

EXXON MOBIL CORP. (SISTERS OF ST. DOMINIC), 2012 WL 8141313 (2012)

2012 WL 8141313 (C.C.H.)

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Securities and Exchange Commission

SEC No-Action Letters (current)

EXXON MOBIL CORP. (SISTERS OF ST. DOMINIC)

February 10, 2012

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References:

Securities Exchange Act of 1934, Section 14(a);Rule 14a-8

_____ Washington Service Bureau Summary _____

[INQUIRY LETTER]

February 10, 2012

VIA E-MAIL

Office of Chief Counsel

Division of Corporation Finance

Securities and Exchange Commission

100 F Street, NE

Washington, DC 20549

Re: Exxon Mobil Corporation Shareholder Proposal of the Sisters of St. Dominic of Caldwell, New Jersey et al. Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

EXXON MOBIL CORP. (SISTERS OF ST. DOMINIC), 2012 WL 8141313 (2012)

In a letter dated January 23, 2012 (the “No-Action Request”), we requested that the staff of the Division of Corporation Finance of the Securities and Exchange Commission concur that Exxon Mobil Corporation (the “Company”) could properly exclude from its proxy statement and form of proxy for its 2012 Annual Meeting of Shareholders (collectively, the “2012 Proxy Materials”) a shareholder proposal (the “Proposal”) and statements in support thereof submitted by the Sisters of St. Dominic of Caldwell, New Jersey; the Sisters of Charity of Saint Elizabeth; American Baptist Home Mission Societies; Abby O. Caulkins; Catholic Health East; Northwest Women Religious Investment Trust; the Sisters of St. Joseph of Carondelet, St. Louis Province; Home Missioners of America; Gwendolen Noyes; the Sisters of the Holy Family; Walden Asset Management; the Sisters of Providence, Mother Joseph Province; Connecticut Retirement Plans and Trust Funds; the Ursuline Sisters of Tildonk; the Dominican Sisters of Hope; the Sisters of the Holy Names of Jesus and Mary U.S. Ontario Province; the Sisters of the Holy Cross of Notre Dame, Indiana; Catholic Health Partners; Mercy Investment Services, Inc.; the Sisters of St. Joseph, Chestnut Hill, Philadelphia; Jennifer R. Nolan; Convent Academy of the Incarnate Word; Abby A. Rockefeller; Steven C. Rockefeller; Maryknoll Sisters of St. Dominic, Inc.; Congregation of St. Joseph; Congregation of Sisters of St. Agnes; Catholic Healthcare West; the Basilian Fathers of Toronto; and the Benedictine Sisters of Virginia (the “Proponents”).

Following submission of the No-Action Request, the Company subsequently has determined (absent withdrawal of the Proposal by the Proponents) to include the Proposal in the 2012 Proxy Materials. Based on this determination, the Company hereby withdraws the No-Action Request relating to the Company's ability to exclude the Proposal pursuant to Rule 14a-8 under the Securities Exchange Act of 1934.

If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8287 or James E. Parsons, the Company's Senior Counsel - Corporate and Securities Law, at (972) 444-1478.

Sincerely,

/s/

Elizabeth A. Ising

Enclosures

cc: James E. Parsons, Exxon Mobil Corporation

Sister Patricia A. Daly, OP, Sisters of St. Dominic of Caldwell, New Jersey

Sister Barbara Aires, SC, Sisters of Charity of Saint Elizabeth

Joyce Haboucha, Rockefeller Financial Asset Management

Sister Kathleen Coll, SSJ, Catholic Health East

Deborah R. Fleming, Northwest Women Religious Investment Trust

Sister Patricia Giljum, CSJ, Sisters of St. Joseph of Carondelet, St. Louis Province

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Sister Mary Ellen Holohan, SNJM, Sisters of the Holy Names of Jesus and Mary

Vicki Cummings, Sisters of the Holy Names of Jesus and Mary

Geraldine M. Hoyler, CSC, Sisters of the Holy Cross of Notre Dame, Indiana

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Susan Smith Makos, Mercy Investment Services, Inc.

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Beatrice A. Reyes, Convent Academy of the Incarnate Word

Catherine Rowan, Maryknoll Sisters of St. Dominic, Inc.

Joellen Sbrissa, CSJ, Congregation of St. Joseph

Stella Storch, OP, Congregation of Sisters of St. Agnes

Susan Vickers, RSM, Catholic Healthcare West

Sister Henry Marie Zimmermann, OSB, Benedictine Sisters of Virginia

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[INQUIRY LETTER]

January 23, 2012

VIA E-MAIL

Office of Chief Counsel

EXXON MOBIL CORP. (SISTERS OF ST. DOMINIC), 2012 WL 8141313 (2012)

Division of Corporation Finance

Securities and Exchange Commission

100 F Street, NE

Washington, DC 20549

Re: Exxon Mobil Corporation Shareholder Proposal of the Sisters of St. Dominic of Caldwell, New Jersey et al. Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, Exxon Mobil Corporation (the “Company”), intends to omit from its proxy statement and form of proxy for its 2012 Annual Meeting of Shareholders (collectively, the “2012 Proxy Materials”) a shareholder proposal (the “Proposal”) and statements in support thereof submitted by the Sisters of St. Dominic of Caldwell, New Jersey; the Sisters of Charity of Saint Elizabeth; American Baptist Home Mission Societies; Abby O. Caulkins; Catholic Health East; Northwest Women Religious Investment Trust; the Sisters of St. Joseph of Carondelet, St. Louis Province; Home Missioners of America; Gwendolyn Noyes; the Sisters of the Holy Family; Walden Asset Management; the Sisters of Providence, Mother Joseph Province; Connecticut Retirement Plans and Trust Funds; the Ursuline Sisters of Tildonk; the Dominican Sisters of Hope; the Sisters of the Holy Names of Jesus and Mary U.S. Ontario Province; the Sisters of the Holy Cross of Notre Dame, Indiana; Catholic Health Partners; Mercy Investment Services, Inc.; the Sisters of St. Joseph, Chestnut Hill, Philadelphia; Jennifer R. Nolan; Convent Academy of the Incarnate Word; Abby A. Rockefeller; Steven C. Rockefeller; Maryknoll Sisters of St. Dominic, Inc.; Congregation of St. Joseph; Congregation of Sisters of St. Agnes; Catholic Healthcare West; the Basilian Fathers of Toronto; and the Benedictine Sisters of Virginia (the “Proponents”).

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

- filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 2012 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponents.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”) provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the “Staff”). Accordingly, we are taking this opportunity to inform the Proponents that if they elect to submit additional correspondence to the Commission or the Staff with respect to this Proposal, a copy of that correspondence should concurrently be furnished to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

THE PROPOSAL

The Proposal states the following:

Shareholders request that the Board of Directors adopt quantitative goals, based on current technologies, for reducing total greenhouse gas emissions from the Company's products and operations; and that the Company report to shareholders by

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November 30, 2012, on its plans to achieve these goals. Such a report will omit proprietary information and be prepared at reasonable cost.

A copy of the Proposal and related correspondence with the Proponents is attached to this letter as *Exhibit A*.

BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2012 Proxy Materials pursuant to Rule 14a-8(i)(11) because the Proposal substantially duplicates another proposal previously submitted to the Company that the Company intends to include in the Company's 2012 Proxy Materials. The Company has submitted a letter to the Staff stating its intention to omit the earlier proposal, but to the extent the Staff does not agree with the Company's position, the Company asserts that it may properly exclude the Proposal under Rule 14a-8(i)(11).

ANALYSIS

The Proposal May Be Excluded Under Rule 14a-8(i)(11) Because It Substantially Duplicates Another Proposal That The Company Intends to Include In Its Proxy Materials.

Rule 14a-8(i)(11) provides that a shareholder proposal may be excluded if it “substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting.” The Commission has stated that “the purpose of [Rule 14a—8(i)(11)] is to eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other.” [Exchange Act Release No. 12999 \(Nov. 22, 1976\)](#). When two substantially duplicative proposals are received by a company, the Staff has indicated that the company must include the first of the proposals in its proxy materials, unless that proposal may otherwise be excluded. *See Great Lakes Chemical Corp.* (avail. Mar. 2, 1998); *Pacific Gas and Electric Co.* (avail. Jan. 6, 1994).

On December 7, 2011, before the December 11, 2011 date upon which the Company received the Proposal, the Company received a proposal from the Province of St. Joseph of the Capuchin Order (the “St. Joseph Proposal”). *See Exhibit B*. The Company has submitted a separate letter to the Staff stating its intention to omit the St. Joseph Proposal, but if the Staff does not agree with the Company that the St. Joseph Proposal may be excluded, then the Company intends to include the St. Joseph Proposal in its 2012 Proxy Materials. In such a case, the Company believes that it may exclude the Proposal under Rule 14a-8(i)(11). The St. Joseph Proposal provides:

RESOLVED:shareholders request ExxonMobil's Board of Directors create a Climate Future Task Force including outside climate change experts to study how, like the insurance industry, ExxonMobil, at all levels, will “factor climate change into their models for measuring, pricing, and distributing risk” and other alternatives to its existing business model that depends on continued fossil fuel production and marketing. Barring competitive information, its conclusions shall be shared with requesting shareholders at reasonable cost within a year of the annual meeting.

As discussed below, the Proposal is substantially duplicative of the St. Joseph Proposal because both proposals focus on the same core issue: assessing the business-planning issues related to the risks associated with carbon-based fuel products.

The standard that the Staff traditionally has applied for determining whether proposals are substantially duplicative is whether the proposals present the same “principal thrust” or “principal focus.” *Pacific Gas & Electric Co.* (avail. Feb. 1, 1993). If they do so, the more recent proposal may be excluded as substantially duplicative of the first proposal despite differences in the terms or breadth of the proposals and even if the proposals request different actions. *See, e.g., Wells Fargo & Co.* (avail.

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Feb. 8, 2011) (concurring that a proposal seeking a review and report on the company's internal controls related to loan modifications, foreclosures and securitizations was substantially duplicative of a proposal seeking a report that would include "home preservation rates" and "loss mitigation outcomes," which would not necessarily be covered by the other proposal); *Ford Motor Co. (Leeds)* (avail. Mar. 3, 2008) (concurring that a proposal to establish an independent committee to prevent Ford family shareholder conflicts of interest with non-family shareholders substantially duplicated a proposal requesting that the board take steps to adopt a recapitalization plan for all of the company's outstanding stock to have one vote per share); *Siebel Systems, Inc.* (avail. Apr. 15, 2003) (permitting the exclusion of a proposal requesting that the board "adopt a policy that a significant portion of future stock option grants to senior executives shall be performance-based" because it substantially duplicated a prior proposal requesting that the company "adopt and disclose in the Proxy Statement, an 'Equity Policy' designating the intended use of equity in management compensation programs"); *Wal-Mart Stores, Inc.* (avail. Apr. 3, 2002) (permitting the exclusion of a proposal requesting a report on gender equality in employment at Wal-Mart because the proposal substantially duplicated another proposal requesting a report on affirmative action policies and programs addressing both gender and race).

The Staff has previously concurred that multiple proposals addressing business risks associated with carbon-based fuels were substantially duplicative despite differences in their scope and breadth. In *Exxon Mobil Corp. (Goodwin et al.)* (avail. Mar. 19, 2010), the Staff permitted the exclusion of a proposal calling for the Board to consider, in its strategic planning process, the risk that future demand for fossil fuels could be significantly lower than the company projected (the "Fossil Fuel Proposal") as substantially duplicative of an earlier proposal requesting a report on the financial risks of climate change (the "Climate Change Proposal"). Even though the details of the proposals' resolutions varied, with one addressing forecasts concerning consumption of fossil fuels and the other addressing climate change, both spoke principally to concerns about the use of, and reliance on, carbon-based fuels. Similarly, in *Chevron Corp.* (avail. Mar. 23, 2009, *recon. denied* Apr. 6, 2009), the Staff agreed that a proposal on the environmental effect of "the company's expanding oil sands operations in the Canadian boreal forest" could be excluded as substantially similar to a proposal regarding "reducing total greenhouse gas emissions from [Chevron's] products and operations." Both of these proposals addressed environmental concerns arising out of the production and use of carbon-based fuels. Despite the differences in the scope and requested action of these proposals, the Staff agreed that the proposals shared the same principal thrust.

Consistent with the precedent cited above, the Proposal and the St. Joseph Proposal share the same principal thrust. The Proposal, like the Fossil Fuel Proposal in *Exxon Mobil*, addresses a concern that increased regulation of greenhouse gas emissions will make it necessary for companies not to be overly reliant on carbon-based fuel products. Similarly the St. Joseph Proposal, like the *Exxon Mobil* Climate Change Proposal, discusses the risk that climate change, which is believed to be a side effect of carbon-based fuel, might pose to a company's value. And, as with the proposals in *Chevron*, the St. Joseph Proposal, which requests that the Company examine how climate change factors into its models for measuring, pricing and distributing risk, has the same principal focus as the Proposal, which concerns the greenhouse gases released by carbon-based fuels that are believed to represent the most controllable human input to climate change.

Similar to the precedent discussed above, the principal thrust addressed by the Proposal and the St. Joseph Proposal is the same: assessing the business-planning issues related to the risks associated with carbon-based fuel products.

This shared principal thrust and focus is evidenced by the following:

- Both proposals refer to the risk of increased regulation on carbon-based forms of energy and the negative impact this could have on the Company's business model. The Proposal highlights the concern that the Company's current business model might be placed at risk by the "restrictions on high carbon energy" which "[o]ne can presume" will eventually be enacted. It continues to say that "[e]conomists are now concerned about a 'carbon bubble' as current investments will produce reserves that will be stranded by such policy restrictions." Similarly, the St. Joseph Proposal quotes an article stating that "insurers already factor

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climate change into their models for measuring, pricing, and distributing risk,” and notes that a companion editorial promotes “legislation to curb carbon emissions.”

- Each proposal claims that the Company has not taken sufficient steps to mitigate possible risks stemming from reliance on carbon-based fuel products. The Proposal notes that, despite the Company's disclosures to the Carbon Disclosure Project, it “had a net increase of 3 percent in [greenhouse gas] emissions from operations in 2010 over 2009.” The Proposal also states that “[n]one of [the Company's] major strategies to date are low carbon.” Similarly, the St. Joseph Proposal states that despite the Company's contributions to MIT “it resists using MIT's finding when these might force [the Company] to rethink its existing business model which is almost totally dependent on continuing fossil fuel burning.”
- Both proposals address business planning. The Proposal states that it “is long overdue for ExxonMobil to articulate a clear and cohesive business strategy for wide scale emissions reductions.” It calls for clear-cut goals to “focus management on our company's ability to significantly reduce our carbon footprint by implementing a disciplined business strategy to cut emissions from our operations and products.” The St. Joseph Proposal criticizes the Company for not “rethink[ing] its existing business model,” and it requests a task force that will both study how the Company can revise its risk models by factoring climate change into them and “offer alternatives to its existing business model that depends on continued fossil fuel production and marketing.”
- Each proposal cites climate change as an example of a risk associated with carbon-based fuels. The Proposal notes that “businesses and countries are taking significant steps to reduce emissions, as costs to taxpayers, shareholders and economies from severe weather events mount.” The St. Joseph Proposal warns that, without “drastic changes to energy and industrial policy” long-term average global temperatures may rise more than two degrees Celsius, “seen by many scientists as the maximum increase without serious climate disruption.”

While the Proposal and the St. Joseph Proposal request slightly different actions—the Proposal requests that the board adopt quantitative goals for reducing greenhouse gas emissions, while the St. Joseph Proposal requests that the Company form a task force to study how the Company will factor climate change into its risk models and to offer alternatives to its existing business model—that does not change the fact that they have the same principal focus. The Staff previously concurred that two proposals were substantially similar where one, paralleling the language of the Proposal, called for the company to adopt quantitative goals on reducing greenhouse gases and the other requested a company to assess the steps it was taking to reduce greenhouse gases and fuel standards. *See General Motors Corp.* (avail. Mar. 13, 2008). *See also Ford Motor Co.* (avail. Feb. 19, 2004) (concurring in the exclusion of a proposal calling for internal goals related to greenhouse gases as substantially similar to a proposal calling for a report on historical data on greenhouse gas emissions and the company's planned response to regulatory scenarios).

Finally, because the Proposal substantially duplicates the St. Joseph Proposal, if the Company were required to include both proposals in its proxy materials, there is a risk that the Company's shareholders would be confused when asked to vote on both proposals. In such a circumstance, shareholders could assume incorrectly that there must be substantive differences between the two proposals and the requested reports. As noted above, the purpose of Rule 14a-8(i)(11) “is to eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other.” [Exchange Act Release No. 12999 \(Nov. 22, 1976\)](#).

Accordingly, the Company believes that the Proposal may be excluded as substantially duplicative of the St. Joseph Proposal.

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2012 Proxy Materials.

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We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8287 or James E. Parsons, the Company's Senior Counsel - Corporate and Securities Law, at (972) 444-1478.

Sincerely,

/s/

Elizabeth A. Ising

Enclosures

cc: James E. Parsons, Exxon Mobil Corporation

Sister Patricia A. Daly, OP, Sisters of St. Dominic of Caldwell, New Jersey

Sister Barbara Aires, SC, Sisters of Charity of Saint Elizabeth

Joyce Haboucha, Rockefeller Financial Asset Management

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cc: Jerome R. Judd, Catholic Health Partners

Susan Smith Makos, Mercy Investment Services, Inc.

Sister Mary Beth Hamm, Sisters of St. Joseph, Chestnut Hill, Philadelphia

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Stella Storch, OP, Congregation of Sisters of St. Agnes

Susan Vickers, RSM, Catholic Healthcare West

Sister Henry Marie Zimmermann, OSB, Benedictine Sisters of Virginia

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[APPENDIX]

December 12, 2011

Mr. Rex W. Tillerson, CEO

ExxonMobil Corporation

5959 Las Colinas Blvd.

Irving, TX 75039-2298

Dear Mr. Tillerson,

As long time investors in ExxonMobil the Dominican Sisters of Caldwell, NJ are increasingly concerned about the impact of climate change on future generations on this planet. We have been grateful for the dialogues we have had with executives of ExxonMobil over the years. We believe that now more than ever our company needs to produce a clear business plan committing to greenhouse gas emissions reductions in both operations and product.

The Community of the Sisters of St. Dominic of Caldwell, NJ is the beneficial owner of two hundred (200) shares of ExxonMobil, which we intend to hold at least until after the next annual meeting. Verification of ownership is attached.

I am hereby authorized to notify you of our intention to file the attached proposal regarding reducing greenhouse gas emissions for consideration and action by the stockholders at the next annual meeting. I hereby submit it for inclusion in the proxy statement in accordance with rule 14-a-8 of the general rules and regulations of The Securities and Exchange Act of 1934.

While there will be other shareholders submitting this resolution, I will serve as the primary contact for these concerns. However, all co-filers respectfully request direct communication from the company. I am happy to help provide addresses for electronic communication to facilitate time, and avoid the waste of resources.

Sincerely,

/s/

Sister Patricia A. Daly, OP

Corporate Responsibility Representative

[APPENDIX]

Reduce Greenhouse Gas Emissions ExxonMobil 2012

WHEREAS:

2010 was a record year for greenhouse gas (GHG) emissions with a 5.9 percent increase over the 2009 global estimate. The increase is larger than the worst-case scenario expected by United Nations scientists when the 2008 Intergovernmental Panel on Climate Change report was issued.

It is widely agreed that research has understated the enormity of the impact of GHG emissions. Investors expect ExxonMobil to take leadership in developing solutions to this global challenge as the company plays such a critical role in energy markets.

ExxonMobil discloses its GHG emissions to the Carbon Disclosure Project (CDP) as do well over 3,000 corporations. The CDP "Carbon Action Initiative," backed by investors managing US \$7.6 trillion in assets under management, asks the world's largest companies to make emissions reductions, implement investments in GHG reductions, and publicly disclose emissions reductions targets through the established CDP annual survey.

Our company though had a net increase of 3 percent in GHG emissions from operations in 2010 over 2009.

ExxonMobil's December 2011 Energy Outlook suggests our company will make significant investments in deepwater, shale oil and fracking plays, all of which contribute significant GHGs emissions. None of its major strategies to date are low carbon. Even though substantial U.S. and international policy is stalled, businesses and countries are taking significant steps to reduce emissions, as costs to taxpayers, shareholders and economies from severe weather events mount. One can presume that restrictions on high carbon energy will eventually be enacted. Economists are now concerned about a "carbon bubble" as current investments will produce reserves that will be stranded by such policy restrictions.

It is long overdue for ExxonMobil to articulate a clear and cohesive business strategy for wide scale emissions reductions. Shareholders' request for GHG reduction goals during the last six years are consistent with ExxonMobil's own Environmental Business Planning process, which is used "to identify key environmental drivers, set targets in key focus areas, and identify projects and actions to achieve these targets." Clear-cut goals will focus management on our company's ability to significantly reduce our carbon footprint by implementing a disciplined business strategy to cut emissions from our operations and products.

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AESOLVED: Shareholders request that the Board of Directors adopt quantitative goals, based on current technologies, for reducing total greenhouse gas emissions from the Company's products and operations; and that the Company report to shareholders by November 30, 2012, on its plans to achieve these goals. Such a report will omit proprietary information and be prepared at reasonable cost.

[STAFF REPLY LETTER]

February 10, 2012

Elizabeth A. Ising

Gibson, Dunn & Crutcher LLP

Eising@gibsondunn.com

Re: Exxon Mobil Corporation

Dear Ms. Ising:

This is in regard to your letter dated February 10, 2012 concerning the shareholder proposal submitted by The Sisters of St. Dominic of Caldwell, New Jersey and several co-proponents for inclusion in ExxonMobil's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that ExxonMobil will include the proposal in its proxy materials for its upcoming annual meeting of security holders, and that ExxonMobil therefore withdraws its January 23, 2012 request for a no-action letter from the Division. Because the matter is now moot, we will have no further comment.

Copies of all of the correspondence related to this matter will be made available on our website at <http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml>. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Michael J. Reedich

Special Counsel

cc: Sister Patricia A. Daly

pdaly@tricri.org

...The staff will not comment on a shareholder proposal, which requests that this company's board of directors adopt quantitative goals for reducing total greenhouse gas emissions from the company's products and operations, where the company's agreement to include the proposal in its proxy materials and withdrawal of its request for a no-action letter has rendered the matter moot.

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