>6</sup> It is unclear how ExxonMobil accounts for these divestitures in its emissions reporting. Therefore, shareholders cannot determine whether ExxonMobil’s reported GHG reductions are the result of operational improvements or of transferring emissions off its books.

In contrast, peer company Devon Energy recalculates its baseline when asset divestitures or investments result in “a change to its emissions baseline of 5% or higher” to ensure accuracy and comparability of emissions reporting.<sup>7</sup> Devon notes that this “recalculation methodology affirms our commitment to structurally drive down emissions, rather than divesting assets as a means to achieve our ambitious emissions reduction targets.”<sup>8</sup> Investors deserve the same transparency from ExxonMobil.

**RESOLVED:** Shareholders request that ExxonMobil, at reasonable cost and omitting proprietary information, disclose a recalculated emissions baseline that excludes the aggregated GHG emissions from material asset divestitures occurring since 2016, the year ExxonMobil uses to baseline its emissions.

**SUPPORTING STATEMENT:** Proponents recommend disclosing, at management’s discretion:

- The emissions associated with ExxonMobil’s material asset divestments since 2016;
- What portion, if any, of ExxonMobil’s current emissions reduction targets relies on accounting for asset transfers as emissions reductions;
- A base year emissions recalculation policy establishing a threshold for future recalculations related to divestitures.

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<sup>1</sup> <https://business.edf.org/files/Transferred-Emissions-How-Oil-Gas-MA-Hamper-Energy-Transition.pdf> p. 4

<sup>2</sup> <https://assets.bbhub.io/company/sites/63/2021/11/GFANZ-Progress-Report.pdf> p. 52

<sup>3</sup> <https://ghgprotocol.org/sites/default/files/standards/ghg-protocol-revised.pdf> p. 35

<sup>4</sup> <https://www.ipieca.org/resources/good-practice/petroleum-industry-guidelines-for-reporting-greenhouse-gas-emissions-2nd-edition/> p. 39

<sup>5</sup> <https://corporate.exxonmobil.com/-/media/global/files/advancing-climate-solutions-progress-report/2022-july-update/exxonmobil-advancing-climate-solutions-2022-progress-report.pdf?la=en&hash=3A2B299463CE50DCDD6A9595E49AC3030CFF4350>

<sup>6</sup> <https://business.edf.org/files/Transferred-Emissions-How-Oil-Gas-MA-Hamper-Energy-Transition.pdf> p. 22

<sup>7</sup> [https://dvnweb.azureedge.net/assets/documents/Sustainability/DVN\\_2022\\_SustainabilityReport.pdf](https://dvnweb.azureedge.net/assets/documents/Sustainability/DVN_2022_SustainabilityReport.pdf) p. 20

<sup>8</sup> Ibid.”

**Englande, Sherry M**

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**From:** Microsoft Outlook  
**To:** Shareholder Engagement; [REDACTED]  
**Sent:** Friday, January 06, 2023 9:09 PM  
**Subject:** Relayed: Shareholder Proposal Filings

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

[Shareholder Engagement](#) [REDACTED]

[REDACTED]

[REDACTED]

Subject: Shareholder Proposal Filings



Shareholder  
Proposal Filings

January 23, 2023

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 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 supplement the Company’s no-action request letters each dated January 13, 2023 (the “**No-Action Letters**”) with respect to the shareholder proposal (the “**First Proposal**”) submitted by Andrew Behar (the “**First Proponent**”) and the shareholder proposal (the “**Second Proposal**”) submitted by Anna Marie Lyles (the “**Second Proponent**”) for inclusion in the proxy materials the Company intends to distribute in connection with its 2023 Annual Meeting of Shareholders (the “**2023 Proxy Materials**”). Capitalized terms not defined herein are used as defined in the No-Action Letters.<sup>1</sup> We have been advised by the Company as to the factual matters set forth herein.

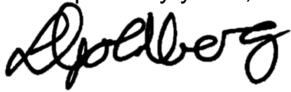
On January 18, 2023, 14 days after the Company sent the Second Deficiency Notice and five days after the Company submitted the No-Action Letters, the Company received via email a response from the Second Proponent (the “**Deficiency Response**”), which, along with related correspondence, is attached hereto as Exhibit A. The Deficiency Response confirms that the Second Proponent uses the name “Annarie Lyles” in certain professional contexts, and that the Second Proponent serves as a member of the board of directors of As You Sow, as well as in the board officer position of treasurer at As You Sow.

As noted in the No-Action Letters, the Company believes the First Proposal and Second Proposal may be properly omitted from the 2023 Proxy Materials because of the First Proponent’s role as chief executive officer of As You Sow and the Second Proponent’s role as a member of the board of directors and treasurer of As You Sow, such that more than one proposal has been submitted directly or indirectly by As You Sow, in violation of Rule 14a-8(c). Neither the First Proposal nor the Second Proposal has been withdrawn or has otherwise cured the deficiency. Therefore we continue to believe that both the First Proposal and Second Proposal may be excluded on this basis.

<sup>1</sup> The First No-Action Letter is also available at <https://www.sec.gov/files/corpfm/no-action/14a-8/beharexon011323-14a8-incoming.pdf>. The Second No-Action Letter is also available at <https://www.sec.gov/files/corpfm/no-action/14a-8/lylesexon011323-14a8-incoming.pdf>.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this supplement to the No-Action Letters. Please do not hesitate to call me at (212) 450-4539 or James Parsons at [james.e.parsons@exxonmobil.com](mailto:james.e.parsons@exxonmobil.com).

Respectfully yours,



Louis Goldberg

Attachment

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

Anna Marie Lyles

Danielle Fugere

**Exhibit A**

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-----Original Message-----

From: Annarie Lyles [REDACTED]  
Sent: Thursday, January 19, 2023 7:55 PM  
To: Shareholder Relations /SM [REDACTED]  
Cc: Morford, Craig Stephen [REDACTED]  
Subject: Re: Lyles Shareholder proposal & As You Sow

External Email - Think Before You Click

Dear Ms. Driscoll,

Please confirm whether Exxon Mobil has already, or intends to forward my response below to the SEC, as it is correspondence related to the no-action letter that was submitted.

Thank you,  
Anna Marie "Annarie" Lyles, Ph.D.

On Wed, Jan 18, 2023 at 11:01 AM Annarie Lyles [REDACTED] > wrote:

Dear Ms. Driscoll,

I am writing in response to your January 6 letter alleging that the proposal I submitted was not my own. This allegation is false, as are other of the central claims made in your letter.

First, there is no confusion surrounding my name. My full legal name is Anna Marie Lyles. In various professional capacities, my colleagues also refer to me in the shorthand as 'Annarie'.

Second, I am not employed by As You Sow. I am self employed as a consultant and as a manager of a small, private, venture capital portfolio. To be clear, I serve as a volunteer director on As You Sow's board of directors. I have no employment contract with As You Sow and receive no compensation from As You Sow. The treasurer title you reference is a volunteer board officer position, not an employment position.

Given the above, I am certainly not controlled by As You Sow or in any kind of control relationship with As You Sow. That you state otherwise does not make it so.

Third, I made my proposal as a longtime Exxon shareholder (you have proof of this in the broker letter I submitted evidencing that I have held the shares underlying my submission in my name since 2015) concerned with the risk that environmental litigation poses to my investment. I have been concerned with environmental challenges since the early 1980s when I researched global carbon models at Yale. Over the ensuing years, I have worked in conservation biology as well as in business, and I have served on numerous boards that are concerned with our environment and sustainability.

This email should clear up any confusion you may have had with regards to my proposal and confirm that it was and remains validly submitted.

Sincerely yours,  
Anna Marie "Annarie" Lyles, Ph.D.





# Sanford Lewis & Associates

PO Box 231  
Amherst, MA 01004-0231  
413 549-7333  
sanfordlewis@strategiccounsel.net

February 13, 2023

## **VIA EMAIL**

Office of Chief Counsel  
Division of Corporate Finance  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549  
Email: shareholderproposals@sec.gov

### **Re: Shareholder Proposal to Exxon Mobil Corporation Regarding Greenhouse Gas Emissions on Behalf of Andrew Behar**

Ladies and Gentlemen:

Andrew Behar (the “Proponent”) is the beneficial owner of common stock of Exxon Mobil Corporation (the “Company”) and has submitted a shareholder proposal (the “Behar Proposal”) to the Company. I write on the Proponents’ behalf in response to a letter dated January 13, 2023 (the “Company Letter” or “Company No Action Letter”) sent to the Securities and Exchange Commission by Louis Goldberg of Davis Polk & Wardwell LLP. In the Company Letter, the Company contends that the Behar Proposal may be excluded from its 2023 proxy statement. Proponent’s response follows. A copy of this letter is being emailed concurrently to the Company and its counsel.

The Company has no basis under Rule 14a-8 for exclusion of the Proposal. As such, the Proponent respectfully requests that the Staff inform the Company that it is denying the no action request.

#### **SUMMARY**

The shareholder proposal requests that the Company disclose a recalculated baseline for accounting for its greenhouse gas emissions consistent with the greenhouse gas protocol. The Company does not challenge the substance of the proposal, but instead focuses on purported procedural issues with the filing. In fact, it is the company that has procedurally failed to comply with the rule's deficiency notice requirements and as a result, the no action request must be denied.

The Proponent submitted a shareholder proposal (the “Behar Proposal”) based on his personal ownership of Exxon shares, from his personal email address, on December 5, 2022. The Proponent also serves as Chief Executive Officer of *As You Sow* (“AYS”), an organization that represents shareholders in the shareholder engagement and proposal process. At the time of the submission, he designated Danielle Fugere, an employee of AYS as his representative to thereafter engage with the company.

On December 8, 2022, *As You Sow* submitted a shareholder resolution related to plastics to the Company on behalf of Meyer Memorial Trust (S) (the “Meyer Proposal”). Unrelatedly, Anna Marie Lyles (who also uses the name “Annarie Lyles”) personally submitted a proposal (the “Lyles Proposal”) to the Company. Dr. Lyles is an independent, unpaid member of *As You Sow*’s Board of Directors.

The Company’s No Action Letter is procedurally deficient. The Company failed to issue a deficiency notice asserting the deficiencies now asserted in the No Action request within 14 days of receipt of the Proposal and the allegedly conflicting proposals. Instead, the Company notified the Proponent of a procedural deficiency stemming from an alleged violation of Rule 14a-8(c) *thirty days* after it admits to receiving each of the three proposals at issue.

The Company also failed to afford the Proponent the required 14-day opportunity to cure the alleged deficiency before filing the Company Letter seeking Staff's permission to exclude the Behar Proposal.

Moreover, the third, untimely deficiency letter (attached as *Exhibit A* and hereinafter referred to as the "Third Deficiency Letter"<sup>1</sup>) alleged a violation of Rule 14a-8(c) based *solely* on the Lyles and Behar Proposals, whereas the Company No Action Letter raises an *entirely new* issue - purported violation of the one proposal rule as a result of the Meyer Proposal, an issue which was not addressed or even mentioned in any of the deficiency notices.

In short, the Company neither provided a timely notice of deficiency to the proponent, nor provided the requisite time required by the rule for corrective action by the proponent prior to filing a No Action request. Just as proponents are held to strict deadlines, in this instance the Company failed to meet the procedural rigors of Rule 14a-8 and the No Action request must be rejected.

We note in addition that the Company's No Action Letter further attempts to fabricate new rules about how 14a-8(c) should be applied to a proponent in Mr. Behar's shoes. We urge the Staff to maintain an objective, rather than subjective, interpretation of the Rule regarding submission of one proposal per entity. The Company would interpret the filing of a shareholder proposal by any "employee" of a representative organization, even where the filing is based on the employee's own shares and not in the course of employment, as prohibited where the employer entity has separately filed a proposal. The Rule does not require such an outcome. The Staff should permit independent submissions by shareholders acting under their own control with their own personally held shares, regardless of an employment or other relationship status to a representative organization. To do otherwise would involve the Staff in time-consuming and complicated analyses of indicia of control relationships, related or not-related job duties, and acceptable or prohibited relationships. Behar's personal submission, pursuant to federal legal rights attached to stock he personally owns, was not undertaken in the course of his employment.

It is not necessary to address the Company's dual representation argument in deciding the current matter, because as noted above, the failure of the Company to meet deficiency notice requirements precludes a finding on the basis of the "one proposal" rule.

## ANALYSIS

### **I. The Company's Deficiency Notice and No Action Request Are in Violation of the Procedural Protections of Rule 14a-8(f) Afforded to Shareholders and Should Therefore Be Denied.**

Rule 14a-8 contains several important procedural protections for shareholders. Among these protections is the requirement for companies to provide notice of an alleged deficiency in a shareholder proposal and an opportunity to cure any such deficiency. In this case, the Company has run afoul of both principles.

#### **A. Regulatory Background**

Rule 14a-8 sets forth several requirements that shareholders must follow for their proposals to appear in a company's proxy materials. These requirements are both procedural and substantive. The Rule specifically identifies a subset of the procedural requirements as 'curable.' See Rule 14a-8(f).

Where a deficiency is curable, a company may seek to "exclude [the] proposal, but only after it has notified [the proponent] of the problem, and [the proponent] ha[s] failed adequately to correct it." *Id.* (emphasis added). Companies and proponents alike are subject to a strict and unambiguous timetable for

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<sup>1</sup> Two earlier proof-of ownership deficiency letters were timely sent out and responded to by the Proponent and, upon information and belief, *As You Sow* on behalf of the Meyer Memorial Trust.

this deficiency process. Companies “must notify” a proponent “of any procedural or eligibility deficiencies” “[w]ithin 14 calendar days of receiving [the] proposal.” *Id.* Proponents’ responses “must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company’s notification.” *Id.* Only *after* the completion of the full deficiency process does the Rule contemplate the submission of a No Action request. *See* Rule 14a-8(f) (after setting out the above timelines, stating that “[i]f the company intends to exclude the proposal, it will *later* have to make a submission under [Rule 14a-8(j)]” (emphasis added)). If a company were allowed to file a No Action letter prior to the 14-day cure period, the deficiency notice requirement would be wholly negated, contrary to the well-established canon of construction requiring that laws be interpreted “so that no part will be inoperative or superfluous, void or insignificant.”<sup>2</sup>

The Rule further provides that “[e]ach person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders’ meeting.” Rule 14a-8(c). An alleged violation of this provision is curable. Rule 14a-8(f); *see also* Staff Legal Bulletin No. 14F (Oct. 18, 2011), at n.13 (stating that “company must send the shareholder a notice of defect . . . if it intends to exclude [a] proposal from its proxy materials in reliance on Rule 14a-8(c)”).

## **B. The Company Violated Rule 14a-8’s Procedural Protections.**

### **1. The Deficiency Letter Alleging Filing of Multiple Proposals Was Late.**

As discussed above and in the Company Letter:

- The Behar Proposal was submitted by Behar on December 5, 2022.
- The Meyer Proposal was submitted by *AYS* on December 8, 2022.
- The Lyles Proposal was submitted by Lyles and/or her representative on December 8, 2022.

On December 19, 2022, fourteen days after submission of the Behar Proposal and 11 days after the submission of the Meyer and Lyles proposals, the Company sent a deficiency letter to Danielle Fugere of *As You Sow* asserting only that the Behar Proposal was procedurally deficient because of inadequate proof of ownership (the “First Deficiency Letter”). The First Deficiency Letter did not mention the Meyer or Lyles Proposals.<sup>3</sup> Behar subsequently personally provided the required proof of ownership to the Company from his personal email account.<sup>4</sup>

On December 20, 2022, the Company sent a timely deficiency letter regarding the Meyer Proposal to *AYS* employee Conrad MacKerron; it addressed only proof of ownership (the “Second Deficiency Letter”). The Second Deficiency Letter, signed by the same Company official as the Behar Ownership Deficiency Letter, did not mention the Behar or Lyles Proposals.<sup>5</sup>

On December 22, with 14 days having passed from the submission of the Meyer and Lyles proposals, the deadline for the Company to submit a deficiency notice asserting that *AYS* was responsible for the direct or indirect submission of more than one proposal elapsed. The Staff has clarified that a Company can issue a second deficiency notice beyond the initial 14 day period only where the proponent’s response fails to fully address the identified deficiency in a proof of ownership, not to address a wholly new issue. *See* Staff Legal Bulletin 14L discussing circumstance under which a second deficiency notice can be sent.

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<sup>2</sup> *United States v. Harris*, 838 F.3d 98, 106 (2d Cir. 2016).

<sup>3</sup> The First Deficiency Letter is attached as *Exhibit B*.

<sup>4</sup> Behar’s response to the First Deficiency Letter is attached as *Exhibit D*.

<sup>5</sup> The Second Deficiency Letter is attached as *Exhibit C*.

In the current instance this extension of time is inapplicable because the alleged deficiencies in question occurred on December 8 and the requisite 14 days tolled on December 22.

However, on January 6, 2023 — 32 days after submission of the Behar Proposal and 29 days after submission of the Meyer and Lyles Proposals — the Company sent a Third Deficiency Letter simultaneously to Danielle Fugere (regarding the Behar Proposal) and to Dr. Lyles (regarding her own proposal). This Third Deficiency Letter indicated that, “subsequent to [the Company’s] letter of December 21, 2022 to Ms. Lyles acknowledging receipt of the Lyles Proposal,” the Company became aware of Lyles’ position on *AYS*’ Board of Directors. The Letter further noted that Behar served as Chief Executive Officer of *AYS*, and asserted, “[o]n the basis of these new facts” the Proposals were procedurally deficient due to a violation of Rule 14a-8(c) and “one of the [Behar or Lyles] Proposals must be withdrawn.” *See* Third Deficiency Letter at 2 (“[T]he submission of *both* of the Proposals causes *each* of the *Lyles* Proposal and *Behar* Proposal to violate the one-proposal limit.” (emphasis added)). The letter, signed by the same Company official as had signed the previous two deficiency letters, did not mention the Meyer Proposal.

The Third Deficiency Letter plainly did not comply with Rule 14a-8(f)’s requirement that a deficiency letter must be provided within 14 days of receiving a proposal. The Company apparently seeks to excuse its delay on the Third Deficiency Letter on the basis of lack of knowledge, because the Lyles Proposal “was not submitted on *AYS* letterhead [and] does not make any direct reference to *AYS*’ involvement in the submission,” and because Dr. Lyles filed the proposal using her legal name (Anna Marie Lyles) but commonly uses a variation of that name (Annarie Lyles), including in connection with her service on *AYS*’s Board. *See* Deficiency Letter 3 at 1-2; Company Letter at 2. This is not a credible explanation. Both names -- “Anna Marie” and “Annarie” Lyles -- are readily available online with regard to the Board position and Dr. Lyles’ shareholder advocacy. To claim that this was covered up or that it took the Company 29 days to discover this “new” information does not excuse the Company’s failure to comply with Rule 14a-8(f). The Company’s arguments concerning Dr. Lyles also do not explain why the Company failed to timely object to the submission of the Meyer proposal. The Company asserts that the Behar proposal is attributable to *AYS*; therefore, under the Company’s logic, Rule 14a-8(c) was triggered by the submission of the Meyer Proposal, which came directly from *AYS*.

The Company acknowledges that it received the Meyer Proposal “from *AYS*” just three days after submission of the Behar Proposal, Company Letter at 2, and that it sent proof-of-ownership deficiencies with respect to the Meyer and Behar Proposals to *AYS* employees’ email addresses on *back-to-back* days. Yet it failed to object to the Behar Proposal on the basis of Rule 14a-8(c) for 29 days following the submission of the Meyer Proposal.

Staff precedent strictly applies the deadlines in Rule 14a-8(f). *E.g.*, *FedEx Corp.* (June 5, 2019) (concurring with exclusion where proponent’s proof of ownership in response to company’s deficiency notice was just one day late); *AT&T Inc.* (Jan. 29, 2019) (three days late); *Mondelez International, Inc.* (Feb. 27, 2015) (two days late); *see also Exxon Mobil Corp.* (Mar. 6, 2020) (concurring with exclusion for violation of 14-day limit even where 14-day period included Christmas Eve, Christmas Day, and New Year’s Eve and Day). Accordingly, there is ample Staff precedent supporting the principle that the Company’s failure to provide a notice of deficiency within 14 days of receipt of the proposal is cause to reject a no action request. *E.g.*, *CoStar Group, Inc.* (Apr. 5, 2022) (rejecting no action request where “the Company failed to notify the Proponent of any deficiencies within 14 days of receiving the Proposal as required by Rule 14a-8(f)(1)”). *See also LNB Bancorp, Inc.* (Dec. 28, 2007) (rejecting no action request where company failed to adequately inform proponent of necessary cure to alleged deficiency); *AT&T Inc.* (Feb. 16, 2007) (rejecting no action request where Company addressed deficiency notice to incorrect address). Already this season, the Staff has denied a no action request because it was “not able to determine whether the Proponent received the deficiency notice in a timely manner.” *AmerisourceBergen*

*Corporation* (Jan. 12, 2023). Here, by contrast, there is zero ambiguity. The Proponent *did not* receive the deficiency notice in a timely manner.

**2. *The Company's No Action Letter was Filed Prior to the Running of the Deficiency Response Period.***

Having been late in notifying Mr. Behar of the alleged deficiency, the Company compounded its error by initiating the No Action process before the 14-day response period to which the Proponent was entitled had run. The Company may seek to exclude a proposal based on a curable deficiency “only after it has notified [the proponent] of the problem, and [the proponent] ha[s] failed adequately to correct it.” Rule 14a-8(f). Only “later”— *i.e.*, after the deficiency process is complete — can the company “make a submission” to the Staff to request its concurrence in the decision to exclude. *Id.*

Here, the Company sent the Third Deficiency Letter on January 6, 2023. It sent the No Action Letter only 7 days later, on January 13, 2023. Accordingly, the Company failed to afford the Proponent with the 14 days to which the Proponent was entitled to cure the alleged deficiency. Despite this fact, the Company Letter misleadingly asserts that “[t]o date, the Proponent has not responded to [the Third Deficiency Letter].” Company Letter at 2.

**3. *The Deficiency Letter and Company Letter Differ Substantively.***

Even if the Company had complied with the applicable deadlines in notifying the Proponent, Mr. Behar, of the alleged deficiency and allowing the Proponent the opportunity to cure the alleged deficiency, the Company’s actions would still be procedurally inappropriate. This is because the Company No Action Letter asserts that *AYS* has submitted three proposals and must withdraw two, while the Third Deficiency Letter asserted that *AYS* had submitted two proposals and needed to withdraw one. Consequently, even if Behar or Lyles had withdrawn one of their proposals in response to the Third Deficiency Letter, the Company could have still sandbagged the remaining Proponent with a no action request. Staff guidance and precedent strictly requires companies to fully describe both the nature of the deficiency and the necessary remedy in a deficiency letter and supports denying a no action request where they have failed to do so.

The Company’s No Action requests regarding the Behar and Lyles Proposals seek the exclusion of *both* Proposals, but not the Meyer Proposal. It is evident that the Company believes it received three Proposals from *AYS* and is entitled to exclude two. *See* Company Letter at 2, 3. The Third Deficiency Letter, however, *did not mention or reference* the Meyer Proposal *at all*. Rather, it asserted that *AYS* was responsible for *two* proposals - from Lyles and Behar – and that “*one* of the [Lyles or Behar] Proposals must be withdrawn.” Deficiency Letter at 2 (emphasis added). Withdrawal of only *one* of the Lyles or Behar Proposals is a different remedy than the one the Company now seeks — exclusion of *both* the Lyles and Behar Proposals. Moreover, as a result of the Company’s inconsistent treatment of the Meyer Proposal, it now inappropriately seeks exclusion of the *first* Proposal it received – the Behar Proposal.

The Company’s failure to correctly describe the deficiency and the necessary remedy constitutes an independent reason to reject the No Action request. In guidance spanning more than two decades, the Staff has repeatedly instructed companies to identify any procedural or substantive defects with *specificity* in their deficiency notices.<sup>6</sup> In *Marathon Oil Corporation* (Mar. 3, 2009), the Staff rejected a no action

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<sup>6</sup> In Staff Legal Bulletin No. 14, the Staff directed companies to “provide adequate detail about what the shareholder must do to remedy all eligibility or procedural defects.” (July 13, 2001). The Staff reiterated this instruction in Staff Legal Bulletin No. 14B (Sept. 15, 2004). There, the Staff also reminded companies of their “obligation to provide appropriate notice of defects.” Staff Legal Bulletin No. 14B. In 2012, the Staff referred to these previous bulletins as “explain[ing] that companies should provide adequate detail about what a proponent must

request on precisely this basis, acknowledging that “[w]hile it appears that the proponent may have exceeded the one-proposal limitation in rule 14a-8(c), it appears that Marathon did not request that the proponent reduce the proposals to cure the deficiency as required by rule 14a-8(f). Accordingly, we do not believe that Marathon may omit the proposal from its proxy materials in reliance on rule 14a-8(c).” The Proponent urges the Staff to continue to protect shareholders by holding companies to this important standard.

**D. Lack of Deficiency Notice Precludes Assessment of “Dual Proposal” Claims Regarding Either Subsequently Submitted Proposal.**

The procedural failures of the Company in this instance are sufficient to bar the need for the Staff to assess whether or not a CEO or a volunteer board member filing in their own capacity and not *as a “controlled” employee* would trigger the “dual” filing rule when the organization itself subsequently files on behalf of a proponent.

As will be discussed further below, the Proponent understood at the time of submission that he was submitting the Proposal in his personal capacity as an owner of Company stock, pursuant to his rights under federal law. Nothing in Commission or Staff guidance suggests that an individual must give up their personal proxy rights as a holder of securities merely because their employer subsequently files a shareholder proposal on behalf of a third party.

**II. The Company’s Interpretation of the Amended “One Proposal Rule” is Overly Broad. The Rule is Inapplicable to the Proponent, Who Acted in His Personal Rather Than Employment Capacity, and Infringes on Behar’s Rights as an Individual Stock Owner of the Company.**

In the unlikely event that the Staff were to overlook the procedural failures of the Company regarding deficiency notices, the Proponent urges the Staff to reject the Company’s interpretation of the Rule, which would have the effect of insulating companies from appropriate shareholder engagement and infringing on individual stockholders’ rights.

**A. Commission Guidance Does Not Prohibit Filing by an Individual Employee on Their Own Behalf.**

The Company extends the Rule’s general description of “entities and all persons under their control, including employees,” *see* 2020 Final Rule at 61, as a *per se* rule that the actions of a person who has a job (at least at an organization like *AYS* or, for example, an investment advisory firm) as necessarily subject to the “control” of their employer. *See* Company Letter at 4 (“[I]t is the Commission’s intent to prohibit a ‘person,’ which for an entity like *AYS* that is in the business of advising clients on the submission of shareholder proposals, would include all persons under its control, including employees, from submitting more than one proposal . . .”).<sup>7</sup>

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do to remedy all eligibility or procedural defects.” Staff Legal Bulletin No. 14G (Oct. 16, 2012). And the Staff expressed its “concern[] that companies’ notices of defect are not adequately describing the defects or explaining what a proponent must do to remedy defects,” particularly, in that case, in the context of proof-of-ownership letters. *Id.* Inadequate notices, the Staff explained, “do not . . . serve the purpose of Rule 14a-8(f).” *Id.* Finally, in 2021, the Staff reiterated that deficiency notices should “identify any *specific* defects.” Staff Legal Bulletin No. 14L (Nov. 3, 2021) (emphasis added).

<sup>7</sup> The Company’s attempt to cabin its reasoning to organizations like *AYS* and businesses like investment advisory firms is, in fact, without any textual basis in the 2020 Final Rule. The Company’s reasoning and the interpretation of the text upon which it relies applies with equal force to an administrative assistant working for an executive of an LLC that submitted a shareholder proposal, to the human resources manager of an environmental

The Company's arguments regarding dual representation constitute an expansive interpretation of the 2020 rule amendment and a highly problematic public policy path for the Staff's interpretation of the Rule. We believe it would be ill-advised for the Staff to interpret the rule so as to place itself in a position of micromanaging relationships between market-leading advisors and their clients by either treating all employees as equivalent to their employer for purposes of filing and representation, or assessing gradations of support, influence and control in the relationships between representatives and their clients, board members, and employees, among other types of relationships.

Instead, we urge the Staff to adopt a bright line rule, focused on whether the representative organization has itself filed more than one proposal at a company. In particular, an employee's ability to exercise their shareholder rights based on personal ownership of company securities should not turn on whether their employers previously or subsequently filed a shareholder proposal on behalf of another share owner.

The example from the Commission regarding the investment advisor submitting a proposal "on behalf of [a client]," which would prohibit the advisor or anyone else at his firm from submitting another proposal "on behalf of a different [client]," 2020 Final Rule at 61, *does not* state that the investment advisor's submission of a proposal on behalf of a client prohibits an employee of his firm — whether that employee is an office manager, janitor, investment advisor, accountant, lawyer, or anyone else — from submitting a proposal in their personal capacity, as the Company argues.

Nor does it state that if the investment advisor submitted a proposal using his own shares in his personal capacity that his firm is thereby prohibited from submitting a proposal on behalf of one of its clients that year. The 2020 Final Rule's example provides no support for the Company's position.

In short, the Company's position amounts to an argument that, in 2020, the Commission made employees subject to a *per se* prohibition on exercising their personal rights as shareholders if their employers had already or subsequently submitted a proposal on behalf of a client. This interpretation is not consistent with the guidance or the rule.

**1. *Lyles was Neither an Employee nor Acting Under the Control of AYS When Submitting Her Resolution.***

Here, the Company makes no argument other than a bald assertion, based on an alleged employment relationship with *AYS*, without establishing such a relationship, or proving any other control by *AYS* over the filing of the Lyles proposal.

Dr. Lyles, however, is an *independent* member of the *AYS* Board of Directors, who also serves as Treasurer of the Board in her capacity as a Board member. Service on a nonprofit Board does not ordinarily create an employment relationship.<sup>8</sup> Indeed, all members of *AYS*'s board are unpaid volunteers.<sup>9</sup> Further, nonprofit board service does not ordinarily — and does not in this case — require either owning stock in third-party companies or submitting shareholder proposals. Nor should it be particularly surprising that Lyles believes in the shareholder proposal process and has taken advantage of it herself during her Board tenure. Other than her Board service, the Company's only argument that Lyles' actions should be attributed to *AYS* is a bold assertion that the absence of evidence that *AYS* controlled Lyles' submission (e.g., the fact that the Lyles submission was not submitted on *AYS* letterhead

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nonprofit organization submitting a single proposal on behalf of a donor, and so on. After all, by the Company's reasoning, these are individuals "under the control" of an entity that has submitted a shareholder proposal.

<sup>8</sup> Directors of a corporation - members of the governing board - are defined by statute as non-employees. <https://www.irs.gov/charities-non-profits/exempt-organizations-who-is-a-statutory-non-employee>.

<sup>9</sup> See <https://www.asyousow.org/about-us/staff/board-of-directors>.

or added to its resolution tracker) is, in fact, evidence that *AYS* controlled Lyles' submission. The Staff should reject this plainly fallacious reasoning.

**2. *Behar was Not Acting as an Employee or Under the "Control" of AYS When Submitting His Resolution.***

Behar is, of course, an employee of As You Sow. Behar is also an independent owner of Company shares. Behar submitted the Proposal from his personal email address based on his ownership of those shares. Service as the CEO of *AYS* does not require, as a condition of employment or as one of Behar's job duties, that Behar own stock and personally submit shareholder resolutions using that stock. As with Lyles, it should not be surprising, given his employment with *AYS*, that Behar personally believes in the value of exercising his rights as a stockholder and has indeed taken advantage of those rights.

Behar's designation of an *AYS* employee to serve as his representative also does not support an inference that he was acting under the control of *AYS*, since the Guidance from the Commission expressly stated that representative organizations and companies are not prohibited from *representing* multiple investors who have submitted proposals at the same AGM – it merely prohibits them from *submitting* multiple proposals at a single company. Behar and *AYS* complied with this Rule.

**B. The Directives of the Commission in the 2020 Rulemaking.**

The Commission noted in the Release accompanying the 2020 rulemaking that the new Rule regarding representatives prohibits only multiple submissions by those representatives. See Rule 14a-8(c); SEC, *Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8: A Small Entity Compliance Guide* (Dec. 28, 2020, modified Dec. 7, 2022 (“[A] shareholder-proponent cannot submit one proposal in his or her own name and simultaneously serve as a representative to submit a different proposal on another shareholder's behalf for consideration at the same meeting.” (emphasis added)); see also *id.* (“[A] representative cannot submit more than one proposal to be considered at the same meeting, even if the representative were to submit each proposal on behalf of different shareholders.” (emphasis added)); SEC, *Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a-8 (Final Rule)* (“2020 Final Rule”) (Nov. 4, 2020), at 59.

However, the Commission also made it clear that while the new rule prohibits multiple *submissions by a representative* it does not prohibit an entity from providing support and representation for multiple entities both before and after the submission process. One can look to the Commission's release to understand the Commission intended to avoid obstructing constructive relationships between advisors and clients in the marketplace:

...the amendment is not intended to prevent shareholders from seeking assistance and advice from lawyers, investment advisers, or others to help them draft shareholder proposals and navigate the shareholder-proposal process, nor do we believe it would interfere with a representative's ability to effectively represent its clients. The ability to provide such assistance to more than one shareholder is not affected.... In addition, we do not believe, as suggested by commenters, that the amended rule will raise costs to a meaningful degree for shareholder-proponents or otherwise unduly restrict their options in selecting a representative because, while in some cases shareholder-proponents may need to submit a proposal on their own, they can otherwise enjoy all of the benefits of being represented by a representative of their choosing. For example, if a shareholder's representative of choice is unable to submit a proposal for the shareholder, because it has already made a submission on behalf of another client, the representative could still assist the shareholder with drafting the proposal, advising on steps in the submission process, and engaging with the company.



Thus, we know that under the Rule and guidance in the release that As You Sow can advise a shareholder client or partner and draft a proposal on their behalf without triggering the exclusion.

### **C. Prior “Control” Decisions are Inappropriate for Representation Relationships.**

We note that the Company’s citations principally focused on interpretation under the preceding “one proposal” rule, built around finding sufficient control to claim that one proponent is simply an alter ego of another. Close examination of the issue leads us to conclude that the historical alter ego/control analytical framework is not a functionally viable formula to apply in the context of applying the “one proposal” rule to representation relationships.

For example, prior rulings focused on indicia of “acting on behalf or as an alter ego of or in concert with” a proponent, which the Staff has recognized as a basis for omission under Rule 14a-8(a)(4) include the admission by a nominal proponent or the proponent’s affiliation with another proponent; the overall coordination, arranging and masterminding of multiple proposals by one proponent, a significant similarity in the language of proposals, supporting statements and cover letters, and the existence of evidence that the true proponent authored, prepared and solicited with respect to multiple proposals. See, e.g., Weyerhaeuser Company (December 20, 1995) (omission of multiple proposals permitted where one of the two proponents did not contest the company’s position that the proposals were submitted by a single proponent, the proponents worked together and had the same address, and the language in the proposals and supporting statements was similar); Albertson’s Inc. (March 11, 1994) (omission of multiple proposals permitted where two proponents admitted alliance as co-chairs of shareholders’ committee, one proposal was submitted on such committee’s letterhead and the other was submitted by a proponent as co-chair of the committee, and the language in the cover letters accompanying the proposals and the supporting statements was similar); Banc One Corporation (February 2, 1993) (omission of multiple proposals permitted where the true proponent admitted that he arranged for the other proponents to submit proposals, established the date for filing the proposals, and worked on the text of the other proponents’ proposals).

The precedents thus target affiliation, coordination of multiple proposals, similarity in proposals and cover letters, and authorship of multiple proposals. Given the Commission’s guidance that representatives can do all but submit a proposal on behalf of multiple proponents, proponents can be expected to be represented by an entity that has multiple clients that it coordinates, supports, provides templates for, etc. Moreover, a representative or advisor providing extensive support does not constitute control, and any attempt to try to evaluate or claim “control” by a representative or advisor would plunge the Staff into a quagmire of arbitrating and micromanaging advisor/client/employee relationships.

Depending on how the new “one proposal” rule on filing directly or indirectly it is interpreted and applied, the Rule could involve the Staff and parties deeply in fact-finding regarding the gradations of control, support, and intentions. At a time when the Commission is seeking to simplify the No Action process, the broad interpretation of the rule sought by the Company would plunge the Staff into the kind of debates among the parties that the Staff has learned to reject after other prior experience. For example, in the early stage of application of Rule 14a-8(i)(3), which prohibits false and misleading statements, the Staff began to receive letters from issuers and proponents debating subjective advocacy issues regarding their proposals, e.g. company objected “to factual assertions that, while not materially false or misleading, may be disputed or countered .... [or] may be interpreted by shareholders in a manner that is unfavorable

to the company, its directors, or its officers; and/or ...[that] represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.”<sup>10</sup> Parsing such issues placed the Staff in an untenable, time consuming process of parsing facts from gradations of advocacy that are best directed toward the shareholders’ consideration on the proxy rather than the Staff’s consideration in the No Action process. Accordingly, the Staff placed a clear boundary and limit in Staff Legal Bulletin 14B of September 15, 2004, where the Staff noted that the process of reviewing company no action letters had devolved to forcing the Staff to evaluate line-by-line company objections to the wording of proposals, and created a bright line rule for excluding objectively false information only. Under the same rationale, we believe that a bright line rule regarding representation and “indirect” filing should apply the “one proposal” exclusion exclusively to employees acting in their employment capacity and avoiding the quagmire of assessing the relative level of “control” that a representative has in relation to its clients or employees.

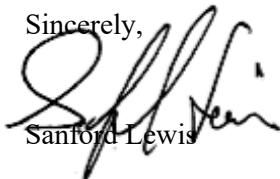
**D. Dual Submission Issue is Not Appropriate to Resolve in this No Action Request.**

As we emphasized above, because the Company has failed to comply with the Rule’s procedural requirements, the current no action request is not an appropriate vehicle for analyzing and resolving the “one proposal” principles sought in the Company Letter. We believe these issues will need to be resolved in the future and not in this instance where the Company waived its right to raise these issues.

**CONCLUSION**

Based on the foregoing, we believe it is clear that the Company has provided no basis for the conclusion that the Proposal is excludable from the 2023 proxy statement pursuant to Rule 14a-8. As such, we respectfully request that the Staff inform the company that it is denying the no action request. If you have any questions, please contact me at 413 549-7333 or sanfordlewis@strategiccounsel.net.

Sincerely,



Sanford Lewis

Brittany Blanchard Goad

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<sup>10</sup> Staff Legal Bulletin 14B.

EXHIBIT A



**VIA EMAIL**

January 6, 2023

As You Sow Control Group  
2020 Milvia St., Ste. 500  
Berkeley, CA 94704  
[dfugere@asyousow.org](mailto:dfugere@asyousow.org)

Danielle Fugere  
President & Chief Counsel  
As representative for:  
Andrew Behar  
2020 Milvia St. Ste. 500  
Berkeley, CA 94704  
[dfugere@asyousow.org](mailto:dfugere@asyousow.org)

Anna Marie Lyles, Ph.D.

PII

Dear Ms. Fugere and Ms. Lyles:

I am writing to you in relation to Ms. Lyles' proposal concerning a report on current environment-related litigation (the "Lyles Proposal") that you submitted on December 8, 2022, and Mr. Behar's proposal concerning an adjustment to greenhouse gas reporting (the "Behar Proposal" and, together with the Lyles Proposal, the "Proposals") that you submitted on December 5, 2022, in connection with ExxonMobil's 2023 annual meeting of shareholders. See [Attachment 1](#) and [Attachment 2](#) for full text of the Proposals.

Subsequent to our letter of December 21, 2022 to Ms. Lyles acknowledging receipt of the Lyles Proposal, we became aware that, in other professional capacities, your colleague refers to herself as Annarie Lyles.<sup>1</sup> We also learned that, as Annarie Lyles, Ms. Lyles is currently serving as a member of the board of directors and treasurer of As You Sow.<sup>2</sup> We are sending this letter now as none of these facts were apparent or disclosed in your December 8, 2022 submission of the Lyles Proposal.<sup>3</sup> Separately, Andrew Behar is the chief executive officer of As You Sow and served in this role at the time the Behar Proposal was submitted shortly before the submission of the Lyles Proposal.

<sup>1</sup> See <https://www.linkedin.com/in/annarielyles>. This profile for Annarie also lists Bio-Gist Ventures, LLC. See also information for Bio-Gist Ventures, LLC, using the Anna Marie Lyles names: <https://www.allbiz.com/business/bio-gist-ventures-llc-609-497-0340> and <https://www.buzzfile.com/business/Bio~Gist-Ventures-LLC-609-497-0340>. All use the same address as the submission of [REDACTED].

<sup>2</sup> See <https://www.asyousow.org/about-us/staff/board-of-directors>.

<sup>3</sup> We further note that, for some reason, As You Sow does not list the Lyles Proposal on its website: <https://www.asyousow.org/resolutions-tracker>. Nor was As You Sow listed or referenced in your Proposal.

On the basis of these new facts, we wanted to notify you that each of the Proposals contain a deficiency under the regulations of the Securities and Exchange Commission ("SEC"). We elaborate below for your benefit.

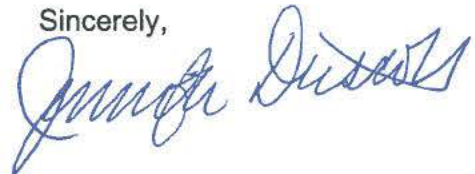
*As Controlled Persons of As You Sow, Each of the Lyles Proposal and Behar Proposal has the Same Proponent as Another Proposal Submitted by Another Controlled Person of As You Sow*

Rule 14a-8(c) states that each person may submit no more than one proposal to a company. This includes both direct and indirect submissions. An organization such as As You Sow may indirectly submit a proposal where the proposal is submitted by someone with whom they have a control relationship, including employment relationships.<sup>4</sup> Ms. Lyles' work as a director and treasurer of As You Sow and Mr. Behar's work as chief executive officer of As You Sow each qualify as control relationships. Therefore, the submission of both of the Proposals causes each of the Lyles Proposal and Behar Proposal to violate the one-proposal limit. Therefore, one of the Proposals must be withdrawn.

We wanted to make you aware that the SEC's rules require that the deficiency we have identified be remedied, and your response must be postmarked or transmitted electronically to us no later than 14 calendar days from the date this letter is received. Please mail any response to me at ExxonMobil at the address shown above. Alternatively, you may send your response to me via facsimile at 972-940-6748, or by email to [shareholderrelations@exxonmobil.com](mailto:shareholderrelations@exxonmobil.com). The failure to correct the deficiencies within this time period will provide the company with a basis to exclude both Proposals from the company's proxy statement for the company's 2023 annual meeting of shareholders.

Please contact us with any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "James D. ...", is written over the word "Sincerely,".

JKD/tlb

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<sup>4</sup> See final release, page 61: "[W]e note that under the final amendment, **entities and all persons under their control, including employees, will be treated as a 'person'** for purposes of the amendment."

Full release: <https://www.sec.gov/rules/final/2020/34-89964.pdf>.



Attachment 1

**Anna Marie Lyles Proposal**

**RESOLVED:** Shareholders request an actuarial assessment, omitting confidential information and prepared at a reasonable cost, of the potential cumulative risk to Exxon Mobil Corporation (“ExxonMobil” or the “Company”) from current environment-related litigation against the Company and its affiliates.

***SUPPORTING STATEMENT***

Environment-related litigation poses an increasing risk to oil and gas investments. For instance, BP paid more than \$60bn in criminal and civil penalties and remediation costs following the Macondo blowout, and Shell has been ordered by a Dutch court to reduce its CO2 emissions by 45% by 2030.

In addition, we have observed a recent trend of courts cancelling energy production permits (e.g. in Australia, South Africa, Brazil), which poses a particular risk for investments in new production. These cancellations allegedly result from non-compliance with environmental laws and the incompatibility of new production with climate goals. Notably, we believe that courts may now use as a point of reference the International Energy Agency's assessment in its 2021 report Net Zero by 2050 that no new oil, gas, or thermal coal projects can be approved by relevant licensing authorities in order to meet Paris Agreement emissions goals.

These environment-related lawsuits are often lengthy and we believe that the direct and indirect risks posed to the business and shareholder value in case of losing some of these lawsuits appear substantial, and shareholders deserve proper disclosure of these risks.

Media reports indicate that ExxonMobil also faces environment-related lawsuits with potentially material impacts on the business. For example:

- Multiple climate lawsuits brought by states and attorneys general alleging failures to adequately address climate risks, an obligation to pay damages for climate harms, and misleading consumers and investors regarding greenhouse gas emissions.<sup>1</sup> Individually and cumulatively, losing these cases could have a direct financial and/or reputational impact on ExxonMobil.
- Multiple lawsuits alleging non-compliance with legal requirements by ExxonMobil's major investment in Guyana. A court has cut two of ExxonMobil's Guyana subsidiary's environmental permits from over 20 years to 5 years.
- Ongoing lawsuits seek cancellation of more permits, enforcement regarding safety conditions amid reports of spills, and unlimited parent company indemnities to cover the risk of a major spill that could impact many Caribbean countries. Constitutional litigation demands that Guyana's government halt oil and gas production entirely due to its alleged impact on the environment.

Clearly, ExxonMobil is not immune to risks of environment-related litigation. However, it discloses what we believe is insufficient information on these risks, leaving shareholders with an inadequate means to assess the future value of their investments. Therefore, the shareholders believe the board of directors of the Company should take the steps necessary to direct the Company to provide additional disclosure regarding these risks so that the shareholders are able to properly evaluate potential impact such risks may have on the shareholder value.

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<sup>1</sup> See e.g., *City and County of Honolulu v. ExxonMobil et al.* 1CCV-20-0000380; *Matthew Platkin Attorney General of New Jersey v. ExxonMobil Corporation et al.* MER-L-001797-22; *Commonwealth of Massachusetts v. ExxonMobil Corporation* No. 19-12430-WGY.RESOL"

Attachment 2

**Andrew Behar Proposal**

Representative: Danielle Fugere (As You Sow President and Chief Counsel)

**“WHEREAS:** The economic risks associated with climate change exist in the real world rather than on company balance sheets. Transferring emissions from one company to another may reduce balance sheet emissions but does not mitigate company or stakeholder exposure to climate risk or contribute to the goal of limiting global temperature rise to 1.5 degrees Celsius. In the aggregate, upstream oil and gas assets are moving from operators with stronger climate commitments to operators with weaker climate targets and disclosures.<sup>1</sup>

The Glasgow Financial Alliance for Net Zero states that “divestment of carbon-intensive assets can be ineffective and even lead to real-world increases in emissions.”<sup>2</sup> As such, these divestments should not be counted as emissions reductions.

To accurately account for greenhouse gas (GHG) emissions reductions, the Greenhouse Gas Protocol provides that companies should recalculate base year emissions in the event of a “transfer of ownership or control of emissions-generating activities.”<sup>3</sup> Oil and gas industry association IPIECA similarly recommends “adjustments to the base year emissions” to account for asset divestiture, to avoid giving the appearance of “increases or decreases in emissions, when in fact. . . emissions would merely be transferred from one company to another.”<sup>4</sup>

Since 2016, ExxonMobil reports absolute Scope 1 and 2 emissions reductions of roughly 10% on both equity and operated bases.<sup>5</sup> However, between 2017 and 2021, ExxonMobil sold more assets than any other American oil and gas company except Chevron, ranking fourth globally among sellers.<sup>6</sup> It is unclear how ExxonMobil accounts for these divestitures in its emissions reporting. Therefore, shareholders cannot determine whether ExxonMobil’s reported GHG reductions are the result of operational improvements or of transferring emissions off its books.

In contrast, peer company Devon Energy recalculates its baseline when asset divestitures or investments result in “a change to its emissions baseline of 5% or higher” to ensure accuracy and comparability of emissions reporting.<sup>7</sup> Devon notes that this “recalculation methodology affirms our commitment to structurally drive down emissions, rather than divesting assets as a means to achieve our ambitious emissions reduction targets.”<sup>8</sup> Investors deserve the same transparency from ExxonMobil.

**RESOLVED:** Shareholders request that ExxonMobil, at reasonable cost and omitting proprietary information, disclose a recalculated emissions baseline that excludes the aggregated GHG emissions from material asset divestitures occurring since 2016, the year ExxonMobil uses to baseline its emissions.

**SUPPORTING STATEMENT:** Proponents recommend disclosing, at management’s discretion:

- The emissions associated with ExxonMobil’s material asset divestments since 2016;
- What portion, if any, of ExxonMobil’s current emissions reduction targets relies on accounting for asset transfers as emissions reductions;
- A base year emissions recalculation policy establishing a threshold for future recalculations related to divestitures.



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<sup>1</sup> <https://business.edf.org/files/Transferred-Emissions-How-Oil-Gas-MA-Hamper-Energy-Transition.pdf> p. 4

<sup>2</sup> <https://assets.bbhub.io/company/sites/63/2021/11/GFANZ-Progress-Report.pdf> p. 52

<sup>3</sup> <https://ghgprotocol.org/sites/default/files/standards/ghg-protocol-revised.pdf> p. 35

<sup>4</sup> <https://www.ipieca.org/resources/good-practice/petroleum-industry-guidelines-for-reporting-greenhouse-gas-emissions-2nd-edition/> p. 39

<sup>5</sup> <https://corporate.exxonmobil.com/-/media/global/files/advancing-climate-solutions-progress-report/2022-july-update/exxonmobil-advancing-climate-solutions-2022-progress-report.pdf?la=en&hash=3A2B299463CE50DCDD6A9595E49AC3030CFF4350>

<sup>6</sup> <https://business.edf.org/files/Transferred-Emissions-How-Oil-Gas-MA-Hamper-Energy-Transition.pdf> p. 22

<sup>7</sup> [https://dvnweb.azureedge.net/assets/documents/Sustainability/DVN\\_2022\\_SustainabilityReport.pdf](https://dvnweb.azureedge.net/assets/documents/Sustainability/DVN_2022_SustainabilityReport.pdf) p. 20

<sup>8</sup> Ibid."

EXHIBIT B



**VIA EMAIL**

December 19, 2022

Danielle Fugere  
President & Chief Counsel  
Andrew Behar  
2020 Milvia St. Ste. 500  
Berkeley, CA 94704

Dear Ms. Fugere:

Thank you for your interest in ExxonMobil. This will acknowledge receipt of the proposal concerning an adjustment to greenhouse gas reporting (the "Proposal"), for which you are acting as representative of Andrew Behar (the "Proponent") in connection with ExxonMobil's 2023 annual meeting of shareholders.

We wanted to let you know that the Proposal contains certain procedural deficiencies, which the Securities and Exchange Commission ("SEC") regulations require us to bring to your attention. Let me elaborate on them for your benefit.

*Ownership Eligibility*

In order to be eligible to submit a shareholder proposal, Rule 14a-8, as amended (copy enclosed), requires that each proponent must have continuously held, as of the date the proposal was submitted, at least (i) \$2,000 in market value of the company's securities entitled to vote on the proposal at the meeting for at least three years, (ii) \$15,000 in market value of the company's securities entitled to vote on the proposal at the meeting for at least two years or (iii) \$25,000 in market value of the company's securities entitled to vote on the proposal at the meeting for at least one year, for the applicable period through and including the date the shareholder proposal was submitted.

For this Proposal, the date of submission is December 5, 2022, which is the date the Proposal was received electronically by email.

Note that the SEC rules do not permit a shareholder to aggregate the Proponent's share holdings with those of another shareholder or group of shareholders to meet the ownership eligibility requirement.

*Method for Demonstrating Proof of Ownership*

Mr. Behar does not appear in our records as a registered shareholder. Moreover, to date we have not received proof that he have satisfied these ownership requirements. To remedy this deficiency, he, or you as his representative, must submit sufficient proof verifying his continuous

ownership of the requisite number of ExxonMobil shares for the applicable time period preceding and including December 5, 2022.

As explained in Rule 14a-8(b) and SEC staff guidance, sufficient proof must be in the form of:

- a written statement from the "record" holder of Mr. Behar's shares (usually a broker or a bank) verifying that you continuously held the requisite number of ExxonMobil shares for the applicable time period preceding and including December 5, 2022; or
- if Mr. Behar has filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting his ownership of the requisite number of ExxonMobil shares as of or before the date on which the required holding period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that he continuously held the requisite number of ExxonMobil shares for the applicable time period preceding and including December 5, 2022.

If you, as Mr. Behar's representative, intend to demonstrate ownership by submitting a written statement from the "record" holder of the shares as set forth in the first bullet point above, please note that most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company ("DTC"), a registered clearing agency that acts as a securities depository (DTC is also known through the account name of Cede & Co.). Such brokers and banks are often referred to as "participants" in DTC. In Staff Legal Bulletin No. 14F (October 18, 2011) (copy enclosed), the SEC staff has taken the view that only DTC participants should be viewed as "record" holders of securities that are deposited with DTC. As the SEC adopted amendments to Rule 14a-8 that became effective in 2021, please note that Staff Legal Bulletin No. 14F does not reflect those amendments and to the extent any provisions are inconsistent, Rule 14a-8 governs in all respects.

You can confirm whether Mr. Behar's broker or bank is a DTC participant by asking his broker or bank or by checking the listing of current DTC participants, which is available on the internet at: <https://www.dtcc.com/client-center/dtc-directories>. In these situations, shareholders need to obtain proof of ownership from the DTC participant through which the securities are held, as follows:

- If Mr. Behar's broker or bank is a DTC participant, then you need to submit a written statement from his broker or bank verifying that he continuously held the requisite number of ExxonMobil shares for the applicable time period preceding and including December 5, 2022.
- If Mr. Behar's broker or bank is not a DTC participant, then you need to submit proof of ownership from the DTC participant through which the securities are held verifying that he continuously held the requisite number of ExxonMobil shares for the applicable time period preceding and including December 5, 2022. You should be able to find out who this DTC participant is by asking Mr. Behar's broker or bank. If his broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through his account statements because the clearing broker identified on his account statements will generally be a DTC participant. If the DTC participant that holds his shares knows his broker's or bank's holdings, but does not know his holdings, you need to satisfy the proof of

ownership requirement by obtaining and submitting two proof of ownership statements verifying that for the applicable period preceding and including December 5, 2022, the required amount of securities were continuously held – one from Mr. Behar’s broker or bank, confirming his ownership, and the other from the DTC participant, confirming the broker or bank’s ownership.

In the event there are co-filers for this Proposal, Rule 14a-8 requires that all co-filers must either agree to the same dates and times of availability or identify a single lead filer who will provide dates and times of the lead filer’s availability to engage on behalf of all co-filers.

The SEC’s rules require that this deficiency we have identified be remedied, and any response to this letter must be postmarked or transmitted electronically to us no later than 14 calendar days from the date this letter is received. Please mail any response to me at ExxonMobil at the address shown above. Alternatively, you may send your response to me via facsimile at 972-940-6748, or by email to [shareholderrelations@exxonmobil.com](mailto:shareholderrelations@exxonmobil.com). The failure to correct the deficiencies within this time period will provide the company with a basis to exclude the Proposal from the company’s proxy statement for the 2023 annual meeting.

You should note that, if the Proposal is not withdrawn or excluded, you or your representative, who is qualified under New Jersey law to present the Proposal on your behalf, must attend the annual meeting in person to present the Proposal. Under New Jersey law, only shareholders or their duly constituted proxies are entitled as a matter of right to attend the meeting.

If you intend for a representative to present the Proposal, you must provide documentation that specifically identifies your intended representative by name and specifically authorizes the representative to act as Mr. Behar’s proxy at the annual meeting. To be a valid proxy entitled to attend the annual meeting, the representative must have the authority to vote Mr. Behar’s shares at the meeting. A copy of this authorization meeting state law requirements should be sent to my attention in advance of the meeting. The authorized representative should also bring an original signed copy of the proxy documentation to the meeting, together with photo identification if requested, so that our counsel may verify the representative’s authority to act on your behalf prior to the start of the meeting.

In the event there are co-filers for this Proposal and in light of the guidance in SEC Staff Legal Bulletin No. 14F dealing with co-filers of shareholder proposals, it is important to ensure that, you as Mr. Behar’s representative, has clear authority to act on behalf of all co-filers, including with respect to any potential negotiated withdrawal of the Proposal. Unless the lead filer can represent that it holds such authority on behalf of all co-filers, and considering SEC staff guidance, it will be difficult for us to engage in productive dialogue concerning this Proposal.

Note that under Staff Legal Bulletin No. 14F, the SEC will distribute no-action responses under Rule 14a-8 by email to companies and proponents. We encourage all proponents and any co-filers to include an email contact address on any additional correspondence to ensure timely communication in the event the Proposal is subject to a no-action request.

Danielle Fugere  
Page 4

I hope that's helpful to you.

Last, we are interested in discussing this Proposal and will contact you in the near future.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Dutton". The signature is written in a cursive, flowing style.

JKD/sme

Enclosures

c: Andrew Behar

EXHIBIT C





**VIA EMAIL**

December 20, 2022

Conrad MacKerron  
Senior Vice President  
As You Sow  
2020 Milvia St. Ste. 500  
Berkeley, CA 94704

Dear Mr. MacKerron:

Thank you for your interest in ExxonMobil. This will acknowledge receipt of the proposal concerning a report on plastic production (the "Proposal"), which you have submitted on behalf of the Meyer Memorial Trust (S) (the "Proponent") in connection with ExxonMobil's 2023 annual meeting of shareholders.

We wanted to let you know that the Proposal contains certain procedural deficiencies, which the Securities and Exchange Commission ("SEC") regulations require us to bring to your attention. Let me elaborate on them for your benefit.

*Ownership Eligibility*

In order to be eligible to submit a shareholder proposal, Rule 14a-8, as amended (copy enclosed), requires that each proponent must have continuously held, as of the date the proposal was submitted, at least (i) \$2,000 in market value of the company's securities entitled to vote on the proposal at the meeting for at least three years, (ii) \$15,000 in market value of the company's securities entitled to vote on the proposal at the meeting for at least two years or (iii) \$25,000 in market value of the company's securities entitled to vote on the proposal at the meeting for at least one year, for the applicable period through and including the date the shareholder proposal was submitted.

For this Proposal, the date of submission is December 7, 2022, which is the date the Proposal was first postmarked for delivery by certified mail service.

Note that the SEC rules do not permit a shareholder to aggregate the Proponent's share holdings with those of another shareholder or group of shareholders to meet the ownership eligibility requirement.

*Method for Demonstrating Proof of Ownership*

The Meyer Memorial Trust (S) does not appear in our records as a registered shareholder. Moreover, to date we have not received proof from you that the Proponent satisfies the applicable ownership requirements. To remedy this deficiency, you must submit sufficient proof



verifying the Proponent's continuous ownership of the requisite number of ExxonMobil shares for the applicable time period preceding and including December 7, 2022.

As explained in Rule 14a-8(b) and SEC staff guidance, sufficient proof must be in the form of:

- a written statement from the "record" holder of the Proponent's shares (usually a broker or a bank) verifying that the Proponent continuously held the requisite number of ExxonMobil shares for the applicable time period preceding and including December 7, 2022; or
- if the Proponent has filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting the Proponent's ownership of the requisite number of ExxonMobil shares as of or before the date on which the required holding period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that the Proponent continuously held the requisite number of ExxonMobil shares for the applicable time period preceding and including December 7, 2022.

If you, as the Proponent's representative, intend to demonstrate ownership by submitting a written statement from the "record" holder of the shares as set forth in the first bullet point above, please note that most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company ("DTC"), a registered clearing agency that acts as a securities depository (DTC is also known through the account name of Cede & Co.). Such brokers and banks are often referred to as "participants" in DTC. In Staff Legal Bulletin No. 14F (October 18, 2011) (copy enclosed), the SEC staff has taken the view that only DTC participants should be viewed as "record" holders of securities that are deposited with DTC. As the SEC adopted amendments to Rule 14a-8 that became effective in 2021, please note that Staff Legal Bulletin No. 14F does not reflect those amendments and to the extent any provisions are inconsistent, Rule 14a-8 governs in all respects.

You can confirm whether the Proponent's broker or bank is a DTC participant by asking that broker or bank or by checking the listing of current DTC participants, which is available on the internet at: <https://www.dtcc.com/client-center/dtc-directories>. In these situations, shareholders need to obtain proof of ownership from the DTC participant through which the securities are held, as follows:

- If the Proponent's broker or bank is a DTC participant, then you need to submit a written statement from such broker or bank verifying that the Proponent continuously held the requisite number of ExxonMobil shares for the applicable time period preceding and including December 7, 2022.
- If the Proponent's broker or bank is not a DTC participant, then you need to submit proof of ownership from the DTC participant through which the securities are held verifying that the Proponent continuously held the requisite number of ExxonMobil shares for the applicable time period preceding and including December 7, 2022. You should be able to find out who this DTC participant is by asking the Proponent's broker or bank. If the Proponent's broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through the Proponent's account statements because the clearing broker identified on the account statements will generally be a DTC participant. If the DTC participant that holds the Proponent's shares knows the broker's or bank's holdings, but

does not know the Proponent's holdings, you need to satisfy the proof of ownership requirement by obtaining and submitting two proof of ownership statements verifying that for the applicable period preceding and including December 7, 2022, the required amount of securities were continuously held – one from the Proponent's broker or bank, confirming its ownership, and the other from the DTC participant, confirming the broker or bank's ownership.

The SEC's rules require that this deficiency we have identified be remedied, and any response to this letter must be postmarked or transmitted electronically to us no later than 14 calendar days from the date this letter is received. Please mail any response to me at ExxonMobil at the address shown above. Alternatively, you may send your response to me via facsimile at 972-940-6748, or by email to [shareholderrelations@exxonmobil.com](mailto:shareholderrelations@exxonmobil.com). The failure to correct the deficiencies within this time period will provide the company with a basis to exclude the Proposal from the company's proxy statement for the 2023 annual meeting.

You should note that, if the Proposal is not withdrawn or excluded, you, on behalf of the Proponent, or your representative, who is qualified under New Jersey law to present the Proposal on your behalf, must attend the annual meeting in person to present the Proposal. Under New Jersey law, only shareholders or their duly constituted proxies are entitled as a matter of right to attend the meeting.

If you intend for a representative to present the Proposal, you must provide documentation that specifically identifies the intended representative by name and specifically authorizes the representative to act as your proxy at the annual meeting. To be a valid proxy entitled to attend the annual meeting, the representative must have the authority to vote the shares of the Proponent at the meeting. A copy of this authorization meeting state law requirements should be sent to my attention in advance of the meeting. The authorized representative should also bring an original signed copy of the proxy documentation to the meeting, together with photo identification if requested, so that our counsel may verify the representative's authority to act on your behalf prior to the start of the meeting.

Note that under Staff Legal Bulletin No. 14F, the SEC will distribute no-action responses under Rule 14a-8 by email to companies and proponents. We encourage all proponents and any co-filers to include an email contact address on any additional correspondence to ensure timely communication in the event the Proposal is subject to a no-action request.

I hope that's helpful to you.

Last, we are interested in discussing this Proposal and will contact you in the near future.

Sincerely,



JKD/sme

Enclosures

EXHIBIT D

## ExxonMobil Climate Shareholder Proposal - Proof of Ownership

Andrew Behar <[REDACTED]>

Wed 12/28/2022 4:38 PM

To: sherry.m.englande@exxonmobil.com  
<sherry.m.englande@exxonmobil.com>;shareholderrelations@exxonmobil.com  
<shareholderrelations@exxonmobil.com>;Danielle Fugere <DFugere@asyousow.org>;Shareholder  
Engagement <shareholderengagement@asyousow.org>

📎 1 attachments (95 KB)

23.XOM.2 Exxon Climate Change - Proof of Ownership Request\_Andrew Behar.pdf;

Please see my attached proof of ownership.

I would greatly appreciate if you could confirm receipt of this email and that all deficiencies are satisfied.

Best,  
Andrew Behar

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**From:** Englande, Sherry M <[sherry.m.englande@exxonmobil.com](mailto:sherry.m.englande@exxonmobil.com)> on behalf of Shareholder Relations /SM  
<[shareholderrelations@exxonmobil.com](mailto:shareholderrelations@exxonmobil.com)>  
**Sent:** Monday, December 19, 2022 1:17 PM  
**To:** Danielle Fugere <[DFugere@asyousow.org](mailto:DFugere@asyousow.org)>  
**Cc:** Shareholder Engagement <[shareholderengagement@asyousow.org](mailto:shareholderengagement@asyousow.org)>; Andrew Behar <[REDACTED]>  
**Subject:** RE: ExxonMobil Climate Shareholder Proposal

*Sent on behalf of Jennifer Driscoll:*

Dear Ms. Fugere -

Please see the attached letter regarding the shareholder proposal submitted by Mr. Behar.

Thank you

The ExxonMobil Shareholder Relations Team

**From:** Andrew Behar [[mailto:\[REDACTED\]](mailto:[REDACTED])]  
**Sent:** Monday, December 05, 2022 8:37 PM  
**To:** Shareholder Relations /SM <[shareholderrelations@exxonmobil.com](mailto:shareholderrelations@exxonmobil.com)>  
**Cc:** [dfugere@asyousow.org](mailto:dfugere@asyousow.org); [shareholderengagement@asyousow.org](mailto:shareholderengagement@asyousow.org)  
**Subject:** ExxonMobil Climate Shareholder Proposal

December 5, 2022

Craig S. Morford  
Vice President, Corporate Secretary, and General Counsel  
ExxonMobil Corporation  
5959 Las Colinas Boulevard  
Irving, TX 75039-2298

Cc: Investor Relations, [shareholderrelations@exxonmobil.com](mailto:shareholderrelations@exxonmobil.com)  
Danielle Fugere, [dfugere@asyousow.org](mailto:dfugere@asyousow.org)

Dear Mr. Morford,

I am submitting the attached shareholder proposal, which I support, for a vote at ExxonMobil's 2023 annual shareholder meeting requesting ExxonMobil's Board to report on the impact of asset transfers on disclosed greenhouse gas emissions. I will meet Rule 14a-8 requirements including the continuous ownership of the required stock value until after the date of the Company's next annual shareholder meeting in 2023. These shares are held by myself, Andrew Behar.

My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

I am available to meet with Exxon Mobil Corporation's representative at the following times:

- December 16, 2022 at 4:00pm Central
- December 16, 2022 at 4:30pm Central

**This letter confirms that I am delegating Danielle Fugere to act as my agent** regarding this Rule 14a-8 proposal, including negotiations and/or modification, and presentation at the forthcoming shareholder meeting. Please direct all future communications regarding my rule 14a-8 proposal to Danielle Fugere at [dfugere@asyousow.org](mailto:dfugere@asyousow.org) to facilitate prompt communication. Please send all correspondence with a copy to [shareholderengagement@asyousow.org](mailto:shareholderengagement@asyousow.org).

Your consideration and that of the Board of Directors is appreciated in support of the long-term performance of our company. You can avoid the time and expense of filing a deficiency letter to verify ownership by simply acknowledging receipt of my proposal promptly by email to [shareholderengagement@asyousow.org](mailto:shareholderengagement@asyousow.org). That will prompt me to request the required letter from my broker and to submit it to you.

Sincerely,

*Andrew Behar*

Shareholder

Enclosures

- Shareholder Proposal

February 27, 2023

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 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 (i) respond to the letter from Sanford J. Lewis and Brittany Blanchard Goad on behalf of Andrew Behar dated February 13, 2023 (the “**First Proponent Response Letter**”) and to the letter from Anna Marie Lyles dated February 9, 2023 (the “**Second Proponent Response Letter**,” and, together with the First Proponent Response Letter, the “**Response Letters**”) with respect to the Company’s no-action request letters each dated January 13, 2023 (the “**No-Action Letters**”) with respect to the shareholder proposal (the “**First Proposal**”) submitted by Andrew Behar (the “**First Proponent**”) and the shareholder proposal (the “**Second Proposal**,” and together with the First Proposal, the “**Proposals**”) submitted by Anna Marie Lyles (the “**Second Proponent**,” and together with the First Proponent, the “**Proponents**”) for inclusion in the proxy materials the Company intends to distribute in connection with its 2023 Annual Meeting of Shareholders (the “**2023 Proxy Materials**”) and (ii) supplement the No-Action Letters. Capitalized terms not defined herein are used as defined in the No-Action Letters. Copies of the Proponents’ Response Letters and each of the No-Action Letters (each without attachments) are attached hereto as Exhibit A, Exhibit B, Exhibit C and Exhibit D, respectively.<sup>1</sup> A copy of the Company’s supplement to the No-Action Letters dated January 23, 2023 (the “**Company Supplemental Letter**”) is also attached hereto as Exhibit E. We have been advised by the Company as to the factual matters set forth herein.

As noted in the No-Action Letters and the Company Supplemental Letter, the Company believes the First Proposal and the Second Proposal may be properly omitted from the 2023 Proxy Materials pursuant to Rule 14a-8(c) and Rule 14a-8(f)(1) because the Proponents, through As You Sow (“**AYS**”), have exceeded the one-proposal limitation under Rule 14a-8(c). Neither of the Proposals has been withdrawn, nor otherwise been cured of the deficiency. Therefore, the Company continues to believe that both the First Proposal and the Second Proposal may be excluded on this basis. This letter provides additional support for the Company’s belief.

**1. The development of the current one-proposal limitation under Rule 14a-8(c) was designed to prevent abuse of the shareholder proposal submission process.**

As amended, Rule 14a-8(c) provides that “[e]ach person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders’ meeting” and that “[a] person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting

<sup>1</sup> The First No-Action Letter is also available at <https://www.sec.gov/files/corpfin/no-action/14a-8/beharexon011323-14a8-incoming.pdf>. The Second No-Action Letter is also available at <https://www.sec.gov/files/corpfin/no-action/14a-8/lylesexon011323-14a8-incoming.pdf>.

multiple proposals for a particular shareholders' meeting." Over the course of the decades-long regulatory development of this rule, the Securities and Exchange Commission (the "**Commission**") has consistently sought to avoid the situation of related persons employing a strategy to submit multiple proposals under different shareholder proponent names.

The Commission first adopted a version of this multiple-proposal limitation over 40 years ago, specifically limiting shareholders to the submission of two proposals (later lowered to one proposal). In Exchange Act Release No. 12999 (Nov. 22, 1976) (the "**1976 Release**"), the Commission explained that this then-new limitation was implemented in response to criticisms that "proponents [exceed] the bounds of reasonableness ... by submitting excessive numbers of proposals." At the time, the Commission noted that the "excessive numbers of proposals" that were submitted by "several proponents" amounted to "practices [which] are inappropriate under Rule 14a-8 not only because they constitute an unreasonable exercise of the right to submit proposals at the expense of other stockholders but also because they tend to obscure other material matters in the proxy statements of issuers, thereby reducing the effectiveness of such documents." *Id.*

Upon adopting this new limitation on shareholder proposal submissions, the Commission expressed concern about the "possibility that some proponents may attempt to evade the new limitations through various maneuvers such as having other persons whose securities they control submit two proposals each in their own names." The Commission warned that "such tactics ... may result in ... the granting of requests by the affected managements for a 'no-action' letter," meaning companies would be permitted to exclude proposals submitted by proponents attempting to circumvent the predecessor to Rule 14a-8(c). *Id.*

The Commission furthered its efforts to curb this kind of abuse of the shareholder proposal process in 1982, when it proposed an amendment to the original multiple-proposal rule that would lower the limit to one proposal per shareholder proponent. As the Commission explained at the time, the impetus to narrow the multiple-proposal limitation stemmed in part from "the susceptibility of certain provisions of the rule and the staff's interpretations thereunder to [be] abuse[d] by a few proponents and issuers." Exchange Act Release No. 19135 (Oct. 14, 1982).

The Commission commented at the time that there had been suggestions that "under [the] current construction of the rule, a few proponents have been able to use the rule as a publicity mechanism." *Id.* Upon the final adoption of the proposed one-proposal limitation, the Commission explained its belief that "this change is one way to reduce issuer costs and to improve the readability of proxy statements without substantially limiting the ability of proponents to bring important issues to the shareholder body at large." Exchange Act Release No. 20091 (Aug. 16, 1983).

In 2020, the Commission adopted further amendments to Rule 14a-8(c) to expand the one-proposal limitation to "*each person*" rather than to "each shareholder" submitting proposals "*directly or indirectly*" (emphasis added). Rule 14a-8(c) also states that "[a] person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders' meeting." In the adopting release, the Commission explained that its broadening the scope of the one-proposal limitation to cover not only shareholder proponents, but also representatives, as well as "lawyers, investment advisers, or others," was designed to continue to "combat [the] abuse" of the shareholder proposal process first addressed by the multiple-proposal limitation adopted in 1976. Exchange Act Release No. 34-89964 (Sept. 23, 2020) (the "**2020 Release**").



Accordingly, the 2020 Release made clear that “to the extent that *the provider of such services submits a proposal, either as a proponent or as a representative, it will be subject to the one-proposal limit* and will not be permitted to submit more than one proposal in total to the same company for the same meeting” (emphasis added). The Commission also explained that, with respect to the one-proposal limitation’s applicability to “each person” and proposals submitted “directly or indirectly” by a “provider of such services,” “under the final amendment, *entities and all persons under their control, including employees, will be treated as a ‘person’ for purposes of the amendment* [to Rule 14a-8(c)]” (emphasis added). *Id.*

**2. The Company notified the Proponents that they had exceeded the one-proposal limitation as soon as it became aware that the Second Proponent was to be considered with the First Proponent and AYS as one “person” for the purposes of Rule 14a-8(c), and both the Proponents and AYS have since failed to correct the deficiency.**

As noted in the First Proponent Response Letter, Rule 14a-8(f)(1) states that a company must notify a proponent of certain curable procedural or eligibility deficiencies “[w]ithin 14 calendar days of receiving [the proponent’s] proposal.” The First Proposal was submitted on December 5, 2022, and the Second Proposal was submitted on December 8, 2022. Within 14 days of the submission of the First Proposal, the Company sent a deficiency notice relating to the First Proposal and identifying certain deficiencies that were apparent at that time, and took similar action with respect to the Second Proposal, also within 14 days of the submission of the Second Proposal.

The First Proponent Response Letter claims that a deficiency notice from the Company identifying the multiple-proposal deficiency in particular would have been due to *both* the First Proponent and Second Proponent on December 22, 2022, 14 days after the submission of *only* the Second Proposal. This claim is evidently based on the First Proponent’s belief that it was not until the time of the Second Proposal’s submission that the multiple-proposal deficiency, which also pertains to the First Proposal submission, seemingly came to light. More specifically, the First Proponent Response Letter recognizes that the 14-day window for the Company to notify the First Proponent of the multiple-proposal deficiency could not have started when the First Proposal was filed. In this case, the 14-day period is necessarily different from the 14 days that would apply to a proof of ownership deficiency or another deficiency where there is a positive obligation on the proponent to provide information that the company can verify and, if missing or otherwise deficient, send a deficiency notice to the proponent identifying the specific deficiency within 14 days of receiving the proposal.

The Company agrees with the First Proponent Response Letter’s understanding that for a multiple-proposal deficiency under Rule 14a-8(c), such notice would be due to a proponent 14 days after a company first becomes aware of the deficiency. The Company notes that the Commission has recognized that in some cases there are springing eligibility and procedural deficiencies that cannot be identified until after the 14-day period following the submission of a proposal has expired. For example, Rule 14a-8(f)(2) states that if a proponent fails in its promise to hold the required number of securities through the date of a company’s annual meeting, then the company will be permitted to exclude all of the proponent’s proposals from its proxy materials for any meeting held in the following two calendar years because it was not entitled to bring the proposal. The timing of when this deficiency occurs following the submission and prior to the annual meeting date is irrelevant. Similarly, latent or hidden relationships among proponents that would violate the one-proposal limitation are a springing deficiency that cannot be time-limited from 14 days from the submission of a proposal. Instead, the time period for a company to notify a proponent of a multiple-proposal deficiency should be viewed as arising when an impermissible control relationship is discovered,



not before. Here, the Company has acted with all diligence to alert the Proponents and provide them a chance to remedy the deficiency despite having received no information from the Proponents.

As described in more detail herein, the Company was not aware of the multiple-proposal deficiency at the time the Second Proposal was submitted. This is because the Second Proponent submitted the Second Proposal using a variation (Anna Marie Lyles) of the name that she is known by in her capacity as a member of the board of directors (the “**Board**”) and in the Board officer position of Treasurer of AYS, as well as in other professional contexts (Annarie Lyles). There also was no direct reference to AYS’s involvement in the submission in the text of the Second Proposal, in the form of AYS letterhead or otherwise. The Company also notes that a simple Google search of the name used by the Second Proponent in the context of the proposal submission (Anna Marie Lyles) does not readily indicate any connection with AYS; the first page of such search results is attached hereto as Exhibit F. In any event, the onus cannot be on the Company to somehow undertake some kind of deep research on every proponent to uncover any hidden or latent control relationships, such as that which exists between the Second Proponent and AYS, within 14 days of receiving a proposal that gives no reasonable notice of the relationship. These are the kinds of “maneuvers” or “tactics” that the Commission has sought to curb since the adoption of the multiple-proposal restriction in 1976, when the Commission stated that it was “aware of the possibility that some proponents may attempt to evade the new limitations through various maneuvers, such as having other persons whose securities they control submit ... proposals each in their own names.”<sup>2</sup> 1976 Release. If the 14-day time period is interpreted to protect latent or hidden control relationships that could violate the one-proposal limitation, this could encourage professional proponents seeking to defeat the rules to hide these relationships when engaging with companies.

The Company only became aware of the Second Proponent’s control relationship with AYS in connection with its preparation for potential engagement with the Second Proponent. On January 6, 2023, as soon as the Company determined that the Second Proponent was under the “control” of AYS within the meaning of the 2020 Release, and that AYS, acting through the Proponents, had therefore exceeded the one-proposal limitation, it sent both of the Proponents a deficiency notice (the “**Deficiency Notice**”). Contrary to the Second Proponent Response Letter’s claim that the Company did not contact the Second Proponent with respect to this control relationship with AYS, the Deficiency Notice identified the multiple-proposal deficiency and provided methods by which the Proponents could respond to the notice by mail, facsimile and/or email. The Deficiency Notice also explained the steps the Proponents could take to cure such deficiency (i.e., one of the two Proposals could have been withdrawn).

The violation of the one-proposal limitation under Rule 14a-8(c) would have therefore been cured if either of the Proponents had withdrawn their respective Proposal. Because neither of the Proponents cured the deficiency, the Company submitted the No-Action Letters requesting the exclusion of both Proposals from the 2023 Proxy Materials.<sup>3</sup> Rule 14a-8(j) states that if a company intends to exclude a proposal from its

<sup>2</sup> Similarly, the First Proponent submitted the First Proposal identifying himself only as a shareholder of the Company, without indicating his role as CEO of AYS or using AYS letterhead, and included only a personal email address as his contact information. The submission states that he First Proponent is “delegating Danielle Fugere to act as [his] agent,” without indicating that Ms. Fugere is also employed by AYS, as President and Chief Counsel, according to the AYS website. Other than the email addresses provided for future communications with the First Proponent’s “agent,” the First Proposal does not make any direct references to AYS’s involvement in the submission of the Proposal, despite the fact that AYS takes credit for the First Proposal on the tracker on its website and its employees participated exclusively, along with the First Proponent but without his “agent,” in engagement with the Company regarding the First Proposal.

<sup>3</sup> The Company notes that a separate proposal was submitted on behalf of the Meyer Memorial Trust. Although that separate proposal is referenced in the No-Action Letters, such reference was only for the purposes of establishing a complete procedural record of the submissions. The Company confirms that it is seeking to exclude only the First Proposal and he Second Proposal, because from the time of the No-Action Letters to date, neither the First Proponent nor the Second Proponent have cured the multiple-proposal deficiency. Contrary to the First Proponent Response Letter’s assertion, at no time

proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. As explained in the No-Action Letters, the Company filed such letters on January 13, 2023, based on its expectation with respect to when it may be filing its definitive proxy statement, solely for the purposes of complying with Rule 14a-8(j). At that time, neither of the Proponents had responded to the Deficiency Notice.

As noted above, the Company timely notified the Proponents of the deficiency as soon as (and within 14 days after) the previously obscured facts (including the understanding that Second Proponent Anna Marie Lyles is one and the same person as Annarie Lyles, Board Treasurer of AYS) became known to the Company. To date, neither of the Proponents has cured the deficiency identified in this Deficiency Letter. For the reasons described in the No-Action Letters and supplemented herein, the Company believes that AYS, acting through the First Proponent and the Second Proponent, has exceeded the one-proposal limitation. Therefore, the First Proposal and the Second Proposal may be omitted pursuant to Rule 14a-8(c) and Rule 14a-8(f)(1).

**3. As amended, Rule 14a-8(c) treats professional intermediary entities like AYS and all persons under their control as one “person” for the purposes of the one-proposal limitation.**

As part of the Commission’s clear efforts to continue to “combat this type of abuse” presented by multiple proposal submissions, the 2020 Release explained that, with respect to the one-proposal limitation’s applicability to “each person” and proposals submitted “directly or indirectly” by such person, “under the final amendment, *entities and all persons under their control, including employees, will be treated as a ‘person’ for purposes of the amendment [to Rule 14a-8(c)]*” (emphasis added). 2020 Release.

The Commission noted that it was providing this clarification around the scope of “each person” subject to the one-proposal limitation in response to certain comment letters. It directly cited one such comment letter submitted by a number of “investors and advisors” – specifically including AYS as a signatory – that questioned the then-proposed amendment’s applicability to various providers of “professional representation.” According to this comment letter from Boston Trust Walden et al. (Jan. 27, 2020) (the “**BTW Comment Letter**”), these professional intermediaries in the shareholder proposal process included “*investment advisers* that have been designated by specific clients ... to coordinate filing a resolution, and to participate in co-filing a resolution in the clients’ own names and to represent them in engagement with companies and negotiating agreements,” as well as “*institutions* that ... routinely assist different shareholder clients in submitting separate, unrelated proposals to a company, such that one company may receive two or more permissible proposals from the institution, on behalf of separate, eligible clients.” With respect to these “institutions” in particular, the BTW Comment Letter specifically referenced co-signer AYS as one such example. The BTW Comment Letter expressed concern about how the then-proposed amendment to Rule 14a-8(c) would impact the various providers of “professional representation,” questioning that: “if two or more clients own shares in the same company and wish to co-file the same resolution, or file proposals on separate topics, the limitation contained in the [proposing release] would require the agent to choose which principal’s wishes would prevail.”

In the 2020 Release, the Commission affirmed that in the type of scenario set forth in the BTW Comment Letter, such professional advisers would only be able to submit, directly or indirectly, one of the proposals.

has the Company in its No-Action Letters sought exclusion of the Meyer Memorial Trust proposal or exclusion of the First Proposal or Second Proposal because of the Meyer Memorial Trust proposal.

According to the 2020 Release, this is because such intermediaries are considered, with any employees and other persons under its control, one “person” for the purposes of the one-proposal limitation:

In response to certain commenters,<sup>4</sup> we note that under the final amendment, entities and all persons under their control, including employees, will be treated as a ‘person’ for purposes of the amendment. As such, if an investment adviser at Advisory Firm A submits a proposal on behalf of a shareholder-proponent to Company Y, neither that investment adviser nor any other adviser at Advisory Firm A would be permitted to submit a proposal on behalf of a different shareholder-proponent at Company Y for the same meeting.

2020 Release.

This non-exhaustive, sample illustration of the meaning of one “person” for the purposes of Rule 14a-8(c) was provided by the Commission in direct response to the BTW Comment Letter signed by AYS and a number of other types of intermediaries who, like the hypothetical Advisory Firm A, routinely submit shareholder proposals on behalf of individual clients. The Commission’s example indicates that more generally, for the purposes of the one-proposal limitation, professional advisory entities – including, but not limited, to investment advisers – and all persons under their control are together considered one “person” who cannot submit, whether directly or indirectly, more than one shareholder proposal for a particular shareholders’ meeting. Therefore, the Company believes this meaning of one “person” provided in the 2020 Release also applies to AYS, an advisory organization that, like Boston Trust Walden and other investment advisers, routinely submits shareholder proposals on behalf of clients.

As noted in the No-Action Letters, AYS is not, according to one of its affiliate websites, an investment adviser.<sup>5</sup> Its professional advisory services, however, are directly analogous to the role of an investment adviser in the context of the 2020 Release’s treatment of such entities, including persons under their control, as one “person” for the purposes of Rule 14a-8(c). The AYS website reports that as an institution, the entity routinely represents “investors across a broad range of ESG issue areas, empowering shareholders through the use of shareholder resolutions.”<sup>6</sup> The “resolutions” tracker posted on the AYS website lists 671 proposals for which AYS states that it “represent[s] investors,” going back to 2010.<sup>7</sup> Additionally, records of AYS’s shareholder proposal involvement can be traced to proposals submitted as far back as 1998.<sup>8</sup>

AYS’s close collaboration with registered investment advisers who participate in the shareholder proposal process is also well established, even beyond the fact that the organization aligned itself with Boston Walden Trust and other professional intermediaries as a co-signer of the BTW Comment Letter. For example, AYS publishes an annual report, the “Proxy Preview,” with the support of professional advisers like Boston Trust Walden, Northstar Asset Management, Natixis Investment Managers, Miller/Howard Investments, Inc. and Harrington Investments, Inc.<sup>9</sup>

<sup>4</sup> BTW Comment Letter; see also Recommendation of the SEC Investor Advisory Committee (IAC) Relating to SEC Guidance and Rule Proposals on Proxy Advisors and Shareholder Proposals dated January 24, 2020.

<sup>5</sup> <https://fossilfreefunds.org/legal>.

<sup>6</sup> *Id.*

<sup>7</sup> <https://www.asyousow.org/resolutions-tracker>.

<sup>8</sup> See *Wal-Mart Stores, Inc.* (Mar. 23, 1998).

<sup>9</sup> <https://www.proxypreview.org/>.

Further, in an article authored by the First Proponent speaking on the mission of AYS, the First Proponent stated, “[w]hen [AYS] sit[s] down with companies ... we only talk about how we as shareholder representatives have identified material risks and we have solutions” and when discussions with companies don’t result in the desired reforms, “we then escalate by filing shareholder resolutions.”<sup>10</sup> Submitting shareholder proposals is a core component of AYS’s mission, as it is for other investment advisers as illustrated in the BTW Comment Letter.

Academic literature also supports the notion that AYS, as a professional adviser in the shareholder proposal process, should be treated like the “investment advisers” referenced in the 2020 Release, meaning that for the purposes of the one-proposal limitation, AYS and all persons under their control are to be treated as one “person.” As Roberto Tallarita noted in a *Hastings Law Journal* article published in 2022 (the “**Stockholder Politics Article**”), of 2,933 proposals on social and environmental issues submitted between 2010 and 2021 to S&P 500 companies, 35% of such proposals were submitted by “shareholder advocates or other representatives of shareholders on behalf of individuals, charities, family foundations, or other shareholders,” and 82% of “direct filings” (i.e., those submitted without an apparent intermediary) were in fact “made by institutional actors with substantial expertise in socially relevant shareholder proposals,” meaning that “almost nine proposals out of ten were prepared and promoted by stockholder politics specialists, whether in their own name or on behalf of other shareholders.”<sup>11</sup> These professional intermediaries are “highly specialized repeat players, with dedicated staff and substantial expertise in shareholder proposals.”<sup>12</sup> According to the Stockholder Politics Article, they include both registered investment advisers, as well as “advocates (such as As You Sow ... ) that partner with nominal shareholders to file proposals on their behalf”:

As You Sow, like other similar organizations, performs the role of shareholder advocate on behalf of the actual shareholder-proponent. It identifies potential target companies on social and environmental issues, prepares the proposal and the accompanying statements and materials, interacts with the company’s management, and files a formal response with the SEC when the company seeks a no-action letter.<sup>13</sup>

Of note, the Commission’s broadening of the one-proposal limitation to treat as one “person” professional advisers like AYS, who may have otherwise submitted multiple proposals to one company directly or indirectly, applies not only to such entities in their capacity as representative, but also as shareholder proponent. The 2020 Release also made clear that “to the extent that the provider of such services submits a proposal, *either as a proponent or as a representative*, it will be subject to the one-proposal limit and will not be permitted to submit more than one proposal in total to the same company for the same meeting” (emphasis added).

AYS itself has acknowledged the active role it plays in submitting shareholder proposals. In a sworn deposition in connection with *People of the State of New York v. Exxon Mobil Corporation*, Case No. 452044, Sup. Ct. N.Y. Cnty. 2019, a case brought by the New York Attorney General against the Company, in which the court found in favor of the Company on all accounts, Danielle Fugere, the General Counsel of AYS and the First Proponent’s “agent” according to the submission, explained that with respect to the

<sup>10</sup> <https://www.climateandcapitalmedia.com/using-shareholder-power-to-change-corporate-behavior/>.

<sup>11</sup> Tallarita, Roberto, *Stockholder Politics*, 73 *Hastings L.J.* 1697, 1742 (2022), available at [https://repository.uchastings.edu/cgi/viewcontent.cgi?article=4000&context=hastings\\_law\\_journal](https://repository.uchastings.edu/cgi/viewcontent.cgi?article=4000&context=hastings_law_journal).

<sup>12</sup> *Id.* at 1742.

<sup>13</sup> *Id.* at 1742.

proposal in question, AYS drafted the resolution and then found a holder of the requisite shares who would agree to support it:

Q: What is As You Sow?

A: As You Sow is an organization, we represent shareholders, and we work with companies on cutting edge environmental, social, and governance issues.

...

Q: So, this was the proposal that, that you and Arjuna submitted. Let's focus on the resolved section.

A: Okay.

Question: It says, shareholders request Exxon to prepare a report by September 30, 2014, omitting proprietary information, and prepared at reasonable cost, on the company's goals and plans to address global concerns regarding fossil fuels and their contribution to climate change, including analysis of long and short-term financial and operational risks to the company. Do you see that text?

Answer: I do.

Question: What did, what did your insertion of word – well, did you help draft this text?

Answer: Yes

Question: Who else drafted it?

Answer: Natasha and I drafted this.

...

Question: Whose idea was it to raise the issue with Exxon?

Answer: I imagine, I mean, we certainly had the concept of doing that. I know that Arjuna did. I assume others were also interested in doing so, as well.

...

Question: So, it was a shared idea of you and Ms. Lamb to make this proposal?

Answer: Yes. I think we had similar thoughts.

Question: And then how did you go about finding a shareholder who was willing to propose it, since As You Sow can't propose it itself?

Answer: Just, probably, *the way we always do*, letting, and I don't recall which, which shareholder this was. I think, in the end, I don't know if Natasha may have actually filed this, but we probably brought on co-filers (emphasis added).

Question: So after deciding the resolution should be made, then you found a shareholder who would support it?

Answer: I believe that that's the case.<sup>14</sup>

The Stockholder Politics Article also noted that AYS is known to submit proposals as a proponent as well:

Occasionally, the leaders of the organization buy stock in the company and serve as nominal shareholder-proponent. For example, Andrew Behar, CEO of As You Sow, is the proponent of fifteen proposals in my entire sample.<sup>15</sup>

The First Proponent Response Letter notes that the 2020 Release “does not prohibit an entity from providing support and representation for multiple entities both before and after the submission process.” Here, however, AYS has a known history, acknowledged in its own sworn testimony and supported by academic research, of not only submitting proposals as representatives on behalf of clients, but also seemingly going beyond providing mere advisory services, to using maneuvers to submit such proposals that it formulates by finding shareholders in whose name to submit the proposal.

Given AYS's well-established role as a professional intermediary in the shareholder proposal submission process that is known to submit shareholder proposals, AYS and all persons under its control are, within the meaning of the 2020 Release, one “person” subject to Rule 14a-8(c). As one such “person,” AYS is only permitted to submit one proposal to the Company for inclusion in its 2023 Proxy Materials, whether directly or indirectly, or acting as proponent or representative.

**4. Given AYS's control of the Proponents, through AYS, they have exceeded the one-proposal limitation.**

- a. *Prior Staff decisions provide for a well-established “control” standard in the context of multiple-proposal submissions.*

The Company believes that AYS “controls” both Proponents within the meaning of such term for purposes of Rule 14a-8(c), such that they are together considered, with AYS, one “person” subject to the one-proposal limitation of Rule 14a-8(c). Although neither the final version of Rule 14a-8(c), as amended, nor the 2020 Release defines the meaning of “control,” the Staff has consistently applied a control standard to determine whether different persons constitute a single person or entity for the purposes of the one-proposal limitation.

For example, in *Consolidated Freightways, Inc. (recon. avail. Feb. 23, 1994)*, where two different proposals were accompanied by almost identical cover letters and were both hand-delivered by an official of an organization on behalf of two shareholder proponents who were also members of that organization, the Staff concurred in the exclusion of both proposals under the predecessor to Rule 14a-8(c), stating that “the

<sup>14</sup> <https://www.sec.gov/comments/s7-23-19/s72319-6794790-207771.pdf>.

<sup>15</sup> *Id.* at 1742.



one proposal limitation applies in those instances where a person (or entity) attempts to avoid the one proposal limitation through maneuvers, such as having persons they control submit a proposal.” In *Consolidated Freightways*, both proposals were deemed to have been submitted by the organization. The two shareholders were seen as merely nominal proponents acting as the alter egos of the International Brotherhood of Teamsters, the organization where they both served as members.<sup>16</sup>

The Staff has also consistently concurred in the exclusion of proposals where one proponent was able to exert control, or even influence, over nominal proponents in order to submit multiple proposals, in violation of Rule 14a-8(c). See, e.g., *Clemente Global Growth Fund, Inc.* (May 8, 1998) (concurring in the exclusion of a proposal where a single shareholder orchestrated the submission of multiple proposals from other shareholders); *Jefferson-Pilot Corporation* (Mar. 12, 1992) (concurring in the exclusion of a proposal where a proponent submitted one proposal on his own behalf and another proposal on behalf of an organization he controlled); *BankAmerica Corp.* (Feb. 8, 1996) (concurring in the exclusion of a proposal where one of the proponents was the president of a corporation and the custodian of the other minor proponent and, as such, exercised substantial influence over him). Of note, in *BankAmerica Corp.*, the Staff interpreted that the presence of mere “influence,” not necessarily control, domination or the ability to rule proponents, is sufficient to find “control” for the purposes of the one-proposal limitation rule.

In *General Electric Co.* (Jan. 10, 2008), the Staff found that a situation of “control” occurs when “a shareowner has submitted multiple proposals and then has had family members, friends or other associates submit the same or similar proposal shortly after.” There, the Staff concurred in the exclusion of multiple proposals where, after a proponent was notified by the company that his submission of two proposals violated the one-proposal limitation, the proponent’s daughters filed the same two proposals again, as if they were new proposals. See also *Bank of America Corp.* (Mar. 1, 2022) (concurring in the exclusion of multiple proposals where a proponent submitted one proposal in his own name and then submitted another proposal as representative of another shareholder); *Alaska Air Group, Inc.* (Mar. 5, 2009, recon. denied Apr. 8, 2009) (concurring in the exclusion of multiple proposals that were submitted by the same representative on behalf of different shareholders who granted the representative proxy authority which had unlimited breadth, discretion and duration thereby endowing the representative with beneficial ownership); *Staten Island Bancorp, Inc.* (Feb. 27, 2002) (concurring in the exclusion of multiple proposals where immediate family members, close neighbors and one of the proponent’s attorneys were deemed to be nominal proponents); *Spartan Motors, Inc.* (Mar. 12, 2001) (concurring in the exclusion of multiple proposals where a proponent initially submitted two proposals and, on notice from the company that he exceeded the one-proposal limitation, he responded that his wife, who owned shares jointly with him, wished to submit a second proposal); *International Business Machines Corp.* (Jan. 26, 1997) (concurring in the exclusion of a proposal where, after the original proponent of multiple proposals was notified that he exceeded the one-proposal rule, he resubmitted one proposal while his wife, son and daughter resubmitted the other three proposals in their own names); *First Union Real Estate Equity and Mortgage Investments (Winthrop)* (Dec. 20, 1995) (concurring in the exclusion of proposals that were submitted by the same representative on behalf of different trusts and, on notice that this exceeded the one-proposal limitation, the representative withdrew the original proposals and submitted new ones by different persons deemed nominal proponents, each signed by the original representative in his capacity as a fiduciary); *Stone & Webster Inc.* (avail. Mar. 2, 1995) (concurring in the exclusion of a proposal where a proponent coordinated the submission of 10 shareholder proposals by an arrangement with a trust that permitted the nominal proponents’ shares to be controlled by the trust; the company also argued that the fact that the nominal

<sup>16</sup> This member relationship is analogous and similar to the Commission’s use of the concept of a control “group” under Regulation 13D and Regulation 13G and “common control” under Rule 12b-2.

proponents were “acting in concert” should be considered sufficient to show a violation of the one-proposal limitation); *Albertson’s Inc.* (avail. Mar. 11, 1993) (concurring in the exclusion of a proposal where each of the proponents had corresponded with the company representing themselves as co-chairs of Albertson’s Shareholders Committee); *Dominion Resources, Inc.* (Feb. 24, 1993) (concurring in the exclusion of a proposal where there was deemed to be a coordinated scheme to submit multiple proposals that were identical to proposals that had originally been submitted by the first proponent that were then resubmitted by close relatives after the company notified the first proponent that the submissions had exceeded the one-proposal limitation); *Banc One Corp.* (Feb. 2, 1993) (concurring in the exclusion of a proposal where the original proponent had stated in a letter that he had “arranged for other qualified shareholders to serve as proponents of three shareholder proposal[s]”); *TPI Enterprises, Inc.* (Jul. 15, 1987) (concurring in the exclusion of several proposals where the company received nine proposals accompanied by identical letters from a single law firm, which represented a shareholder that had previously sued the company, on behalf of nominal proponents who were, in several cases, unable to document their ownership; the Staff concurred that the proposals were “masterminded” by a single individual, as evidenced by the similar form and content of the proposals); and *Texas Instruments Inc.* (Jan. 19, 1982) (concurring in the exclusion of several proposals respectively submitted by a shareholder and his daughter, as well as a corporation and a foundation, both of which the shareholder incorporated and for which he served as a director; the Staff concurred that the multiple proposals were effectively submitted by the same proponent).

In the prior decisions referenced above, the Staff permitted exclusion of proposals where, based on the facts and circumstances of multiple proposal submissions, a person was determined to have attempted to circumvent the one-proposal limitation by submitting such proposals using different or nominal shareholder proponent names under their “control.” The First Proponent Response Letter claims that the Staff’s prior “control” decisions are “not a functionally viable formula” for Rule 14a-8(c), as amended, given the fact-based inquiry into the coordination behind the multiple-proposal submissions. However, these are the kinds of maneuvers the Commission has worked to combat since the adoption of the predecessor to Rule 14a-8(c) in 1976, most recently by adopting amendments to the one-proposal limitation in 2020.

Therefore, this same standard should apply in determining whether the Proponents are under the “control” of AYS as an entity, such that they, along with AYS, are to be treated as one “person” for the purposes of Rule 14a-8(c). As described in more detail herein, the Company believes there is clear evidence that AYS and persons under its “control,” within the meaning of the 2020 Release, have engaged in similar coordination tactics.

More generally, both the Commission and the courts have consistently considered the existence of a “control” group as necessarily dependent on the facts and circumstances. Pursuant to Rule 12b-2, “the term ‘control’ (including the terms ‘controlling,’ ‘controlled by’ and ‘under common control with’) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.” Under this definition, and based on the specific facts at hand, corporate officers have frequently been found to be in a common control relationship with the company they serve. *Cameron v. Outdoor Resorts of America, Inc.*, 608 F.2d 187, 194–95 (5th Cir. 1979), on reh’g, 611 F.2d 105 (5th Cir. 1980); *Safeway Portland Employees’ Federal Credit Union v. C. H. Wagner & Co., Inc.*, 501 F.2d 1120, 1124 (9th Cir. 1974); *Stadia Oil & Uranium Co. v. Wheelis*, 251 F.2d 269 (10th Cir. 1957). Even though being an officer is not conclusive, it is



*prima facie* evidence of control. Furthermore, “corporations are generally controlled by their board of directors.”<sup>17</sup>

As noted herein, the 2020 Release broadened the scope of Rule 14a-8(c) to subject not just shareholders, but also other “persons” to the one-proposal limitation, and further clarified that for professional intermediary entities like AYS, persons under their control will be treated together as one “person.” In an analogous context, the Commission has recently proposed expanding its view of circumstances under which two or more persons may be deemed to have formed a “group” to be treated as one “person” subject to beneficial ownership reporting obligations under Regulation 13D and Regulation 13G: “[w]hether or not a group exists is dependent upon the facts and circumstances.”<sup>18</sup> For these reporting purposes, a group does not necessarily need to have entered into an agreement to act; depending on the particular “facts and circumstances...concerted actions by two or more persons” (in the Regulation 13D-G context, for the purpose of acquiring, holding or disposing of securities of an issuer) may be sufficient to have constituted the formation of a group. *Id.*

Here, looking at the facts and circumstances – as is necessary for determining the existence of a “control” relationship, consistent with the approach of prior Staff decisions and other relevant Commission rulemaking – the First Proponent and Second Proponent are not mere employees of AYS akin to “an office manager, janitor...or anyone else,” contrary to the claims made in the First Proponent Response Letter. The First Proponent is Chief Executive Officer (“**CEO**”) of AYS. It is hard to imagine a more obvious and clear example of a control relationship. As the Company ultimately discovered through its own detective work, the Second Proponent is a Board member of AYS and holds the Board position of Treasurer – a position of immense responsibility over AYS’s finances. Those are far from junior level positions, but rather connote positions of authority and control. Furthermore, the Company has uncovered numerous other instances of coordination demonstrating the existence of a “control” group, as noted and outlined below. All of this taken together overwhelmingly confirms that the Proponents, acting through AYS, have exceeded the one-proposal limitation.

- b. *As the CEO of AYS, the First Proponent is under the “control” of AYS and forms part of a “control” group of AYS for the purposes of the one-proposal limitation rule.*

The 2020 Release notes that all persons under an entity’s control, specifically “including employees,” will be treated with such entity as one “person” under Rule 14a-8(c). According to the AYS website<sup>19</sup> and the First Proponent’s LinkedIn profile,<sup>20</sup> the First Proponent has been the CEO of AYS since 2010. (Screenshots of the First Proponent’s biography on the AYS website, as well as his LinkedIn profile, are attached hereto as Exhibit G). In his capacity as CEO, the First Proponent has also signed at least one comment letter on behalf of AYS submitted to the Commission in connection with proposed rulemaking,<sup>21</sup> as well as a comment letter from AYS to the U.S. Department of Labor’s Employee Benefits Security Administration on Financial Factors in Selecting Plan Investments.<sup>22</sup> Because the First Proponent is clearly an employee of AYS, he is under its “control” within the meaning of the 2020 Release, as well as within the meaning of Rule

<sup>17</sup> Sommer, A. A. Jr., *Who’s in Control - S.E.C.*, 21 Bus. Law. 559, 575 (1966)

<sup>18</sup> Exchange Act Release No. 33-11030 (Feb. 10, 2022).

<sup>19</sup> <https://www.asyousow.org/staff/andrew-behar>.

<sup>20</sup> <https://www.linkedin.com/in/andrewbehar>.

<sup>21</sup> See <https://www.sec.gov/comments/s7-17-22/s71722-20136120-306863.pdf>.

<sup>22</sup> <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-AB95/00644.pdf>.

12b-2 and as such term has been interpreted in prior Staff decisions excluding multiple-proposal submissions, and therefore is to be treated with AYS as one “person” for the purposes of Rule 14a-(c).

The First Proponent also has a long history of directly participating in the shareholder proposal process in direct coordination with AYS, having been involved with his employer in the submission of at least 16 proposals to different companies over the last 10 years, where the First Proponent specifically identified himself as proponent. In addition, there are more than 100 known prior shareholder proposals that involve both AYS and the First Proponent in some capacity.

For example, in *Dow Inc.* (Feb. 15, 2022), AYS filed a shareholder proposal on behalf of the First Proponent, who was acting as the shareholder and nominal proponent, and stated that it was acting as his representative. The submission included a letter claiming to authorize AYS to file the proposal as representative, although it was both addressed to the First Proponent, in his capacity as CEO of AYS, and signed by the First Proponent. Of note, the AYS website’s tracker identifies AYS itself – and not the First Proponent – as the “lead filer” of the Proposal, and does not mention the First Proponent’s involvement in the submission of the proposal.<sup>23</sup>

In *Dollar Tree, Inc.* (Apr. 6, 2021), the First Proponent, acting in his capacity as CEO of AYS according to the submission, filed a shareholder proposal on behalf of LongView Funds, the shareholder, stating that AYS was acting as representative. Like in *Dow Inc.*, the AYS website’s tracker states that AYS itself – and not the First Proponent or the shareholder – was the “co-lead filer” of the proposal.<sup>24</sup> A shareholder proposal was also submitted in *TJX Companies Inc.* (Apr. 9, 2021) under the same circumstances as *Dollar Tree* (i.e., submitted by the First Proponent in his capacity as CEO of AYS, on behalf of LongView Funds as shareholder, and stating that AYS was acting as representative – even though AYS’s own tracker identified itself, as an entity, as the “co-lead filer” of the proposal and does not reference the First Proponent).<sup>25</sup>

In *Apple Inc.* (Dec. 30, 2014), a shareholder proposal was submitted by both the Marco Consulting Group and AYS, the latter submitting on behalf of the First Proponent as his representative, according to the written authorization provided by the First Proponent. Marco Consulting Group and the First Proponent were acting as co-filers, although the AYS website’s tracker indicates that AYS itself was acting as the co-filer with Marco Consulting Group, and the version of the proposal posted on the AYS website makes no reference to the First Proponent.<sup>26</sup>

In *Chevron Corp.* (Mar. 27, 2014), a shareholder proposal was filed by AYS on behalf of the First Proponent, acting as the shareholder. AYS appears to take credit for the proposal, having posted it on its tracker, but does not indicate who served as the shareholder proponent.<sup>27</sup> The Company notes that according to the AYS website’s tracker, AYS also takes credit for a second shareholder proposal that was submitted to Chevron in the same year. It is not clear from the posting or other public records who the shareholder proponent was, or the role AYS and/or the First Proponent might have played in the submission.<sup>28</sup>

<sup>23</sup> <https://www.asyousow.org/resolutions/2021/11/05-dow-petrochemical-risks>.

<sup>24</sup> <https://www.asyousow.org/resolutions/2020/12/24/dollar-tree-greater-disclosure-of-material-corporate-diversity-equity-and-inclusion-data>.

<sup>25</sup> <https://www.asyousow.org/resolutions/2020/12/24/tjx-companies-greater-disclosure-of-material-corporate-diversity-equity-and-inclusion-data>.

<sup>26</sup> <https://archive.asyousow.org/wp-content/uploads/2014/12/apple-2015-executive-compensation.pdf>.

<sup>27</sup> <https://archive.asyousow.org/wp-content/uploads/2014/03/chevron2014carbonbubble.pdf>.

<sup>28</sup> <https://archive.asyousow.org/wp-content/uploads/2014/03/chevron2014hydraulicfracturing.pdf>.

In *FirstEnergy Corp.* (Mar. 7, 2013), a shareholder proposal was submitted directly by the First Proponent acting in his capacity as CEO of the organization, and certain other co-filers. The cover letter accompanying the proposal made clear AYS's involvement in the submission, seemingly as the proponent: it was printed on AYS letterhead, signed by the First Proponent in his capacity as CEO of AYS and identified AYS as the "lead filer." The cover letter included the following note: "Thank you for the time your team has taken to discuss *As You Sow's concerns* over FirstEnergy's exposure [to risks identified in the proposal] ... we were pleased to learn that [FirstEnergy's efforts to mitigate such risks] ... however, we remain concerned that FirstEnergy ... will continue to be exposed to the risks identified in *the As You Sow resolution*" (emphasis added). Nonetheless, the cover letter also claimed that the First Proponent was authorizing AYS to file the proposal on his behalf as the shareholder, even though the First Proponent appears to have submitted the proposal himself.

The proposal in *FirstEnergy* is posted on AYS website's tracker, although, as with the two proposals AYS appears to be claiming it filed with Chevron in 2014, the tracker does not provide any details as to who AYS considers to be the proponent.<sup>29</sup> The company's no-action request letter identified AYS as the "Lead Proponent," without reference to the First Proponent. The response letter from Sanford Lewis, counsel representing the co-filers, identifies AYS – and not the First Proponent – as the "Proponent," indicating that AYS itself intended to be acting as the proponent, in reliance on the First Proponent's shareholdings.

Throughout these examples, even where the First Proponent claimed to be acting in his individual capacity as shareholder and was merely authorizing AYS to act as his representative, or else submitting a proposal on behalf of AYS as representative, AYS appears to market itself on its website as the true proponent of these proposals. These instances of coordination between AYS and the First Proponent demonstrate that they oftentimes treat themselves as interchangeable with respect to the role(s) of shareholder and/or proponent in the shareholder proposal process.

In fact, the author of the Stockholder Politics Article suggests this practice of relying on the First Proponent as well as on other organization "leaders" to serve as nominal proponents in order to submit shareholder proposals is typical for AYS: organizations such as AYS "are not asset managers and, based on my own findings, do not seem to invest directly in the companies they engage with. *Occasionally, the leaders of the organization buy stock in the company and serve as nominal shareholder-proponent. For example, Andrew Behar, CEO of As You Sow, is the proponent of fifteen proposals in my entire sample*" (emphasis added).<sup>30</sup> Similar to *Stone & Webster* where one person coordinated the submission of multiple proposals by nominal proponents, here AYS's prior practice suggests that it often coordinates with the First Proponent, its CEO, to have him serve as the nominal proponent behind its submission of shareholder proposals.

The First Proponent is also known to conflate the efforts of AYS as a professional adviser in the shareholder proposal submission and engagement process as his own. In a podcast interview published on June 23, 2022, the First Proponent uses the word "we" when talking about AYS, illustrating that he considered his actions related to shareholder proposal submissions to be on behalf of, or interchangeable with, those of AYS. In another interview from June 7, 2022, the First Proponent also uses the word "we"

<sup>29</sup> <https://archive.asyousow.org/wp-content/uploads/2013/07/2013-firstenergy-reso.pdf>.

<sup>30</sup> Tallarita, *supra* note 9 at 1742.

when talking about AYS and its work, stating for example that “we realized that if we continued to interact with the large companies of the world ... they may start to make a change.”<sup>31</sup>

With respect to the First Proposal in particular, the First Proponent submitted the proposal identifying himself only as a shareholder of the Company, without indicating his role as CEO of AYS or using AYS letterhead, and included only a personal email address as his contact information. Notably, the submission did not name AYS, the organization, as the First Proponent’s representative. It instead stated that the First Proponent was “delegating Danielle Fugere to act as [his] agent,” without indicating that Ms. Fugere is also employed by AYS, as President and Chief Counsel, according to the AYS website.<sup>32</sup> (A screenshot of Ms. Fugere’s biography on the AYS website is attached hereto as Exhibit H). Other than the email addresses provided for future communications with the First Proponent’s individual “agent,” the First Proposal does not make any direct references to AYS’s involvement in the submission of the Proposal.

Acting in her role as the First Proponent’s agent, Ms. Fugere scheduled a meeting to engage with the Company. However, when the final date did not work for Ms. Fugere’s schedule, the call was led by Thomas Peterson, the Say on Climate Coordinator for AYS,<sup>33</sup> with Alexandra Ferry, a Program and Special Projects Associate for AYS,<sup>34</sup> serving as note taker. (Screenshots of the biographies of Mr. Peterson and Ms. Ferry on the AYS website are attached hereto as Exhibit I). The First Proponent also participated in the meeting, without any indication he was doing so in his individual capacity, separate from his colleagues from AYS who participated on the call, even though neither they nor AYS were designated as the First Proponent’s representative for the purposes of his shareholder proposal submission. This engagement call made clear that AYS and its key employees treat their roles in the shareholder proposal submission process as interchangeable.

The First Proponent’s well-documented employment relationship with AYS as CEO, coupled with the numerous instances in which he appears to have served as a nominal shareholder for proposals submitted by or in coordination with AYS, indicates his strong control relationship with the entity, such that they should together, with the Second Proponent, be treated as “one person” for the purposes of the one-proposal limitation.

- c. *As a member of the Board who also serves in the “Board officer position” of Treasurer of AYS, the Second Proponent is also under the “control” of AYS and forms part of a “control” group of AYS for the purposes of the one-proposal limitation rule.*

The 2020 Release stated that persons under the “control” of a professional advisory entity, “including” – *but not limited to* – employees, will be treated with the entity as one “person” subject to the one-proposal limitation. Even if the Second Proponent is not a paid employee of AYS, her roles as a member of the Board and in the Board officer position of Treasurer of AYS make clear that she is also under the “control” of AYS, within the meaning of the 2020 Release, as well as in a “control” relationship with AYS and the First Proponent, within the meaning of Rule 12b-2 and as such term has been interpreted in prior Staff decisions excluding multiple-proposal submissions. In particular, what the Second Proponent characterized as a “Board officer position,” which is not addressed in any detail by either of the Proponents’ Response Letters,

<sup>31</sup> <https://www.forbes.com/sites/christophermarquis/2022/06/07/as-you-sow-uses-kpis-and-data-to-help-shareholders-advocate-for-long-term-corporate-change/?sh=1fc0eb40511d>.

<sup>32</sup> <https://www.asyousow.org/staff/danielle-fugere>.

<sup>33</sup> <https://www.asyousow.org/thomas-peterson>.

<sup>34</sup> <https://www.asyousow.org/alexandra-ferry>.

is seemingly analogous to an officer position, much like the First Proponent's role as CEO of AYS. As a result of this control relationship, she too, along with the First Proponent, is considered with AYS to be one "person" for the purposes of Rule 14a-8(c).

The AYS website states that the Second Proponent has served as a member of its Board of Directors and as the Treasurer from August 2018 to present.<sup>35</sup> (A screenshot of the Second Proponent's biography on the AYS website is attached hereto as Exhibit J). AYS has also identified the Second Proponent as a member of its Board in public filings, including tax filings submitted to the Internal Revenue Service, and has noted her role on the Board, including in the Treasurer position, in its annual reports.<sup>36</sup> Beyond AYS's own reporting, other third-party websites and online directories identify the Second Proponent as a "Board Member" of AYS.<sup>37</sup> (Screenshots of such third-party websites identifying the Second Proponent as a member of AYS's Board are attached hereto as Exhibit K).

The Second Proponent also self-identifies as "Board Member & Treasurer" of AYS, according to her LinkedIn profile, which also notes that she is "[e]ngaged in supporting shareholder advocacy, sustainability and corporate environmental responsibility via actions with As You Sow."<sup>38</sup> (A screenshot of the Second Proponent's LinkedIn profile is attached hereto as Exhibit L). In coordination with AYS, the Second Proponent co-signed a petition that was included in a comment letter submitted by AYS to the Commission in response to its 2020 rulemaking related to Rule 14a-8 (although in signing the petition, the Second Proponent failed to disclose her professional relationship with AYS, and signed as Anna Lyles, a different name from the one she used to submit the Second Proposal (Anna Marie Lyles) as well as a different name from the one she uses in professional contexts, including as a member of the Board of AYS (Annarie Lyles)).<sup>39</sup>

Furthermore, like the First Proponent, the Second Proponent also has a history of directly coordinating with AYS (as well as with the First Proponent) to submit shareholder proposals, seemingly as a nominal proponent. For example, in *The Kraft Heinz Company* (Feb. 14, 2022), a shareholder proposal was submitted by the Second Proponent, without referencing her roles as member of the Board and Board Treasurer of AYS. In her submission, the Second Proponent delegated "Conrad MacKerron" as her agent, without specifically noting that Mr. MacKerron is a Senior Vice President of AYS, according to its website.<sup>40</sup> Nonetheless, AYS advertised its involvement in the submission by posting the proposal on its online tracker and identifying the Second Proponent as the "Lead Filer."<sup>41</sup> In its press release announcing the withdrawal of the proposal, AYS stated that following engagement with the company, "As You Sow agreed to withdraw

<sup>35</sup> <https://www.asyousow.org/about-us/staff/board-of-directors>.

<sup>36</sup> [https://apps.irs.gov/pub/epostcard/cor/943169008\\_201912\\_990\\_2021022217737755.pdf](https://apps.irs.gov/pub/epostcard/cor/943169008_201912_990_2021022217737755.pdf);  
[https://static1.squarespace.com/static/59a706d4f5e2319b70240ef9/t/619ebd0819cc5a7f0d77cd80/1637793034606/As+You+Sow+2020+990\\_Public+Use+%281%29.pdf](https://static1.squarespace.com/static/59a706d4f5e2319b70240ef9/t/619ebd0819cc5a7f0d77cd80/1637793034606/As+You+Sow+2020+990_Public+Use+%281%29.pdf); [https://static1.squarespace.com/static/59a706d4f5e2319b70240ef9/t/60f98f34d35d04529b35005c/1626967863577/As+You+Sow\\_2019+990%2C+Amended\\_Public+Disclosure\\_July+2020.pdf](https://static1.squarespace.com/static/59a706d4f5e2319b70240ef9/t/60f98f34d35d04529b35005c/1626967863577/As+You+Sow_2019+990%2C+Amended_Public+Disclosure_July+2020.pdf);  
[https://static1.squarespace.com/static/59a706d4f5e2319b70240ef9/t/60749fb4818aec7db4d47b4d/1618255799665/As+You+Sow+2020\\_Annual+Report\\_FIN\\_20210325+%28Website-RGB%29.pdf](https://static1.squarespace.com/static/59a706d4f5e2319b70240ef9/t/60749fb4818aec7db4d47b4d/1618255799665/As+You+Sow+2020_Annual+Report_FIN_20210325+%28Website-RGB%29.pdf);  
[https://static1.squarespace.com/static/59a706d4f5e2319b70240ef9/t/6244e4297025b8193aec5aa7/1648682041431/As+You+Sow+2021\\_Annual+Report\\_20220315.pdf](https://static1.squarespace.com/static/59a706d4f5e2319b70240ef9/t/6244e4297025b8193aec5aa7/1648682041431/As+You+Sow+2021_Annual+Report_20220315.pdf).

<sup>37</sup> <https://entrepreneurs.princeton.edu/events/tiger2tiger-funding-landscape-impact-entrepreneurs>; [https://ballotpedia.org/As\\_You\\_Sow](https://ballotpedia.org/As_You_Sow);  
<https://nonprofitlight.com/ca/berkeley/as-you-sow>; [https://keywiki.org/As\\_You\\_Sow](https://keywiki.org/As_You_Sow); <https://www.zippia.com/as-you-sow-careers-710772/executives/>;  
<https://opengovco.com/charity/20153012525>; <https://www.toptierimpact.com/annarie-lyles-business-biology-technology-living-systems>.

<sup>38</sup> <https://www.linkedin.com/in/annarielyles>.

<sup>39</sup> <https://www.sec.gov/comments/s7-22-19/s72219-6745376-207948.pdf>.

<sup>40</sup> <https://www.asyousow.org/staff/conrad-mackerron>.

<sup>41</sup> <https://www.asyousow.org/resolutions/2021/11/24-kraft-heinz-sustainable-packaging-policies-for-plastics>.



its shareholder proposal” (emphasis added).<sup>42</sup> Mr. MacKerron is quoted as saying, “We were pleased to reach this agreement with Kraft Heinz ... We have similar pending proposals at [other companies]” (emphasis added).<sup>43</sup> The press release does not reference the Second Proponent’s role in the submission of the proposal.

With respect to the same shareholders meeting, AYS submitted another shareholder proposal to the same company in *The Kraft Heinz Company* (Jan. 26, 2022). There, the proposal was submitted on behalf of a shareholder, Handlery Hotels Inc., and included a letter from the shareholder addressed to the First Proponent, authorizing AYS to act as its representative. The AYS website’s tracker identifies AYS – and not the shareholder – as the “lead filer” of the proposal.<sup>44</sup>

The previous year, AYS had also submitted a shareholder proposal to the same company in *The Kraft Heinz Company* (Feb. 12, 2021) on behalf of the Second Proponent, who was acting as a co-filer shareholder. AYS stated that it was acting as her representative. The submission included a letter from the Second Proponent addressed to the First Proponent, in his capacity as CEO of AYS, claiming to authorize AYS to file the proposal on her behalf. The AYS website’s tracker identifies AYS as the “lead filer” of the proposal without referencing the role that the Second Proponent, a member of its Board, played in the submission of the proposal.<sup>45</sup>

In *Exxon Mobil Corp.* (Mar. 20, 2020), AYS filed a shareholder proposal on behalf of the First Proponent, who was acting as a co-filer shareholder and nominal proponent, and stated that it was acting as his representative. Like the proposal in *Dow*, the submission included a letter claiming to authorize AYS to file the proposal as representative, although it was both addressed to the First Proponent, in his capacity as CEO of AYS, and signed by the First Proponent. A subsequent response letter from Sanford Lewis, counsel representing the First Proponent, identified the First Proponent as the “Proponent,” and indicated in a footnote that there were a number of co-filers, including the Second Proponent. However, the Company has no record that it ever received the documentation required under Rule 14a-8 to confirm that the Second Proponent was a valid co-filer. With respect to the proposal at issue in *Exxon Mobil*, the AYS website’s tracker identifies AYS itself – and not the First Proponent, nor the Second Proponent – as the “lead filer” of the proposal, and does not mention either Proponent’s involvement in the submission of the proposal.<sup>46</sup> The Company also notes that, according to the tracker on the AYS website, AYS also claims to have been “lead filer” of another proposal submitted to the Company in the same year.<sup>47</sup> According to the Company’s records, that proposal was submitted by AYS on behalf of Park Foundation, Inc.

In *Devon Energy Corp.* (Mar. 4, 2019), in circumstances nearly identical to the submission of the proposal at issue in *Kraft Heinz* (Feb. 12, 2021), AYS filed a shareholder proposal on behalf of the Second Proponent, who was acting as a co-filer shareholder, and stated that it was acting as her representative. The submission included a letter from the Second Proponent addressed to the First Proponent, in his capacity as CEO of AYS, claiming to authorize AYS to file the proposal on her behalf. The AYS website’s

<sup>42</sup> <https://www.asyousow.org/press-releases/2022/2/23/kraft-heinz-agrees-virgin-plastic-reduction-goal>.

<sup>43</sup> *Id.*

<sup>44</sup> <https://www.asyousow.org/resolutions/2021/11/23-kraft-heinz-pesticide-use-in-agricultural-supply-chain-vrsrs>.

<sup>45</sup> <https://www.asyousow.org/resolutions/2020/11/27/kraft-heinz-pesticide-use-in-agricultural-supply-chains>.

<sup>46</sup> <https://www.asyousow.org/resolutions/2019/12/18/exxon-mobil-climate-change-risk-reporing>.

<sup>47</sup> <https://www.asyousow.org/resolutions/2019/12/18/exxon-mobil-report-on-petrochemical-risks>.

tracker identifies the other co-filer, the George Gund Foundation, as the “lead filer” without referencing the role that the Second Proponent, a member of its Board, played in the submission of the proposal.<sup>48</sup>

In addition to having been involved in the submission of shareholder proposals in direct coordination with AYS, the Second Proponent has admitted that she buys stock in the same companies that AYS targets in its advocacy efforts as a professional adviser in the shareholder proposal process. In an interview from September 30, 2014, the Second Proponent said that she “shop[s] for stocks using As You Sow’s list of shareholder advocacy targets.”<sup>49</sup> It can be inferred that AYS could have relied on these shareholdings by using the Second Proponent as a nominal proponent in order to submit shareholder proposals to Kraft Heinz, Devon and others, including the Company. As the Stockholder Politics Article notes specifically with respect to AYS (citing the First Proponent as just one prominent example): “Occasionally, the leaders of the organization buy stock in the company and serve as nominal shareholder-proponent.”<sup>50</sup>

In another interview, from January 7, 2020, the Second Proponent said that she is “enamored with the work of groups like As You Sow, which organizes shareholders and fund-holders to help them understand what they own, vote their shares, and engage via shareholder resolutions.”<sup>51</sup> In the same interview, when asked about the best ways to start investing, she stated that people should point their financial advisers “to helpful tools like Invest Your Values by As You Sow.”<sup>52</sup>

As noted in the Company Supplemental Letter, the Company acknowledges that the Second Proponent has refuted that she is under the “control” of AYS within the meaning of the 2020 Release, given that she does not have an employment contract with, and does not receive compensation from, AYS. Although the Second Proponent claims in the Second Proponent Response Letter that, as a director, she is not a paid employee of AYS, a person does not necessarily need to be a paid employee in order to be deemed under the “control” of an entity for purposes of Rule 14a-8(c). As noted above, the 2020 Release referenced employees as just one example of the persons who may be under an entity’s “control,” such that they are together treated as one “person” for the purposes of the one-proposal limitation, and the Staff has consistently found many different forms of coordination and types of relationships to have constituted control for purposes of the multiple-proposal limitation. The Second Proponent’s role as a member of the Board who also serves in the “Board officer position” of Treasurer of AYS (which is a position of immense responsibility with respect to AYS’s finances) is indicative of a strong “control” relationship with AYS.

Like the First Proponent (and at times even in apparent collaboration with the First Proponent), the Second Proponent has directly coordinated with AYS in the submission of shareholder proposals in a manner evincing the control that AYS exerts over both Proponents. For these reasons, the Company believes that, within the meaning of the 2020 Release, she is also a person under the “control” of AYS, such that both the First Proponent and Second Proponent are to be treated, with AYS, as one “person” for the purposes of Rule 14a-8(c). Consequently, AYS, acting through the Proponents, has exceeded the one-proposal limitation.

<sup>48</sup> <https://www.asyousow.org/resolutions/2018/12/26/devon-energy-disclose-paris-compliant-emissions-target>.

<sup>49</sup> <https://rachelsnetwork.org/annarie/>.

<sup>50</sup> Tallarita, supra note 9 at 1742.

<sup>51</sup> <https://investforbetter.org/funding-solutions-for-the-environment-qa-with-angel-investor-annarie-lyles/>.

<sup>52</sup> *Id.*

**CONCLUSION**

The Company believes that both of the Proposals were submitted using the kinds of “maneuvers” or “tactics” that the Commission has sought to curb since the adoption of the multiple-proposal restriction in 1976, when the Commission stated that it was “aware of the possibility that some proponents may attempt to evade the new limitations through various maneuvers, such as having other persons whose securities they control submit ... proposals each in their own names.” 1976 Release. The Company notified the Proponents of what is clearly a springing deficiency as soon as (and well within 14 days of when) it became aware of such deficiency. Because the Proponents are each under the “control” of AYS, within the meaning of the 2020 Release, the Company continues to believe that the Proposals violate the one-proposal limitation under Rule 14a-8(c). Under Rule 14a-8(f)(1), it is permissible to exclude proposals submitted by a proponent who fails to satisfy the eligibility requirements under Rule 14a-8(c).

For these reasons as well as those stated in the No-Action Letters, the Company continues to believe that it may exclude the Proposals from its 2023 Proxy Materials pursuant to Rule 14a-8(c) and Rule 14a-8(f)(1).

We would be happy to provide you with any additional information and answer any questions that you may have regarding this supplement to the No-Action Letters. Please do not hesitate to call me at (212) 450-4539 or James Parsons at [james.e.parsons@exxonmobil.com](mailto:james.e.parsons@exxonmobil.com).

Respectfully yours,

Louis Goldberg

A handwritten signature in black ink that reads "L. Goldberg". The signature is written in a cursive, flowing style. Below the signature, the word "Attachment" is printed in a smaller, sans-serif font.

Attachment

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

Anna Marie Lyles

Danielle Fugere

Sanford Lewis





# Sanford Lewis & Associates

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February 13, 2023

## **VIA EMAIL**

Office of Chief Counsel  
Division of Corporate Finance  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549  
Email: shareholderproposals@sec.gov

### **Re: Shareholder Proposal to Exxon Mobil Corporation Regarding Greenhouse Gas Emissions on Behalf of Andrew Behar**

Ladies and Gentlemen:

Andrew Behar (the “Proponent”) is the beneficial owner of common stock of Exxon Mobil Corporation (the “Company”) and has submitted a shareholder proposal (the “Behar Proposal”) to the Company. I write on the Proponents’ behalf in response to a letter dated January 13, 2023 (the “Company Letter” or “Company No Action Letter”) sent to the Securities and Exchange Commission by Louis Goldberg of Davis Polk & Wardwell LLP. In the Company Letter, the Company contends that the Behar Proposal may be excluded from its 2023 proxy statement. Proponent’s response follows. A copy of this letter is being emailed concurrently to the Company and its counsel.

The Company has no basis under Rule 14a-8 for exclusion of the Proposal. As such, the Proponent respectfully requests that the Staff inform the Company that it is denying the no action request.

### **SUMMARY**

The shareholder proposal requests that the Company disclose a recalculated baseline for accounting for its greenhouse gas emissions consistent with the greenhouse gas protocol. The Company does not challenge the substance of the proposal, but instead focuses on purported procedural issues with the filing. In fact, it is the company that has procedurally failed to comply with the rule's deficiency notice requirements and as a result, the no action request must be denied.

The Proponent submitted a shareholder proposal (the “Behar Proposal”) based on his personal ownership of Exxon shares, from his personal email address, on December 5, 2022. The Proponent also serves as Chief Executive Officer of *As You Sow* (“AYS”), an organization that represents shareholders in the shareholder engagement and proposal process. At the time of the submission, he designated Danielle Fugere, an employee of AYS as his representative to thereafter engage with the company.

On December 8, 2022, *As You Sow* submitted a shareholder resolution related to plastics to the Company on behalf of Meyer Memorial Trust (S) (the “Meyer Proposal”). Unrelatedly, Anna Marie Lyles (who also uses the name “Annarie Lyles”) personally submitted a proposal (the “Lyles Proposal”) to the Company. Dr. Lyles is an independent, unpaid member of *As You Sow*’s Board of Directors.

The Company’s No Action Letter is procedurally deficient. The Company failed to issue a deficiency notice asserting the deficiencies now asserted in the No Action request within 14 days of receipt of the Proposal and the allegedly conflicting proposals. Instead, the Company notified the Proponent of a procedural deficiency stemming from an alleged violation of Rule 14a-8(c) *thirty days* after it admits to receiving each of the three proposals at issue.

The Company also failed to afford the Proponent the required 14-day opportunity to cure the alleged deficiency before filing the Company Letter seeking Staff's permission to exclude the Behar Proposal.

Moreover, the third, untimely deficiency letter (attached as *Exhibit A* and hereinafter referred to as the "Third Deficiency Letter"<sup>1</sup>) alleged a violation of Rule 14a-8(c) based *solely* on the Lyles and Behar Proposals, whereas the Company No Action Letter raises an *entirely new* issue - purported violation of the one proposal rule as a result of the Meyer Proposal, an issue which was not addressed or even mentioned in any of the deficiency notices.

In short, the Company neither provided a timely notice of deficiency to the proponent, nor provided the requisite time required by the rule for corrective action by the proponent prior to filing a No Action request. Just as proponents are held to strict deadlines, in this instance the Company failed to meet the procedural rigors of Rule 14a-8 and the No Action request must be rejected.

We note in addition that the Company's No Action Letter further attempts to fabricate new rules about how 14a-8(c) should be applied to a proponent in Mr. Behar's shoes. We urge the Staff to maintain an objective, rather than subjective, interpretation of the Rule regarding submission of one proposal per entity. The Company would interpret the filing of a shareholder proposal by any "employee" of a representative organization, even where the filing is based on the employee's own shares and not in the course of employment, as prohibited where the employer entity has separately filed a proposal. The Rule does not require such an outcome. The Staff should permit independent submissions by shareholders acting under their own control with their own personally held shares, regardless of an employment or other relationship status to a representative organization. To do otherwise would involve the Staff in time-consuming and complicated analyses of indicia of control relationships, related or not-related job duties, and acceptable or prohibited relationships. Behar's personal submission, pursuant to federal legal rights attached to stock he personally owns, was not undertaken in the course of his employment.

It is not necessary to address the Company's dual representation argument in deciding the current matter, because as noted above, the failure of the Company to meet deficiency notice requirements precludes a finding on the basis of the "one proposal" rule.

## ANALYSIS

### **I. The Company's Deficiency Notice and No Action Request Are in Violation of the Procedural Protections of Rule 14a-8(f) Afforded to Shareholders and Should Therefore Be Denied.**

Rule 14a-8 contains several important procedural protections for shareholders. Among these protections is the requirement for companies to provide notice of an alleged deficiency in a shareholder proposal and an opportunity to cure any such deficiency. In this case, the Company has run afoul of both principles.

#### **A. Regulatory Background**

Rule 14a-8 sets forth several requirements that shareholders must follow for their proposals to appear in a company's proxy materials. These requirements are both procedural and substantive. The Rule specifically identifies a subset of the procedural requirements as 'curable.' See Rule 14a-8(f).

Where a deficiency is curable, a company may seek to "exclude [the] proposal, but only after it has notified [the proponent] of the problem, and [the proponent] ha[s] failed adequately to correct it." *Id.* (emphasis added). Companies and proponents alike are subject to a strict and unambiguous timetable for

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<sup>1</sup> Two earlier proof-of ownership deficiency letters were timely sent out and responded to by the Proponent and, upon information and belief, *As You Sow* on behalf of the Meyer Memorial Trust.

this deficiency process. Companies “must notify” a proponent “of any procedural or eligibility deficiencies” “[w]ithin 14 calendar days of receiving [the] proposal.” *Id.* Proponents’ responses “must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company’s notification.” *Id.* Only *after* the completion of the full deficiency process does the Rule contemplate the submission of a No Action request. *See* Rule 14a-8(f) (after setting out the above timelines, stating that “[i]f the company intends to exclude the proposal, it will *later* have to make a submission under [Rule 14a-8(j)]” (emphasis added)). If a company were allowed to file a No Action letter prior to the 14-day cure period, the deficiency notice requirement would be wholly negated, contrary to the well-established canon of construction requiring that laws be interpreted “so that no part will be inoperative or superfluous, void or insignificant.”<sup>2</sup>

The Rule further provides that “[e]ach person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders’ meeting.” Rule 14a-8(c). An alleged violation of this provision is curable. Rule 14a-8(f); *see also* Staff Legal Bulletin No. 14F (Oct. 18, 2011), at n.13 (stating that “company must send the shareholder a notice of defect . . . if it intends to exclude [a] proposal from its proxy materials in reliance on Rule 14a-8(c)”).

## **B. The Company Violated Rule 14a-8’s Procedural Protections.**

### **1. The Deficiency Letter Alleging Filing of Multiple Proposals Was Late.**

As discussed above and in the Company Letter:

- The Behar Proposal was submitted by Behar on December 5, 2022.
- The Meyer Proposal was submitted by *AYS* on December 8, 2022.
- The Lyles Proposal was submitted by Lyles and/or her representative on December 8, 2022.

On December 19, 2022, fourteen days after submission of the Behar Proposal and 11 days after the submission of the Meyer and Lyles proposals, the Company sent a deficiency letter to Danielle Fugere of *As You Sow* asserting only that the Behar Proposal was procedurally deficient because of inadequate proof of ownership (the “First Deficiency Letter”). The First Deficiency Letter did not mention the Meyer or Lyles Proposals.<sup>3</sup> Behar subsequently personally provided the required proof of ownership to the Company from his personal email account.<sup>4</sup>

On December 20, 2022, the Company sent a timely deficiency letter regarding the Meyer Proposal to *AYS* employee Conrad MacKerron; it addressed only proof of ownership (the “Second Deficiency Letter”). The Second Deficiency Letter, signed by the same Company official as the Behar Ownership Deficiency Letter, did not mention the Behar or Lyles Proposals.<sup>5</sup>

On December 22, with 14 days having passed from the submission of the Meyer and Lyles proposals, the deadline for the Company to submit a deficiency notice asserting that *AYS* was responsible for the direct or indirect submission of more than one proposal elapsed. The Staff has clarified that a Company can issue a second deficiency notice beyond the initial 14 day period only where the proponent’s response fails to fully address the identified deficiency in a proof of ownership, not to address a wholly new issue. *See* Staff Legal Bulletin 14L discussing circumstance under which a second deficiency notice can be sent.

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<sup>2</sup> *United States v. Harris*, 838 F.3d 98, 106 (2d Cir. 2016).

<sup>3</sup> The First Deficiency Letter is attached as *Exhibit B*.

<sup>4</sup> Behar’s response to the First Deficiency Letter is attached as *Exhibit D*.

<sup>5</sup> The Second Deficiency Letter is attached as *Exhibit C*.

In the current instance this extension of time is inapplicable because the alleged deficiencies in question occurred on December 8 and the requisite 14 days tolled on December 22.

However, on January 6, 2023 — 32 days after submission of the Behar Proposal and 29 days after submission of the Meyer and Lyles Proposals — the Company sent a Third Deficiency Letter simultaneously to Danielle Fugere (regarding the Behar Proposal) and to Dr. Lyles (regarding her own proposal). This Third Deficiency Letter indicated that, “subsequent to [the Company’s] letter of December 21, 2022 to Ms. Lyles acknowledging receipt of the Lyles Proposal,” the Company became aware of Lyles’ position on *AYS*’ Board of Directors. The Letter further noted that Behar served as Chief Executive Officer of *AYS*, and asserted, “[o]n the basis of these new facts” the Proposals were procedurally deficient due to a violation of Rule 14a-8(c) and “one of the [Behar or Lyles] Proposals must be withdrawn.” See Third Deficiency Letter at 2 (“[T]he submission of *both* of the Proposals causes *each* of the *Lyles* Proposal and *Behar* Proposal to violate the one-proposal limit.” (emphasis added)). The letter, signed by the same Company official as had signed the previous two deficiency letters, did not mention the Meyer Proposal.

The Third Deficiency Letter plainly did not comply with Rule 14a-8(f)’s requirement that a deficiency letter must be provided within 14 days of receiving a proposal. The Company apparently seeks to excuse its delay on the Third Deficiency Letter on the basis of lack of knowledge, because the Lyles Proposal “was not submitted on *AYS* letterhead [and] does not make any direct reference to *AYS*’ involvement in the submission,” and because Dr. Lyles filed the proposal using her legal name (Anna Marie Lyles) but commonly uses a variation of that name (Annarie Lyles), including in connection with her service on *AYS*’s Board. See Deficiency Letter 3 at 1-2; Company Letter at 2. This is not a credible explanation. Both names -- “Anna Marie” and “Annarie” Lyles -- are readily available online with regard to the Board position and Dr. Lyles’ shareholder advocacy. To claim that this was covered up or that it took the Company 29 days to discover this “new” information does not excuse the Company’s failure to comply with Rule 14a-8(f). The Company’s arguments concerning Dr. Lyles also do not explain why the Company failed to timely object to the submission of the Meyer proposal. The Company asserts that the Behar proposal is attributable to *AYS*; therefore, under the Company’s logic, Rule 14a-8(c) was triggered by the submission of the Meyer Proposal, which came directly from *AYS*.

The Company acknowledges that it received the Meyer Proposal “from *AYS*” just three days after submission of the Behar Proposal, Company Letter at 2, and that it sent proof-of-ownership deficiencies with respect to the Meyer and Behar Proposals to *AYS* employees’ email addresses on *back-to-back* days. Yet it failed to object to the Behar Proposal on the basis of Rule 14a-8(c) for 29 days following the submission of the Meyer Proposal.

Staff precedent strictly applies the deadlines in Rule 14a-8(f). *E.g.*, *FedEx Corp.* (June 5, 2019) (concurring with exclusion where proponent’s proof of ownership in response to company’s deficiency notice was just one day late); *AT&T Inc.* (Jan. 29, 2019) (three days late); *Mondelez International, Inc.* (Feb. 27, 2015) (two days late); *see also Exxon Mobil Corp.* (Mar. 6, 2020) (concurring with exclusion for violation of 14-day limit even where 14-day period included Christmas Eve, Christmas Day, and New Year’s Eve and Day). Accordingly, there is ample Staff precedent supporting the principle that the Company’s failure to provide a notice of deficiency within 14 days of receipt of the proposal is cause to reject a no action request. *E.g.*, *CoStar Group, Inc.* (Apr. 5, 2022) (rejecting no action request where “the Company failed to notify the Proponent of any deficiencies within 14 days of receiving the Proposal as required by Rule 14a-8(f)(1)”). *See also LNB Bancorp, Inc.* (Dec. 28, 2007) (rejecting no action request where company failed to adequately inform proponent of necessary cure to alleged deficiency); *AT&T Inc.* (Feb. 16, 2007) (rejecting no action request where Company addressed deficiency notice to incorrect address). Already this season, the Staff has denied a no action request because it was “not able to determine whether the Proponent received the deficiency notice in a timely manner.” *AmerisourceBergen*

*Corporation* (Jan. 12, 2023). Here, by contrast, there is zero ambiguity. The Proponent *did not* receive the deficiency notice in a timely manner.

**2. *The Company's No Action Letter was Filed Prior to the Running of the Deficiency Response Period.***

Having been late in notifying Mr. Behar of the alleged deficiency, the Company compounded its error by initiating the No Action process before the 14-day response period to which the Proponent was entitled had run. The Company may seek to exclude a proposal based on a curable deficiency “only after it has notified [the proponent] of the problem, and [the proponent] ha[s] failed adequately to correct it.” Rule 14a-8(f). Only “later”— *i.e.*, after the deficiency process is complete — can the company “make a submission” to the Staff to request its concurrence in the decision to exclude. *Id.*

Here, the Company sent the Third Deficiency Letter on January 6, 2023. It sent the No Action Letter only 7 days later, on January 13, 2023. Accordingly, the Company failed to afford the Proponent with the 14 days to which the Proponent was entitled to cure the alleged deficiency. Despite this fact, the Company Letter misleadingly asserts that “[t]o date, the Proponent has not responded to [the Third Deficiency Letter].” Company Letter at 2.

**3. *The Deficiency Letter and Company Letter Differ Substantively.***

Even if the Company had complied with the applicable deadlines in notifying the Proponent, Mr. Behar, of the alleged deficiency and allowing the Proponent the opportunity to cure the alleged deficiency, the Company’s actions would still be procedurally inappropriate. This is because the Company No Action Letter asserts that *AYS* has submitted three proposals and must withdraw two, while the Third Deficiency Letter asserted that *AYS* had submitted two proposals and needed to withdraw one. Consequently, even if Behar or Lyles had withdrawn one of their proposals in response to the Third Deficiency Letter, the Company could have still sandbagged the remaining Proponent with a no action request. Staff guidance and precedent strictly requires companies to fully describe both the nature of the deficiency and the necessary remedy in a deficiency letter and supports denying a no action request where they have failed to do so.

The Company’s No Action requests regarding the Behar and Lyles Proposals seek the exclusion of *both* Proposals, but not the Meyer Proposal. It is evident that the Company believes it received three Proposals from *AYS* and is entitled to exclude two. *See* Company Letter at 2, 3. The Third Deficiency Letter, however, *did not mention or reference* the Meyer Proposal *at all*. Rather, it asserted that *AYS* was responsible for *two* proposals - from Lyles and Behar – and that “*one* of the [Lyles or Behar] Proposals must be withdrawn.” Deficiency Letter at 2 (emphasis added). Withdrawal of only *one* of the Lyles or Behar Proposals is a different remedy than the one the Company now seeks — exclusion of *both* the Lyles and Behar Proposals. Moreover, as a result of the Company’s inconsistent treatment of the Meyer Proposal, it now inappropriately seeks exclusion of the *first* Proposal it received – the Behar Proposal.

The Company’s failure to correctly describe the deficiency and the necessary remedy constitutes an independent reason to reject the No Action request. In guidance spanning more than two decades, the Staff has repeatedly instructed companies to identify any procedural or substantive defects with *specificity* in their deficiency notices.<sup>6</sup> In *Marathon Oil Corporation* (Mar. 3, 2009), the Staff rejected a no action

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<sup>6</sup> In Staff Legal Bulletin No. 14, the Staff directed companies to “provide adequate detail about what the shareholder must do to remedy all eligibility or procedural defects.” (July 13, 2001). The Staff reiterated this instruction in Staff Legal Bulletin No. 14B (Sept. 15, 2004). There, the Staff also reminded companies of their “obligation to provide appropriate notice of defects.” Staff Legal Bulletin No. 14B. In 2012, the Staff referred to these previous bulletins as “explain[ing] that companies should provide adequate detail about what a proponent must

request on precisely this basis, acknowledging that “[w]hile it appears that the proponent may have exceeded the one-proposal limitation in rule 14a-8(c), it appears that Marathon did not request that the proponent reduce the proposals to cure the deficiency as required by rule 14a-8(f). Accordingly, we do not believe that Marathon may omit the proposal from its proxy materials in reliance on rule 14a-8(c).” The Proponent urges the Staff to continue to protect shareholders by holding companies to this important standard.

**D. Lack of Deficiency Notice Precludes Assessment of “Dual Proposal” Claims Regarding Either Subsequently Submitted Proposal.**

The procedural failures of the Company in this instance are sufficient to bar the need for the Staff to assess whether or not a CEO or a volunteer board member filing in their own capacity and not *as a “controlled” employee* would trigger the “dual” filing rule when the organization itself subsequently files on behalf of a proponent.

As will be discussed further below, the Proponent understood at the time of submission that he was submitting the Proposal in his personal capacity as an owner of Company stock, pursuant to his rights under federal law. Nothing in Commission or Staff guidance suggests that an individual must give up their personal proxy rights as a holder of securities merely because their employer subsequently files a shareholder proposal on behalf of a third party.

**II. The Company’s Interpretation of the Amended “One Proposal Rule” is Overly Broad. The Rule is Inapplicable to the Proponent, Who Acted in His Personal Rather Than Employment Capacity, and Infringes on Behar’s Rights as an Individual Stock Owner of the Company.**

In the unlikely event that the Staff were to overlook the procedural failures of the Company regarding deficiency notices, the Proponent urges the Staff to reject the Company’s interpretation of the Rule, which would have the effect of insulating companies from appropriate shareholder engagement and infringing on individual stockholders’ rights.

**A. Commission Guidance Does Not Prohibit Filing by an Individual Employee on Their Own Behalf.**

The Company extends the Rule’s general description of “entities and all persons under their control, including employees,” *see* 2020 Final Rule at 61, as a *per se* rule that the actions of a person who has a job (at least at an organization like *AYS* or, for example, an investment advisory firm) as necessarily subject to the “control” of their employer. *See* Company Letter at 4 (“[I]t is the Commission’s intent to prohibit a ‘person,’ which for an entity like *AYS* that is in the business of advising clients on the submission of shareholder proposals, would include all persons under its control, including employees, from submitting more than one proposal . . .”).<sup>7</sup>

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do to remedy all eligibility or procedural defects.” Staff Legal Bulletin No. 14G (Oct. 16, 2012). And the Staff expressed its “concern[] that companies’ notices of defect are not adequately describing the defects or explaining what a proponent must do to remedy defects,” particularly, in that case, in the context of proof-of-ownership letters. *Id.* Inadequate notices, the Staff explained, “do not . . . serve the purpose of Rule 14a-8(f).” *Id.* Finally, in 2021, the Staff reiterated that deficiency notices should “identify any *specific* defects.” Staff Legal Bulletin No. 14L (Nov. 3, 2021) (emphasis added).

<sup>7</sup> The Company’s attempt to cabin its reasoning to organizations like *AYS* and businesses like investment advisory firms is, in fact, without any textual basis in the 2020 Final Rule. The Company’s reasoning and the interpretation of the text upon which it relies applies with equal force to an administrative assistant working for an executive of an LLC that submitted a shareholder proposal, to the human resources manager of an environmental

The Company's arguments regarding dual representation constitute an expansive interpretation of the 2020 rule amendment and a highly problematic public policy path for the Staff's interpretation of the Rule. We believe it would be ill-advised for the Staff to interpret the rule so as to place itself in a position of micromanaging relationships between market-leading advisors and their clients by either treating all employees as equivalent to their employer for purposes of filing and representation, or assessing gradations of support, influence and control in the relationships between representatives and their clients, board members, and employees, among other types of relationships.

Instead, we urge the Staff to adopt a bright line rule, focused on whether the representative organization has itself filed more than one proposal at a company. In particular, an employee's ability to exercise their shareholder rights based on personal ownership of company securities should not turn on whether their employers previously or subsequently filed a shareholder proposal on behalf of another share owner.

The example from the Commission regarding the investment advisor submitting a proposal "on behalf of [a client]," which would prohibit the advisor or anyone else at his firm from submitting another proposal "on behalf of a different [client]," 2020 Final Rule at 61, *does not* state that the investment advisor's submission of a proposal on behalf of a client prohibits an employee of his firm — whether that employee is an office manager, janitor, investment advisor, accountant, lawyer, or anyone else — from submitting a proposal in their personal capacity, as the Company argues.

Nor does it state that if the investment advisor submitted a proposal using his own shares in his personal capacity that his firm is thereby prohibited from submitting a proposal on behalf of one of its clients that year. The 2020 Final Rule's example provides no support for the Company's position.

In short, the Company's position amounts to an argument that, in 2020, the Commission made employees subject to a *per se* prohibition on exercising their personal rights as shareholders if their employers had already or subsequently submitted a proposal on behalf of a client. This interpretation is not consistent with the guidance or the rule.

**1. *Lyles was Neither an Employee nor Acting Under the Control of AYS When Submitting Her Resolution.***

Here, the Company makes no argument other than a bald assertion, based on an alleged employment relationship with *AYS*, without establishing such a relationship, or proving any other control by *AYS* over the filing of the Lyles proposal.

Dr. Lyles, however, is an *independent* member of the *AYS* Board of Directors, who also serves as Treasurer of the Board in her capacity as a Board member. Service on a nonprofit Board does not ordinarily create an employment relationship.<sup>8</sup> Indeed, all members of *AYS*'s board are unpaid volunteers.<sup>9</sup> Further, nonprofit board service does not ordinarily — and does not in this case — require either owning stock in third-party companies or submitting shareholder proposals. Nor should it be particularly surprising that Lyles believes in the shareholder proposal process and has taken advantage of it herself during her Board tenure. Other than her Board service, the Company's only argument that Lyles' actions should be attributed to *AYS* is a bold assertion that the absence of evidence that *AYS* controlled Lyles' submission (e.g., the fact that the Lyles submission was not submitted on *AYS* letterhead

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nonprofit organization submitting a single proposal on behalf of a donor, and so on. After all, by the Company's reasoning, these are individuals "under the control" of an entity that has submitted a shareholder proposal.

<sup>8</sup> Directors of a corporation - members of the governing board - are defined by statute as non-employees. <https://www.irs.gov/charities-non-profits/exempt-organizations-who-is-a-statutory-non-employee>.

<sup>9</sup> See <https://www.asyousow.org/about-us/staff/board-of-directors>.



or added to its resolution tracker) is, in fact, evidence that *AYS* controlled Lyles' submission. The Staff should reject this plainly fallacious reasoning.

**2. *Behar was Not Acting as an Employee or Under the "Control" of AYS When Submitting His Resolution.***

Behar is, of course, an employee of As You Sow. Behar is also an independent owner of Company shares. Behar submitted the Proposal from his personal email address based on his ownership of those shares. Service as the CEO of *AYS* does not require, as a condition of employment or as one of Behar's job duties, that Behar own stock and personally submit shareholder resolutions using that stock. As with Lyles, it should not be surprising, given his employment with *AYS*, that Behar personally believes in the value of exercising his rights as a stockholder and has indeed taken advantage of those rights.

Behar's designation of an *AYS* employee to serve as his representative also does not support an inference that he was acting under the control of *AYS*, since the Guidance from the Commission expressly stated that representative organizations and companies are not prohibited from *representing* multiple investors who have submitted proposals at the same AGM – it merely prohibits them from *submitting* multiple proposals at a single company. Behar and *AYS* complied with this Rule.

**B. The Directives of the Commission in the 2020 Rulemaking.**

The Commission noted in the Release accompanying the 2020 rulemaking that the new Rule regarding representatives prohibits only multiple submissions by those representatives. See Rule 14a-8(c); SEC, *Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8: A Small Entity Compliance Guide* (Dec. 28, 2020, modified Dec. 7, 2022 (“[A] shareholder-proponent cannot submit one proposal in his or her own name and simultaneously serve as a representative to submit a different proposal on another shareholder's behalf for consideration at the same meeting.” (emphasis added)); see also *id.* (“[A] representative cannot submit more than one proposal to be considered at the same meeting, even if the representative were to submit each proposal on behalf of different shareholders.” (emphasis added)); SEC, *Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a-8 (Final Rule)* (“2020 Final Rule”) (Nov. 4, 2020), at 59.

However, the Commission also made it clear that while the new rule prohibits multiple *submissions by a representative* it does not prohibit an entity from providing support and representation for multiple entities both before and after the submission process. One can look to the Commission's release to understand the Commission intended to avoid obstructing constructive relationships between advisors and clients in the marketplace:

...the amendment is not intended to prevent shareholders from seeking assistance and advice from lawyers, investment advisers, or others to help them draft shareholder proposals and navigate the shareholder-proposal process, nor do we believe it would interfere with a representative's ability to effectively represent its clients. The ability to provide such assistance to more than one shareholder is not affected.... In addition, we do not believe, as suggested by commenters, that the amended rule will raise costs to a meaningful degree for shareholder-proponents or otherwise unduly restrict their options in selecting a representative because, while in some cases shareholder-proponents may need to submit a proposal on their own, they can otherwise enjoy all of the benefits of being represented by a representative of their choosing. For example, if a shareholder's representative of choice is unable to submit a proposal for the shareholder, because it has already made a submission on behalf of another client, the representative could still assist the shareholder with drafting the proposal, advising on steps in the submission process, and engaging with the company.

Thus, we know that under the Rule and guidance in the release that As You Sow can advise a shareholder client or partner and draft a proposal on their behalf without triggering the exclusion.

### **C. Prior “Control” Decisions are Inappropriate for Representation Relationships.**

We note that the Company’s citations principally focused on interpretation under the preceding “one proposal” rule, built around finding sufficient control to claim that one proponent is simply an alter ego of another. Close examination of the issue leads us to conclude that the historical alter ego/control analytical framework is not a functionally viable formula to apply in the context of applying the “one proposal” rule to representation relationships.

For example, prior rulings focused on indicia of “acting on behalf or as an alter ego of or in concert with” a proponent, which the Staff has recognized as a basis for omission under Rule 14a-8(a)(4) include the admission by a nominal proponent or the proponent’s affiliation with another proponent; the overall coordination, arranging and masterminding of multiple proposals by one proponent, a significant similarity in the language of proposals, supporting statements and cover letters, and the existence of evidence that the true proponent authored, prepared and solicited with respect to multiple proposals. See, e.g., Weyerhaeuser Company (December 20, 1995) (omission of multiple proposals permitted where one of the two proponents did not contest the company’s position that the proposals were submitted by a single proponent, the proponents worked together and had the same address, and the language in the proposals and supporting statements was similar); Albertson’s Inc. (March 11, 1994) (omission of multiple proposals permitted where two proponents admitted alliance as co-chairs of shareholders’ committee, one proposal was submitted on such committee’s letterhead and the other was submitted by a proponent as co-chair of the committee, and the language in the cover letters accompanying the proposals and the supporting statements was similar); Banc One Corporation (February 2, 1993) (omission of multiple proposals permitted where the true proponent admitted that he arranged for the other proponents to submit proposals, established the date for filing the proposals, and worked on the text of the other proponents’ proposals).

The precedents thus target affiliation, coordination of multiple proposals, similarity in proposals and cover letters, and authorship of multiple proposals. Given the Commission’s guidance that representatives can do all but submit a proposal on behalf of multiple proponents, proponents can be expected to be represented by an entity that has multiple clients that it coordinates, supports, provides templates for, etc. Moreover, a representative or advisor providing extensive support does not constitute control, and any attempt to try to evaluate or claim “control” by a representative or advisor would plunge the Staff into a quagmire of arbitrating and micromanaging advisor/client/employee relationships.

Depending on how the new “one proposal” rule on filing directly or indirectly it is interpreted and applied, the Rule could involve the Staff and parties deeply in fact-finding regarding the gradations of control, support, and intentions. At a time when the Commission is seeking to simplify the No Action process, the broad interpretation of the rule sought by the Company would plunge the Staff into the kind of debates among the parties that the Staff has learned to reject after other prior experience. For example, in the early stage of application of Rule 14a-8(i)(3), which prohibits false and misleading statements, the Staff began to receive letters from issuers and proponents debating subjective advocacy issues regarding their proposals, e.g. company objected “to factual assertions that, while not materially false or misleading, may be disputed or countered .... [or] may be interpreted by shareholders in a manner that is unfavorable

to the company, its directors, or its officers; and/or ...[that] represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.”<sup>10</sup> Parsing such issues placed the Staff in an untenable, time consuming process of parsing facts from gradations of advocacy that are best directed toward the shareholders’ consideration on the proxy rather than the Staff’s consideration in the No Action process. Accordingly, the Staff placed a clear boundary and limit in Staff Legal Bulletin 14B of September 15, 2004, where the Staff noted that the process of reviewing company no action letters had devolved to forcing the Staff to evaluate line-by-line company objections to the wording of proposals, and created a bright line rule for excluding objectively false information only. Under the same rationale, we believe that a bright line rule regarding representation and “indirect” filing should apply the “one proposal” exclusion exclusively to employees acting in their employment capacity and avoiding the quagmire of assessing the relative level of “control” that a representative has in relation to its clients or employees.

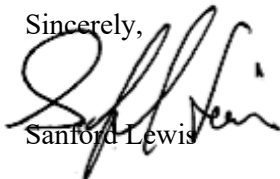
**D. Dual Submission Issue is Not Appropriate to Resolve in this No Action Request.**

As we emphasized above, because the Company has failed to comply with the Rule’s procedural requirements, the current no action request is not an appropriate vehicle for analyzing and resolving the “one proposal” principles sought in the Company Letter. We believe these issues will need to be resolved in the future and not in this instance where the Company waived its right to raise these issues.

**CONCLUSION**

Based on the foregoing, we believe it is clear that the Company has provided no basis for the conclusion that the Proposal is excludable from the 2023 proxy statement pursuant to Rule 14a-8. As such, we respectfully request that the Staff inform the company that it is denying the no action request. If you have any questions, please contact me at 413 549-7333 or sanfordlewis@strategiccounsel.net.

Sincerely,



Sanford Lewis

Brittany Blanchard Goad

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<sup>10</sup> Staff Legal Bulletin 14B.

**Exhibit B**

Anna Marie Lyles, PhD

PII

February 9, 2023

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

**Re: Submission of Shareholder Proposal for the 2023 Annual Meeting of Shareholders of Exxon Mobil Corporation**

To the Staff of the SEC:

I am writing with regard to the shareholder proposal that I submitted on December 8, 2022 to Exxon Mobil Corporation. In response to my proposal, the company's counsel sent a letter, on January 13, 2023, to the SEC claiming that my proposal was not valid. Specifically, Exxon's counsel claim that the proposal did not comply with Rule 14a-8(c), which says that a person may only submit one proposal for a particular company's annual meeting.

Exxon reached this conclusion by asserting that my proposal was "indirectly" submitted on behalf of As You Sow, a nonprofit organization where I *volunteer* as a member of the board of directors. I have no contract of employment with As You Sow, nor do I receive any compensation from them. I volunteer some of my spare time to this nonprofit because I am environmentally conscious and care deeply about our planet. It was, in part, this same conscientiousness that drove me, a longtime Exxon shareholder concerned with both the environmental and financial risk posed to Exxon by potential environmental-related litigation, to submit my proposal.

I've read Exxon's previous responses to me and its no-action letter to the SEC more than once and it's still unclear to me what legs their argument for exclusion stands upon. They appear to offhandedly assert that which they don't know, and, based on these false assumptions, surmise that I am an "employee" of As You Sow and under their "control." Exxon then concludes that my proposal was submitted on behalf of As You Sow and that because As You Sow had—according to Exxon—indirectly submitted its own proposal, my proposal is invalid.

As mentioned above, I am not an employee of and am certainly not controlled by As You Sow. My actual employment is as a consultant and as the manager of a private venture capital portfolio, neither of which are affiliated with or have any connection, professional or otherwise, to As You Sow. That Exxon feels it can assert otherwise, and that it does so in a legal letter, without knowing any of the facts, is, frankly, baffling to me. Not once did Exxon or its counsel attempt to contact me to ask about the nature of my relationship with As You Sow. Instead, they apparently googled my name, saw that I served on the board of a non-profit organization, decided that I was employed and controlled by the non-profit and was therefore submitting a proposal on its behalf, and sought no-action with the SEC.

Based on the facts, it isn't clear to me that the legal arguments Exxon makes require a rebuttal, as the arguments are all rooted in the false assumption that I am an employee of and controlled by As You Sow. That being said, I will briefly address them so that no questions remain.

Exxon cites to an SEC Release, titled Release No. 34-89964, that says "entities and all persons under their control, including employees, will be treated as a 'person' for purposes of the amendment." As I have explained, I am not an employee of As You Sow nor am I under their control. Exxon has cited nothing that evidences anything to the contrary.

It's worth noting that federal and state law throw additional cold water on Exxon's assertions. The Internal Revenue Service explicitly categorizes directors of non-profit organizations, such as As You Sow, as 'non-employees.'<sup>1</sup> This would be true even if a director received compensation, which I do not. Further, the SEC itself makes clear that the term 'Employee' "does not include a director."<sup>2</sup> California<sup>3</sup> state law further excludes "person[s] performing voluntary service for a public agency or a private, nonprofit organization who does not receive remuneration..." as employees.<sup>4</sup> It follows that not only am I not an employee of As You Sow in any practical sense, I am also not an employee of As You Sow in any legal sense.

Although none are analogous or applicable, Exxon, in its no-action request, cites to various no-action letters. These no-action letters discuss submissions by persons under someone else's control, submissions by persons under the "substantial influence" of someone else, and submissions by children seemingly made on behalf of their parents. None of these situations are present here, nor are they even tangentially comparable to the facts at hand (as explained above).

Exxon should not be allowed to exclude my proposal under Rule 14a-8(c) and I respectfully request that the SEC reject Exxon's no action request to exclude my proposal. Thank you for your time.

I am copying Exxon on the transmission of this email for awareness. If you have any questions, please feel free to contact me by email at [REDACTED]<sup>PII</sup>.

Sincerely,

  
\_\_\_\_\_  
Anna Marie Lyles

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<sup>1</sup> "Exempt Organizations: Who Is a Statutory Non-Employee?" *Internal Revenue Service*, <https://www.irs.gov/charities-non-profits/exempt-organizations-who-is-a-statutory-non-employee>.

<sup>2</sup> United States Securities Exchange Act of 1934, 17 CFR § 240.12b-2 – Definitions.

<sup>3</sup> As You Sow is incorporated in California.

<sup>4</sup> California Labor Code, § 3352(i).



January 13, 2023

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549  
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 Andrew Behar, delegating Danielle Fugere as his agent (the “**Proponent**”) for inclusion in the proxy materials the Company intends to distribute in connection with its 2023 Annual Meeting of Shareholders (the “**2023 Proxy Materials**”). The Proposal and related correspondence 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 2023 Proxy Materials.

Pursuant to Staff Legal Bulletin No. 14D (CF), Shareholder Proposals (Nov. 7, 2008), Question C, we have submitted this letter 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 2023 Proxy Materials. This letter constitutes the Company’s statement of the reasons it deems the omission of the Proposal to be proper. We have been advised by the Company as to the factual matters set forth herein.

## **THE PROPOSAL**

The Proposal states:

RESOLVED: Shareholders request that ExxonMobil, at reasonable cost and omitting proprietary information, disclose a recalculated emissions baseline that excludes the aggregated GHG emissions from material asset divestitures occurring since 2016, the year ExxonMobil uses to baseline its emissions.

## **REASON FOR EXCLUSION OF THE PROPOSAL**

The Company believes that the Proposal may be properly omitted from the 2023 Proxy Materials pursuant to Rule 14a-8(c) and Rule 14a-8(f)(1) because the Proponent has exceeded the one-proposal limitation.



## BACKGROUND

The Company received two proposals for inclusion in the 2023 Proxy Materials that it believes are each indirectly submitted by As You Sow (“AYS”). In addition, AYS is acting as a representative in connection with a third proposal submitted for inclusion in the 2023 Proxy Materials. According to the AYS website, AYS “represents investors across a broad range of ESG issue areas, empowering shareholders through the use of shareholder resolutions.”<sup>1</sup>

On December 5, 2022, the Company received the Proposal. According to the AYS website, the Proponent is the CEO of AYS, and his agent is the President and Chief Counsel of AYS.<sup>2</sup> Because the Proposal did not demonstrate any proof of ownership, on December 19, 2022, within 14 days of the date the Company received the Proposal, the Company sent the Proponent a deficiency notice (the “**First Deficiency Notice**”), noting that the Proponent had not demonstrated that he owned the requisite shares for the applicable period of time in order to be eligible to submit the Proposal pursuant to Rule 14a-8(b)(2). The Proponent responded on December 28, 2022 and included documentation satisfying Rule 14a-8(b)(2).

On December 8, 2022, the Company received a proposal from AYS as a representative of the Meyer Memorial Trust (the “**Second Proposal**”), which, along with related correspondence, is attached hereto as Exhibit B.

Also on December 8, 2022, the Company received a proposal submitted by Anna Marie Lyles (the “**Third Proposal**”), which, along with related correspondence, is attached hereto as Exhibit C.

After the Proponent responded to the First Deficiency Notice, the Company, in connection with its preparation for potential engagement with Ms. Lyles, the proponent of the Third Proposal, became aware that the AYS website lists Ms. Lyles (identified therein and in other professional contexts as “Annarie Lyles”) as a member of the board of directors and the treasurer of AYS.<sup>3</sup> The Company determined that AYS, as an entity with the Proponent, his agent and Ms. Lyles under its control as employees (within the meaning of the 2020 Release as defined and discussed below), had indirectly submitted more than one proposal, in violation of Rule 14a-8(c). The Company was not initially aware of Ms. Lyles’ employment by AYS because the Third Proposal was not submitted on AYS letterhead, does not make any direct reference to AYS’ involvement in the submission and Ms. Lyles, in her submission of the Third Proposal, used a variation (Anna Marie Lyles) of the name that she is known by in her capacity as a director and the treasurer of AYS (Annarie Lyles).<sup>4</sup> On January 6, 2023, as soon as it became aware of this deficiency, the Company sent the Proponent a second deficiency notice (the “**Second Deficiency Notice**”), expressly identifying the multiple proposal deficiency and explaining the steps the Proponent could take to cure such deficiency.

To date, the Proponent has not responded to the Second Deficiency Notice. Pursuant to Rule 14a-8(j), if a company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The Company is filing this letter based on its current expectation with respect to when it may be filing its definitive proxy statement, in order to comply with Rule 14a-8(j).

<sup>1</sup> <https://www.asyousow.org/resolutions-tracker>.

<sup>2</sup> <https://www.asyousow.org/about-us/staff>.

<sup>3</sup> <https://www.asyousow.org/about-us/staff/board-of-directors>.

<sup>4</sup> A public social media profile identifies “Annarie Lyles” as a managing director at Bio-Gist Ventures, LLC and a member of the board of directors and the treasurer of AYS, while public listing websites for the business Bio-Gist Ventures, LLC identify “Anna Marie Lyles” as an employee and list the same address provided by the Proponent in connection with the Proposal. See <https://www.linkedin.com/in/annarielyles>; <https://www.allbiz.com/business/bio-gist-ventures-llc-609-497-0340>; <https://www.buzzfile.com/business/bio-gist-ventures-llc-609-497-0340>.



The Company notes that it also sent the Second Deficiency Notice to Ms. Lyles, with respect to the Third Proposal. The Company is separately requesting to exclude the Third Proposal through another no-action request letter.

***The Proposal May Be Excluded Under Rule 14a-8(c) and Rule 14a-8(f)(1) Because the Proponent, Through AYS, Has Exceeded the One-Proposal Limitation.***

The Company believes that it may exclude the Proposal pursuant to Rule 14a-8(c) and Rule 14a-8(f)(1) because it was indirectly submitted by AYS, in violation of the one-proposal limitation.

In 2020, Rule 14a-8(c) was amended to provide that “[e]ach *person* may submit no more than one proposal, *directly or indirectly*, to a company for a particular shareholders’ meeting. A person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders’ meeting” (emphasis added). The Commission first adopted this rule over 40 years ago, noting in Release No. 12999 (Nov. 22, 1976) (the “1976 Release”) that it was responding to the concern that some “proponents ... [exceed] the bounds of reasonableness ... by submitting excessive numbers of proposals” and that “[s]uch practices are inappropriate under Rule 14a-8 not only because they constitute an unreasonable exercise of the right to submit proposals at the expense of other shareholders but also because they tend to obscure other material matters in the proxy statements of issuers, thereby reducing the effectiveness of such documents.” The Commission explained in Release No. 34-89964 (Sept. 23, 2020) (the “2020 Release”) that, for the purposes of Rule 14a-8(c), “entities and all persons under their control, including employees will be treated as a ‘person’ for purposes of the amendment.”

The Company recognizes that the 2020 Release discusses the scope of the term “person” in the context of the example provided of different employees of an investment advisor submitting multiple proposals as a representative on behalf of more than one shareholder. Although AYS is not, according to one of its affiliate websites, an investment adviser,<sup>5</sup> the AYS website also makes clear that the firm frequently submits shareholder proposals on behalf of clients.<sup>6</sup> In fact, AYS’s own publicly available tracker of its shareholder proposals advertises that both the Proposal<sup>7</sup> and the Second Proposal<sup>8</sup> are proposals “on which As You Sow represents investors.”

As of the date of this letter, AYS’ tracker does not list the Third Proposal as one of its shareholder proposals.<sup>9</sup> Nonetheless, given that the proponent, Ms. Lyles, just like the Proponent of the Proposal, is (based on AYS’ website) an employee of an entity that routinely submits shareholder proposals on behalf of clients, the submission of the Proposal fits squarely within the intent of the 2020 Release with respect to limiting such “persons” to one shareholder proposal submission. Just like the example used in the 2020 Release regarding employees of an investment adviser under common control, here, AYS employees have submitted more than one proposal to the Company.

In *Consolidated Freightways, Inc. (Recon. avail. Feb. 23, 1994)*, the Staff concurred that proposals submitted by two different shareholders had violated the predecessor to Rule 14a-8(c), stating that “the one proposal limitation applies in those instances where a person (or entity) attempts to avoid the one proposal

<sup>5</sup> <https://fossilfreefunds.org/legal>.

<sup>6</sup> <https://www.asyousow.org/resolutions-tracker>.

<sup>7</sup> <https://www.asyousow.org/resolutions/2022/12/9-exxon-petrochemical-risk-single-use-plastic>.

<sup>8</sup> <https://www.asyousow.org/resolutions/2022/12/6-exxonmobil-report-asset-transfers-ghg-emissions>.

<sup>9</sup> However, the Company notes that for the 2022 proxy season, AYS’ tracker advertised that it represented investors in two shareholder proposals submitted to The Kraft Heinz Company, one of which listed the lead filer as AYS, with the other listing the lead filer as “Anna Marie Lyles,” the name used by the Proponent in connection with the Proposal. See <https://www.asyousow.org/resolutions/2021/11/23-kraft-heinz-pesticide-use-in-agricultural-supply-chain-vrsrc>; <https://www.asyousow.org/resolutions/2021/11/24-kraft-heinz-sustainable-packaging-policies-for-plastics>.

limitation through maneuvers, such as having persons they control submit a proposal.” See also *BankAmerica Corp.* (Feb. 8, 1996) (concurring in the exclusion of a proposal where the company also received proposals by proponents under “substantial influence” of the first proponent given that they were either related to or employed by the first proponent); and *Weyerhaeuser Co.* (Dec. 20, 1995) (concurring in the exclusion of multiple proposals where the son of a proponent who had submitted another proposal was determined to be “acting on behalf of, under the control of, or alter ego of the [proponent]”). Likewise, the Staff has consistently concurred in excluding proposals where a shareholder has coordinated with family members, friends, and associates to submit proposals to contravene the one-proposal limit rule. See, e.g., *General Electric Co.* (Jan. 10, 2008) and *Staten Island Bancorp, Inc.* (Feb. 27, 2002).

Here, given that the Proponent is the CEO of AYS, the Company believes, pursuant to the 2020 Release, he is a person (i.e., an employee) under the control of AYS. Just as in *Weyerhaeuser*, the Proponent is “acting on behalf of, under the control of, or alter ego of” AYS. Pursuant to the 2020 Release, the Company believes that he should be treated together with AYS as a “person.” Thus, with respect to the Proposal, AYS has indirectly submitted more than one proposal to the Company to be included in its 2023 Proxy Materials.

The Company notes that this situation, of related persons employing a strategy to submit multiple proposals under different proponent names, has been one that the Commission has sought to avoid since the adoption of the one-proposal restriction in 1976, when the Commission stated that it was “aware of the possibility that some proponents may attempt to evade the new limitations through various maneuvers, such as having other persons whose securities they control submit ... proposals each in their own names.” 1976 Release. Further, the 2020 Release indicates that it is the Commission’s intent to prohibit a “person,” which for an entity like AYS that is in the business of advising clients on the submission of shareholder proposals, would include all persons under its control, including employees, from submitting more than one proposal to a company. Because AYS has indirectly submitted more than one proposal to be included in the 2023 Proxy Materials, the Company believes that the Proposal violates the one-proposal limitation under Rule 14a-8(c).

Under Rule 14a-8(f)(1), it is permissible to exclude proposals submitted by a proponent who fails to satisfy the eligibility requirements under Rule 14a-8(c). Therefore, pursuant to Rules 14a-8(c) and 14a-8(f)(1), the Company believes that it may exclude the Proposal from its 2023 Proxy Materials.

## CONCLUSION

For the reasons set forth above, the Company believes that the Proposal may be excluded from its 2023 Proxy Materials pursuant to Rule 14a-8(c) and Rule 14a-8(f)(1). The Company respectfully requests the Staff’s concurrence with its decision to exclude the Proposal from its 2023 Proxy Materials and further requests confirmation that the Staff will not recommend enforcement action to the SEC if it so excludes the Proposal.



We would be happy to provide you with any additional information and answer any questions that you may have regarding this request. Please do not hesitate to call me at (212) 450-4539 or James Parsons at james.e.parsons@exxonmobil.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,



Louis Goldberg

Attachment

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

Danielle Fugere

**Exhibit D**

January 13, 2023

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549  
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 Anna Marie Lyles (the “**Proponent**”) for inclusion in the proxy materials the Company intends to distribute in connection with its 2023 Annual Meeting of Shareholders (the “**2023 Proxy Materials**”). The Proposal and related correspondence 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 2023 Proxy Materials.

Pursuant to Staff Legal Bulletin No. 14D (CF), Shareholder Proposals (Nov. 7, 2008), Question C, we have submitted this letter 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 2023 Proxy Materials. This letter constitutes the Company’s statement of the reasons it deems the omission of the Proposal to be proper. We have been advised by the Company as to the factual matters set forth herein.

## **THE PROPOSAL**

The Proposal states:

RESOLVED: Shareholders request an actuarial assessment, omitting confidential information and prepared at a reasonable cost, of the potential cumulative risk to Exxon Mobil Corporation (“ExxonMobil” or the “Company”) from current environment-related litigation against the Company and its affiliates.

## **REASON FOR EXCLUSION OF THE PROPOSAL**

The Company believes that the Proposal may be properly omitted from the 2023 Proxy Materials pursuant to Rule 14a-8(c) and Rule 14a-8(f)(1) because the Proponent has exceeded the one-proposal limitation.

## BACKGROUND

The Company received two proposals for inclusion in the 2023 Proxy Materials that it believes are each indirectly submitted by As You Sow (“AYS”). In addition, AYS is acting as a representative in connection with a third proposal submitted for inclusion in the 2023 Proxy Materials. According to the AYS website, AYS “represents investors across a broad range of ESG issue areas, empowering shareholders through the use of shareholder resolutions.”<sup>1</sup>

On December 8, 2022, the Company received the Proposal.

Previously on December 5, 2022, the Company had received a proposal submitted by Andrew Behar, delegating Danielle Fugere as his agent (the “**Second Proposal**”), which, along with related correspondence is attached hereto as Exhibit B. According to the AYS website, Mr. Behar is the CEO of AYS and Ms. Fugere is the President and Chief Counsel of AYS.<sup>2</sup>

Also on December 8, 2022, the Company received a proposal from AYS as a representative on behalf of Meyer Memorial Trust (the “**Third Proposal**”), which, along with related correspondence, is attached hereto as Exhibit C.

Because the Proposal did not demonstrate any proof of ownership, on December 21, 2022, within 14 days of the date the Company received the Proposal, the Company sent the Proponent a deficiency notice (the “**First Deficiency Notice**”). The First Deficiency Notice informed the Proponent that she had failed to demonstrate that she owned the requisite shares for the applicable period of time in order to be eligible to submit the Proposal pursuant to Rule 14a-8(b)(2). The Proponent responded on December 30, 2022 and included documentation satisfying Rule 14a-8(b)(2).

After the Proponent responded to the First Deficiency Notice, the Company, in connection with its preparation for potential engagement with the Proponent, became aware that the AYS website also lists the Proponent (identified therein and in other professional contexts as “Annarie Lyles”) as a member of the board of directors and the treasurer of AYS.<sup>3</sup> The Company determined that AYS, as an entity with Mr. Behar, Ms. Fugere and the Proponent under its control as employees of AYS (within the meaning of the 2020 Release as defined and discussed below), had indirectly submitted more than one proposal, in violation of Rule 14a-8(c). The Company was not initially aware of the Proponent’s employment by AYS because the Proposal was not submitted on AYS letterhead, does not make any direct reference to AYS’ involvement in the submission and the Proponent, in her submission of the Proposal, used a variation (Anna Marie Lyles) of the name that she is known by in her capacity as a director and the treasurer of AYS (Annarie Lyles).<sup>4</sup> On January 6, 2023, as soon as it became aware of this deficiency, the Company sent the Proponent a second deficiency notice (the “**Second Deficiency Notice**”), expressly identifying the multiple proposal deficiency and explaining the steps the Proponent could take to cure such deficiency.

To date, the Proponent has not responded to the Second Deficiency Notice. Pursuant to Rule 14a-8(j), if a company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the

<sup>1</sup> <https://www.asyousow.org/resolutions-tracker>.

<sup>2</sup> <https://www.asyousow.org/about-us/staff>.

<sup>3</sup> <https://www.asyousow.org/about-us/staff/board-of-directors>.

<sup>4</sup> A public social media profile identifies “Annarie Lyles” as a managing director at Bio-Gist Ventures, LLC and a member of the board of directors and the treasurer of AYS, while public listing websites for the business Bio-Gist Ventures, LLC identify “Anna Marie Lyles” as an employee and list the same address provided by the Proponent in connection with the Proposal. See <https://www.linkedin.com/in/annarielyles>; <https://www.allbiz.com/business/bio-gist-ventures-llc-609-497-0340>; <https://www.buzzfile.com/business/bio-gist-ventures-llc-609-497-0340>.



Commission. The Company is filing this letter based on its current expectation with respect to when it may be filing its definitive proxy statement, in order to comply with Rule 14a-8(j).

The Company notes that it also sent the Second Deficiency Notice to Mr. Behar and Ms. Fugere, with respect to the Second Proposal. The Company is separately requesting to exclude the Second Proposal through another no-action request letter.

***The Proposal May Be Excluded Under Rule 14a-8(c) and Rule 14a-8(f)(1) Because the Proponent, Through AYS, Has Exceeded the One-Proposal Limitation.***

The Company believes that it may exclude the Proposal pursuant to Rule 14a-8(c) and Rule 14a-8(f)(1) because it was indirectly submitted by AYS, in violation of the one-proposal limitation.

In 2020, Rule 14a-8(c) was amended to provide that “[e]ach *person* may submit no more than one proposal, *directly or indirectly*, to a company for a particular shareholders’ meeting. A person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders’ meeting” (emphasis added). The Commission first adopted this rule over 40 years ago, noting in Release No. 12999 (Nov. 22, 1976) (the “1976 Release”) that it was responding to the concern that some “proponents ... [exceed] the bounds of reasonableness ... by submitting excessive numbers of proposals” and that “[s]uch practices are inappropriate under Rule 14a-8 not only because they constitute an unreasonable exercise of the right to submit proposals at the expense of other shareholders but also because they tend to obscure other material matters in the proxy statements of issuers, thereby reducing the effectiveness of such documents.” The Commission explained in Release No. 34-89964 (Sept. 23, 2020) (the “2020 Release”) that, for the purposes of Rule 14a-8(c), “entities and all persons under their control, including employees will be treated as a ‘person’ for purposes of the amendment.”

The Company recognizes that the 2020 Release discusses the scope of the term “person” in the context of the example provided of different employees of an investment advisor submitting multiple proposals as a representative on behalf of more than one shareholder. Although AYS is not, according to one of its affiliate websites, an investment adviser,<sup>5</sup> the AYS website also makes clear that the firm frequently submits shareholder proposals on behalf of clients.<sup>6</sup> In fact, AYS’s own publicly available tracker of its shareholder proposals advertises that both the Second Proposal submitted by Mr. Behar, the CEO of AYS,<sup>7</sup> and the Third Proposal<sup>8</sup> are proposals “on which As You Sow represents investors.”

As of the date of this letter, AYS’ tracker does not list the Proposal as one of its shareholder proposals.<sup>9</sup> Nonetheless, given that the Proponent, just like the proponent of the Second Proposal, is (based on AYS’ website) an employee of an entity that routinely submits shareholder proposals on behalf of clients, the submission of the Proposal fits squarely within the intent of the 2020 Release with respect to limiting such “persons” to one shareholder proposal submission. Just like the example used in the 2020 Release regarding employees of an investment adviser under common control, here, AYS employees have submitted more than one proposal to the Company.

<sup>5</sup> <https://fossilfreefunds.org/legal>.

<sup>6</sup> <https://www.asyousow.org/resolutions-tracker>.

<sup>7</sup> <https://www.asyousow.org/resolutions/2022/12/6-exxonmobil-report-asset-transfers-ghg-emissions>.

<sup>8</sup> <https://www.asyousow.org/resolutions/2022/12/9-exxon-petrochemical-risk-single-use-plastic>.

<sup>9</sup> However, the Company notes that for the 2022 proxy season, AYS’ tracker advertised that it represented investors in two shareholder proposals submitted to The Kraft Heinz Company, one of which listed the lead filer as AYS, with the other listing the lead filer as “Anna Marie Lyles,” the name used by the Proponent in connection with the Proposal. See <https://www.asyousow.org/resolutions/2021/11/23-kraft-heinz-pesticide-use-in-agricultural-supply-chain-vrsrs>; <https://www.asyousow.org/resolutions/2021/11/24-kraft-heinz-sustainable-packaging-policies-for-plastics>.



In *Consolidated Freightways, Inc. (Recon. avail. Feb. 23, 1994)*, the Staff concurred that proposals submitted by two different shareholders had violated the predecessor to Rule 14a-8(c), stating that “the one proposal limitation applies in those instances where a person (or entity) attempts to avoid the one proposal limitation through maneuvers, such as having persons they control submit a proposal.” See also *BankAmerica Corp.* (Feb. 8, 1996) (concurring in the exclusion of a proposal where the company also received proposals by proponents under “substantial influence” of the first proponent given that they were either related to or employed by the first proponent); and *Weyerhaeuser Co.* (Dec. 20, 1995) (concurring in the exclusion of multiple proposals where the son of a proponent who had submitted another proposal was determined to be “acting on behalf of, under the control of, or alter ego of the [proponent]”). Likewise, the Staff has consistently concurred in excluding proposals where a shareholder has coordinated with family members, friends, and associates to submit proposals to contravene the one-proposal limit rule. See, e.g., *General Electric Co.* (Jan. 10, 2008) and *Staten Island Bancorp, Inc.* (Feb. 27, 2002).

Here, given that the Proponent is (based on AYS’ website) a member of the board of directors and the treasurer of AYS, the Company believes, pursuant to the 2020 Release, that she is a person (i.e., an employee) under the control of AYS. Just as in *Weyerhaeuser*, the Proponent is “acting on behalf of, under the control of, or alter ego of” AYS. Pursuant to the 2020 Release, the Company believes that she should be treated together with AYS as a “person.” Thus, with respect to the Proposal, AYS has indirectly submitted more than one proposal to the Company to be included in its 2023 Proxy Materials.

The Company notes that this situation, of related persons employing a strategy to submit multiple proposals under different proponent names, has been one that the Commission has sought to avoid since the adoption of the one-proposal restriction in 1976, when the Commission stated that it was “aware of the possibility that some proponents may attempt to evade the new limitations through various maneuvers, such as having other persons whose securities they control submit ... proposals each in their own names.” 1976 Release. Further, the 2020 Release indicates that it is the Commission’s intent to prohibit a “person,” which for an entity like AYS that is in the business of advising clients on the submission of shareholder proposals, would include all persons under its control, including employees, from submitting more than one proposal to a company. Because AYS has indirectly submitted more than one proposal to be included in the 2023 Proxy Materials, the Company believes that the Proposal violates the one-proposal limitation under Rule 14a-8(c).

Under Rule 14a-8(f)(1), it is permissible to exclude proposals submitted by a proponent who fails to satisfy the eligibility requirements under Rule 14a-8(c). Therefore, pursuant to Rules 14a-8(c) and 14a-8(f)(1), the Company believes that it may exclude the Proposal from its 2023 Proxy Materials.

## CONCLUSION

For the reasons set forth above, the Company believes that the Proposal may be excluded from its 2023 Proxy Materials pursuant to Rule 14a-8(c) and Rule 14a-8(f)(1). The Company respectfully requests the Staff’s concurrence with its decision to exclude the Proposal from its 2023 Proxy Materials and further requests confirmation that the Staff will not recommend enforcement action to the SEC if it so excludes the Proposal.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this request. Please do not hesitate to call me at (212) 450-4539 or James Parsons at james.e.parsons@exxonmobil.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,



Louis Goldberg

Attachment

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

Anna Marie Lyles



January 23, 2023

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 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 supplement the Company’s no-action request letters each dated January 13, 2023 (the “**No-Action Letters**”) with respect to the shareholder proposal (the “**First Proposal**”) submitted by Andrew Behar (the “**First Proponent**”) and the shareholder proposal (the “**Second Proposal**”) submitted by Anna Marie Lyles (the “**Second Proponent**”) for inclusion in the proxy materials the Company intends to distribute in connection with its 2023 Annual Meeting of Shareholders (the “**2023 Proxy Materials**”). Capitalized terms not defined herein are used as defined in the No-Action Letters.<sup>1</sup> We have been advised by the Company as to the factual matters set forth herein.

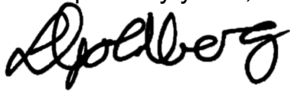
On January 18, 2023, 14 days after the Company sent the Second Deficiency Notice and five days after the Company submitted the No-Action Letters, the Company received via email a response from the Second Proponent (the “**Deficiency Response**”), which, along with related correspondence, is attached hereto as Exhibit A. The Deficiency Response confirms that the Second Proponent uses the name “Annarie Lyles” in certain professional contexts, and that the Second Proponent serves as a member of the board of directors of As You Sow, as well as in the board officer position of treasurer at As You Sow.

As noted in the No-Action Letters, the Company believes the First Proposal and Second Proposal may be properly omitted from the 2023 Proxy Materials because of the First Proponent’s role as chief executive officer of As You Sow and the Second Proponent’s role as a member of the board of directors and treasurer of As You Sow, such that more than one proposal has been submitted directly or indirectly by As You Sow, in violation of Rule 14a-8(c). Neither the First Proposal nor the Second Proposal has been withdrawn or has otherwise cured the deficiency. Therefore we continue to believe that both the First Proposal and Second Proposal may be excluded on this basis.

<sup>1</sup> The First No-Action Letter is also available at <https://www.sec.gov/files/corpfm/no-action/14a-8/beharexon011323-14a8-incoming.pdf>. The Second No-Action Letter is also available at <https://www.sec.gov/files/corpfm/no-action/14a-8/lylesexon011323-14a8-incoming.pdf>.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this supplement to the No-Action Letters. Please do not hesitate to call me at (212) 450-4539 or James Parsons at [james.e.parsons@exxonmobil.com](mailto:james.e.parsons@exxonmobil.com).

Respectfully yours,



Louis Goldberg

Attachment

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

Anna Marie Lyles

Danielle Fugere

**Exhibit A**

---

-----Original Message-----

From: Annarie Lyles [REDACTED]  
Sent: Thursday, January 19, 2023 7:55 PM  
To: Shareholder Relations /SM [REDACTED]  
Cc: Morford, Craig Stephen [REDACTED]  
Subject: Re: Lyles Shareholder proposal & As You Sow

External Email - Think Before You Click

Dear Ms. Driscoll,

Please confirm whether Exxon Mobil has already, or intends to forward my response below to the SEC, as it is correspondence related to the no-action letter that was submitted.

Thank you,  
Anna Marie "Annarie" Lyles, Ph.D.

On Wed, Jan 18, 2023 at 11:01 AM Annarie Lyles [REDACTED] > wrote:

Dear Ms. Driscoll,

I am writing in response to your January 6 letter alleging that the proposal I submitted was not my own. This allegation is false, as are other of the central claims made in your letter.

First, there is no confusion surrounding my name. My full legal name is Anna Marie Lyles. In various professional capacities, my colleagues also refer to me in the shorthand as 'Annarie'.

Second, I am not employed by As You Sow. I am self employed as a consultant and as a manager of a small, private, venture capital portfolio. To be clear, I serve as a volunteer director on As You Sow's board of directors. I have no employment contract with As You Sow and receive no compensation from As You Sow. The treasurer title you reference is a volunteer board officer position, not an employment position.

Given the above, I am certainly not controlled by As You Sow or in any kind of control relationship with As You Sow. That you state otherwise does not make it so.

Third, I made my proposal as a longtime Exxon shareholder (you have proof of this in the broker letter I submitted evidencing that I have held the shares underlying my submission in my name since 2015) concerned with the risk that environmental litigation poses to my investment. I have been concerned with environmental challenges since the early 1980s when I researched global carbon models at Yale. Over the ensuing years, I have worked in conservation biology as well as in business, and I have served on numerous boards that are concerned with our environment and sustainability.

This email should clear up any confusion you may have had with regards to my proposal and confirm that it was and remains validly submitted.

Sincerely yours,  
Anna Marie "Annarie" Lyles, Ph.D.









anna marie lyles



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https://www.linkedin.com › annarielyles

### Annarie Lyles - Managing Director - Bio-Gist Ventures, LLC

Annarie's work for healthy living systems spans three fields: 1. Impact investing. Founder of a small, seed-stage venture fund with several dozen ...

https://www.facebook.com › annamarie

### Anna Marie Lyles | Facebook

Anna Marie Lyles is on Facebook. Join Facebook to connect with Anna Marie Lyles and others you may know. Facebook gives people the power to share and...

### Images for anna marie lyles



Feedback

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### anna.marie.lyles - Instagram

601 Followers, 1849 Following, 38 Posts - See Instagram photos and videos from Anna Marie Lyles

https://prabook.com › web › anna\_marie.lyles

### Anna Marie Lyles (born March 3, 1961), American population ...

Anna Marie Lyles, American zoo curator, population biologist. Achievements include research on the application of ecological, behavioral and genetic ...

Education: Bachelor of Science in Biology cum ...

https://www.google.com/search?q=anne+marie+lyles&source=hp&ei=bWH2Y87YJ7-r5NoP97G7-AI&iflsig=AK50M\_UAAAAAY\_ZvfajLa8MfcZIG-mH3HWyD3zB614Zw&ved=0ahUKEwiOw43B46n9AhW\_FVkfFHfYDi8Q4dUDCAo&uact=5&oq=anne+marie+lyles&gs\_lcp=Cgdn3Mtd2l6EAMyBQghEKABOg4IABCPARDqAhCMAxDIAjoOCC4QjwEQ6giQjAMQ5Ql6EQguEIAEELEDEIMBEMcBENEDogsIAB CABBCxAXCDAToFCC4QgAQ6CAguELEDEIMBOgsILhCABBDHARDRAzoLCC4QgwEQsQMqAQ6CAguEIAEELEDOg4ILhCABBCxAXDHARDRAzoLCC4QgAQsQMqgwE6CAgAELEDEIMBOggILhCDARCxAzoICAAQgAQsQM6EQguEIAEELEDEIMBEMcBEK8BOg0ILhCABBCxAXCDARAKOgoILhCABBCxAXAKOgoIABCABBCxAXAKOgcILhCABBAKOg0IABCABBCxAXCDARAKOgcIABCABBAKOgUIABCABDoJCAAQFhAeEPEEOgYIABAW EB46CwgAEBYQHhDxBBAKUOIXWPAvYlKxaAJwAHgAgAFuiAHDB5IBBDE1LjGYAQCgAQGwAQo&scient=gws-wiz





**Andrew Behar** 3rd  
CEO As You Sow, author of Shareholder Action Guide

- As You Sow
- New York University

Oakland, California, United States · [Contact info](#)  
500+ connections

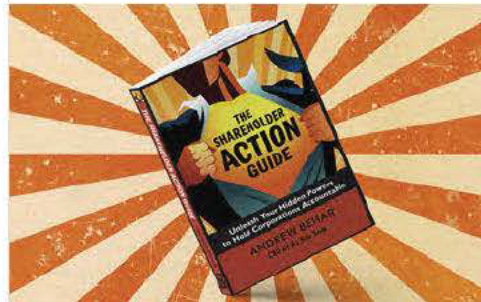
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### About

As You Sow is a nonprofit organization dedicated to increasing corporate environmental and social responsibility. Founded in 1992, As You Sow envisions a safe, just and sustainable world in which environmental health and human rights are central to corporate decision making. Its Corporate Social Responsibility and

### Featured

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**Shareholder Action Guide**  
The Shareholder Action Guide | Unleash Your Hidden Powers ...  
Andrew leads As You Sow, a nonprofit organization, based in Oakland, CA, dedicated to corporate accountability and increased environmental and social change through corporate engagement, shareholder advocacy, and innovative legal strategies. They are...

Link



**As You Sow | Engaging Co People and Planet.**  
As You Sow  
As You Sow is promoting c through shareholder action innovative legal strategies grantmaking. We are trans and creating a more social just...

### Activity

5,203 followers

Andrew Behar posted this · 16h

The market has spoken. To investors across the country, ESG issues are material and must be accounted for when making financially sound and responsible investment more



Democratic lawmakers create sustainable investment caucus to addre...



pionline.com • 2 min read



11

Andrew Behar posted this • 20h



We wholeheartedly agree with @VasNarasimhan that corporations exist to serve society.



2

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## Experience



### Chief Executive Officer

As You Sow

2010 - Present 13 yrs 2 mos

Our Vision: A safe, just and sustainable world in which environmental health and human rights are central to corporate decision making.



As You Sow | Engaging Corporations. Protecting People and Planet.

As You Sow is a nonprofit organization dedicated to increasing environmental and social corporate...

### Advisory Board

1-Earth Institute

Feb 2016 - Present 7 yrs 1 mo

Merging time-honored indigenous knowledge with sustainability innovation



1-Earth Institute

ew@1earth-institute.net info@1earth-institute.net US

Phone: +1 (321) 396-5744 AUS Phone: +61 2 9229-271...



### Advisory Board Member

Real Impact Tracker

Oct 2017 - Present 5 yrs 5 mos



### Past Board Member

US SIF: The Forum for Sustainable and Responsible Investment

Jan 2015 - Dec 2020 6 yrs

US SIF and its members advance investment practices that consider environmental, social, and corporate governance criteria to generate long-



The Forum for Sustainable and Responsible Investment

US SIF: The Forum for Sustainable and Responsible Investment is the leading voice advancing sustainable,...

## Education



### New York University

Bachelor's Degree, Communications and Media

1977 - 1979



### Duke University

Bachelor's Degree, Communication and Media Studies

1975 - 1977

## Skills

Corporate Social Responsibility



# ANDREW BEHAR

## CONTACT INFORMATION

## CEO

[@andrewbe](#)

[har](#)

abehar@asyo

usow.org

(510) 735-8151

**Andrew Behar** is CEO of [As You Sow](#), the nation's leading non-profit practitioner of shareholder advocacy and engagement. With a 30-year track record of success, *As You Sow* advances values-aligned investing and uses shareholder power to compel companies to reduce material risk on issues including climate change; toxins in the food system; ocean plastics; diversity, equity, and inclusion; racial justice; and wage equity. Previously Andrew was a documentary filmmaker and entrepreneur founding start-ups developing an innovative physiological



monitoring medical device and grid-scale fuel cells. He is currently on the board of the [Responsible Sourcing Network](#). His book, [The Shareholders Action Guide: Unleash Your Hidden Powers to Hold Corporations Accountable](#), was published in November 2016 by Berrett-Koehler.

## ANDREW'S POSTS



Darts in the Dark  
Podcast:  
Andrew Behar  
Discusses Climate Anxiety & How To Make A Difference

[Andrew Behar](#), CEO of *As You Sow*, joins Casey



Andrew Behar  
Discusses Climate Inflation on Voice of America: Africa News Tonight

In an October 2022 episode of Voice of America: Africa News Tonight, [Andrew](#)



Hogue, the host of Darts in the Dark Podcast, to discuss the history of *As You Sow* and its mission, conscious consumerism, the 4th industrial age, and more.

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Nov 18, 2022

[Behar](#), CEO of *As You Sow* was interviewed about climate inflation. He explained that the root cause of current inflation is extreme weather ...

[Read More →](#)

Oct 12, 2022



## New Report Details Simple, Safe, and Low-Cost Solutions to Reduce Levels of Lead and Cadmium in Chocolate

A groundbreaking 381-page report called “**Expert Investigation Related to Cocoa and Chocolate Products,**” is the culmination of a three-year research effort by four world-renowned experts.

[Read More →](#)







# DANIELLE FUGERE

## President & Chief Counsel

Danielle Fugere, President & Chief Counsel, leads *As You Sow's* program teams in creating lasting social and environmental change through shareholder advocacy and legal initiatives. She brings an in-depth knowledge of clean energy, sustainability, and team building to her work.

Danielle previously served as Executive Director of the Environmental Law Foundation, focusing on environmental health and water protection; as Western Regional Program Director for national nonprofit

## CONTACT INFORMATION

[@Danielle\\_F](#)

[ugere](#)

(510) 735-8141

[dfugere@asy](mailto:dfugere@asyousow.org)

[ousow.org](mailto:dfugere@asyousow.org)

Friends of the Earth, she spearheaded innovative climate change strategies and directed campaigns to promote sustainable alternative energies and fuels.

Through her work, Danielle has been instrumental in securing industry conversions to environmentally sound technologies and securing compliance with environmental laws. She holds a J.D. from the University of California, Berkeley School of Law and a B.A. in Political Economics from the University of California, Berkeley.

## DANIELLE'S POSTS



New Report  
Details  
Simple,  
Safe, and



'As You Talk':  
How Asset  
Managers  
Are Moving

## Low-Cost Solutions to Reduce Levels of Lead and Cadmium in Chocolate

A groundbreaking 381-page report called “**Expert Investigation Related to Cocoa and Chocolate Products,**” is the culmination of a three-year research effort by four world-renowned experts.

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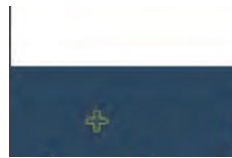
Aug 17, 2022

## Portfolios Toward Net Zero Emissions

In the latest episode of *As You Sow*'s new series “As You Talk” on Clubhouse, [Danielle Fugere](#), president of *AYS*, [Billy Gridley](#), director of the Investor Network at [Ceres](#), and [Tim Dunn](#), investment professional and founder of [Terra Alpha Investments](#), discuss the actions investors and companies are taking to meet net-zero targets and mitigate climate risk.

[Read More →](#)

Jul 1, 2021



## Energy Thinks Podcast (Adamantine Energy)

[Tisha Schuller](#) sits down with [Danielle Fugere](#),



You Sow to learn about shareholder activism from the *activist* perspective. Shareholder resolutions are increasingly successful in pushing oil and gas companies to address climate concerns *on activist terms*.

[Read More →](#)

Sep 29, 2020

**MORE BLOGS  
(6)**

**Exhibit I**



# THOMAS PETERSON

## Say on Climate Coordinator

Thomas works on *As You Sow's* Say on Climate Initiative and specializes in climate-related shareholder advocacy. Thomas's previous experience includes working as a Shareholder Advocate at Green Century Capital Management, where he led the firm's engagements with some of the world's largest agribusinesses, consumer goods companies, retailers, and banks on issues related to land-use emissions, deforestation, and conservation. His achievements include majority-supported shareholder proposals focused on climate and deforestation at

companies like Costco and Home Depot. Before that, he worked as a field organizer on campaigns to support legislation on climate, environmental justice, and conservation issues. He was the recipient of the inaugural Marie Marx Strohm Memorial Award for his organizing work with Green Corps. His comments on corporate action on climate and deforestation have appeared in the *Wall Street Journal* and *Reuters* and on *CBS News*. Thomas holds a B.A. from Harvard in History and Literature and was a postgraduate Harvard Williams-Lodge Scholar at the Sorbonne Nouvelle.





# ALEXANDRA FERRY

## Program and Special Projects Associate

As a Program and Special Projects Associate, Alex assists the President & Chief of Counsel in project planning, operational, and administrative tasks. Additionally, she takes on special projects across *As You Sow* programs.

Prior to joining *As You Sow*, Alex worked as a grassroots environmental justice advocate in Santa Barbara County. She holds a B.S. in Society and Environment with a focus on Justice and Sustainability from



the University of California,  
Berkeley.



**STAFF**

**CAREERS**

# BOARD OF DIRECTORS

The *As You Sow* Board of Directors is comprised of talented and dedicated volunteers. Our Directors, all of whom are independent voting members, bring a broad range of expertise and interests including experience in social activism, publishing, education, environmental law, business, socially responsible investing, fundraising, and philanthropy.

**CARI RUDD, CHAIR  
OF THE BOARD**



**ANNARIE LYLES,  
TREASURER**



*2018 – current*

Annarie Lyles, PhD, is on a mission to protect and restore the health of living systems, from individuals to habitats. Her work spans governance and activism with corporations (both for-profit and tax-exempt), supporting applied R&D initiatives, and managing impact investments. She also leads the family side of a closely-held private business, and advises several entrepreneurs and funds. She leads working groups on how businesses can better align with eco-health for a few impact business networks. At home, in New Jersey, with ecology professor Andy Dobson, she relishes rambles with hounds, getting her hands dirty

A frequent speaker, Annarie has authored three dozen publications.

doing local forest restoration, and other nature adventures.


Previously, she gained a decade of deal-making experience as a Business Development executive with publicly traded Genmab and Medarex (acquired by BMY). After earning a BS from Yale and a PhD in Biology from Princeton University, she worked in non-profit management as an animal curator at NYC's Central Park and Bronx Zoos. A frequent speaker, Dr. Lyles has authored over three dozen publications.



# Tiger2Tiger: The Funding Landscape for Impact Entrepreneurs

---

## Panelists:

**Annarie Lyles**  \*90, Social Venture Circle



Annarie Lyles \*90 is driven to protect and restore healthy living systems. Her work spans the fields of impact investing, board service and developing early technology businesses. Annarie's current impact investing roles include: Managing Director of her Bio-Gist Ventures angel portfolio; board member of non-profit As You Sow, which empowers shareholder to change corporations for good; Past-President of Social Venture Circle's Philadelphia investor group; co-founder of algae-to-biofuel robot start-up Solaris Cybernetics.

During prior careers, she negotiated biotechnology deals, helped run zoos, advised endangered species breeding programs, and enjoyed ecology adventures in the tropics. She speaks frequently and has over thirty publications. Annarie earned her Princeton Ph.D. in Biology and is also associated with Princeton as a parent of a '19 grad, spouse of professor Andy Dobson, past service on the APGA and Graduate College Leadership Council, and as an advisor to start-ups, Arable Labs, Solstice and Box Power.



As You Sow



## ENVIRONMENTAL, SOCIAL, AND CORPORATE GOVERNANCE

### Leadership

As of February 2021, the following individuals served on the As You Sow board of directors:<sup>[4]</sup>

- **Cari Rudd**, Chair
- **Amanda Hanley**, Vice president
- **Kaveri Marathe**, Secretary
- **Annarie Lyles**, Treasurer
- **Thomas Van Dyck**, Founder
- **Randy Hayes**
- **Ric Lucien**
- **Abigail Rome**

# AS YOU SOW

2150 KITTREDGE ST NO 450, BERKELEY, CA 94704

[www.asyousow.org](http://www.asyousow.org)

## Executives Listed on Filing

Total Salary includes financial earnings, benefits, and all related organization earnings listed on tax filing

Name	Title	Hours Per Week	Total Salary
Andrew Behar	CEO	40	\$157,906
Danielle Fugere	PRESIDENT & CHIEF COUNSEL	40	\$148,429
Clara Vondrich	DIVENST INVEST DIRECTOR	40	\$140,025
Conrad Mackerron	SENIOR VP	40	\$139,475
Sarah Milne	VICE PRESIDENT, ADVANCEMEN	40	\$133,189
Abigail Rome	DIRECTOR	1	\$0
Kaveri Marathe	DIRECTOR	1	\$0
Anarie Lyles	DIRECTOR	1	\$0



# As You Sow

## Board of Directors

The following individuals were listed on the **As You Sow** board of directors and advisory board as of August 29 2019.<sup>[9]</sup>

- [Thomas Van Dyck](#), Chairman
- [Randy Hayes](#), Vice President
- [Amanda Hanley](#)

- [Annarie Lyles](#)
- [Rick Lucien](#)
- [Kaveri Marathe](#)



## AS YOU SOW CEO AND LEADERSHIP

Zippia Score 3.8 ★★★★★

[Claim This Company](#)



**Annarie Lyles**

Treasurer

Colorado Charities, Paid Solicitors, Professional Fundraising Consultants, and Public Benefit Corporations

# As You Sow

## Filing History

Title	Officer Name
PRESIDENT AND CHIEF COUNSEL	Danielle Fugere
CHAIR	Cari Rudd
	Andrew Behar
DIRECTOR	Thomas Van Dyck
TREASURER	Annarie Lyles
VICE PRESIDENT	Amanda Hanley
DIRECTOR	Cecily Joseph
DIRECTOR	Geoff Haynes
DIRECTOR	Randy Hayes
SECRETARY	Kaveri Marathe
SENIOR VP	Conrad Mackerron
DIRECTOR	Abigail Rome
DIRECTOR	Annarie Lyles

## Annarie Lyles: Business, biology and technology to improve living systems

*This week, our TTI Interview Series covers TTIer Annarie Lyles. An experienced investor, Annarie is on a mission to protect and restore biodiversity and healthy living systems. Her current work spans corporations, networks, R&D, and impact investing. She co-founded a robotics company, Solaris Cybernetics, to prevent eutrophication and harmful algae blooms. Annarie is also the leader of the TTI biodiversity working group, which is part of our energy & environment working group.*

*In this interview, Annarie explains how she integrates business, biology and technology to improve the health and wellness of living systems. She urges to hinder the collapse of natural ecosystems and the loss of biodiversity, and build the bridge between nature-based solutions and business. She wishes to see corporations integrate sustainable solutions by restoring and replenishing functional ecosystems.*







**Annarie Lyles** <sup>3rd</sup>  
Executive, Biologist & Impact-Investor

- Bio-Gist Ventures, LLC**  
Princeton, New Jersey, United States · [Contact info](#)  
500+ connections

Message [+ Follow](#) [More](#)

### About

Annarie's work for healthy living systems spans three fields:  
1. Impact investing. Founder of a small, seed-stage venture fund with several dozen investments in health and sustainability. Engaged in supporting shareholder advocacy, sustainability and corporate environmental responsibility via actions with

### Activity

990 followers

Annarie Lyles commented on a post • 1mo

I'm ecstatic that the world is at finally agreeing to a goal around biodiversity. It is a start.



3 comments

Annarie Lyles commented on a post • 2mo

Nice to be in the company of elephants!



2 comments

[Show all activity](#) →

### Experience

#### Managing Director

Bio-Gist Ventures, LLC  
2010 - Present 13 yrs 2 mos  
Greater Philadelphia Area

Bio-Gist Ventures aims to advance technologies and businesses with potential to support healthy living systems, for example, pollution and

#### Co-Founder

Solaris Cybernetics  
Jan 2019 - Present 4 yrs 2 mos  
NJ, USA Remote

The patented technology is an aquatic robot with promise for mitigating harmful algal blooms and pond scum, and other potential applications.





### Member of the Board of Advisors

Lyles Diversified, Inc

Jun 2021 - Present 1 yr 9 mos

Fresno, California, United States



### Sr. VP, Head of Business Development

Genmab

2005 - 2010 5 yrs

Led effort to negotiate and manage a record-breaking alliance that brought a new biologic cancer therapy from R&D to the market. Responsible for

### Sr. Director, Business Development

Medarex

1999 - 2005 6 yrs

Medarex was acquired by Bristol Myers Squibb in 2009.

Show all 6 experiences →

## Education



### Princeton University

Ph.D., Biology, Population Biology

1984 - 1990

Dissertation: "Genetic variation and susceptibility to parasites: Poecilia reticulata infected with Gyrodactylus turnbulli." Advisor: Lord Robert M.



### Yale University

B.S., Biology

1979 - 1983

Activities and societies: Yale Daily News, Swimming, Track, Rugby, Women in Science

## Volunteering



### Board Member & Treasurer

As You Sow

Aug 2018 - Present 4 yrs 7 mos

Environment

Named the top corporate watchdog by Ethos in 2020 & 2021



### Board Member and Life Member

American Sustainable Business Network

Jan 2013 - Present 10 yrs 2 mos

Active in Investors Circle and Livable Planet Working Group (co-founded and co-chaired). Served as a member representative for oversight of the

### President

Lyles Family Council

Sep 2013 - Present 9 yrs 6 mos

Recognized as one of 30 Exceptional Families by Family Business Magazine, September/October 2019. Also serves on a new advisory board

Show all 11 volunteer experiences →

## Skills

### Biotechnology



Endorsed by Claudia Hirawat and 5 others who are highly skilled at this



Endorsed by 4 colleagues at Genmab




34 endorsements

## Lifesciences

 19 endorsements

## Entrepreneurship

 Endorsed by Alessa Berg who is highly skilled at this

 Endorsed by 2 colleagues at Wildlife Conservation Society

 15 endorsements

Show all 23 skills →

## Recommendations

Received Given

### Nothing to see for now

Recommendations that Annarie receives will appear here.

## Interests

Companies Groups Schools



**W. M. Lyles Co.**

1,110 followers

+ Follow



**Golden Leaf of London**

321 followers

+ Follow

Show all 24 companies →

# Sanford Lewis & Associates

PO Box 231  
Amherst, MA 01004-0231

413 549-7333

sanfordlewis@strategiccounsel.net

March 6, 2023

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 Exxon Mobil Corporation by Andrew Behar

Ladies and Gentlemen:

I write in further reply to the February 27, 2023 supplemental letter sent by Louis Goldberg of Davis Polk & Wardwell LLP on behalf of Exxon Mobil Corporation (the “No Action Supplement” or “Supplement”). A copy of this letter is being sent concurrently to the Company and its counsel.

The No Action Supplement fails to provide a basis for excluding the Behar Proposal. Rather, it doubles down on the Company’s procedural failures and troubling substantive arguments.

## **I. The Company’s Deficiency Notice Was Late**

The Supplement does not provide any appropriate basis for the Staff to excuse the Company’s late deficiency notice.<sup>1</sup> As noted in the Proponent’s initial reply to the Company’s no action request, the Company’s deficiency notice was sent *thirty days* after the submission of the proposals at issue here.

The deficiency notice was due on December 22, 14 days after the “triggering event” of the submission of the second proposal that the Company alleges came from a single proponent. The Company argues, without citing any basis in Rule 14a-8 or any Staff precedent, that “[i]n this case, the 14-day period is necessarily different from the 14 days that would apply to a proof of ownership deficiency or another deficiency.” No Action Supplement at 3. In making this argument, the Company incorrectly suggests that the Proponent “agrees” that the 14-day period begins to run “after a company first becomes aware of the deficiency.” *Id.* The Proponent firmly disagrees; indeed, Proponent’s initial reply stated that “the deadline for the Company to submit a deficiency notice asserting that AYS was responsible for the direct or indirect submission of more than one proposal elapsed” on December 22, 14 days after the submission of the Lyles Proposal. Proponent Letter at 3.

The Company’s proposed interpretation—that it has unlimited time to conduct opposition research into

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<sup>1</sup> The Company’s abandonment of any claimed deficiency based on the Meyer Proposal does moot some of the Proponent’s procedural arguments. However, it does not moot but rather heightens the concern raised by the Proponent about the shifting goalposts of the Company’s deficiency and no action process. The Company’s statement that “it is seeking to exclude only the [Behar] Proposal and the [Lyles] Proposal, because from the time of the No-Action Letters to date, neither the First Proponent nor the Second Proponent have cured the multiple-proposal deficiency” does nothing to explain the Company’s inconsistent treatment of the Meyer Proposal.

Nor does the Company’s abandonment of the Meyer Proposal have any bearing on the fact that the Company sent its no action request only seven days, rather than the required 14, after sending the deficiency notice.

proponents in order to devise a Rule 14a-8(c) violation—is wholly unworkable and at odds with the Commission’s overarching approach, which is to strictly construe time limits in favor of certainty on behalf of both proponents and companies. *See, e.g., Exxon Mobil Corp.* (Mar. 6, 2020) (concurring with exclusion for violation of 14-day limit to correct deficiency even where 14-day period included Christmas Eve, Christmas Day, New Year’s Eve, and New Year’s Day). The Company’s exception would fully swallow the 14-day rule. A company could fit virtually any legal argument it wanted into the “we discovered new facts we deem relevant” theory the Company is attempting to create in Rule 14a-8. Given the accelerated timeframe of the shareholder proposal process, issuers and shareholders rely heavily on the certainty established by the 14-day limits.

Moreover, the massive exception to the 14-day rule that the Company seeks to establish is particularly unpersuasive under the circumstances here. Ultimately, the Company’s argument boils down to “Dr. Lyles should have disclosed X,” but “X” is a statement of fact wholly of the Company’s own invention. For example, the Company states that it was unable to make its argument within 14 days of the submission of the Lyles Proposal because the Lyles Proposal contained “no direct reference to AYS’ involvement in the submission.” No Action Supplement at 4. The Proposal made no reference to AYS’ involvement in the submission because AYS was not involved. **The Company has established no evidence that *As You Sow* was involved in the Lyles submission.** Instead, the Company’s argument forms a neat circle: by assuming the truth of its conclusion, it can fault the Proponents for not disclosing the things it has assumed are true.<sup>2</sup>

The Company’s approach is also unpersuasive under the circumstances given the extraordinarily broad interpretation the Company gives to Rule 14a-8(c) – to prohibit not only the independent submissions of employees but also the independent submissions of volunteer board members of organizations. To establish any certainty whatsoever under the Company’s proposed approach, shareholders would apparently have to affirmatively disclose the entirety of their professional networks in conjunction with their submissions. This is not a serious approach to a workable rule.

## **II. The Company Incorrectly Expands Rule 14a-8(c) to Prohibit Acts of Representation.**

Much of the Company’s supplement amounts to little more than a broadside against *As You Sow* and organizations like it, which assist in representing shareholders in the 14a-8 process. These attacks are wholly irrelevant because, as explained in Proponent’s initial response, and left unrefuted by the Company, Rule 14a-8(c) prohibits nothing more than the *submission* of multiple proposals by a single proponent. The Rule does not prohibit any individual or organization from assisting in drafting multiple proposals and representing multiple shareholders in the 14a-8 process with respect to a single company at a single annual general meeting. While the Company offers *no evidence* to suggest that this is what actually happened with respect to either the Behar or Lyles Proposals, it goes to great lengths to suggest it, based on *AYS*’s organizational mission, and to imply that doing so is somehow prohibited by the Rule. This is a fundamental mistake about Rule 14a-8(c).

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<sup>2</sup> The Company goes so far as to state that Lyles and Behar engaged in “maneuvers” or “tricks” by not preemptively anticipating the Company’s broad extension of Rule 14a-8(c) and disclosing “facts” that are either irrelevant or which the Company continues to have no basis besides its own assumptions to conclude are actually true. No Action Supplement at 4. It likewise describes Behar as somehow attempting to hide his employment with *As You Sow*, as if individual proponents regularly affirmatively disclose their job titles and employers in submissions and as if Behar’s submission did not include a designation of one *As You Sow* employee (with her work email address) as his representative while also requesting that all emails be CCed to shareholderproposals@asyousow.org.

Notably, the Company also does not deny that it would have filed a proof-of-ownership deficiency notice had Lyles used a name other than her legal name in her submission.

The rule states that “[e]ach person may *submit* no more than one proposal.” Rule 14a-8(c) (emphasis added). The 2020 Final Rule states, repeatedly, that apart from prohibiting multiple submissions, Rule 14a-8(c) is not intended to interfere with shareholder coordination or with the acts inherent in representing shareholders in the 14a-8 process. *See* SEC, *Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a-8 (Final Rule)* (“2020 Final Rule”) (Nov. 4, 2020). Thus, the Rule explicitly contemplates representatives permissibly working with multiple shareholders, including assisting with drafting multiple proposals at the same company’s AGM. *See id.* at 59 (“[W]hile in some cases shareholder-proponents may need to submit a proposal on their own [because their chosen representative has already submitted a proposal at the same company that year], they can otherwise enjoy all of the benefits of being represented by a representative of their choosing,” and “if a shareholder’s representative of choice is unable to submit a proposal for the shareholder, because it has already made a submission on behalf of another client, the representative could still assist the shareholder with drafting the proposal, advising on steps in the submission process, and engaging with the company.”). Rule 14a-8(c) “is not intended to prevent shareholders from seeking assistance and advice . . . to help them draft shareholder proposals and navigate the shareholder-proposal process.” *Id.* Additionally, the Commission declined to adopt a proposal from commenters requiring proponents to certify that their proposal was “not at the request or solicitation of a representative that has already submitted (or is considering submitting) a proposal to the same company.” *Id.* at 61.

This understanding of the Rule also meshes with the Staff’s pre-2020 application of the Rule. The Company continues to rely on a series of inapposite precedents in which the procedural history of the submissions demonstrated open gamesmanship or obvious control. *See, e.g., General Elec. Co.* (Jan. 10, 2008) (proponent submitted two proposals and, when notified of deficiency, proposals were resubmitted by his two daughters); *Staten Island Bancorp* (Feb. 27, 2002) (proponent submitted five proposals and, when notified of deficiency, proposals were resubmitted by proponent, his daughter, his friends, and his neighbors); *Spartan Motors, Inc.* (Mar. 12, 2001) (proponent submitted two proposals and, when notified of deficiency, responded that his wife wished to submit second proposal) *BankAmerica Corp.* (Feb. 8, 1996) (one proponent was custodian of the other proponent, who was a minor).

However, more recently, and analytically distinct from these examples, the Staff has repeatedly declined to concur in the exclusion of proposals even where multiple shareholders submitted substantially similar proposals and the manner of submission suggested they were developed by a single entity. A series of no action requests involving John Chevedden involved allegations by the companies that Chevedden had recruited “nominal” proponents to submit proposals for which he was, in actuality, the driving force. In each instance, the company pointed to similarities in the formatting of the proposals, more or less identical cover letters, and the fact that Chevedden in fact sent in both his own proposals and the ones in which he was acting as representative. Nonetheless, the Staff declined to exclude the Proposals. *See, e.g., American International Group, Inc.*, (Mar. 16, 2009); *Sempra Energy* (Feb. 23, 2009); *Wyeth* (Jan. 30, 2009). The 2020 Final Rule, by its text and by the Commission’s description of its intended effects, altered only one relevant factor: under the new rule, a representative cannot be the literal sender of more than one proposal per company AGM.

Even where companies have succeeded in securing the Staff’s concurrence, it has been on a substantially narrower basis than that suggested by the Company. For example, the Company suggests that even “influence” may rise to the level of “control” for purposes of establishing a 14a-8(c) violation. *See* No Action Supplement at 10. But in *Bank of America Corp.* (Mar. 1, 2022), one proponent designated as his representative John Chevedden, who had already submitted a proposal to the company, and who thereafter handled all communications related to both proposals. The company argued strenuously that Chevedden had “indirectly” submitted the second proposal, but the Staff decided in the company’s favor on a substantially narrower basis: concluding that when Chevedden submitted a revised version of the second

proposal he “effectively withdrew the original proposal . . . and substituted it with the revised proposal that he, himself, submitted,” thereby only breaking the rule because he *submitted* two proposals.

### **III. The Company’s Supplemental Arguments About Behar and Lyles Demonstrate the Danger of Its Approach**

The Company concedes that it failed to notify the Proponents of any deficiency that involved the Meyer Proposal, and as a consequence, it states that its no action request does not claim a violation of Rule 14a-8(c) relating to the submission of the Meyer Proposal. This is a major concession that markedly changes the nature of the Company’s substantive argument. As a consequence of the concession, the Company must demonstrate that *both* the Behar and Lyles Proposals were indirect submissions of *As You Sow*, rather than *either*. As a consequence, even if the Staff found that Behar’s independent submission was actually controlled by *As You Sow*, the Company’s argument for exclusion would *still* fail because Lyles’ submission was wholly independent of *As You Sow*.

As for the Company’s arguments about the Behar Proponent, its supplement does not provide any additional specific evidence about the Behar Proposal. Instead, it doubles down on its assertion that the Behar Proposal *must* be attributed to *As You Sow* simply because Behar is employed by *As You Sow*.

Proponent’s response to the Company’s no action request underscored the difficulty inherent in the Company’s proposed “control” test as applied to employees who submit proposals using shares that they personally own, warning that the Company’s approach “would plunge the Staff into a quagmire of arbitrating and micromanaging advisor/client/employee relationships.” In its No Action Supplement, the Company in fact asks the Staff to dive headfirst into that quagmire, urging the Staff to conclude that the Proponent was acting under the control of *As You Sow* based on, *inter alia*, his pronoun usage in an unrelated podcast interview from June 2022. This is the unavoidable consequence of the Company’s interpretation, and an ample demonstration of why the Staff should resist the Company’s attempts to drag it into these murky waters.

The Company’s argument about Behar’s pronoun usage also demonstrates its misunderstanding of Rule 14a-8(c). It should be no surprise that Behar, as *As You Sow*’s CEO, uses the pronoun “we” when describing *As You Sow*’s work generally. That does not mean that every action Behar takes – whether it is brushing his teeth at night or filing shareholder proposals with stock that he personally owns – is attributable to *As You Sow*. Demonstrating the absence of evidence underlying the Company’s contentions, it has to turn to unrelated podcasts six months prior to the filing of the Proposal in an attempt to support its arguments. More importantly, the company has provided no information indicating that Mr. Behar, as a global citizen impacted by climate change and a shareholder making investment decisions, lacks an independent interest in ensuring accurate climate-related reporting by the oil and gas companies whose shares he holds.

The Company’s arguments about Lyles fare no better. The Company notes that Lyles: (a) supports the shareholder proposal process, (b) agrees with *As You Sow*’s mission, and (c) has, in the past, designated *As You Sow* as her representative. The Company declares that Lyles has a “history of directly coordinating with AYS . . . to submit shareholder proposals,” pointing to *Devon Energy Corp.* (Mar. 4, 2019) and *The Kraft Heinz Company* (Jan. 26, 2022 and Feb. 12, 2021). In each instance, *As You Sow* represented Lyles, and made statements and acted consistent with that representation. In this instance, *As You Sow* does not represent Lyles. It is not be surprising, then, that *As You Sow* has not claimed credit for Lyles’ independent submission, nor should it surprise anyone that Lyles did not “disclose” any *As You Sow* involvement with her submission, an involvement the Company simply assumes must exist based on three instances of past representation.

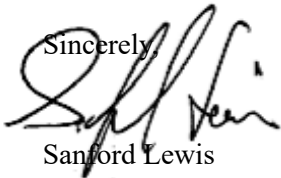
Nor does the Company explain why an independent, volunteer member of the board of the directors of an organization is under the “control” of that organization. (Indeed, as a general principle, the “control” relationship between an organization and its directors is generally considered to go in the *other* direction.) The Company merely argues that “employees [are] just one example of the persons who may be under an entity’s ‘control.’” No Action Supplement at 18. It provides no objective reason to extend its “control” test to independent, volunteer directors of an organization in general, nor does it provide any reason to believe that Lyles was, in fact, under the “control” of *As You Sow* when she submitted her proposal. The Company’s entire argument about Lyles, in fact, depends on: (1) defining “control” as “voluntary cooperation,” and (2) assuming that such cooperation must have taken place in this instance, despite the lack of any evidence of such and based solely on the fact that it occurred in the past.

The Company’s position is at odds with *Rayonier, Inc.* (Mar. 11, 2014). There, a nonprofit organization and a member/donor of the organization each submitted proposals to the company and retained the same representative. The proposals were submitted on the same date with substantially similar cover letters. The company pointed to the member/donor’s involvement with and financial support of the organization and argued that these facts constituted “clear concerted action and unity of interest.” The Staff rejected the company’s request to exclude the proposal under Rule 14a-8(c).

### Conclusion

Based on the foregoing, the Proponent believes that the Company has provided no basis for the conclusion that the Proposal is excludable from the 2023 proxy statement pursuant to Rule 14a-8. The Proponent urges the Staff to deny the no action request.

Sincerely,

A handwritten signature in black ink, appearing to read "Sanford Lewis", written over the word "Sincerely,".

Sanford Lewis