

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

BOCA RATON POLICE and FIRE
FIGHTERS' RETIREMENT SYSTEM,

Plaintiff,

v.

EXXON MOBIL CORPORATION, a
New Jersey Corporation,

Defendant.

Case No. _____

**VERIFIED SHAREHOLDER
COMPLAINT FOR
VIOLATION OF THE
FEDERAL SECURITIES
LAWS AND NEW JERSEY
STATE LAWS**

TABLE OF CONTENTS

NATURE OF THE ACTION 1

I. INTRODUCTION 2

II. JURISDICTION AND VENUE..... 9

III. PARTIES 10

 A. Plaintiff..... 10

 B. Defendant 10

IV. THE BOARD HAS A HISTORY OF CONTENTIOUS DISPUTES WITH SHAREHOLDERS..... 10

 A. In 2021, the Incumbent Board Loses the Most Expensive Proxy Contest to Date. 11

 B. In Late 2021, the SEC Enacts the Universal Proxy Rule, and in 2022, the Board Amends Exxon’s Bylaws in Response..... 14

 C. In 2023, Investors React Negatively to Exxon’s Acquisition of Pioneer..... 16

 D. In 2024, Exxon Goes on the Offensive Against Two Shareholders. .. 16

V. THE BOARD ADOPTS THE AUTOMATIC VOTING PROGRAM..... 19

VI. EXXON PREPACKAGES A NO ACTION LETTER FROM THE SEC. .. 23

 A. Exxon Submits a No Action Letter Request on September 15, 2025, and Receives a Barebones Positive Response the Same Day..... 23

 B. The Non-Binding No Action Letter Does Not Mean Exxon Complied with the Federal Securities Laws. 24

VII. EXXON BEGINS SOLICITING RETAIL INVESTORS IN VIOLATION OF THE SEC RULES. 25

VIII. PLAINTIFF IS ENTITLED TO INJUNCTIVE RELIEF TO PREVENT THE IMPLEMENTATION OF THE UNLAWFUL AUTOMATIC VOTING PROGRAM. 32

COUNT I.....34
COUNT II36
REQUEST FOR RELIEF37

NATURE OF THE ACTION

1. Plaintiff Boca Raton Police and Firefighters' Retirement System ("Plaintiff"), by and through its undersigned counsel, brings the following Verified Complaint (the "Complaint") against Exxon Mobil Corporation ("Exxon" or the "Company"). Plaintiff brings the Complaint to challenge Exxon's violations of (i) numerous federal securities laws; and (ii) the New Jersey statute governing the legal use of voting proxies.

2. This Complaint's allegations are based on Plaintiff's knowledge as to itself, including personal knowledge concerning its Exxon stock ownership. As to all other matters, this Complaint's allegations are made on information and belief based on the investigation of counsel, which included a review of Exxon's public filings with the United States Securities and Exchange Commission (the "SEC"), Exxon press releases and other public statements on the Company's website, media reports, and other publicly disclosed information about Exxon. Plaintiff's investigation into the matters alleged herein is continuing. Facts relevant to certain of Plaintiff's claims are known only to, or are exclusively within, Defendant's custody or control. Plaintiff believes substantial additional evidentiary support will exist for the allegations in this Complaint after a reasonable opportunity for discovery.

I. INTRODUCTION

3. This action challenges Exxon’s unlawful effort to secure a large block of shares to automatically and indefinitely vote in favor of the Board’s recommendation for any stockholder vote, including electing directors in contested elections and voting on mergers (the “Automatic Voting Program” or “Program”). Specifically, under the Program, participating shareholders’ stock will be voted automatically in accordance with the Board’s recommendations on *all* issues at *all* future shareholder meetings. The Automatic Voting Program violates federal and New Jersey law.

4. Crucially, while Exxon has labeled the Automatic Voting Program as a “Retail Voting Program,” the point of the Program is *not* to enhance shareholder democracy or increase voter engagement. Instead, the Program creates “sticky” votes to support and entrench Exxon’s current Board and vote in line with their recommendations on any stockholder proposal—evident from the fact that the Program *only* allows shareholders to vote in accordance with the Board’s recommendations. That is not democracy in any sense.

5. A functioning voting system requires an informed electorate. An informed electorate, at a minimum, knows the identities of candidates before voting. Thus, in federal elections in the United States, ballots provide voters with basic information such as the candidates’ names, and the offices for which they are

running, before voters cast their votes. And to ensure that voters actually make their own decisions, voters must either show up in person at the polls or submit a valid absentee ballot. It is considered voter fraud for members of the electorate to sign blank ballots for someone else to fill out. And voters may not assign future votes to party leaders to cast automatically on their behalf.

6. The shareholder franchise is no different. Regulation 14A and other SEC voting rules, enacted pursuant to Section 14(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), require that shareholders receive basic information about director candidates and other voting matters before they cast their votes. These SEC voting rules prohibit corporations from collecting shareholders’ votes to be cast automatically. And they prohibit soliciting perpetual proxies.

7. Importantly, Section 14(a) was enacted because “[f]air corporate suffrage is an important right that should attach to every equity security bought on a public exchange.” *J.I. Case Co. v. Borak*, 377 U.S. 426, 431 (1964) (citing H.R. Rep. No. 1383, 73rd Cong., 2d Sess., at 13 (1934)). It was intended to “control the conditions under which proxies may be solicited with a view to preventing the recurrence of abuses which . . . [had] frustrated the free exercise of the voting rights of stockholders,” and to ensure that each shareholder is informed “of the real nature of the questions for which authority to cast his vote is sought.” *Id.* (citing H.R. Rep. No. 1383, at 14; S. Rep. No. 792, 73rd Cong., 2d Sess., at 12 (1934)).

8. In recent years, Exxon’s shareholders have become increasingly dissatisfied with the Board’s and management’s poor business decisions and aggressive approach to dissident shareholders:

- In 2021, shareholders elected three dissident shareholders over the incumbent Board’s resistance.¹
- In late 2021, the SEC passed the “Universal Proxy Rule,” which made it easier for shareholders to present dissident slates and proposals.²
- In 2023, Exxon’s stock price dropped by more than 4% upon announcement that Exxon was acquiring Pioneer Natural Resources Company (“Pioneer”) for almost \$60 billion.³
- In connection with the 2024 annual shareholder meeting, Exxon sued two shareholders to prevent them from presenting a proposal. Exxon continued to litigate against the shareholders, even after they agreed to drop their proposal. The Company’s aggressive litigation tactics cost Exxon further credibility and led to a “no” vote for several Exxon directors.⁴

9. Fed up with what Exxon described as a “flawed” SEC-established voting system that made it too easy for dissidents to oppose the incumbents, Exxon took matters into its own hands.

10. In 2025, Exxon commenced the Automatic Voting Program by which shareholders could give their votes to the Board indefinitely. Under the Program, if

¹ See *infra* § IV.A.

² See *infra* § IV.B.

³ See *infra* § IV.C.

⁴ See *infra* § IV.D.

Exxon convinces shareholders to make a one-time decision to join, the shareholders' stock will automatically vote in accordance with the Board's recommendations on all issues at all future shareholder meetings.

11. The Automatic Voting Program never expires, so program shares will continue to vote for the Board's recommendations decades in the future.⁵ This unprecedented perpetual proxy is extraordinarily broad. It includes contested director elections at annual shareholder meetings and votes to approve mergers at special shareholder meetings. And it includes votes—for directors who have yet to be identified, much less disclosed to shareholders—to fill additional Board seats that are created in the future.

12. The Automatic Voting Program purportedly permits shareholders to opt out of the program or override the default vote. But that right is illusory. Shareholders that have previously declined to vote, once enlisted in the Program, are unlikely to make further effort to manually override the Board's default vote or manually opt out of the program. Thus, the Program entrenches the incumbent directors by giving them a perpetual proxy over the Program shares at every shareholder meeting. That is the whole point.⁶

⁵ See *infra* § V.

⁶ See *infra* § V.

13. Exxon markets the Automatic Voting Program as applying to “retail” shareholders. But, according to Exxon’s SEC filings, the Program is broadly open to everyone except investment advisers under the Investment Advisers Act of 1940—and only because New York Stock Exchange (“NYSE”) Rule 452 prohibits them from voting on non-routine matters such as director elections and mergers without client direction.

14. Notably, Exxon previously asserted that “automatic submissions” of votes “undermine shareholder engagement efforts” and “short-circuit the shareholder engagement process”⁷—yet that is precisely what the Automatic Voting Program seeks to accomplish.

15. Exxon also knew its Automatic Voting Program was illegal under federal law. Thus, on September 15, 2025, Exxon requested and received a “no action” letter from the SEC, which stated that the reviewing SEC staff would not recommend an enforcement action against the Program under the two SEC rules Exxon identified, Rule 14a-4(d)(2) and Rule 14a-4(d)(3) (the “No Action Letter”).

⁷ Letter from Neil Hansen (Exxon Vice President, Investor Relations and Secretary) to Vanessa Countryman (Secretary, U.S. Securities and Exchange Commission) (Feb. 3, 2020), <https://www.sec.gov/comments/s7-22-19/s72219-6742834-207796.pdf>.

16. Exxon received the No Action Letter the day it requested it, which indicates that the No Action Letter was prepackaged.⁸ Indeed, Exxon recently admitted that before requesting the No Action Letter, it spent “years” developing the Automatic Voting Program and engaged in “months” of correspondence with the SEC.⁹

17. Notably, Exxon omitted clearly relevant SEC rules from its no action letter request. Exxon apparently understood that the SEC would not grant a no action letter with respect to those rules. In any event, the No Action Letter is not binding on the SEC, let alone this Court, with respect to any SEC rule.¹⁰

18. Exxon quickly moved to implement the Automatic Voting Program after receiving the No Action Letter. On September 17, 2025, only two days after receiving the No Action Letter, Exxon publicly filed proxy materials related to the Automatic Voting Program. By mid-October 2025, individual shareholders began receiving “invitations” to opt into the plan.¹¹

19. The Automatic Voting Program violates numerous SEC rules.¹²

⁸ *See infra* § VI.A.

⁹ *City of Hollywood Police Officers’ Retirement System v. Woods, et al.*, Case No. 3:25-cv-16633-ZNQ-TJB (D.N.J.), ECF 27.

¹⁰ *See infra* § VI.B.

¹¹ *See infra* § VII.

¹² *See infra* Count I.

20. The Automatic Voting Program also violates the New Jersey statute governing proxies.¹³

21. In this action, Plaintiff seeks preliminary and permanent injunctive relief to prevent Exxon from continuing to implement the unlawful Automatic Voting Program. The Court is not required to wait until an unlawful election occurs.

22. The Automatic Voting Program directly infringes on Plaintiff's voting rights because its illegality taints every election while the Program is in effect. Plaintiff is entitled to vote in elections that are not tainted by Exxon's violations of the SEC rules and New Jersey law. And the Program is currently harming Plaintiff because the Board is actively creating a large block of perpetual automatic votes in the incumbents' favor. This block materially dilutes—and materially devalues—the votes of all shareholders that actively participate in the shareholder franchise, including Plaintiff. The Program also entrenches incumbents and thus reduces shareholder value. And it creates a chilling effect on dissent board slates and proposals. Accordingly, Plaintiff's claims are ripe.¹⁴

23. Plaintiff also seeks damages.¹⁵

¹³ See *infra* Count II.

¹⁴ See *infra* § VIII.

¹⁵ See *infra* Request for Relief.

II. JURISDICTION AND VENUE

24. Count I arises under Section 14(a) of the Exchange Act, 15 U.S.C. § 78n(a), and the SEC's implementing rules thereunder, 17 C.F.R. § 240.14a-1 *et seq.* This Court has subject matter jurisdiction over this claim under Section 27 of the Exchange Act, 15 U.S.C. § 78aa, and 28 U.S.C. § 1331, because this is a civil action arising under the laws of the United States of America. In connection with the acts and conduct alleged in this Complaint, Exxon directly or indirectly used the means and instrumentalities of interstate commerce, including U.S. mail, interstate telephone and other electronic communications, and the facilities of the NYSE, a national securities exchange.

25. Count II arises under New Jersey law. This Court has diversity jurisdiction over this claim under 28 U.S.C. § 1332 because the matter in controversy exceeds the sum or value of \$75,000 and this action is between citizens of different States. This Court also has ancillary jurisdiction over this claim under 28 U.S.C. § 1367 because it forms the same case or controversy under Article III of the United States Constitution as Plaintiff's federal claim.

26. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. § 78aa(c), and 28 U.S.C. § 1391(b) because Exxon is incorporated in this District and many of the alleged violations of federal and state law took place within this District.

III. PARTIES

A. PLAINTIFF

27. Boca Raton Police and Fire Fighters' Retirement System (previously defined as "Plaintiff") has been a beneficial owner of Exxon common stock since at least March 2022. As of November 18, 2025, Plaintiff owned 7,334 Exxon shares with a market value of approximately \$862,625.

B. DEFENDANT

28. Defendant Exxon Mobil Corporation (previously defined as "Exxon" or the "Company") is a New Jersey corporation. Since July 2023, Exxon's global headquarters has been at 22777 Springwoods Village Parkway, Spring, Texas 77389-1425. Exxon's common stock trades on the NYSE under the ticker symbol "XOM." Exxon is involved in the exploration for, and production of, crude oil and natural gas; and the manufacture, trade, transport, and sale of crude oil, natural gas, petroleum products, petrochemicals, and a wide variety of specialty products.

IV. THE BOARD HAS A HISTORY OF CONTENTIOUS DISPUTES WITH SHAREHOLDERS.

29. As late as 2013, Exxon was the most valuable company in the world.¹⁶ In mid-2014, Exxon's market capitalization peaked at \$446 billion.¹⁷ However, by

¹⁶ Matt Egan, *Exxon was the world's largest company in 2013. Now it's being kicked out of the Dow*, CNN (Aug. 25, 2020), <https://edition.cnn.com/2020/08/25/investing/exxon-stock-dow-oil>.

¹⁷ *Id.*

mid-2020, Exxon's market capitalization had plummeted by \$267 billion.¹⁸ Exxon reported a net annual loss of \$22.4 billion in 2020.¹⁹ The COVID-19 pandemic decimated energy prices and led the Company to a \$20 billion write-down of the value of its shale gas properties.²⁰

30. Exxon was more exposed than its peers to the effects of the pandemic due to poor strategic choices. In 2009, Exxon paid \$41 billion to buy natural gas company XTO Energy shortly before natural gas prices plummeted.²¹ Exxon was also late to the shale oil boom in the United States.²² Exxon rival Chevron suffered in the pandemic but not as badly as Exxon. Exxon was removed from the Dow Jones Industrial Average in 2020, while Chevron remained.²³

A. IN 2021, THE INCUMBENT BOARD LOSES THE MOST EXPENSIVE PROXY CONTEST TO DATE.

31. Exxon's poor performance understandably led to shareholder dissatisfaction. On December 7, 2020, activist fund Engine No. 1 sent a letter to the

¹⁸ *Id.*

¹⁹ Jennifer Hill, *Pandemic pushes Exxon to historic annual loss, \$20 bln cut in shale value*, REUTERS (Feb. 2, 2021), <https://www.reuters.com/business/energy/pandemic-pushes-exxon-historic-annual-loss-20-bln-cut-shale-value-2021-02-02/>.

²⁰ *Id.*

²¹ Matt Egan, *Exxon was the world's largest company in 2013. Now it's being kicked out of the Dow*, CNN (Aug. 25, 2020), <https://edition.cnn.com/2020/08/25/investing/exxon-stock-dow-oil>.

²² *Id.*

²³ *Id.*

Board that, among other things, called for Board refreshment with qualified, independent directors with diverse track records of success in the energy sector.²⁴ On December 18, 2020, Engine No. 1 requested a director questionnaire and nomination forms to prepare to submit director nominations for Exxon's 2021 annual shareholder meeting.²⁵

32. Over the next month, Exxon tried to convince Engine No. 1 not to nominate director candidates. Exxon directors, officers, and advisors met with Engine No. 1 several times in December 2020 and January 2021. The Company offered to give Engine No. 1 "some credit for" certain "announcements that the Company intended to make on the Company's upcoming quarterly earnings call[.]"²⁶ The incumbent Board selected and appointed three new directors, two of whom (Michael Angelakis and Jeffrey Ubben) remain on the Board to this day. But the incumbent Board was unwilling to even consider Engine No. 1's proposed director nominees. On January 27, 2021, Engine No. 1 submitted its notice to nominate four candidates.²⁷

33. The nomination notice led to a contentious proxy contest. Exxon disclosed that it planned to spend \$35 million more than its usual proxy solicitation

²⁴ Exxon Mobil Corp., Proxy Statement (Schedule DEFC 14A) at 4 (Mar. 15, 2021).

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

costs opposing the dissident slate.²⁸ Some industry experts speculated that Exxon actually spent more than \$100 million.²⁹ According to one report, Engine No. 1 and its allies spent \$30 million on the proxy contest—making it the most expensive proxy fight in history to that point.³⁰

34. Independent proxy advisor Institutional Shareholder Services (“ISS”) endorsed three of Engine No. 1’s four nominees. Independent proxy advisor Glass Lewis & Co. (“Glass Lewis”) endorsed two of the four.³¹ Exxon’s three largest investors—The Vanguard Group (“Vanguard”), BlackRock, Inc. (“BlackRock”), and State Street Corporation (“State Street”)—voted for Engine No. 1’s nominees.³²

²⁸ Svea Herbst-Bayliss, *Little Engine No. 1 beat Exxon with just \$12.5 mln – sources*, REUTERS (June 29, 2021), <https://www.reuters.com/business/little-engine-no-1-beat-exxon-with-just-125-mln-sources-2021-06-29/>.

²⁹ *Id.*

³⁰ See Nell Minow, *Memo to Corporate Directors: Three Lessons from the Exxon-Mobil Activist Victory*, HARVARD LAW SCHOOL FORUM ON CORPORATE GOVERNANCE (May 20, 2021), <https://corpgov.law.harvard.edu/2021/05/30/memo-to-corporate-directors-three-lessons-from-the-exxon-mobil-activist-victory/>. Other reports pegged Engine No. 1’s spending at \$12.5 million. Svea Herbst-Bayliss, *Little Engine No. 1 beat Exxon with just \$12.5 mln – sources*, REUTERS (June 29, 2021), <https://www.reuters.com/business/little-engine-no-1-beat-exxon-with-just-125-mln-sources-2021-06-29/>.

³¹ *Advisory firm Glass Lewis backs two dissident nominees in Exxon battle*, REUTERS (May 17, 2021), <https://www.reuters.com/business/finance/advisory-firm-glass-lewis-backs-two-dissident-nominees-exxon-battle-2021-05-18/>.

³² See Andrew Ross Sorkin, *DealBook*, NEW YORK TIMES (May 31, 2023), <https://www.nytimes.com/2023/05/31/business/dealbook/engine-no-1-exxon-mobil.html> (noting that Vanguard, BlackRock, and State Street voted for Engine No. 1’s nominees); Exxon Mobil Corp., Proxy Statement (Schedule DEFC 14A) at 35 (Mar. 16, 2021) (listing those shareholders as Exxon’s three largest).

Other major institutional investors also supported Engine No. 1’s nominees, including the California State Teachers’ Retirement System (“CalSTRS”), the Church of England, and the New York State Common Retirement Fund.

35. On May 26, 2021, Exxon shareholders elected three of the four nominees on Engine No. 1’s slate.³³ The winning dissident nominees were: (i) Kaisa Hietala; (ii) Gregory J. Goff; and (iii) Alexander A. Karsner. Two of those nominees—Hietala and Karsner—are still on the Board.

B. IN LATE 2021, THE SEC ENACTS THE UNIVERSAL PROXY RULE, AND IN 2022, THE BOARD AMENDS EXXON’S BYLAWS IN RESPONSE.

36. On November 17, 2021, the SEC enacted the Universal Proxy Rule (Rule 14a-19). The new rule added disclosure requirements onto Rule 14a-4(d), which was specifically “promulgated to eliminate a practice of soliciting proxies for the election of directors without making disclosure of the persons who would be nominated and for whom the proxies would be voted.”³⁴

37. Rule 14a-4(d) has four subsections and provides:

(d) No proxy shall confer authority:

(1) To vote for the election of any person to any office for which a bona fide nominee is not named in the proxy statement[;]

...

³³ Exxon Mobil Corp., Amended Current Report (Form 8-K/A) at 3 (June 21, 2021).

³⁴ *Aegis Corp. v. Goldman*, 523 F. Supp. 1273, 1279 (S.D.N.Y. 1981).

(2) To vote at any annual meeting other than the next annual meeting (or any adjournment thereof) to be held after the date on which the proxy statement and form of proxy are first sent or given to security holders;

(3) To vote with respect to more than one meeting (and any adjournment thereof) or more than one consent solicitation; or

(4) To consent to or authorize any action other than the action proposed to be taken in the proxy statement, or matters referred to in paragraph (c) of this section.³⁵

38. The Universal Proxy Rule requires further disclosures to level the playing field between an incumbent director slate and a dissident's slate. For example, prior to the new rule, a company could send shareholders a proxy and exclude the dissident slate. Under Rule 14a-19, the company must disclose the names of its proposed slate, disclose the names of the dissident's slate, and comply with numerous formatting rules to ensure the company's slate is not portrayed more favorably. Moreover, under the new rule, the proxy must "[p]rovide a means for the security holder to grant authority to vote for the nominees set forth."³⁶

39. On October 25, 2022, the Board amended Exxon's bylaws specifically to address proxy access issues, including with respect to "Rule 14a-19 promulgated under the Exchange Act."³⁷ The amended bylaws required the Company to disclose

³⁵ 17 C.F.R. § 240.14a-4(d)(4).

³⁶ 17 C.F.R. § 240.14a-19(e)(2).

³⁷ Ex. A, art. 9, § (a)(iii)(C)(2).

the information required by the Universal Proxy Rule and repeatedly noted the shareholders' responsibility to abide by all relevant laws, including "Section 14 of the Securities Exchange Act of 1934 (together with the rules and regulations promulgated thereunder)[.]"³⁸

C. IN 2023, INVESTORS REACT NEGATIVELY TO EXXON'S ACQUISITION OF PIONEER.

40. In October 2023, Exxon announced that it was acquiring Pioneer in an all-stock transaction valued at approximately \$59.5 billion.³⁹ The deal required Exxon to issue approximately 540 million shares to Pioneer shareholders, which diluted Exxon's existing shareholders by approximately 14%.⁴⁰ Exxon's shareholders reacted negatively to the announcement, and the stock dropped by more than 4%.⁴¹

D. IN 2024, EXXON GOES ON THE OFFENSIVE AGAINST TWO SHAREHOLDERS.

41. In advance of Exxon's 2024 annual shareholder meeting, Arjuna Capital, LLC ("Arjuna") submitted a proposal for consideration requiring Exxon to

³⁸ *Id.*, art. 8, § (a)(i)(C).

³⁹ Steve Anderson, *Pioneer Deal Sends Exxon Mobil (NYSE:XOM) Sliding*, TIPRANKS (Oct. 11, 2023), <https://www.tipranks.com/news/pioneer-deals-completion-sends-exxon-mobil-nysexom-sliding>.

⁴⁰ *Id.*

⁴¹ *Id.*

accelerate the pace of reductions in greenhouse gas emissions. The next day, Follow This (“FT”) joined the proposal as a co-filer.

42. On January 21, 2024, Exxon sued Arjuna and FT in the United States District Court for the Northern District of Texas (the “Texas Federal Court”). In its complaint, Exxon criticized the existing proxy laws and regulations as creating “a flawed shareholder proposal and proxy voting process that does not serve investors’ interests[.]”⁴²

43. Arjuna and FT withdrew their proposal in response to Exxon’s lawsuit, but Exxon insisted on continuing to litigate. The Texas Federal Court dismissed the case against FT for lack of personal jurisdiction, and it ultimately dismissed the case completely after Arjuna committed to not bring any other related proposals.

44. Exxon’s aggressive stance in suing its own shareholders led to a vote-no campaign by some of the Company’s highest-profile shareholders. Glass Lewis endorsed the vote-no campaign against Lead Independent Director Joseph Hooley, explaining that: “The Company’s unusual and aggressive tactics in this matter could threaten to deter both investors’ willingness to submit and ability to vote on materially relevant issues.”⁴³ Norway’s sovereign wealth fund, one of Exxon’s

⁴² Ex. B ¶ 2.

⁴³ Michael Watson, *Exxon Determined to Crush Activist Investors, Even Over Opposition from Its Largest Shareholders*, DEMINOR LITIGATION FUNDING (June 12,

largest shareholders, stated that it would vote against the election of one Exxon director.⁴⁴ Other shareholders voted against Chairman Darren Woods and Lead Independent Director Hooley.⁴⁵ Still others, like the California Public Employees' Retirement System ("CalPERS") voted against all Exxon's nominees.⁴⁶ According to CalPERS CEO, Exxon's suit: "threaten[ed] to silence shareholders everywhere."⁴⁷

45. Although the vote-no campaign did not result in the resignation of any Exxon director, it showed that the Company has "work to do to gain back the trust of its investors after its attacks on the shareholder proposal process."⁴⁸

* * *

2024), <https://www.deminor.com/en/news-insights/exxon-determined-to-crush-activist-investors-even-over-opposition-from-its-largest-shareholders/>.

⁴⁴ *Id.*

⁴⁵ Ross Kerber & Arunima Kumar, *Top Exxon directors cruise to re-election despite activist opposition*, REUTERS (May 29, 2024), <https://www.reuters.com/markets/commodities/exxon-shareholders-re-elect-two-directors-targeted-by-activists-2024-05-29>.

⁴⁶ *Id.* CalSTRS also voted against Exxon's director nominees. See Michael Watson, *Exxon Determined to Crush Activist Investors, Even Over Opposition from Its Largest Shareholders*, DEMINOR LITIGATION FUNDING (June 12, 2024), <https://www.deminor.com/en/news-insights/exxon-determined-to-crush-activist-investors-even-over-opposition-from-its-largest-shareholders/>.

⁴⁷ Ross Kerber & Arunima Kumar, *Top Exxon directors cruise to re-election despite activist opposition*, REUTERS (May 29, 2024), <https://www.reuters.com/markets/commodities/exxon-shareholders-re-elect-two-directors-targeted-by-activists-2024-05-29>.

⁴⁸ *Id.*

46. The facts above demonstrate that shareholder dissatisfaction with the Board and Exxon management is not just a clash between climate activists and those who are more comfortable with the long-term use of fossil fuels. Exxon's fiduciaries have a troubling recent history of poor business choices and disrespect toward the shareholder franchise, which negatively affects all shareholders.

V. THE BOARD ADOPTS THE AUTOMATIC VOTING PROGRAM.

47. In the course of resisting dissident shareholders, Exxon seized an opportunity to procure automatic votes in support of the Board's preferred agenda.

48. Enter the Automatic Voting Program, which solicits Exxon shareholders to make a one-time choice to cast their votes automatically at *all* future shareholder meetings, including votes at special meetings such as to approve a merger—but *only* in accordance with the Board's recommendations.⁴⁹

49. The Automatic Voting Program is a powerful entrenchment device for Exxon's Board. Although shareholders can purportedly override the automatic default votes under the Program, they are unlikely to do so, similar to individuals who forget to cancel a television subscription that auto-renews. The whole point of the Program is to target shareholders who have not consistently participated in the corporate voting process, then capitalize on the fact that—once enrolled in the

⁴⁹ As explained below, the Automatic Voting Program is currently operative. *See infra* § VII.

program—they are unlikely to spend further time and effort to manually withdraw or manually vote against the Board.

50. The Board developed and approved the Automatic Voting Program against a backdrop of contentious disputes with shareholders. This background shows that the Program is not an innocuous attempt to give retail shareholders a greater voice or enhance corporate democracy. Instead, it is a naked entrenchment device—evident from the fact that it *only* allows shareholders to vote in accordance with the Board’s recommendations.

51. The entrenching effect of the Automatic Voting Program is especially potent at Exxon. Exxon tends to have a more elderly retail shareholder base, who hold the stock for its dividend. Exxon’s individual shareholders routinely pass away while holding the stock. Participants in the Program lock up the votes associated with their shares not only during their own lifetimes, but also while the shares are in probate, and until their heirs opt out of the program. Because heirs are unlikely to know that the shares are involved in the program, the shares might be voted automatically for years after the heirs inherit them. The program materials Plaintiff has seen to date do not highlight this risk.

52. Exxon has also resorted to misleading statements to market the Automatic Voting Program, stating that the “average retail investor would have had to dedicate a year of full-time work to briefly study and vote on each of the roughly

28,000 items in the proxies of the companies in the Russell 3000 in 2024—and that’s assuming that they spent only 5 minutes on each item.”⁵⁰ As a commentator pointed out, Exxon’s claim of the time needed for proxy voting is “misleading” because the average retail shareholder likely owns eight or fewer stocks—not 3,000.⁵¹

53. The extreme nature of the Automatic Voting Program is manifest when compared to the rules that apply to brokers. Since July 2009, the NYSE rules have prevented stockbrokers from voting their clients’ stock without client instructions, even in non-contested elections.⁵² “The amendments respond[ed] in part to criticism of the NYSE by institutional shareholders and shareholder activist groups that the allowance of broker discretionary voting in director elections . . . had the effect of diluting ‘just vote no’ campaigns and other efforts to marshal opposition votes to incumbent directors that fell short of a full-blown proxy contest.”⁵³ So while the NYSE rules require specific client instructions for every vote, even uncontested

⁵⁰ ExxonMobil Investors: *Your shares, your say: ensuring retail investors are heard* (Sep. 15, 2025), https://corporate.exxonmobil.com/news/news-releases/2025/0915_ensuring-retail-investors-are-heard

⁵¹ Amy C. Arnott, *Dear Exxon Mobil: No Thank You*, Morningstar (Sep. 30, 2025), <https://www.morningstar.com/stocks/dear-exxon-mobil-no-thank-you>.

⁵² See Knute J. Salhus & Jeffries L. Oliver-Li, *SEC Approves Elimination of Broker Discretionary Voting in Uncontested Elections of Directors*, WILMER HALE (July 2, 2009), <https://www.wilmerhale.com/en/insights/publications/sec-approves-elimination-of-broker-discretionary-voting-in-uncontested-elections-of-directors-july-2-2009>.

⁵³ *Id.*

director elections, the Automatic Voting Program purports to permit the Board to vote shares automatically and indefinitely with no specific client instructions.

54. Importantly, the Automatic Voting Program is not limited to activist proposals on capping greenhouse gas emissions. If Exxon sought to address that issue, there are narrower proposals it could present, including submitting it to a shareholder vote. Instead, the program permits shareholders to give their votes to the Board on all matters to be voted on at annual or special shareholder meetings, including mergers and contested director elections.

55. Exxon's own prior statements underscore why the Automatic Voting Program is improper. In a 2020 letter to the SEC, Exxon complained about alleged "automatic" voting by institutional investors based on proxy advisor recommendations, writing that "[a]utomatic submissions undermine shareholder engagement efforts" and "short-circuit the shareholder engagement process."⁵⁴ Of course, Exxon itself is now trying to "short-circuit" the normal "shareholder engagement process" by securing a block of votes to be voted perpetually and automatically in accordance with the Board's recommendations.

⁵⁴ Letter from Neil Hansen (Exxon Vice President, Investor Relations and Secretary) to Vanessa Countryman (Secretary, U.S. Securities and Exchange Commission) (Feb. 3, 2020), <https://www.sec.gov/comments/s7-22-19/s72219-6742834-207796.pdf>.

56. In its 2020 letter to the SEC, Exxon even proposed that for contested elections, votes should be “pre-populated at ‘ABSTAINED’ or ‘DO NOT VOTE’ until the client determines to affirmatively vote them.” Now, Exxon is doing the opposite: under the Automatic Voting Program, votes on contested issues will be cast automatically in favor of the Board.

VI. EXXON PREPACKAGES A NO ACTION LETTER FROM THE SEC.

A. EXXON SUBMITS A NO ACTION LETTER REQUEST ON SEPTEMBER 15, 2025, AND RECEIVES A BAREBONES POSITIVE RESPONSE THE SAME DAY.

57. Exxon was clearly aware that the Automatic Voting Program violated federal law. On September 15, 2025, Exxon requested a “no action” letter from the SEC⁵⁵ with respect to Rule 14a-4(d)(2) and Rule 14a-4(d)(3), which, among other things, prohibit proxies for multiple shareholder meetings.⁵⁶ Notably, Exxon’s no action letter request did not address other directly relevant SEC rules.⁵⁷

58. Exxon received the No Action Letter *the same day*.⁵⁸ The No Action Letter was short. It regurgitated certain of the representations in Exxon’s no-action letter request, and then informed Exxon that the SEC Division of Corporate Finance would not recommend an enforcement action against the Automatic Voting Program

⁵⁵ See Ex. C.

⁵⁶ See *supra* ¶ 37.

⁵⁷ See *infra* §VII.

⁵⁸ See Ex. D.

for violating Rule 14a-4(d)(2) and Rule 14a-4(d)(3). The almost immediate turnaround of Exxon’s request implies that Exxon negotiated with the SEC staff before submitting its request and tailored its request to what the SEC staff was willing to include in the No Action Letter. Indeed, Exxon admittedly engaged in “months” of correspondence with the SEC before requesting the No Action Letter.⁵⁹

B. THE NON-BINDING NO ACTION LETTER DOES NOT MEAN EXXON COMPLIED WITH THE FEDERAL SECURITIES LAWS.

59. A no action letter is a non-binding statement by SEC staff about whether they would recommend an enforcement action against a company for a proposed plan of conduct. A no action letter does not bind the SEC, which is free to bring an enforcement action if a company moves forward with the proposed conduct. Nor is a no action letter binding on a court in a civil action.⁶⁰

60. Exxon recognizes this. In the Company’s 2024 complaint against the two shareholders, Exxon affirmatively argued that SEC interpretive guidance did not bind the Texas Federal Court.⁶¹ There, Exxon asserted:

The plain language of Rule 14a-8 supports excluding the 2024 Proposal, but current guidance by SEC staff about

⁵⁹ *City of Hollywood Police Officers’ Retirement System v. Woods, et al.*, Case No. 3:25-cv-16633-ZNQ-TJB (D.N.J.), ECF 27.

⁶⁰ *See, e.g., Trinity Wall St. v. Wal-Mart Stores, Inc.*, 792 F.3d 323, 331 (3d Cir. 2015) (recognizing that “no-action letters are not binding—they reflect only informal views of the staff and are not decisions on the merits”); *N.Y.C. Emps.’ Ret. Sys. v. SEC*, 45 F.3d 7, 12 (2d Cir. 1995) (“No-action letters are deemed interpretive because they do not impose or fix a legal relationship upon any of the parties.”).

⁶¹ Ex. B ¶¶ 18, 42, 61.

how to apply the rule can be at odds with the rule itself. Even though that guidance has no legal force or effect, Defendants and other similar activist organizations rely on it to pursue their personal preferences at the expense of shareholders. ExxonMobil seeks declaratory relief from this Court to stop this misuse of the current system.⁶²

In other words, Exxon told the Texas Federal Court that the SEC staff's positions on SEC rules were not dispositive. The court had to interpret the rules themselves.

61. Here, the No Action Letter is non-binding with respect to the two SEC rules it addresses. The No Action Letter itself states that it “does not express any legal conclusion on the questions presented or any views on any other questions that your request may raise, including compliance with other provisions of the federal proxy rules or the federal securities laws.” And the No Action Letter fails to address several other SEC rules relevant to the Automatic Voting Program (discussed below).

VII. EXXON BEGINS SOLICITING RETAIL INVESTORS IN VIOLATION OF THE SEC RULES.

62. On September 17, 2025, Exxon filed copies of communications to shareholders soliciting participation in the Automatic Voting Program (the “Solicitation Materials”). Exxon filed the Solicitation Materials as definitive proxy materials on Schedule DEFA 14A.⁶³

⁶² *Id.* ¶ 18.

⁶³ Ex. E, Exxon Mobil Corp., Definitive Proxy Statement (Schedule DEFA 14A) (Sep. 17, 2025).

63. In October 2025, Exxon had brokers forward the Solicitation Materials to shareholders, “inviting” them to join the Automatic Voting Program. Although Exxon marketed the program as “another way to ensure [the shareholder’s] voice is heard,” participation in the program would simply make the Board’s voice louder.⁶⁴

64. The Solicitation Materials touted the program as a “new, easy way to vote” and a way to “[s]ave time[.]”⁶⁵ These slogans confirmed that Exxon’s goal is to attract support from relatively passive shareholders who will be unlikely to opt out of the program in the future.

65. According to the Solicitation Materials, “this free service” is available to “[a]ll shareholders, including beneficial owners, registered shareholders, and participants in company-sponsored equity or retirement plans.”⁶⁶ The materials do not mention that registered investment advisors may not participate in the plan because NYSE Rule 452 prohibits brokers from voting on non-routine matters without instructions from the ultimate beneficial owner. The materials also do not explain what happens once a shareholder dies and the new owners do not know that the Board is continuing to vote the shares.

⁶⁴ Ex. E at 3.

⁶⁵ *Id.*

⁶⁶ *Id.* at 9.

66. The Solicitation Materials violated numerous SEC rules pursuant to Regulation 14A. Specifically:

67. **Rule 14a-4(d)(1)**: This rule prohibits a proxy: “To vote for the election of any person to any office for which a bona fide nominee is not named in the proxy statement[.]” A “bona fide nominee” must have “consented to being named in a proxy statement relating to the registrant’s next annual meeting of shareholders at which directors are to be elected (or a special meeting in lieu of such meeting) and to serve if elected.” The Automatic Voting Program violates this rule because it unlawfully allows perpetual proxies to vote for the elections of directors who are *not* bona fide nominees and *not* named in the proxy statement for the next annual meeting—including for directors who are nominated, and new Board seats that are created, years after the proxy was granted. Notably, Exxon did not obtain a no action letter with respect to its violation of this rule.

68. **Rule 14a-4(d)(2)**: This rule prohibits a proxy: “To vote at any annual meeting other than the next annual meeting (or any adjournment thereof) to be held after the date on which the proxy statement and form of proxy are first sent or given to security holders.” The Automatic Voting Program violates this rule because it unlawfully allows perpetual proxies to vote at annual meetings far into the future.

69. **Rule 14a-4(d)(3)**: This rule prohibits a proxy: “To vote with respect to more than one meeting (and any adjournment thereof) or more than one consent

solicitation.” Again, the Automatic Voting Program violates this rule because it unlawfully allows perpetual proxies to vote at annual meetings far into the future.

70. **Rule 14a-4(d)(4)**: This rule prohibits a proxy: “To consent to or authorize any action other than the action proposed to be taken in the proxy statement, or matters referred to in paragraph (c) of this section.” In other words, the grant of a proxy can only be for matters listed in the proxy statement and not for matters that have not yet been identified. The Automatic Voting Program violates this rule because it unlawfully allows perpetual proxies to vote for actions and matters not listed in the current proxy statement, including votes for new directors and other matters far into the future. Notably, Exxon did not obtain a no action letter with respect to its violation of this rule.

71. **Rules 14a-3(a), 14a-3(b), and 14a-12**: Rule 14a-3(a)(1) prohibits a proxy solicitation “unless each person solicited is concurrently furnished or has previously been furnished with . . . [a] publicly-filed preliminary or definitive proxy statement, in the form and manner described in § 240.14a-16, containing the information specified in Schedule 14A,” and various items of “current” information and information for the “last fiscal year.” Rule 14a-3(b) prohibits a proxy solicitation unless the proxy statement is “accompanied or preceded by an annual report to security holders,” which must include audited financial statements for the “most recent fiscal years.” These rules codify the common-sense principle that

shareholders must have current, material information before voting. In violation of these rules, the Automatic Voting Program “invites” shareholders to grant a perpetual proxy. Notably, Exxon did not obtain a no action letter with respect to its violations of these rules.⁶⁷

72. **Rule 14a-5**: Rule 14a-5 addresses the presentation of information in proxy statements. Rule 14a-5(e) provides that “[a]ll proxy statements shall disclose” the: (i) “deadline for submitting shareholder proposals for inclusion in the registrant’s proxy statement and form of proxy for the registrant’s next annual meeting”; (ii) “date after which notice of a shareholder proposal submitted outside the processes of § 240.14a-8 is considered untimely”; (iii) “deadline for submitting nominees for inclusion in the registrant’s proxy statement”; and (iv) “deadline for providing notice of a solicitation of proxies in support of director nominees other than the registrant’s nominees pursuant to § 240.14a-19 [the Universal Proxy Rule][.]” The Solicitation Materials contain no such information. Rule 14a-5(b) provides that shareholder authority regarding subjects that “must be determined in the future . . . shall be confined within limits reasonably related to the need for discretionary authority.” The authority Exxon asks shareholders to provide under

⁶⁷ While Rule 14a-12 permits parties to provide certain information to shareholders before the filing of a preliminary or definitive proxy statement, that rule does not save the Automatic Voting Program, since a proxy solicitation under SEC Rule 14a-12 cannot include a proxy for the shareholder to sign. The actual grant of the proxy must await the dissemination of the proxy statement.

the Program is boundless and not confined within reasonable limits, and there is no need for discretionary authority. Notably, Exxon did not obtain a no action letter with respect to its violation of this rule.

73. **Rule 14a-6:** Rule 14a-6 addresses the deadlines and requirements for filing proxy materials for various voting matters and transaction types. The Automatic Voting Program violates this rule because it purports to permit shareholders to give up their votes in perpetuity before receiving any such proxy materials. Notably, Exxon did not obtain a no action letter with respect to its violation of this rule.

74. **Rule 14a-9:** Rule 14a-9(a) provides that:

No solicitation subject to this regulation shall be made by means of any proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading.

75. The Automatic Voting Program violates this rule because it purports to permit shareholders to give up their votes without receiving *any* information about the specific matters on which the Board will cast their votes. Notably, Exxon did not obtain a no action letter with respect to its violation of this rule.

76. **Rule 14a-10:** Rule 14a-10 prohibits: “(a) Any undated or postdated proxy; or (b) Any proxy which provides that it shall be deemed to be dated as of any date subsequent to the date on which it is signed by the security holder.” The Automatic Voting Program violates this rule because it purports to create proxies that are undated and voted on undisclosed dates in the future, long after being signed by the security holder. Notably, Exxon did not obtain a no action letter with respect to its violation of this rule.

77. **Rule 14a-12:** Rule 14a-12 establishes strict requirements for solicitations that precede a proxy statement. The Solicitation Materials do not meet these requirements because, among other reasons, they purport to seek to have shareholders give up their votes before receiving a definitive proxy statement as required by Rule 14a-12(a)(2). Notably, Exxon did not obtain a no action letter with respect to its violation of this rule.

78. **Rule 14a-19:** Rule 14a-19 requires special disclosures in contested director elections. Under Rule 14a-19(e), companies and dissidents are now required to use a universal proxy card that lists all the nominees in alphabetical order in the same font and type size. Companies must also provide a way for shareholders to vote for dissident nominees as part of the companies’ proxy materials. This change makes it easier for dissidents to present their nominees and proposals to the shareholder franchise. The Automatic Voting Program violates this rule because it

purports to allow shareholders to give up their votes in all elections, including disputed director elections, before receiving information about the dissident candidates or a way to vote for the dissident candidates. Notably, Exxon did not obtain a no action letter with respect to its violation of this rule.

VIII. PLAINTIFF IS ENTITLED TO INJUNCTIVE RELIEF TO PREVENT THE IMPLEMENTATION OF THE UNLAWFUL AUTOMATIC VOTING PROGRAM.

79. The Automatic Voting Program violates federal and state law and rides roughshod over the proper functioning of the shareholder franchise. The unlawful Program will cause irreparable harm to Plaintiff and Exxon's other shareholders, and the equities support preliminary and permanent injunctive relief to stop the implementation of the Program.

80. The Program directly infringes on Plaintiff's voting rights because its illegality taints every election while the Program is in effect. Plaintiff is entitled to vote in elections that comply with the SEC rules and New Jersey law.

81. Further, Exxon's clear purpose in creating the Automatic Voting Program is to give the Board consistent voting control over a large block of Exxon's shares, which (under the terms of the Program) will be voted perpetually and automatically in accordance with the Board's recommendations.

82. This dilutes the votes of Plaintiff and all other shareholders who do not participate in the Program and instead seek to cast their votes separately for each

annual meeting based on current, accurate information.⁶⁸ This dilution is significant. For example, if 30% of Exxon's shares are enrolled in the Program, defeating the Board's proposals will require over 71% of the remaining shares to vote against the Board. And if 50% or more of total shares are enrolled, the Program would effectively guarantee that the Board will prevail.

83. The Program's dilutive effect and entrenchment of the current Board are value-destructive for Plaintiff and other shareholders. It is well-established that conflicted blockholders tend to harm shareholder value.⁶⁹ Moreover, while board turnover is important for growing shareholder value, the Automatic Voting Program entrenches the incumbents.⁷⁰ Thus, the Automatic Voting Program threatens imminent economic harm to Plaintiff and Exxon's other shareholders.

84. Exxon typically holds its annual shareholder meetings in May of each year, with definitive proxy statements issued in March or April. Under the

⁶⁸ Votes have value. *See generally, e.g.,* Avner Kalay & Shagun Pant, *The Market Value of the Vote: A Contingent Claims Approach* (Sep. 2009), <https://w4.stern.nyu.edu/finance/docs/pdfs/Seminars/093f-kalay.pdf>; Umit G. Gurun, *Earnings and the Value of Voting Rights* (Apr. 17, 2025), <https://onlinelibrary.wiley.com/doi/10.1111/fima.12502>. Accordingly, impairments to voting rights negatively affect the value of the stock.

⁶⁹ *See, e.g.,* Alex Edmans, *Blockholders & Corporate Governance*, ECGI (Oct. 16, 2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2285781 (summarizing ways in which blockholders can harm firm value).

⁷⁰ *See, e.g.,* George M. Anderson & David Chun, *How Much Board Turnover Is Best?*, HARVARD BUSINESS REVIEW (Apr. 2014), <https://hbr.org/2014/04/how-much-board-turnover-is-best>.

Automatic Voting Program, participants' shares will be voted in accordance with the Board's recommendations once the Company files a definitive proxy statement with the SEC and before it is distributed to shareholders.⁷¹

COUNT I

Violation of Exchange Act Section 14(a) and Regulation 14A (Against Exxon)

85. Plaintiff incorporates by reference and realleges each and every allegation set forth above as if fully set forth herein.

86. Section 14(a) of the Exchange Act, 15 U.S.C. § 78n, authorizes the SEC to make rules and regulations regarding proxy solicitations. The SEC has exercised that authority in, among other things, Regulation 14A, which appears at 17 C.F.R. § 240.14a-1 *et seq.* Regulation 14A ensures that shareholders receive important information *before* deciding how to vote at shareholder meetings. That information includes the names and qualifications of director nominees, executive compensation data, details on shareholder proposals, and corporate governance information.

87. It is self-evident that shareholders must receive the required information on each voting item *before* they decide how to vote. Rule 14a-3(a) makes this point explicitly by requiring proxy statements before shareholders may grant voting proxies. Rule 14a-4(d)(2) and Rule 14a-4(d)(3) confirm the importance

⁷¹ See Ex. C at 3.

of shareholders having current information at the time they vote by prohibiting proxies for votes that occur at anything other than the next shareholder meeting. These rules promote informed votes by guaranteeing that shareholders know what they are being asked to vote for before they vote. For example, before casting their votes, shareholders must have the current proxy statement to know which directors are being nominated, and they must have the corporation's current financial statements to evaluate its performance.

88. The Automatic Voting Program turns these bedrock principles upside down. Instead of shareholders deciding how to cast each vote based on receiving current, material information, shareholders are encouraged to blindly grant their votes to the incumbent Board indefinitely and in advance. Regardless of what happens to the corporation or who is nominated in the future, their shares will automatically back the incumbents.

89. Unsurprisingly, Regulation 14A does not permit this result. The Automatic Voting Program violates at least Rule 14a-3(a) (including as modified by Rule 14a-12); Rule 14a-4(d)(1), Rule 14a-4(d)(2), Rule 14a-4(d)(3), Rule 14a-4(d)(4), Rule 14a-5, Rule 14a-6, Rule 14a-9, Rule 14a-10, Rule 14a-12, and Rule 14a-19. By developing and implementing the Automatic Voting Program, Exxon is liable for the violations of Regulation 14A.

90. The No Action Letter does not change this result. It is non-binding, even on the SEC. Furthermore, it expressly does not apply to many of the SEC rules the Automatic Voting Program violates, as detailed above.

91. Exxon's violations of Section 14(a) and Regulation 14A are impairing Plaintiff's voting rights. Exxon's violations have also damaged Plaintiff by diluting its votes through unlawful means and devaluing its Exxon shares, including by impairing Plaintiff's voting rights and allowing Exxon to take value-destructive corporate actions that would not be approved absent Exxon's violations.

92. Plaintiff seeks injunctive relief to prevent and remedy the irreparable harm Exxon's violations of Regulation 14A will inflict on the shareholder franchise.

COUNT II

Violation of N.J.S.A. 14A:5-19 (Against Exxon)

93. Plaintiff incorporates by reference and realleges each and every allegation set forth above as if fully set forth herein.

94. N.J.S.A. 14A:5-19 provides, in relevant part: "No proxy shall be valid for more than 11 months, unless a longer time is expressly provided therein." The Automatic Voting Program purports to create an eternal proxy. To Plaintiff's knowledge, the New Jersey courts have not ruled on whether indefinite proxies are valid. Other courts interpreting similar statutes have held that purportedly indefinite proxies are invalid and therefore last for only eleven months. This interpretation is

consistent with the language and spirit of N.J.S.A. 14A:5-19. Accordingly, the Automatic Voting Program violates N.J.S.A. 14A:5-19.

95. Exxon's violations of New Jersey law are impairing Plaintiff's voting rights and have also damaged Plaintiff by diluting its votes and devaluing its Exxon shares.

96. Plaintiff seeks injunctive relief to prevent and remedy the irreparable harm the Company's violation of N.J.S.A. 14A:5-19 will inflict on the shareholder franchise.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment in the form of an order or orders:

- A. Declaring that the Company violated Section 14(a) of the Exchange Act and the SEC's implementing rules thereunder;
- B. Declaring that the Company violated N.J.S.A. 14A:5-19, which defines the legal use of voting proxies under New Jersey law;
- C. Temporarily, preliminarily, and permanently enjoining Exxon from implementing the Automatic Voting Program;
- D. Awarding damages to Plaintiff;

- E. Awarding Plaintiff its reasonable fees and expenses in this Action, including attorneys' fees and expert fees, and pre- and post-judgment interest on all out-of-pocket fees and expenses; and
- F. Granting such other and further relief as this Court deems just and proper.

OF COUNSEL:

Javier Bleichmar
Nancy Kulesa
BLEICHMAR FONTI & AULD LLP
300 Park Avenue, Suite 1301
New York, New York 10022
(212) 789-1347
jbleichmar@bfalaw.com

Derrick B. Farrell
Matthew L. Miller
Robert B. Lackey
BLEICHMAR FONTI & AULD LLP
3411 Silverside Road
Baynard Building, Suite 104
Wilmington, Delaware 19810
(302) 499-2158
dfarrell@bfalaw.com
mmiller@bfalaw.com
rlackey@bfalaw.com

(Pro Hac Vice Motions Forthcoming)

Dated: December 1, 2025

/s/ Theodore J. Hawkins

Eric T. Kanefsky
(No. 024292002)
Theodore J. Hawkins
(No. 490632024)
CALCAGNI & KANEFKY, LLP
1085 Raymond Boulevard
18th Floor
Newark, New Jersey 07102
(862) 397-1796
eric@ck-litigation.com
thawkins@ck-litigation.com

*Counsel for Plaintiff Boca Raton
Police and Firefighters'
Retirement System*

VERIFICATION

Boca Raton Police and Fire Fighters' Retirement System

I, Darryl Kingman, do hereby declare:

1. I am the Chairman of the Boca Raton Police and Fire Fighters' Retirement System (the "System"), which is a beneficial owner of Exxon Mobil Corporation common stock. As the Chairman of the Fund, I have authority to act on its behalf.

2. I verify that I have reviewed the Complaint (the "Complaint"). As to those allegations of which I have personal knowledge, I believe them to be true; as to those allegations of which I lack personal knowledge, I rely upon my counsel and counsel's investigation, and believe them to be true. Having received a copy of the Complaint and reviewed it with counsel, I authorize its filing.

3. The System has not received, been promised or offered, and will not accept any form of compensation, directly or indirectly, for prosecuting this action except: (i) such fees, costs, or other payments as the Court expressly approves to be paid to the System; or (ii) reimbursement, by its attorneys, of actual and reasonable out-of-pocket expenditures incurred directly in connection with the prosecution of this action.

I declare under penalty of perjury that the foregoing is true and correct.

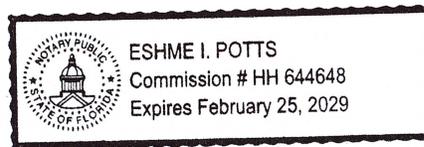
Dated: 11/25/25



Darryl Kingman, Chairman
Boca Raton Police and Fire Fighters' Retirement System

Sworn and Subscribed before me

This 25th day of November 2025


Notary Public

CERTIFICATION UNDER LOCAL CIVIL RULE 11.2 & 40.1

I hereby certify that, to the best of my knowledge, the matter in controversy is not the subject of any other action currently or previously pending in any court or of any pending arbitration or administrative proceeding, except for the following case, which is a related action: *City of Hollywood Police Officers' Retirement System v. Woods et al.*, No. 3:25-cv-16633 (D.N.J., filed Oct. 14, 2025).

Date: December 1, 2025

/s/ Theodore J. Hawkins
Theodore J. Hawkins

EXHIBIT A

EX-3.II 2 xomexhibit3ii-20221025.htm EX-3(II)
Exhibit 3(ii)

EXXON MOBIL CORPORATION
INCORPORATED IN NEW JERSEY
AUGUST 5, 1882
BY-LAWS
(AS REVISED October 25, 2022)

ARTICLE I

Meetings of Shareholders

1. Meetings of shareholders may be held on such date and at such time and place, within or without the State of New Jersey, as may be fixed by the board of directors and stated in the notice of meeting.
2. The date for each annual meeting of shareholders, fixed as provided in Section 1 of this Article I, shall be a date not more than thirteen months after the date on which the last annual meeting of shareholders was held. The directors shall be elected at the annual meeting of shareholders or any special meeting of shareholders in accordance with these by-laws.
3. (a) Special meetings of the shareholders may be called by the board of directors, the chairman of the board, the president, or by the secretary of the corporation pursuant to Article I, Section 3(b), and may not be called by any other person.

(b) A special meeting of shareholders shall be called by the secretary of the corporation at the written request or requests (each, a "Special Meeting Request" and, collectively, the "Special Meeting Requests") of holders of record of at least 15% of the voting power of the outstanding capital stock of the corporation, entitled to vote on the matter or matters to be brought before the proposed special meeting (the "Requisite Percentage"). To satisfy the Requisite Percentage, each such holder must comply with the requirements of these by-laws including Section 9 of this Article I. The type of share ownership must meet the requirements for being "Net Long Shares," which are described below. Whether share ownership meets the requirements for being "Net Long Shares," shall be decided by the board in its reasonable determination.

Net Long Shares shall be limited to the number of shares beneficially owned, directly or indirectly, by any shareholder or beneficial owner that constitute such person's net long position as defined in Rule 14e-4 under the Securities Exchange Act of 1934, as amended (the "Exchange Act") provided that (i) for purposes of such definition, in determining each person's "short position," the reference in Rule 14e-4 to "the date the tender offer is first publicly announced" shall instead be the date for determining and/or documenting a shareholder's or beneficial owner's Net Long Shares and the reference to the "highest tender offer price or stated amount of the consideration offered for the subject security" shall refer to the market price on such date, and, to the extent not covered by such definition, reduced by any shares as to which such person does not have the right to vote or direct the vote at the special meeting or as to which such person has entered into a derivative or other agreement, arrangement or understanding that hedges or transfers, in whole or in part, directly or indirectly, any of the economic consequences of ownership of such shares. In addition, to the extent any affiliates of the shareholder or beneficial owner are acting in concert with the shareholder or beneficial owner with respect to the calling of the special meeting, the determination of Net Long Shares may include the effect of aggregating the Net Long Shares (including any negative number) of such affiliate or affiliates.

Except as may otherwise be permitted by the New Jersey Business Corporation Act, a Special Meeting Request must be delivered by hand or by registered U.S. mail, postage prepaid, return receipt requested, or courier service, postage prepaid, to the attention of the secretary of the corporation at the principal executive offices of the corporation. A Special Meeting Request to the secretary shall be signed and dated by each shareholder of record and each beneficial owner, if any, on whose behalf the Special Meeting Request is being made (or a duly authorized

agent of such shareholder or owner) requesting the special meeting (each, a “Requesting Shareholder”), shall comply with this Section 3 of Article I, and shall include

- (i) a statement of the specific purpose or purposes of the special meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend these by-laws, the text of the proposed amendment), the reasons for conducting such business and any material interest in such business of such shareholder and the beneficial owner, if any, on whose behalf the proposal is made,
- (ii) as to the shareholders requesting the special meeting and the beneficial owners, if any, on whose behalf the Special Meeting Request(s) are being made, the information required by Section 9(a)(iii)(B) of Article I (as if Section 9(a)(iii) applies to a special meeting and any nomination of directors or other business brought before a special meeting),
- (iii) such other information, if applicable, required to be set forth in a shareholder’s notice required by Section 9(a)(iii)(A) of Article I (as if Section 9(a)(iii) applies to a special meeting and any nomination of directors or other business brought before a special meeting),
- (iv) an acknowledgement by the Requesting Shareholders and the beneficial owners, if any, on whose behalf the Special Meeting Request(s) are being made that any reduction in the number of Net Long Shares with respect to which a Special Meeting Request relates following the delivery of such Special Meeting Request to the secretary shall constitute a revocation of such Special Meeting Request to the extent of such reduction, and an agreement to notify the corporation if there has been any such reduction, and
- (v) documentary evidence that the Requesting Shareholders own the Requisite Percentage as of the date of such written request to the secretary; provided, that if the Requesting Shareholders are not the beneficial owners of the shares representing the Requisite Percentage, then to be valid, the Special Meeting Request(s) must also include documentary evidence (or, if not simultaneously provided with the Special Meeting Request(s), such documentary evidence must be delivered to the secretary within 10 business days after the date on which the Special Meeting Request(s) are delivered to the secretary) that the beneficial owners on whose behalf the Special Meeting Request(s) are made beneficially own the Requisite Percentage as of the date on which such Special Meeting Request(s) are delivered to the secretary. In addition, the Requesting Shareholders and the beneficial owners, if any, on whose behalf the Special Meeting Request(s) are being made shall promptly provide any other information reasonably requested by the corporation.

The information required under clauses (b)(ii), (iii), (iv) and (v) of this Section 3 of Article I shall be supplemented by each Requesting Shareholder and any beneficial owner on whose behalf the Special Meeting Request(s) are made not later than 10 days after the record date for the special meeting to disclose such information as of the record date (and with respect to the information required under clause (b)(v) of this Section 3 of Article I, as of a date not more than 5 business days before the scheduled date of the special meeting to which the Special Meeting Request relates).

- (c) A special meeting requested by shareholders in accordance with these by-laws shall be held on such date and at such time as may be fixed by the board of directors in accordance with these by-laws; provided, however, that the date of any such special meeting shall not be more than 120 days after a Special Meeting Request that satisfies the requirements of this Section 3 of Article I is received by the secretary.
- (d) Notwithstanding the foregoing provisions of this Section 3 of Article I, a special meeting requested by shareholders shall not be held if
 - (i) the Special Meeting Request does not comply with this Section 3 of Article I,
 - (ii) the Special Meeting Request relates to an item of business that is not a proper subject for shareholder action under applicable law,

- (iii) the Special Meeting Request is delivered during the period commencing 90 days prior to the first anniversary of the date of the notice of annual meeting for the immediately preceding annual meeting and ending on the earlier of (x) the date of the next annual meeting and (y) 30 calendar days after the first anniversary of the date of the immediately preceding annual meeting,
- (iv) an identical or substantially similar matter (as determined in good faith by the board of directors, a “Similar Matter”) was included on the agenda of any annual or special meeting of shareholders held within 120 days before the Special Meeting Request is delivered or will be included on the agenda at an annual or special meeting to be held within 90 days after the Special Meeting Request is delivered (and for purposes of this clause (iv), the nomination, election or removal of directors, changing the size of the Board of Directors or filling of vacancies and/or newly created directorships resulting from any increase in the authorized number of directors shall be considered an identical or substantially similar matter with respect to all matters involving nomination, election or removal of directors, changing the size of the Board of Directors or filling of vacancies and/or newly created directorships resulting from any increase in the authorized number of directors),
- (v) a Similar Matter is included in the corporation’s notice as an item of business to be brought before a stockholder meeting that has been called or will be called within 30 days after the Special Meeting Request is delivered, or
- (vi) the applicable requirements of Section 9 of this Article I are not complied with.

For purposes of this section, the date of delivery of the Special Meeting Request shall be the first date on which valid Special Meeting Requests constituting the Requisite Percentage have been delivered to the corporation.

- (e) In determining whether a special meeting of shareholders has been requested by shareholders who own shares that are Net Long Shares representing in the aggregate at least the Requisite Percentage, multiple Special Meeting Requests delivered to the secretary will be considered together only if
 - (i) each Special Meeting Request identifies substantially the same purpose or purposes of the special meeting and substantially the same matters proposed to be acted on at the special meeting (in each case as determined in good faith by the board of directors) and
 - (ii) such Special Meeting Requests have been dated and delivered to the secretary within 60 days of the earliest dated Special Meeting Request.

A Requesting Shareholder may revoke a Special Meeting Request at any time by written revocation delivered to the secretary. If at any point the unrevoked (after giving effect to specific written revocation by the shareholder or Section 3(b)(iv) of Article I) valid Special Meeting Requests from Requesting Shareholders represent in the aggregate less than the Requisite Percentage, the board of directors may, in its discretion, cancel the special meeting. If none of the Requesting Shareholders appears or sends a duly authorized representative to present the business to be presented for consideration that was specified in the Special Meeting Request, the corporation need not present such business for a vote at such special meeting.

- (f) Nothing contained herein shall prohibit the board of directors from submitting matters to the shareholders at any special meeting requested by shareholders, and only such business shall be conducted at a special meeting of shareholders as shall have been brought before the meeting pursuant to the corporation’s notice of meeting in accordance with Section 4 of Article I.
 - (g) Nothing in Section 3(b) of Article I or Section 9 of Article I shall limit or impair the right of a shareholder or shareholders under applicable state law to make an application to a court of competent jurisdiction to call a special meeting of shareholders.
4. Except as otherwise provided by statute, written notice of the date, time, place and purpose or purposes of every meeting of shareholders shall be given not less than ten nor more than sixty days before the date of the meeting, either personally

or by mail, to each shareholder of record entitled to vote at the meeting. The business transacted at meetings shall be confined to the purposes specified in the notice.

5. Unless otherwise provided by statute, the holders of shares entitled to cast a majority of votes at a meeting, present either in person or by proxy, shall constitute a quorum at such meeting. Less than a quorum may adjourn.

At a meeting of shareholders at which directors are to be elected and a quorum is present, a nominee for director shall be elected to the Board of Directors if the number of votes cast “for” such nominee’s election exceed the number of votes cast “against” such nominee’s election, excluding abstentions; provided, that directors shall be elected by a plurality of the votes cast if the number of nominees exceeds the number of directors to be elected at such meeting.

6. For the purpose of determining the shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or for the purpose of determining shareholders entitled to receive payment of any dividend or allotment of any right, or for the purpose of any other action, the board of directors may fix in advance a date as the record date for any such determination of shareholders. Such date shall not be more than sixty nor less than ten days before the date of such meeting, nor more than sixty days prior to any other action.
7. The board of directors may, in advance of any shareholders’ meeting, appoint one or more inspectors to act at the meeting or any adjournment thereof. If inspectors are not so appointed by the board or shall fail to qualify, the person presiding at a shareholders’ meeting may, and at the request of any shareholder entitled to vote thereat, shall, make such appointment. In case any person appointed as inspector fails to appear or act, the vacancy may be filled by appointment made by the board in advance of the meeting or at the meeting by the person presiding at the meeting. Each inspector, before entering upon the discharge of the duties of inspector, shall take and sign an oath faithfully to execute such duties at such meeting with strict impartiality and according to the best of the inspector’s ability.

The inspectors shall determine the number of shares outstanding and the voting power of each, the shares represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all shareholders. If there are three or more inspectors, the act of a majority shall govern. On request of the person presiding at the meeting or any shareholder entitled to vote thereat, the inspectors shall make a report in writing of any challenge, question or matter determined by them. Any report made by them shall be prima facie evidence of the facts therein stated, and such report shall be filed with the minutes of the meeting.

8. (a) Inclusion of Shareholder Nominees in corporation’s Proxy Statement.
- (i) Subject to the provisions of this Section 8 of Article I (the “**Proxy Access By-Law**”), if expressly requested in the relevant Nomination Notice (as defined below), the corporation shall include in its proxy statement for any annual meeting of shareholders:
- (A) the names of any person or persons nominated for election (each, a “**Shareholder Nominee**”), who shall also be included on the corporation’s form of proxy and ballot, by any Eligible Shareholder (as defined below) or group of up to 20 Eligible Shareholders that, as determined by the board of directors, has (individually and collectively, in the case of a group) satisfied all applicable conditions and complied with all applicable procedures and requirements set forth in this Section 8 of Article I (such Eligible Shareholder or group of Eligible Shareholders being a “**Nominating Shareholder**”);
- (B) disclosure about each Shareholder Nominee and the Nominating Shareholder required under the rules of the Securities and Exchange Commission or other applicable law to be included in the proxy statement;
- (C) any statement included by the Nominating Shareholder in the Nomination Notice for inclusion in the proxy statement in support of each Shareholder Nominee’s election to the board of directors (subject, without limitation, to Section 8(e)(ii) of Article I, and provided that such statement does not exceed 500 words and fully complies with Section 14 of the Securities Exchange Act of 1934 (as amended (together with the rules and regulations promulgated thereunder), the “**Exchange Act**”), including Rule 14a-9 thereunder (the “**Supporting Statement**”)); and

(D) any other information that the corporation or the board of directors determines, in their discretion, to include in the proxy statement relating to the nomination of each Shareholder Nominee, including, without limitation, any statement in opposition to the nomination, any of the information provided pursuant to this Section 8 of Article I and any solicitation materials or related information with respect to a Shareholder Nominee.

(ii) For purposes of this Section 8 of Article I, any determination to be made by the board of directors may be made by the board of directors, a committee of the board of directors or any officer of the corporation designated by the board of directors or a committee of the board of directors, and any such determination shall be final and binding on the corporation, any Eligible Shareholder, any Nominating Shareholder, any Shareholder Nominee and any other person so long as made in good faith (without any further requirements). The chairman of any annual meeting of shareholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall have the power and duty to determine whether a Shareholder Nominee has been nominated in accordance with the requirements of this Section 8 of Article I and, if not so nominated, shall direct and declare at the meeting that such Shareholder Nominee shall not be considered.

(b) *Maximum Number of Shareholder Nominees.*

(i) The corporation shall not be required to include in the proxy statement for an annual meeting of shareholders more Shareholder Nominees than that number of directors constituting the greater of two or 20% of the total number of directors of the corporation then serving on the last day on which a Nomination Notice may be submitted pursuant to this Section 8 of Article I (rounded down to the nearest whole number) (the “**Maximum Number**”).

(ii) The Maximum Number for a particular annual meeting shall be reduced by:

- (A) each Shareholder Nominee whose nomination is withdrawn by the Nominating Shareholder or who becomes unwilling to serve on the board of directors;
- (B) each Shareholder Nominee who ceases to satisfy, or each Shareholder Nominee of a Nominating Shareholder that ceases to satisfy, the eligibility requirements in this Section 8 of Article I, as determined by the board of directors;
- (C) each Shareholder Nominee who the board of directors itself decides to nominate for election at such annual meeting; and
- (D) the number of incumbent directors who had been Shareholder Nominees at any of the preceding two annual meetings of shareholders and whose reelection at the upcoming annual meeting of shareholders is being recommended by the board of directors.

In the event that one or more vacancies for any reason occurs on the board of directors after the deadline for submitting a Nomination Notice as set forth in Section 8(d) of Article I but before the date of the annual meeting of shareholders and the board of directors resolves to reduce the size of the board of directors in connection therewith, the Maximum Number shall be calculated based on the number of directors then serving in office as so reduced.

(iii) If the number of Shareholder Nominees pursuant to this Section 8 of Article I for any annual meeting of shareholders exceeds the Maximum Number then, promptly upon notice from the corporation, each Nominating Shareholder will select one Shareholder Nominee for inclusion in the proxy statement until the Maximum Number is reached, going in order of the amount (largest to smallest) of shares of the corporation’s common stock that each Nominating Shareholder disclosed as owned in its Nomination Notice, with the process repeated if the Maximum Number is not reached after each Nominating Shareholder has selected one Shareholder Nominee. If, after the deadline for submitting a Nomination Notice as set forth in Section 8(d) of Article I, a Nominating Shareholder or a Shareholder Nominee ceases to satisfy the eligibility requirements in

this Section 8 of Article I, as determined by the board of directors, a Nominating Shareholder withdraws its nomination or a Shareholder Nominee becomes unwilling to serve on the board of directors, whether before or after the mailing or other distribution of the definitive proxy statement, then the corporation:

- (A) shall not be required to include in its proxy statement or on any ballot or form of proxy the Shareholder Nominee or any successor or replacement Shareholder Nominee proposed by the Nominating Shareholder or by any other Nominating Shareholder and
- (B) may otherwise communicate to its shareholders, including without limitation by amending or supplementing its proxy statement or ballot or form of proxy, that the Shareholder Nominee will not be included as a Shareholder Nominee in the proxy statement or on any ballot or form of proxy and will not be voted on at the annual meeting of shareholders.

(c) *Eligibility of Nominating Shareholder.*

- (i) An “**Eligible Shareholder**” is a person who has either
 - (A) been a record holder of the shares of common stock of the corporation used to satisfy the eligibility requirements in this Section 8(c) of Article I continuously for the three-year period specified in subsection (c)(ii) of this Section 8 or
 - (B) provides to the secretary, within the time period referred to in Section 8(d) of Article I, evidence of continuous ownership of such shares for such three-year period from one or more securities intermediaries in a form that the board of directors determines acceptable.
- (ii) An Eligible Shareholder or group of up to 20 Eligible Shareholders may submit a nomination in accordance with this Section 8 of Article I only if the person or group (in the aggregate) has continuously owned at least the Minimum Number (as defined below) (as adjusted for any stock splits, reverse stock splits, stock dividends or similar events) of shares of the corporation’s common stock throughout the three-year period preceding and including the date of submission of the Nomination Notice, and continues to own at least the Minimum Number of shares through the date of the annual meeting of shareholders. The following shall be treated as one Eligible Shareholder if such Eligible Shareholder shall provide together with the Nomination Notice documentation satisfactory to the board of directors that the Eligible Shareholder consists only of two or more funds that are:
 - (A) under common management and investment control;
 - (B) under common management and funded primarily by the same employer; or
 - (C) a “group of investment companies” (as defined in the Investment Company Act of 1940, as amended).

In the event of a nomination by a Nominating Shareholder that includes more than one Eligible Shareholder, any and all requirements and obligations for a given Eligible Shareholder shall apply to each member of such group; provided, however, that the Minimum Number shall apply to the aggregate ownership of the group of Eligible Shareholders constituting the Nominating Shareholder. Should any Eligible Shareholder cease to satisfy the eligibility requirements in this Section 8 of Article I, as determined by the board of directors, or withdraw from a group of Eligible Shareholders constituting a Nominating Shareholder at any time prior to the annual meeting of shareholders, the Nominating Shareholder shall be deemed to own only the shares held by the remaining Eligible Shareholders. As used in this Section 8 of Article I, any reference to a “group” or “group of Eligible Shareholders” refers to any Nominating Shareholder that consists of more than one Eligible Shareholder and to all the Eligible Shareholders that make up such Nominating Shareholder.

- (iii) The “**Minimum Number**” of shares of the corporation’s common stock means 3% of the number of outstanding shares of common stock of the corporation as of the most recent date for which such amount is

given in any filing by the corporation with the Securities and Exchange Commission prior to the submission of the Nomination Notice.

- (iv) For purposes of this Section 8 of Article I, an Eligible Shareholder “owns” only those outstanding shares of the corporation’s common stock as to which such Eligible Shareholder possesses both:
- (A) the full voting and investment rights pertaining to such shares and
 - (B) the full economic interest in (including the opportunity for profit from and the risk of loss on) such shares; provided that the number of shares calculated in accordance with clauses (A) and (B) of this Section (c)(iv) shall not include any shares: (w) purchased or sold by such Eligible Shareholder or any of its affiliates in any transaction that has not been settled or closed, (x) that were entered into short positions or otherwise sold short by such Eligible Shareholder, (y) borrowed by such Eligible Shareholder or any of its affiliates for any purpose or purchased by such Eligible Shareholder or any of its affiliates pursuant to an agreement to resell or subject to any other obligation to resell to another person, or (z) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar agreement entered into by such Eligible Shareholder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of outstanding capital stock of the corporation, in any such case which instrument or agreement has, or is intended to have, or if exercised would have, the purpose or effect of:
 - (1) reducing in any manner, to any extent or at any time in the future, such Eligible Shareholder’s or any of its affiliates’ full right to vote or direct the voting of any such shares and/or
 - (2) hedging, offsetting or altering to any degree any gain or loss arising from the full economic ownership of such shares by such Eligible Shareholder or any of its affiliates.

An Eligible Shareholder “owns” shares held in the name of a nominee or other intermediary so long as the Eligible Shareholder retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares. An Eligible Shareholder’s ownership of shares shall be deemed to continue during any period in which the Eligible Shareholder has delegated any voting power by means of a proxy, power of attorney or other similar instrument or arrangement that is revocable at any time by the Eligible Shareholder. An Eligible Shareholder’s ownership of shares shall be deemed to continue during any period in which the Eligible Shareholder has loaned such shares; provided that

- (A) the Eligible Shareholder both has the power to recall such loaned shares on five business days’ notice and recalls the loaned shares promptly upon being notified that its Shareholder Nominee will be included in the corporation’s proxy materials for the relevant annual meeting and
- (B) the Eligible Shareholder holds the recalled shares through the annual meeting.

The terms “owned,” “owning” and other variations of the word “own” shall have correlative meanings. Whether outstanding shares of the corporation are “owned” for these purposes shall be determined by the board of directors. For purposes of this Section 8(c)(iv) of Article I, the term “affiliate” or “affiliates” shall have the meaning ascribed thereto under the General Rules and Regulations under the Exchange Act.

- (v) No Eligible Shareholder shall be permitted to be in more than one group constituting a Nominating Shareholder, and if any Eligible Shareholder appears as a member of more than one group, such Eligible Shareholder shall be deemed to be a member of only the group that has the largest ownership position as reflected in the Nomination Notice.
- (d) *Nomination Notice.*

To nominate a Shareholder Nominee pursuant to this Section 8 of Article I, the Nominating Shareholder (including, for the avoidance of doubt, each group member in the case of a Nominating Shareholder consisting of a group of

Eligible Shareholders) must deliver to the secretary at the principal offices of the corporation all of the following information and documents in a form that the board of directors determines acceptable (collectively, the “**Nomination Notice**”), not less than 120 days nor more than 150 days prior to the anniversary of the date that the corporation mailed its proxy statement for the prior year’s annual meeting of shareholders; provided, however, that if (and only if) the annual meeting of shareholders is not scheduled to be held within a period that commences 30 days before and concludes 30 days after the first anniversary date of the preceding year’s annual meeting of shareholders (an annual meeting date outside such period being referred to herein as an (“**Other Meeting Date**”)), the Nomination Notice shall be given in the manner provided herein by the later of the close of business on the date that is 180 days prior to such Other Meeting Date or the tenth day following the date such Other Meeting Date is first publicly announced or disclosed (in no event shall the adjournment or postponement of an annual meeting, or the public announcement thereof, commence a new time period (or extend any time period) for the giving of the Nomination Notice):

- (i) one or more written statements from the record holder of the shares (and from each intermediary through which the shares are or have been held during the requisite three-year holding period) verifying that, as of a date within seven (7) calendar days prior to the date of the Nomination Notice, the Nominating Shareholder owns, and has continuously owned for the preceding three (3) years, the Minimum Number of shares, and the Nominating Shareholder’s agreement to provide, within five (5) business days after the record date for the annual meeting, written statements from the record holder and intermediaries verifying the Nominating Shareholder’s continuous ownership of the Minimum Number of shares through the record date;
- (ii) an agreement to hold the Minimum Number of shares through the annual meeting and to provide immediate notice if the Nominating Shareholder ceases to own the Minimum Number of shares at any time prior to the date of the annual meeting;
- (iii) a Schedule 14N (or any successor form) relating to each Shareholder Nominee, completed and filed with the Securities and Exchange Commission by the Nominating Shareholder, as applicable, in accordance with Securities and Exchange Commission rules;
- (iv) the written consent of each Shareholder Nominee to being named in any proxy statement, form of proxy and ballot for the applicable meeting as a Shareholder Nominee and to serving as a director if elected;
- (v) a written notice, in a form deemed satisfactory by the board of directors, of the nomination of each Shareholder Nominee that includes the following additional information, agreements, representations and warranties by the Nominating Shareholder:
 - (A) the information that would be required to be set forth in a shareholder’s notice of nomination pursuant to Section 9 (a)(iii) of Article I;
 - (B) a representation and warranty that the Nominating Shareholder acquired the securities of the corporation in the ordinary course of business and did not acquire, and is not holding, securities of the corporation for the purpose or with the intent of changing or influencing control of the corporation;
 - (C) a representation and warranty that the Nominating Shareholder has not nominated and will not nominate for election to the board of directors at the annual meeting any person other than such Nominating Shareholder’s Shareholder Nominee(s);
 - (D) a representation and warranty that the Nominating Shareholder has not engaged in and will not engage in a “solicitation” within the meaning of Rule 14a-1(l) under the Exchange Act (without reference to the exception in Section 14a-1(l)(2)(iv)) with respect to the annual meeting, other than with respect to such Nominating Shareholder’s Shareholder Nominee(s) or any nominee of the board of directors;
 - (E) a representation and warranty that the Nominating Shareholder will not use any proxy card other than the corporation’s proxy card in soliciting shareholders in connection with the election of a Shareholder Nominee at the annual meeting;

- (F) a representation and warranty that each Shareholder Nominee’s candidacy or, if elected, membership on the board of directors would not violate the corporation’s certificate of incorporation, these by-laws, applicable state or federal law or the rules of any stock exchange on which the corporation’s securities are traded;
 - (G) a representation and warranty that each Shareholder Nominee:
 - (1) does not have any direct or indirect relationship with the corporation that would cause the Shareholder Nominee to be deemed not independent pursuant to the corporation’s standards in its Corporate Governance Guidelines and otherwise qualifies as independent under any other standards established by the corporation and the rules of the primary stock exchange on which the corporation’s shares of common stock are traded;
 - (2) meets the audit committee and compensation committee independence requirements under the rules of the primary stock exchange on which the corporation’s shares of common stock are traded;
 - (3) is a “non-employee director” for the purposes of Rule 16b-3 under the Exchange Act (or any successor rule);
 - (4) is an “outside director” for the purposes of Section 162(m) of the Internal Revenue Code (or any successor provision);
 - (5) is not and has not been subject to any event specified in Rule 506(d)(1) of Regulation D (or any successor rule) under the Securities Act of 1933 or Item 401(f) of Regulation S-K (or any successor rule) under the Exchange Act, without reference to whether the event is material to an evaluation of the ability or integrity of such Shareholder Nominee; and
 - (6) meets the director qualifications set forth in the corporation’s Corporate Governance Guidelines and any other standards established by the Board and corporation;
 - (H) a representation and warranty that the Nominating Shareholder satisfies the eligibility requirements set forth in Section 8(c) of Article I;
 - (I) a representation and warranty that the Nominating Shareholder intends to continue to satisfy the eligibility requirements described in Section 8(c) of Article I through the date of the annual meeting;
 - (J) details of any position of a Shareholder Nominee as an officer or director of any competitor (that is, any entity that produces products or provides services that compete with or are alternatives to the principal products produced or services provided by the corporation or its affiliates) of the corporation, and of any other relationship with or financial interest in any competitor, within the three years preceding the submission of the Nomination Notice;
 - (K) if desired, a Supporting Statement; and
 - (L) in the case of a nomination by a Nominating Shareholder comprised of a group, the designation by all Eligible Shareholders in such group of one Eligible Shareholder that is authorized to act on behalf of the Nominating Shareholder with respect to matters relating to the nomination, including withdrawal of the nomination;
- (vi) an executed agreement, in a form deemed satisfactory by the board of directors, pursuant to which the Nominating Shareholder (including in the case of a group, each Eligible Shareholder in that group that comprises the Nominating Shareholder) agrees:
- (A) to comply with all applicable laws, rules and regulations in connection with the nomination, solicitation and election;

- (B) to file any written solicitation or other communication with the corporation's shareholders relating to one or more of the corporation's directors or director nominees or any Shareholder Nominee with the Securities and Exchange Commission, regardless of whether any such filing is required under any rule or regulation or whether any exemption from filing is available for such materials under any rule or regulation;
 - (C) to assume all liability stemming from an action, suit or proceeding concerning any actual or alleged legal or regulatory violation arising out of any communication by the Nominating Shareholder or any of its Shareholder Nominees with the corporation, its shareholders or any other person in connection with the nomination or election of directors, including, without limitation, the Nomination Notice;
 - (D) to indemnify and hold harmless (jointly and severally with all other Eligible Shareholders, in the case of a group of Eligible Shareholders that comprise the Nominating Shareholder) the corporation and each of its directors, officers and employees individually against any liability, loss, damages, expenses or other costs (including attorneys' fees) incurred in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the corporation or any of its directors, officers or employees arising out of or relating to a failure or alleged failure of the Nominating Shareholder or any of its Shareholder Nominees to comply with, or any breach or alleged breach of, its or their obligations, agreements or representations under this Section 8 of Article I;
 - (E) in the event that any information included in the Nomination Notice or any other communication by the Nominating Shareholder (including with respect to any Eligible Shareholder included in a group) with the corporation, its shareholders or any other person in connection with the nomination or election ceases to be true and accurate in any material respect (or omits a material fact necessary to make the statements made not misleading), to promptly (and in any event within 48 hours of discovering such misstatement or omission) notify the corporation and any other recipient of such communication of the misstatement or omission in such previously provided information and of the information that is required to correct the misstatement or omission; and
 - (F) in the event that the Nominating Shareholder (including any Eligible Shareholder in a group) has failed to continue to satisfy the eligibility requirements described in Section 8(c) of Article I, to promptly notify the corporation; and
- (vii) an executed agreement, in a form deemed satisfactory by the board of directors, by each Shareholder Nominee:
- (A) to provide to the corporation such other information and certifications, including completion of the corporation's director nominee questionnaire, as the corporation may reasonably request;
 - (B) at the reasonable request of the board of directors, any committee or any person employed by the corporation, to meet with the board of directors, any committee or any person employed by the corporation to discuss matters relating to the nomination of such Shareholder Nominee to the board of directors, including the information provided by such Shareholder Nominee to the corporation in connection with his or her nomination and such Shareholder Nominee's eligibility to serve as a member of the board of directors;
 - (C) that such Shareholder Nominee has read and agrees, if elected, to comply with all of the corporation's corporate governance, conflict of interest, confidentiality, and stock ownership and trading policies and guidelines, and any other corporation policies and guidelines applicable to directors, and understands that any material breach of these by a director may constitute cause for removal from the board of directors, without limiting any other causes for removal under the corporation's certificate of incorporation, these by-laws or otherwise under law; and
 - (D) that such Shareholder Nominee is not and will not become a party to:

- (1) any agreement, arrangement or understanding with any person with respect to any direct or indirect compensation, reimbursement or indemnification in connection with being a Shareholder Nominee that has not been fully disclosed to the corporation prior to or concurrently with the Nominating Shareholder's submission of the Nomination Notice;
 - (2) any agreement, arrangement, or understanding with any person other than the corporation with respect to any direct or indirect compensation, reimbursement, or indemnification in connection with service or action as a director of the corporation;
 - (3) any agreement, arrangement or understanding with any person or entity as to how such Shareholder Nominee, if elected, will vote or act on any issue (a "**Voting Commitment**") except such as is already existing and has been fully disclosed to the corporation prior to or concurrently with the Nominating Shareholder's submission of the Nomination Notice; or
 - (4) any Voting Commitment that could limit or interfere with such Shareholder Nominee's ability to comply, if elected, with his or her fiduciary duties under applicable law. A material breach by a director of any of the foregoing may constitute cause for removal of such director by the board of directors.
- (viii) The information and documents required by this Section 8(d) of Article I to be provided by the Nominating Shareholder shall be:
- (A) provided with respect to and executed by each Eligible Shareholder in the group in the case of a Nominating Shareholder comprised of a group of Eligible Shareholders and
 - (B) provided with respect to the persons specified in Instructions 1 and 2 to Items 6(c) and (d) of Schedule 14N (or any successor item) (x) in the case of a Nominating Shareholder that is an entity and (y) in the case of a Nominating Shareholder that is a group that includes one or more Eligible Shareholders that are entities.

The Nomination Notice shall be deemed submitted on the date on which all of the information and documents referred to in this Section 8(d) of Article I (other than such information and documents contemplated to be provided after the date the Nomination Notice is provided) have been delivered to and received by the secretary.

(e) *Exceptions.*

- (i) Notwithstanding anything to the contrary contained in this Section 8 of Article I, the corporation may omit from its proxy statement any Shareholder Nominee and any information concerning such Shareholder Nominee (including a Nominating Shareholder's Supporting Statement) and no vote on such Shareholder Nominee will occur (notwithstanding that proxies in respect of such vote may have been received by the corporation), and the Nominating Shareholder may not, after the last day on which a Nomination Notice would be timely, cure in any way any defect preventing the nomination of such Shareholder Nominee, if:
 - (A) the corporation receives a notice pursuant to the Advance Notice By-Law (as defined below) that a shareholder intends to nominate a candidate for director at the annual meeting, whether or not such notice is subsequently withdrawn or made the subject of a settlement with the corporation;
 - (B) the Nominating Shareholder (or, in the case of a Nominating Shareholder consisting of a group of Eligible Shareholders, the Eligible Shareholder that is authorized to act on behalf of the Nominating Shareholder), or any qualified representative thereof, does not appear at the annual meeting to present the nomination submitted pursuant to this Section 8 of Article I, the Nominating Shareholder withdraws its nomination or the chairman of the annual meeting declares that such nomination was not made in accordance with the procedures prescribed by this Section 8 of Article I and shall therefore be disregarded;

- (C) the board of directors determines that such Shareholder Nominee's nomination or election to the board of directors would result in the corporation violating or failing to be in compliance with these by-laws or the certificate of incorporation or any applicable law, rule or regulation to which the corporation is subject, including any rules or regulations of any stock exchange on which the corporation's securities are traded;
 - (D) such Shareholder Nominee was nominated for election to the board of directors pursuant to this Section 8 of Article I at one of the corporation's two preceding annual meetings of shareholders and either withdrew from or became ineligible or unavailable for election at such annual meeting or received a vote of less than 25% of the shares of common stock entitled to vote for such Shareholder Nominee;
 - (E) such Shareholder Nominee has been, within the past three years, an officer or director of a competitor, as defined for purposes of Section 8 of the Clayton Antitrust Act of 1914, as amended;
 - (F) the corporation has previously removed the Shareholder Nominee, when elected as a director, for cause pursuant to these by-laws, the certificate of incorporation or otherwise under law;
 - (G) the corporation is notified, or the board of directors determines, that the Nominating Shareholder or such Shareholder Nominee has failed to continue to satisfy the eligibility requirements described in Section 8(c) of Article I, any of the representations and warranties made in the Nomination Notice ceases to be true and accurate in all material respects (or omits a material fact necessary to make the statements made not misleading), such Shareholder Nominee becomes unwilling or unable to serve on the board of directors or any material violation or breach occurs of any of the obligations, agreements, representations or warranties of the Nominating Shareholder or such Shareholder Nominee under this Section 8 of Article I.
- (ii) Notwithstanding anything to the contrary contained in this Section 8 of Article I, the corporation may omit from its proxy statement, or may supplement or correct, any information, including all or any portion of the Supporting Statement or any other statement in support of a Shareholder Nominee included in the Nomination Notice, if the board of directors determines that:
- (A) such information is not true in all material respects or omits a material statement necessary to make the statements made not misleading;
 - (B) such information directly or indirectly impugns the character, integrity or personal reputation of, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation, with respect to, any individual, corporation, partnership, association or other entity, organization or governmental authority;
 - (C) the inclusion of such information in the proxy statement would otherwise violate the Securities and Exchange Commission proxy rules or any other applicable law, rule or regulation; or
 - (D) the inclusion of such information in the proxy statement would impose a material risk of liability upon the corporation.
- (f) The corporation may solicit against, and include in the proxy statement its own statement relating to, any Shareholder Nominee.

9. (a) *Nomination of Directors or Submission of Other Business at Annual Meetings of Shareholders*

- (i) Nominations of persons for election to the board of directors and the proposal of other business to be considered by shareholders (other than matters properly brought under Rule 14a-8 promulgated under the Exchange Act) at an annual meeting of shareholders may be made only:
 - (A) pursuant to the corporation's notice of meeting (or any supplement thereto),
 - (B) by or at the direction of the board of directors,

- (C) by any shareholder of the corporation who is a shareholder of record at the time of giving of notice provided for in paragraph (ii) of this Section 9(a) of Article I and at the time of the annual meeting, who shall be entitled to vote at the meeting and who complies with the procedures and information requirements set forth in Section 9 (a) and (c) of Article I (the “**Advance Notice By-Law**”), including without limitation providing timely updates and supplements to the information contained therein, or
- (D) solely with respect to nominations of persons for election to the board of directors, in accordance with the requirements of the Proxy Access By-Law;

and except as otherwise required by law, any failure to comply with these procedures shall result in the nullification of such nomination or proposal of other business.

- (ii) For nominations or proposals of other business to be properly brought before an annual meeting of shareholders by a shareholder pursuant to clause (C) of Section 9(a)(i) of Article I, the shareholder must have given timely notice thereof in writing to the secretary. To be timely, a shareholder of record’s notice shall be delivered by registered mail, and received by the secretary at the principal offices of the corporation not later than the close of business on the date that is 120 days nor earlier than close of business on the date that is 150 days prior to the anniversary date of the prior year’s annual meeting of shareholders; provided, however, that if (and only if) the annual meeting of shareholders is scheduled for an Other Meeting Date, then to be timely, such notice must be received by the corporation by the later of the close of business on the date that is 180 days prior to such Other Meeting Date or the close of business on the date that is the tenth day following the date such Other Meeting Date is first publicly announced or disclosed. In no event shall the recess, adjournment or postponement of any meeting, or the public announcement thereof, commence a new time period (or extend any time period) for the giving of a shareholder’s notice as described above, and a shareholder shall not be entitled to make additional or substitute nominations following the expiration of the time periods set forth in these by-laws.

The number of nominees a shareholder may nominate for election at an annual meeting (or in the case of a shareholder giving the notice on behalf of a beneficial owner, the number of nominees a shareholder may nominate for election at an annual meeting on behalf of such beneficial owner) shall not exceed the number of directors to be elected at such annual meeting.

- (iii) In accordance with the applicable time periods prescribed for delivery of notice under Section 9(a)(ii) of Article I, a shareholder’s notice to the secretary shall set forth:
 - (A) as to each person whom the shareholder proposes to nominate for election or reelection as a director:
 - (1) all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Exchange Act including such person’s written consent to being named in the proxy statement as a nominee and to serving as a director for the full term if elected;
 - (2) a description of all direct and indirect compensation and other agreements, arrangements and understandings, between or among the shareholder, any Shareholder Associated Person or any Substantial Participant (as each such term is defined below), on the one hand, and each such nominee, and his or her respective affiliates and associates on the other hand, relating to or in connection with the nomination or proposal or any related solicitation or campaign, including, without limitation, (i) a representation as to whether such person is a principal, employee or affiliate of the shareholder, any Shareholder Associated Person or any Substantial Participant, and (ii) all information that would be required to be disclosed pursuant to Item 404 promulgated under Regulation S-K under the Exchange Act if the shareholder making the nomination or proposal, any Shareholder Associated Person or any Substantial Participant were the “registrant” for purposes of such rule and the nominee were a director or executive officer of such registrant; and

- (3) completed and signed questionnaire(s), representation(s) and agreement(s) required by Section 9(c)(i) of Article I;
- (B) as to the shareholder giving the notice and each beneficial owner, if any, on whose behalf the proposed nomination or proposal of other business is made:
- (1) the name and address of such shareholder (as they appear on the corporation's books) and of any Shareholder Associated Person and Substantial Participant;
 - (2) the number of shares of capital stock of the corporation that are held of record or are beneficially owned by such shareholder, by any Shareholder Associated Person or by any Substantial Participant, including any class or series of the corporation of which such shareholder, any Shareholder Associated Person or any Substantial Participant have the right to acquire beneficial ownership;
 - (3) a description of any agreement, arrangement or understanding between or among such shareholder, any Shareholder Associated Person or any Substantial Participant, any of their respective affiliates or associates, and any other person or persons (including their names) in connection with or relating to the proposal of such nomination or other business, any related solicitation or campaign, the funding of such campaign or the voting of shares of the corporation;
 - (4) a description of any agreement, arrangement or understanding (including, regardless of the form of settlement, any derivative, long or short positions, profit interests, forwards, futures, swaps, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions and borrowed or loaned shares) that has been entered into by or on behalf of, or any other agreement, arrangement or understanding that has been made, the effect or intent of which is to create or mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such shareholder, any Shareholder Associated Person, any Substantial Participant or any director nominee with respect to the corporation's securities;
 - (5) any direct or indirect interest of such shareholder, any Shareholder Associated Person or any Substantial Participant in any contract with the corporation or any affiliate of the corporation (including, in any such case, any employment agreement, collective bargaining agreement or consulting agreement);
 - (6) a representation as to whether such shareholder, any Shareholder Associated Person or any Substantial Participant intends to propose any other business in addition to the such shareholder's nomination of directors at the annual meeting;
 - (7) with respect to any proposals of business other than the nomination of directors brought before the annual meeting by such shareholder, if any, (i) the information required by Section 3(b)(i) of Article I (as if Section 3(b)(i) applies to an annual meeting and other business brought before an annual meeting) and (ii) a brief description of any material interest in such business of the shareholder, any Shareholder Associated Person or any Substantial Participant;
 - (8) any other information relating to such shareholder, or any Shareholder Associated Person, or director nominee that would be required to be disclosed in a proxy statement or other filing required to be made in connection with the solicitation of proxies in support of such nominee pursuant to Section 14 of the Exchange Act; and
 - (9) such other information relating to the proposed nomination or other business as the corporation may reasonably require to determine whether such proposed nomination or other business is a proper matter for shareholder action; and
- (C) as to the shareholder giving the notice and any Shareholder Associated Person, completed and signed instruments containing:

- (1) a representation that the shareholder is a holder of record of stock of the corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to bring such nomination or other business before the meeting; and
- (2) a representation as to whether such shareholder, any Shareholder Associated Person or any Substantial Participant intends or is part of a group (whether at, below or above 5% in beneficial ownership) that intends to
 - (i) deliver a proxy statement and/or form of proxy to holders (including any beneficial owners pursuant to Rule 14b-1 and Rule 14b-2 promulgated under the Exchange Act) of, in the case of a nomination, at least the percentage of the voting power of stock issued and outstanding that is reasonably believed by such shareholder to be sufficient to elect each such nominee, or, in the case of a business proposal, at least the percentage of the voting power of stock issued and outstanding that is required to approve or adopt the proposal, in a manner consistent with the requirements of Rule 14a-16 as required by law, (ii) otherwise solicit proxies from shareholders in support of such nomination or proposal and/or (iii) solicit the holders of shares representing at least 67% of the voting power of shares entitled to vote on the election of directors in support of director nominees other than the corporation's nominees pursuant to Rule 14a-19 promulgated under the Exchange Act.

In addition, to be considered timely, a shareholder's notice shall comply with Section 9(c) of Article I, and shall further be updated and supplemented, if necessary, so that the information provided or required to be provided in such notice shall be true and correct as of the record date for the annual meeting and as of the date that is 10 days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the secretary at the principal offices of the corporation not later than five days after the record date for the meeting in the case of the update and supplement required to be made as of the record date, and not later than eight days prior to the date for the meeting or any adjournment or postponement thereof in the case of the update and supplement required to be made as of 10 days prior to the meeting or any adjournment or postponement thereof. For the avoidance of doubt, the obligation to update and supplement as set forth in this Section 9(a)(iii) of Article I or any other Section of these by-laws shall not limit the corporation's rights with respect to any deficiencies in any notice provided by a shareholder, extend any applicable deadlines under these by-laws or enable or be deemed to permit a shareholder who has previously submitted a notice under these by-laws to amend or update any such notice, including by changing or adding nominees proposed to be brought before a meeting of shareholders.

- (iv) For purposes of these by-laws, a "**Shareholder Associated Person**" of any shareholder means: (A) any beneficial owner of shares of stock of the corporation on whose behalf any nomination or proposal is made by such shareholder; (B) any affiliates or associates of such shareholder or any beneficial owner described in clause (A); and (C) any affiliate who controls such shareholder or any beneficial owner described in clause (A).
- (v) For purposes of these by-laws, a "**Substantial Participant**" with respect to any shareholder means a party substantially participating in such shareholder's solicitation campaign by voting agreement, contributing to funding the campaign or making substantial efforts to assist such shareholder in the campaign or in soliciting proxies, including the nominee, provided that a party will not be deemed a Substantial Participant for this purpose just by virtue of being a proxy solicitor or any other shareholder that publicly or privately indicates its intention to vote with such shareholder, supports such shareholder's position or encourages other shareholders to vote with such shareholder.

(b) *Nominations of Directors or Submission of Other Business by Shareholders at Special Meetings of Shareholders.*

The proposal by shareholders of any business other than nomination of directors to be conducted at a special meeting of shareholders may be made only in accordance with Section 3(b) of Article I.

Nominations of persons for election to the board of directors of the corporation at a special meeting of shareholders may be made by shareholders only:

- (i) in accordance with Section 3(b); or

- (ii) if the election of directors is included as business to be brought before a special meeting that is called by the board of directors, the chairman of the board, or the president in accordance with Section 3(a) in the corporation's notice of meeting, then only by any shareholder of the corporation who is a shareholder of record at the time the notice provided for in this Section 9(b) of Article I is delivered to the Secretary and at the time of the special meeting, who shall be entitled to vote at the meeting and who complies with the procedures set forth in this Section 9(b) and (c) of Article I, including without limitation providing timely updates and supplements to the information contained therein.

For nominations to be properly brought by a shareholder before a special meeting of shareholders pursuant to this Section 9(b) of Article I, the shareholder must have given timely notice thereof in writing to the secretary. To be timely, a shareholder's notice shall be delivered to or mailed and received at the principal offices of the corporation:

- (i) not earlier than close of business on the date that is 150 days prior to the date of the special meeting, nor
- (ii) later than close of business on the date that is the later of 120 days prior to the date of the special meeting or the 10th day following the day on which public announcement of the date of the special meeting was first made.

A shareholder's notice to the secretary shall comply with the applicable time periods prescribed for delivery of notice under this Section 9(b) of Article I, and otherwise shall comply with the notice, information and other requirements of Section 9(a)(iii) of Article I as if Section 9(a)(iii) applies to a special meeting, including the requirements of Section 9(c).

(c) *General.*

- (i) To be eligible to be a nominee for election as a director, the proposed nominee must provide to the secretary in accordance with the applicable time periods prescribed for delivery of notice under Section 9(a)(ii) or Section 9(b) of Article I:
 - (A) all fully completed and signed questionnaires prepared by the corporation (including those questionnaires required of the corporation's directors and any other questionnaire the corporation determines is necessary or advisable to assess whether a nominee will satisfy any qualifications or requirements imposed by the certificate of incorporation of the corporation or these by-laws, any law, rule, regulation or listing standard that may be applicable to the corporation, and the corporation's corporate governance policies and guidelines), in the form provided by the secretary at the written request of the nominating shareholder;
 - (B) a written representation and agreement, in the form provided by the secretary at the request of the nominating shareholder, that the nominee has read and agrees, if elected, to comply with all of the corporation's corporate governance, conflict of interest, confidentiality, and stock ownership and trading policies and guidelines, and any other corporation policies and guidelines applicable to directors, and understands that any material breach of these by a director may constitute cause for removal from the board of directors, without limiting any other causes for removal under the corporation's certificate of incorporation, these by-laws or otherwise under law;
 - (C) a written representation that the nominee has (i) informed any other public company board of directors on which he or she serves of his or her intention to serve on the corporation's board of directors if elected, and (ii) obtained all required third-party consents to serve on the corporation's board of directors if elected, including from such other public company board of directors;
 - (D) a written representation and agreement that the nominee is not and will not become a party to a Voting Commitment except such as is already existing and has been fully disclosed to the corporation prior to or concurrently with the nominating shareholder's submission of notice under this Article 9;
 - (E) a written representation and agreement that the nominee is not and will not become a party to any agreement, arrangement or understanding with any person with respect to any direct or indirect

compensation, reimbursement or indemnification in connection with being a nominee for director of the corporation that has not been fully disclosed to the corporation prior to or concurrently with the nominating shareholder's submission of notice under this Article 9; and

- (F) a written representation and agreement that the nominee is not and will not become a party to any agreement, arrangement, or understanding with any person other than the corporation with respect to any direct or indirect compensation, reimbursement, or indemnification in connection with service or action as a director of the corporation.

A material breach by a director of any of the foregoing may constitute cause for removal of such director by the board of directors. At the request of the board of directors, any person nominated by the board of directors for election as a director shall furnish to the secretary the information that is required to be set forth in a shareholder's notice of nomination that pertains to the nominee.

In addition, the corporation may require any proposed nominee to furnish such other information as may reasonably be required by the corporation, which may be in the form of an interview with a nominee at the request of the board of directors, to determine the eligibility of such proposed nominee to serve as an independent director of the corporation or that could be material to a reasonable shareholder's understanding of the independence, or lack thereof, of such nominee.

- (ii) No person shall be eligible to be nominated by a shareholder to serve as a director of the corporation at an annual or special meeting unless nominated in accordance with the requirements set forth in this Section 9, or Section 8 of Article I as well as the requirements of Section 3 of this Article I. No business proposed by a shareholder shall be conducted at an annual or special meeting except in accordance with the requirements set forth in Section 3 and Section 9 of this Article I.
- (iii) With respect to nominations or submissions of other business made pursuant to this Section 9 of Article I, without limiting any remedy available to the corporation, a shareholder may not present such nominations or business at an annual or special meeting (and any such nominee shall be disqualified from standing for election or re-election), notwithstanding that proxies in respect of such vote may have been received by the corporation, if such shareholder, any beneficial owner, any Shareholder Associated Person, any Substantial Participant or any nominee for director acted contrary to any representation, certification or agreement required by this Section 9, otherwise failed to fully comply with this Section 9 (or with any law, rule or regulation identified in this Section), including without limitation failure to provide timely updates and supplements as required, or provided incomplete, false or misleading information to the Corporation.
- (iv) The chairman of the meeting shall, if the facts warrant, determine and declare to the meeting that a nomination or submission of other business was not made in accordance with the procedures prescribed by these by-laws (or any applicable rule or regulation identified herein), and if the chairman should so determine, the chairman shall so declare to the meeting, and the defective nomination or submission of other business shall be disregarded. Unless otherwise required by law, if the shareholder (or a qualified representative of the shareholder) does not appear at the annual or special meeting of shareholders of the corporation to present a nomination or submission of other business (whether pursuant to the requirements of these by-laws or in accordance with Rule 14a-8 promulgated under the Exchange Act), such nomination or submission of other business shall be disregarded, notwithstanding that proxies in respect of such vote may have been received by the corporation and counted for purposes of determining a quorum. For purposes of this Section 9 and Section 8 of Article I, to be considered a qualified representative of the shareholder, a person must be a duly authorized officer, manager or partner of such shareholder or must be authorized by a writing executed by such shareholder or an electronic transmission delivered by such shareholder to act for such shareholder as proxy at the meeting of shareholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of shareholders.
- (v) Without limiting the foregoing provisions of this Section 9 or the provisions of Section 8 of Article I, a shareholder shall also comply with all applicable requirements of the Exchange Act with respect to the matters set forth in this Section 9 or in Section 8 of Article I; provided, however, that any references in these by-laws to the Exchange Act are not intended to and shall not limit any requirements applicable to nominations or other

business that are set forth in this Section 9 or Section 8 of Article I, and with respect to nomination of directors, compliance with this Section 9 or compliance with the requirements of Section 8 of Article I shall be the exclusive means for a shareholder to make nominations. Nothing in these by-laws shall be deemed to affect any rights of shareholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 promulgated under the Exchange Act.

- (vi) Any shareholder, Shareholder Associated Person or Substantial Participant soliciting proxies from other shareholders must use a proxy card color other than white, which shall be reserved for the exclusive use by the corporation's board of directors.
- (vii) Except as otherwise required by law, in preparing and making available any list of shareholders entitled to vote at a meeting, the corporation shall not be required to include electronic mail addresses or other electronic contact information on such list.
- (viii) Notwithstanding anything to the contrary in these by-laws, unless otherwise required by law, if any shareholder, any Shareholder Associated Person or any Substantial Participant (A) provides notice pursuant to Rule 14a-19(b) promulgated under the Exchange Act with respect to any proposed nominee for election as a director of the corporation and (B) subsequently fails to comply with the requirements of Rule 14a-19(a)(2) or Rule 14a-19(a)(3) promulgated under the Exchange Act (or fails to timely provide reasonable evidence sufficient to satisfy the corporation that such shareholder, any Shareholder Associated Person or any Substantial Participant has met the requirements of Rule 14a-19(a)(3) promulgated under the Exchange Act in accordance with the following sentence), then the nomination of each such proposed nominee shall be disregarded, notwithstanding that proxies or votes in respect of the election of such proposed nominees may have been received by the corporation (which proxies and votes shall be disregarded). Upon request by the corporation, if any shareholder, any Shareholder Associated Person or any Substantial Participant provides notice pursuant to Rule 14a-19(b) promulgated under the Exchange Act, such shareholder, any Shareholder Associated Person or any Substantial Participant shall deliver to the corporation, no later than five business days prior to the applicable meeting, reasonable evidence that it has met the requirements of Rule 14a-19(a)(3) promulgated under the Exchange Act.

ARTICLE II

Board of Directors

1. The business and affairs of the corporation shall be managed by its board of directors consisting of not less than ten nor more than nineteen members, who shall hold office until the next annual meeting and until their successors shall have been elected and qualified. The actual number of directors shall be determined from time to time by resolution of the board. If at any time, except at the annual meeting, the number of directors shall be increased, the additional director or directors may be elected by the board, to hold office until the next annual meeting and until their successors shall have been elected and qualified.
2. The organization meeting of the board of directors, for the purpose of organization or otherwise, shall be held without further notice on the day of the annual meeting of shareholders, at such time and place as shall be fixed from time to time pursuant to resolution of the board. Other regular meetings of the board may be held without further notice at such times and places as shall be fixed from time to time pursuant to resolution of the board. The chairman of the board, the president, any vice president who is a member of the board, or the secretary may change the day or hour or place of any single regular meeting from that determined by the board upon causing that prior notice of such change be transmitted to all directors.

Special meetings of the board may be called at the direction of the chairman of the board, of the president or of any vice president who is a member of the board, or, in the absence of such officers, at the direction of any one of the directors. Any such meeting shall be held on such date and at such time and place as may be designated in the notice of the meeting.

Notices required under this section may be transmitted in person, in writing, or by telephone, telegram, cable or radio, and shall be effective whether or not actually received, provided they are duly transmitted not less than forty-eight hours

in advance of the meeting. Notice may be waived in writing before or after a meeting. No notice or waiver need specify the business scheduled for any board meeting and any business may be transacted at either a regular or special meeting.

3. Five directors shall constitute a quorum for the transaction of business, except that any directorship not filled at the annual meeting and any vacancy, however caused, occurring in the board may be filled by the affirmative vote of a majority of the remaining directors even though less than a quorum of the board, or by a sole remaining director. At any meeting of the board, whether or not a quorum is present, a majority of those present may adjourn the meeting. Notice of an adjourned meeting need not be given if the time and place are fixed at the meeting adjourning and if the period of adjournment does not exceed ten days in any one adjournment.
4. (a) The provisions of this Section 4 of Article II shall be operative during any emergency in the conduct of the business of the corporation resulting from an attack on the United States or any nuclear or atomic disaster or from the imminent threat of such an attack or disaster. For the purpose of this Section 4 of Article II, such an emergency is defined as any period following
 - (i) an enemy attack on the continental United States or any nuclear or atomic disaster as a result and during the period of which the means of communication or travel within the continental United States are disrupted or made uncertain or unsafe, or
 - (ii) a determination as herein provided that such an attack or disaster is imminent or has occurred.

The commencement and termination of the period of any such emergency may be determined by the chairman of the board or, in the event of the death, absence or disability of the chairman of the board, by the president, or in the event of the death, absence or disability of both the chairman of the board and the president, by such person or persons as the board of directors may from time to time designate, but in the absence of such specific designation, by the executive or senior vice president who has been designated pursuant to the authority of Section 6 of Article IV of these by-laws to exercise the powers and perform the duties of the chairman of the board and the president. To the extent not inconsistent with the provisions of this Section 4 of Article II, the by-laws in their entirety shall remain in effect during any such emergency.

- (b) Before or during any such emergency, the board may change the head office or designate several alternative head offices or regional offices, or authorize the officers to do so, said change to be effective during the emergency.
- (c) The officers or other persons designated by title in a list approved by the board before or during the emergency, all who are known to be alive and available to act in such order of priority and subject to such conditions and for such period of time, not longer than reasonably necessary after the termination of the emergency, as may be provided in the resolution of the board approving the list, shall, to the extent required to provide a quorum at any meeting of the board, be deemed and shall have all the powers of directors for such meeting. Unless so designated, an officer who is not a director shall not be deemed a director for the foregoing purpose.
- (d) Meetings of the board may be called by any officer or director or in the absence of all officers and directors by any person designated in a list approved by the board pursuant to subsection (c) of this Section 4. Any such meeting shall be held on such date and at such time and place as may be designated in the notice of the meeting. Notice of any such meeting need be given only to such of the directors as it may be feasible to reach at the time and such of the persons designated in such list as is considered advisable in the judgment of the person calling the meeting. Any such notice may be transmitted in person, in writing, or by telephone, telegram, cable or radio, or by such other means as may be feasible at the time, shall be effective whether or not actually received and shall be given at such time in advance of the meeting as, in the judgment of the person calling the meeting, circumstances permit.
- (e) Three directors shall constitute a quorum for the transaction of business.
- (f) Before or during any such emergency, the board by resolution may
 - (i) appoint one or more committees in addition to or in substitution for one or more of those appointed pursuant to the provisions of Article III of these by-laws to act during such emergency and

- (ii) take any of the actions listed in Section 2 of Article III of these by-laws in regard to any committee established pursuant to (i) of this subsection (f).

Each such committee shall have at least three members, none of whom need be a director. To the extent provided in such resolution, each such committee shall have and may exercise all the authority of the board, except that no such committee shall take the action which Section 1 of Article III of these by-laws prohibits committees of the board to take.

- (g) Before or during any such emergency, the board may provide and from time to time modify, lines of succession in the event that during such an emergency any or all officers or agents of the corporation or any or all members of any committee of the board shall for any reason be rendered incapable of discharging their duties.
- (h) No officer, director or employee acting in accordance with this Section 4 of Article II shall be liable except for willful misconduct. No officer, director or employee shall be liable for any action taken in good faith in such an emergency in furtherance of the ordinary business affairs of the corporation even though not authorized by the by-laws then in effect.
- (i) Persons may conclusively rely upon a determination made pursuant to subsection (a) of this Section 4 that an emergency as therein defined exists regardless of the correctness of such determination.

5. No contract or other transaction between the corporation and one or more of its directors or between the corporation and any other corporation, firm or association of any type or kind in which one or more of its directors are directors or are otherwise interested, shall be void or voidable solely by reason of such common directorship or interest, or solely because such director or directors are present at the meeting of the board or a committee thereof which authorizes or approves the contract or transaction, or solely because such director's or directors' votes are counted for such purpose, if

- (a) the contract or other transaction is fair and reasonable as to this corporation at the time it is authorized, approved or ratified, or
- (b) the fact of the common directorship or interest is disclosed or known to the board or committee and the board or committee authorizes, approves or ratifies the contract or transaction by unanimous written consent, provided at least one director so consenting is disinterested, or by affirmative vote of a majority of the disinterested directors, even though the disinterested directors be less than a quorum, or
- (c) the fact of the common directorship or interest is disclosed or known to the shareholders and they authorize, approve or ratify the contract or transaction.

ARTICLE III

Committees of the Board

1. The board, by resolution adopted by a majority of the entire board, may appoint from among its members an executive committee and one or more other committees, each of which shall have at least three members. To the extent provided in such resolution, each such committee shall have and may exercise all the authority of the board, except that no such committee shall
 - (a) make, alter or repeal any by-law of the corporation;
 - (b) elect any director, or remove any officer or director;
 - (c) submit to shareholders any action that requires shareholders' approval; or
 - (d) amend or repeal any resolution theretofore adopted by the board which by its terms is amendable or repealable only by the board.

2. The board, by resolution adopted by a majority of the entire board, may
 - (a) fill any vacancy in any such committee;
 - (b) appoint one or more directors to serve as alternate members of any such committee, to act in the absence or disability of members of any such committee with all the powers of such absent or disabled members;
 - (c) abolish any such committee at its pleasure;
 - (d) remove any director from membership on such committee at any time, with or without cause; and
 - (e) establish as a quorum for any such committee less than a majority of the entire committee, but in no case less than the greater of two persons or one-third of the entire committee.
3. Actions taken at a meeting of any such committee shall be reported to the board at its next meeting following such committee meeting; except that, when the meeting of the board is held within two days after the committee meeting, such report shall, if not made at the first meeting, be made to the board at its second meeting following such committee meeting.

ARTICLE IV

Officers

1. The board of directors at the organization meeting on the day of the annual election of directors shall elect a chairman of the board, a president, one or more vice presidents as the board may determine, any one or more of whom may be designated as executive vice president or as senior vice president or in such special or limiting style as the board may determine, a secretary, a treasurer, a controller, and a general counsel. The chairman of the board and the president shall each be a director, but the other officers need not be members of the board.
2. The board of directors may from time to time elect, or authorize an officer of the corporation to appoint in writing, assistant secretaries, assistant treasurers, assistant controllers, and such other officers as the board may designate.
3. All officers of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the corporation as may be provided in these by-laws, or as may be determined by resolution of the board not inconsistent with these by-laws.
4. The chairman of the board shall be chief executive officer of the corporation and shall preside at all meetings of shareholders and directors. Subject to the board of directors, the chairman of the board shall have general care and supervision of the business and affairs of the corporation. In the absence of the president, the chairman of the board shall exercise the powers and perform the duties of the president.
5. The president shall, subject to the board of directors, direct the current administration of the business and affairs of the corporation. In the absence of the chairman of the board, the president shall preside at meetings of the shareholders and directors and exercise the other powers and duties of the chairman.
6. In the event of the death, absence, or disability of the chairman of the board and the president, an executive or senior vice president may be designated by the board to exercise the powers and perform the duties of those offices.
7. The secretary shall give notice of all meetings of the shareholders and of the board of directors. The secretary shall keep records of the votes at elections and of all other proceedings of the shareholders and of the board. The secretary shall have all the authority and perform all the duties normally incident to the office of secretary and shall perform such additional duties as may be assigned to the secretary by the board, the chairman of the board or the president.

The assistant secretaries shall perform such of the duties of the secretary as may be delegated to them by the secretary.

8. The treasurer shall, unless the board of directors specifies otherwise, be the principal financial officer of the corporation. The treasurer shall have charge and custody of all funds and securities of the corporation; receive and give receipts for monies paid to the corporation, and deposit such monies in the corporation's name in such banks or other depositories as shall be selected for the purpose; and shall cause money to be paid out as the corporation may require. The treasurer shall have all the authority and perform all the duties normally incident to the office of treasurer and shall perform such additional duties as may be assigned to the treasurer by the board of directors, the chairman of the board or the president.

The assistant treasurers shall perform such of the duties of the treasurer as may be delegated to them by the treasurer.

9. The controller shall be the principal accounting and financial control officer of the corporation. The controller shall be responsible for the system of financial control of the corporation, including internal audits, the maintenance of its accounting records, and the preparation of the corporation's financial statements. The controller shall periodically inform the board of directors of the corporation's financial results and position. The controller shall have all the authority and perform all the duties normally incident to the office of controller and shall perform such additional duties as may be assigned to the controller by the board of directors, the chairman of the board or the president.

The assistant controllers shall perform such of the duties of the controller as may be delegated to them by the controller.

10. The general counsel shall advise the board of directors and officers on legal matters, except those relating to taxes, and shall perform such additional duties as may be assigned to the general counsel by the board of directors, the chairman of the board or the president.
11. Any vacancy occurring among the officers, however caused, may be filled by the board of directors except that any vacancy in the office of an assistant secretary, assistant treasurer or assistant controller appointed by an officer of the corporation may be filled by the officer, if any, then authorized by the board to make appointments to such office.
12. Any officer may be removed by the board with or without cause, and any assistant secretary, assistant treasurer or assistant controller appointed by an officer of the corporation may be removed with or without cause by the officer, if any, then authorized by the board to make appointments to such office.

ARTICLE V

Divisions and Division Officers

1. The board of directors may from time to time establish one or more divisions of the corporation and assign to such divisions responsibilities for such of the corporation's business, operations and affairs as the board may designate.
2. The board of directors may appoint or authorize an officer of the corporation to appoint in writing officers of a division. Unless elected or appointed an officer of the corporation by the board of directors or pursuant to authority granted by the board, an officer of a division shall not as such be an officer of the corporation, except that such person shall be an officer of the corporation for the purposes of executing and delivering documents on behalf of the corporation or for other specific purposes, if and to the extent that such person may be authorized to do so by the board of directors. Unless otherwise provided in the writing appointing an officer of a division, such person's term of office shall be for one year and until that person's successor is appointed and qualified. Any officer of a division may be removed with or without cause by the board of directors or by the officer, if any, of the corporation then authorized by the board of directors to appoint such officer of a division.
3. The board of directors may prescribe or authorize an officer of the corporation or an officer of a division to prescribe in writing the duties and powers and authority of officers of divisions.

ARTICLE VI

Transfer of Shares

1. Shares of the corporation shall be transferable on the records of the corporation in accordance with the provisions of Chapter 8 of the Uniform Commercial Code (New Jersey Statutes 12A:8-101 et seq.), as amended from time to time, except as otherwise provided in the New Jersey Business Corporation Act (New Jersey Statutes 14A:1-1 et seq.).
2. In the case of lost, destroyed or wrongfully taken certificates, transfer shall be made only after the receipt of a sufficient indemnity bond, if required by the board of directors, and satisfaction of other reasonable requirements imposed by the board.
3. The board of directors may from time to time appoint one or more transfer agents and one or more registrars of transfers. All share certificates shall bear the signature, which may be a facsimile, of a transfer agent and of a registrar. The functions of transfer agents and registrars shall conform to such regulations as the board may from time to time prescribe. The board may at any time terminate the appointment of any transfer agent or registrar.

ARTICLE VII

Fiscal Year

The fiscal year of the corporation shall be the calendar year.

ARTICLE VIII

Corporate Seal

1. The corporate seal is, and until otherwise ordered by the board of directors shall be, a circle containing the words “EXXON MOBIL CORPORATION, CORPORATE SEAL, 1882, NEW JERSEY” and may be an impression thereof or printed or other facsimile reproduction.
2. The impression of the seal may be made and attested by either the secretary or an assistant secretary for the authentication of contracts and other papers requiring the seal.

ARTICLE IX

Amendments

The board of directors shall have the power to make, alter and repeal the by-laws of the corporation, but by-laws made by the board may be altered or repealed, and new by-laws made, by the shareholders.

ARTICLE X

Indemnification

1. The corporation shall indemnify to the full extent from time to time permitted by law any director or former director or officer or former officer made, or threatened to be made, a party to, or a witness or other participant in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitative, legislative, investigative, or of any other kind, by reason of the fact that such person is or was a director, officer, employee or other corporate agent of the corporation or any subsidiary of the corporation or serves or served any other enterprise at the request of the corporation (including service as a fiduciary with respect to any employee benefit plan of the corporation or any subsidiary of the corporation) against expenses (including attorneys’ fees), judgments, fines, penalties, excise taxes and amounts paid in settlement, actually and reasonably incurred by such person in connection with such action, suit or proceeding, or any appeal therein. No indemnification pursuant to this Article X shall be required with respect to

any settlement or other nonadjudicated disposition of any threatened or pending action or proceeding unless the corporation has given its prior consent to such settlement or other disposition.

2. As any of the foregoing expenses are incurred, they shall be paid by the corporation for the director or former director or officer or former officer in advance of the final disposition of the action, suit or proceeding promptly upon receipt of an undertaking by or on behalf of such person to repay such payments if it shall ultimately be determined that such person is not entitled to be indemnified by the corporation.
3. The foregoing indemnification and advancement of expenses shall not be deemed exclusive of any other rights to which any person indemnified may be entitled.
4. The rights provided to any person by this Article X shall be enforceable against the corporation by such person, who shall be presumed to have relied upon it in serving or continuing to serve as a director or in any of the other capacities set forth in this Article X. No elimination of or amendment to this Article X shall deprive any person of rights hereunder arising out of alleged or actual occurrences, acts or failures to act occurring prior to notice to such person of such elimination or amendment. The rights provided to any person by this Article X shall inure to the benefit of such person's legal representative.

EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

EXXON MOBIL CORPORATION, §
§
Plaintiff, §
§
v. § Civil Action No. _____
§
ARJUNA CAPITAL, LLC and FOLLOW §
THIS, §
§
Defendants. §

COMPLAINT

Exxon Mobil Corporation (“ExxonMobil”) files this complaint seeking a declaratory judgment that it may exclude Arjuna Capital (“Arjuna”) and Follow This’s shareholder proposal from ExxonMobil’s proxy statement pursuant to Rule 14a-8 under the Securities Exchange Act of 1934 and not present it for a shareholder vote at ExxonMobil’s 2024 annual shareholder meeting. Pursuant to Federal Rule of Civil Procedure 57, ExxonMobil respectfully requests relief by March 19, 2024 because ExxonMobil must file its proxy statement by April 11, 2024, in order for it to comply with its obligations under the Exchange Act in advance of its annual shareholder meeting on May 29, 2024.

INTRODUCTION

1. Most shareholders invest in companies to help the companies grow and see a return on their investment. But Arjuna and Follow This are not like most shareholders. Driven by an extreme agenda, they pursue what Follow This calls a “Goldilocks Trojan Horse” strategy: They (or their clients) become shareholders solely to campaign for change through shareholder proposals that are calculated to diminish the company’s existing business.

2. Arjuna and Follow This are aided in their efforts by a flawed shareholder proposal and proxy voting process that does not serve investors' interests and has become ripe for abuse by activists with minimal shares and no interest in growing long-term shareholder value.

3. Arjuna's mission is to "shrink" energy companies, and its chief investment officer was found to be "*manifestly biased*" against ExxonMobil by a New York court.¹ (Emphasis added). Follow This explains in its governing documents and customer terms that it does not aim to achieve returns on behalf of its members through shares it acquires in energy companies.² And its website states: "We buy shares in order to work on our mission to stop climate change, *not to make a financial profit.*"³ (Emphasis added).

4. To achieve their goal, Defendants take different approaches that are designed to take advantage of the current application of the shareholder proposal rules. Arjuna, an activist wealth management firm, represents clients who hold just enough shares in an energy company to be allowed to submit shareholder proposals. Those clients give Arjuna the authority to file a shareholder proposal and deal with all aspects of it.

5. Follow This maintains a website where it asks people to donate money so that Follow This can buy enough shares in ExxonMobil or other energy companies to establish the necessary toehold to submit shareholder proposals. Follow This solicits funds, buys shares, and holds them in a Follow This investment account. It charges a fee of €5 for each share purchased and purports to "assign" each share to the person who contributed the funds.⁴

¹ See *People v. Exxon Mobil Corp.*, 65 Misc. 1233(A), at *16 n.7 (N.Y. Sup. Ct. 2019).

² *Amendment to the Articles of Association of Follow This*, FOLLOW THIS 2 (updated June 20, 2022), <http://tinyurl.com/5apf9d9n>.

³ *FAQ*, FOLLOW THIS, <https://www.follow-this.org/faq/> (last visited Jan. 20, 2024).

⁴ *Id.*

6. The contributors grant Follow This the “mandate and power of attorney” to use the shares to submit shareholder proposals to a company and vote the shares.⁵ With this authority, Follow This prepares and submits shareholder proposals that seek to transform the company.

7. Arjuna and Follow This have submitted numerous shareholder proposals to energy companies, including ExxonMobil. Although ExxonMobil’s shareholders have consistently rejected Arjuna’s and Follow This’s proposals, those proposals are expensive and time-consuming to address, and they are rarely designed to promote overall shareholder value. Instead, they are frequently at odds with the interests of investors who are seeking to obtain returns for their pensions, 401(k) plans, and other savings and retirement investments. Defendants’ proposal this year is no different.

8. On December 14, 2023, Arjuna submitted on behalf of two clients a proposal for consideration at ExxonMobil’s 2024 annual shareholder meeting (the “2024 Proposal”):

Resolved: Shareholders support the Company, by an advisory vote, to go beyond current plans, further accelerating the pace of emission reductions in the medium-term for its greenhouse gas (GHG) emissions across Scope 1, 2, and 3, and to summarize new plans, targets, and timetables.

9. The next day, Follow This joined the 2024 Proposal as a co-filer with Arjuna.

10. The 2024 Proposal addresses substantially the same subject matter as the proposals that Follow This submitted for consideration at ExxonMobil’s 2023 and 2022 annual shareholder meetings (respectively, the “2023 Proposal”⁶ and the “2022 Proposal”), and which were overwhelmingly rejected. At the 2023 annual meeting, 89.5% of voting shareholders voted against the 2023 Proposal.

⁵ *Follow This General Terms and Conditions—August 2020*, FOLLOW THIS 5 (Aug. 2020), <http://tinyurl.com/5z6u8p23> (last visited Jan. 20, 2024).

⁶ Arjuna co-filed the 2023 Proposal with Follow This.

11. The 2024 Proposal does not seek to improve ExxonMobil’s economic performance or create shareholder value. Like the previous proposals, it is designed instead to serve Arjuna’s and Follow This’s agenda to “shrink” the very company in which they are investing by constraining and micromanaging ExxonMobil’s ordinary business operations.

12. By calling for an acceleration in the pace of medium-term reductions across Scope 1, 2, and 3 greenhouse gas (“GHG”) emissions,⁷ Defendants are asking ExxonMobil to change its day-to-day business by altering the mix of—or even eliminating—certain of the products that it sells. Defendants’ overarching objective is to force ExxonMobil to change the nature of its ordinary business or to go out of business entirely.

13. This sweeping intrusion into ExxonMobil’s ordinary business operations is designed to substitute Defendants’ preferences for the judgment of ExxonMobil’s management and board in determining how best to operate the company in an efficient and environmentally-conscious way.

14. Defendants should not be permitted to continue to misuse the shareholder proposal rules to submit a proposal that interferes with ExxonMobil’s ordinary business operations and when close to 90% of voting shareholders rejected the 2023 Proposal.

⁷ “Scope 1 emissions” refers to direct GHG emissions from sources a company owns, operates, or controls. “Scope 2 emissions” refers to indirect GHG emissions from the utilities that a company purchases, like electricity, steam, heat, or cooling. “Scope 3 emissions” refers to indirect GHG emissions that could result from activities or assets along the value chain not owned or controlled by a company, such as the burning of gasoline by a motorist. These include, among other things, the GHG emissions generated upstream or downstream by the products and services sold by the company. In ExxonMobil’s case, the vast majority of Scope 3 emissions are those generated by consumers when they use certain of the products that ExxonMobil sells, such as oil, gasoline, diesel, and aviation fuel.

15. Rule 14a-8 governs the submission of shareholder proposals and provides multiple grounds for excluding the 2024 Proposal from ExxonMobil's proxy statement.

16. The 2024 Proposal is excludable under Rule 14a-8(i)(7) because it "deals with a matter relating to the company's ordinary business operations." 17 C.F.R. § 240.14a-8(i)(7).

17. The 2024 Proposal is also excludable under Rule 14a-8(i)(12) because it addresses substantially the same subject matter as the 2023 Proposal and the 2022 Proposal, and the resubmission criteria of Rule 14a-8(i)(12) are not met. *Id.* § 240.14a-8(i)(12).

18. The plain language of Rule 14a-8 supports excluding the 2024 Proposal, but current guidance by SEC staff about how to apply the rule can be at odds with the rule itself. Even though that guidance has no legal force or effect, Defendants and other similar activist organizations rely on it to pursue their personal preferences at the expense of shareholders. ExxonMobil seeks declaratory relief from this Court to stop this misuse of the current system.

19. ExxonMobil plans to exclude the 2024 Proposal from its proxy statement and, through this lawsuit, seeks a declaration that it may do so and not present the 2024 Proposal for a shareholder vote at its 2024 annual shareholder meeting.

20. ExxonMobil must finalize its proxy statement by March 20, 2024, so that it can be printed and sent to shareholders and submitted to the SEC on April 11, 2024, in advance of ExxonMobil's annual shareholder meeting, which is scheduled for May 29, 2024.

21. Accordingly, ExxonMobil seeks a declaration from this Court by March 19, 2024 that the 2024 Proposal is excludable from ExxonMobil's proxy statement.

JURISDICTION AND VENUE

22. This Court has federal question jurisdiction over this matter under 28 U.S.C. § 1331. This matter arises under Sections 14(a) and 27 of the Securities Exchange Act (15 U.S.C. §§ 78n, 78aa) and SEC Rule 14a-8 (17 C.F.R. § 240.14a-8). This Court also has diversity

jurisdiction over this action pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship among ExxonMobil, Arjuna, and Follow This, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

23. This Court has power to grant declaratory relief under 28 U.S.C. § 2201. An actual controversy exists among Arjuna, Follow This, and ExxonMobil. Defendants seek to force ExxonMobil to include the 2024 Proposal in its proxy statement for the upcoming annual shareholder meeting, and ExxonMobil seeks a determination that the 2024 Proposal can be excluded under SEC Rule 14a-8 because (i) it “deals with a matter relating to the company’s ordinary business operations” and (ii) it addresses substantially the same subject matter as the 2023 Proposal and the 2022 Proposal, and the most recent vote on the proposal did not satisfy the voting threshold to allow it to be resubmitted.

24. This Court can exercise personal jurisdiction over Defendants, both of which have extensive contacts with the United States, which makes them subject to personal jurisdiction in this district pursuant to 15 U.S.C. § 78aa.

25. Venue as to Follow This is proper under 28 U.S.C. §§ 1391(b)(1) and (c)(3) because it is not a resident in the United States but rather is a resident in the Netherlands.

26. Venue as to both Defendants is proper under 28 U.S.C. § 1391(b)(2) and 15 U.S.C. § 78aa because the 2023 Proposal and the 2022 Proposal were delivered in this district and because the ExxonMobil annual shareholder meetings in 2023 and 2022 occurred in this district. These events are a substantial part of a claim at issue in this case, ExxonMobil’s claims require an examination of the conduct and the proposals previously submitted in this district, and Defendants previously transacted business in this district.

27. Venue as to both Defendants also is proper under 28 U.S.C. §§ 1391(b)(1) and (c)(2). Defendants are both entities under 28 U.S.C. § 1391(c)(2), deemed to reside in any judicial district where they are subject to the court's personal jurisdiction with respect to the civil action in question. Because both Defendants are subject to this Court's personal jurisdiction under 15 U.S.C. § 78aa, they both reside in this district for venue purposes under 28 U.S.C. § 1391(c)(2) and are amenable to suit here.

PARTIES

28. ExxonMobil is a corporation organized under the laws of the state of New Jersey, with its principal place of business at 22777 Springwoods Village Parkway, Spring, Texas 77389. At the time of ExxonMobil's 2022 and 2023 annual shareholder meetings, ExxonMobil was headquartered in this district. ExxonMobil relocated its headquarters from Irving, Texas to Spring, Texas in July 2023.

29. ExxonMobil's principal business involves exploration for, and production of, crude oil and natural gas; manufacture, trade, transport, and sale of crude oil, natural gas, petroleum products, petrochemicals, and a wide variety of specialty products; and pursuit of lower-emission business opportunities including carbon capture and storage, hydrogen, biofuels, and lithium.

30. Arjuna is a limited liability company organized under the laws of Delaware with its principal place of business at 353 West Main Street, Durham, North Carolina 27701. It also operates at 13 Elm Street, Manchester, Massachusetts 01944. Arjuna is a registered investment adviser, and it received from two of its clients authorization to submit the 2024 Proposal and to handle aspects of it on their behalf. Arjuna itself does not hold any ExxonMobil stock.

31. Follow This is an association organized under the laws of the Netherlands, with its principal place of business at Anthony Fokkerweg 1, 1059 CM Amsterdam, Netherlands.

STATUTORY AND REGULATORY BACKGROUND

32. Under the securities laws, a shareholder who does not attend a company's annual meeting can still vote by authorizing someone else to do so via a proxy.

33. All U.S.-domiciled public companies must distribute a proxy statement to each of their shareholders in advance of the annual shareholder meeting. A proxy statement is a document or package of information that tells shareholders, among other things, about the items or initiatives on which they are asked to vote.

34. Congress has authorized the SEC to regulate proxies "as necessary or appropriate in the public interest or for the protection of investors." 15 U.S.C. § 78n(a).

35. The SEC promulgated Rule 14a-8 to "address[] when a company must include a shareholder's proposal in its proxy statement and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders." 17 C.F.R. § 240.14a-8.

36. In particular, Rule 14a-8 provides a procedure by which eligible shareholders may submit a shareholder proposal, along with a supporting statement, to be included in a company's proxy statement for consideration at the annual shareholder meeting. *Id.*

37. Under certain circumstances, however, a company may exclude a shareholder proposal from its proxy statement, even if the shareholder is eligible and has otherwise followed the necessary submission procedures.

38. Relevant here, under Rule 14a-8(i)(7), a company may exclude a shareholder proposal from its proxy statement if "the proposal deals with a matter relating to the company's ordinary business operations." 17 C.F.R. § 240.14a-8(i)(7).

39. In addition, a company may exclude a shareholder proposal under Rule 14a-8(i)(12) if it "addresses substantially the same subject matter as a proposal, or proposals, previously

included in the company's proxy materials within the preceding five calendar years" and does not satisfy the resubmission criteria set forth in the rule. *Id.* § 240.14a-8(i)(12).

40. The resubmission criteria of Rule 14a-8(i)(12) permit exclusion if "the most recent vote [on the duplicative proposal or proposals] occurred within the preceding three calendar years and the most recent vote was: (i) Less than 5 percent of the votes cast if previously voted on once; (ii) Less than 15 percent of the votes cast if previously voted on twice; or (iii) Less than 25 percent of the votes cast if previously voted on three or more times." *Id.*

41. The relevant version of Rule 14a-8(i)(7), which governs the ordinary business exclusion, was adopted by the SEC in 1998.⁸ In 2020, the SEC also adopted a new version of 14a-8(i)(12), governing the resubmission exclusion.⁹ The SEC proposed additional amendments to Rule 14a-8(i)(12), but those rules have never been adopted. From time to time, SEC staff have issued differing interpretations of Rule 14a-8 by publishing Staff Legal Bulletins ("SLB"), including most recently SLB 14L.¹⁰ The SEC advises that the SLBs have no legal force or effect.¹¹

42. In addition, SEC staff offer informal guidance on the application of Rule 14a-8 to shareholder proposals when requested by companies. SEC staff explain that these "informal views" "do not and cannot adjudicate the merits of a company's position with respect to the

⁸ Amendments to Rules on Shareholder Proposals, Exchange Act Release No. 34-40018, 63 FR 50622 (Sept. 22, 1998).

⁹ Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a-8, Exchange Act Release No. 34-89964, 87 FR 70240 (Nov. 4, 2020).

¹⁰ See *Shareholder Proposals: Staff Legal Bulletin No. 14L (CF)*, U.S. SEC. & EXCH. COMM'N (Nov. 3, 2021), <https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals?>

¹¹ See Chair Gary Gensler, *Statement Regarding Shareholder Proposals: Staff Legal Bulletin No. 14L*, U.S. SEC. & EXCH. COMM'N (Nov. 3, 2021), <https://www.sec.gov/news/statement/gensler-statement-shareholder-proposals-14l?> ("Staff legal bulletins, like all staff statements, have no legal force or effect: they do not alter or amend applicable law, and they create no new or additional obligations for any person.").

proposal. Only a court . . . can decide whether a shareholder proposal can be excluded from a company's proxy materials."¹²

FACTUAL ALLEGATIONS

I. ExxonMobil Is Committed to Providing the Energy Society Needs and Reducing Emissions.

43. ExxonMobil is one of the world's largest and most successful energy companies. It is committed to both providing the energy and products to meet society's needs and reducing emissions.

44. Since 2000, ExxonMobil has invested billions of dollars to develop and deploy lower-emission energy solutions and is pursuing more than \$20 billion in these efforts from 2022 through 2027. On an annualized basis, ExxonMobil's expenditures on lower carbon emissions efforts—for the company and third parties—represent approximately one-third of the U.S. Environmental Protection Agency's yearly budget.

45. ExxonMobil helps its customers reduce their own emissions through the use of energy-saving technologies and high-value products. For example, ExxonMobil is expanding the supply of natural gas to displace coal, enabling substantial emissions reductions in power generation. The company also produces lightweight plastics and other materials for a range of vital health, safety, and lower-emissions products, is developing and implementing carbon capture technologies, and is developing high-efficiency fuels and lubricants.

46. Shareholders know that ExxonMobil is actively engaged in emission reduction work. For instance, ExxonMobil has announced its ambition to achieve net-zero Scope 1 and 2 GHG emissions from its operated assets by 2050 with advancements in technology and clear and

¹² Division of Corporation Finance, Informal Procedures Regarding Shareholder Proposals (last modified Nov. 2, 2011), <http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8-informal-procedures.htm>.

consistent government policies that support needed investments and development of market-driven mechanics. ExxonMobil also has plans to achieve net-zero Scope 1 and 2 GHG emissions in its Permian Basin unconventional operations by 2030.

II. Arjuna and Follow This Work in Concert to Abuse the Shareholder Proposal Process at the Expense of ExxonMobil Shareholders.

A. Arjuna and Follow This pursue a shared agenda at the expense of ExxonMobil shareholders.

47. ExxonMobil views robust shareholder engagement on issues important to shareholders—including climate issues—as critical for improving its business. Each year, ExxonMobil engages with investors, employees, and other stakeholders to hear their concerns and suggestions on these issues.

48. But Defendants are not like most ExxonMobil investors. Neither organization wants to improve ExxonMobil’s business performance or increase shareholder value. To the contrary, Defendants share a different goal—disrupting ExxonMobil’s investments and development of fossil fuel assets and causing ExxonMobil to change its business model, regardless of the benefits, costs, or the world’s needs.

49. Arjuna is an activist investment firm that pursues its own agenda, at the expense of shareholder value. A registered investment adviser, Arjuna encourages prospective and current clients to “divest from fossil fuels”¹³ and attempts to dissuade energy companies like ExxonMobil from pursuing “growth” while selling products the world needs. Arjuna believes that energy companies need to “shrink.”¹⁴

¹³ ARJUNA CAPITAL, <https://arjuna-capital.com/> (last visited Jan. 20, 2024).

¹⁴ Natasha Lamb, *Arjuna Capital’s Natasha Lamb: You Can’t Deny Big Oil Needs to Shrink*, RESPONSIBLE INVESTOR (May 12, 2016), <http://tinyurl.com/yha6v8tu>.

50. According to Arjuna’s managing partners, none of its model portfolios include ExxonMobil stock, and they never have. Arjuna’s investment portfolios are measured against benchmarks like the S&P 500, which include ExxonMobil. If ExxonMobil performs poorly, that performance is reflected in the benchmark indices and, all else equal, Arjuna’s investment strategies perform better relative to the benchmarks. Arjuna’s business model thus favors ExxonMobil doing poorly.

51. In 2019, one of Arjuna’s managing partners, Natasha Lamb, testified against ExxonMobil in a case brought by the New York Attorney General’s Office. During the trial, Lamb admitted that Arjuna does not hold and does not recommend that anyone purchase ExxonMobil stock. She further testified that the only reason Arjuna’s Chief Investment Officer owned ExxonMobil stock was to allow Arjuna to submit shareholder proposals.

52. After hearing the evidence, the Honorable Barry Ostrager of the New York Supreme Court, Commercial Division, entered a complete defense verdict for ExxonMobil. In his decision rejecting the New York Attorney General’s case, Justice Ostrager discounted Lamb’s testimony, finding that she was “manifestly biased against ExxonMobil.”¹⁵

53. Follow This seeks to radically change the business model of energy companies and impose its agenda on them. It solicits funds from the public so it can buy individual shares in ExxonMobil and other energy companies. Even as it solicits funds to buy shares in energy companies, Follow This works to diminish their business by seeking to cause them to decrease production of products the world needs.

¹⁵ See *People v. Exxon Mobil Corp.*, 119 N.Y.S.3d 829, 65 Misc. 1233(A), at *16 n.7 (N.Y. Sup. Ct. 2019).

B. Arjuna and Follow This submit shareholder proposals to undermine ExxonMobil's business.

54. Despite pursuing interests contrary to those of ExxonMobil and its shareholders, in the past eleven years, Arjuna has submitted eleven proposals to ExxonMobil (ten as the lead filer and one as co-filer), and Follow This has submitted three proposals to ExxonMobil. Some were excluded or withdrawn. All of their proposals that were voted on by shareholders were overwhelmingly rejected.

55. Defendants submit these shareholder proposals to interfere with ExxonMobil's business and to promote their own interests over those of ExxonMobil's shareholders.

56. By design, Defendants' proposals are meant to divert ExxonMobil from its core business lines and to encourage the company to shrink. Undeniably, Defendants' objectives and tactics run counter to the interests of ExxonMobil and its shareholders, who purchase shares in ExxonMobil to grow or safeguard their investments and life savings.

57. Congress did not intend for the proxy rules to be used in this way. Many public companies, including ExxonMobil, expend significant resources each year addressing shareholder proposals that, like the 2024 Proposal, deal with matters relating to the company's ordinary business operations in service of special interests that are not shared with other shareholders.

58. The costs of addressing shareholder proposals are high. The SEC has estimated that a "company can incur up to \$150,000 to process a single proposal."¹⁶ As SEC Commissioner Mark Uyeda has observed:

¹⁶ Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8, Exchange Act Release No. 34-89964, 85 FR 70240 (Sept. 23, 2020), <https://www.sec.gov/files/rules/final/2020/34-89964.pdf>.

[T]his amount does not include opportunity costs associated with the board's and management's time that could have been spent on value-creating activities for the company.¹⁷

59. Notwithstanding these high costs, the number of proposals that shareholders submit each year is rising because of how the SEC staff is applying the shareholder proposal rules.

60. According to SEC figures, the number of proposals submitted in 2023 was 18 percent higher than in 2021. And the number of proposals that were voted on at annual shareholder meetings rose by 40 percent during that period. Proposals focused on environmental and social issues increased at an especially high rate, with the number of submissions growing by 52 percent and the number voted on by 125 percent between 2021 and 2023.¹⁸

61. These increases during the past two years have occurred despite no change in the language of the statute or the applicable SEC rules. They can be traced only to changes in SEC staff positions on the application of the shareholder proposal rules.¹⁹ Such shifting staff interpretations are not binding, however, and they do not have the force of law.

62. Ultimately, the cost of responding to these proposals is borne by all shareholders, even though, as Commissioner Uyeda has observed, "only a minority of shareholders submit proposals."²⁰

63. Just as the number of shareholder proposals has increased, so too has the coordination among the activist investors who submit them. The securities laws have long

¹⁷ Commissioner Mark T. Uyeda, Remarks at the Society for Corporate Governance 2023 National Conference (June 21, 2023), <http://tinyurl.com/59ajtp77>.

¹⁸ *See id.*

¹⁹ *See id.*

²⁰ *See id.*

recognized that multiple people who are acting as a coordinated group, taking concerted actions, or controlled by a single entity may be treated as a single person.

64. Arjuna has a long history of collaborating with other activist organizations such as Proxy Impact, As You Sow, and others to influence shareholders. In 2021, Arjuna collaborated with As You Sow and Proxy Impact to campaign against ExxonMobil's director nominees through their membership in Coalition United for a Responsible Exxon ("CURE"). In addition, they have jointly published reports seeking to influence shareholders on hot-button issues and worked in concert to submit and support each other's shareholder proposals.

65. The co-filing shown here by Arjuna and Follow This in support of the 2024 Proposal exemplifies that tradition.

III. Arjuna and Follow This Submit the 2024 Proposal, Which May Be Excluded Under Rule 14a-8(i)(7) and (i)(12).

66. On December 14, 2023, Arjuna sent ExxonMobil a letter asking it to include the 2024 Proposal in ExxonMobil's proxy statement. The 2024 Proposal is:

Resolved: Shareholders support the Company, by an advisory vote, to go beyond current plans, further accelerating the pace of emission reductions in the medium-term for its greenhouse gas (GHG) emissions across Scope 1, 2, and 3, and to summarize new plans, targets, and timetables.

67. On December 15, 2023, Follow This submitted the identical proposal as a co-filer, designating Arjuna as the lead filer.

68. On December 22, 2023, ExxonMobil responded to Arjuna and Follow This to notify them of procedural and eligibility deficiencies related to the 2024 Proposal.

69. In accordance with Rule 14a-8(j), ExxonMobil is notifying the SEC of its intent to omit the 2024 Proposal from the proxy statement that ExxonMobil plans to distribute for its 2024 annual shareholder meeting.

70. ExxonMobil is notifying the SEC that the 2024 Proposal may be excluded under Rule 14a-8(i)(7) and Rule 14a-8(i)(12).

A. ExxonMobil may exclude the 2024 Proposal under Rule 14a-8(i)(7).

71. A shareholder proposal may be excluded under Rule 14a-8(i)(7) if it deals with a matter relating to the company's ordinary business operations. 17 C.F.R § 240.14a-8(i)(7).

72. The 2024 Proposal is excludable under Rule 14a-8(i)(7) because it seeks to cause ExxonMobil to go beyond the company's current plans and set more aggressive medium-term reduction targets for Scope 1, 2, and 3 GHG emissions. Targets and plans for reducing GHG emissions are prime examples of ordinary business operations for an energy company like ExxonMobil. They require a detailed and balanced understanding of ExxonMobil's business, global supply and demand, technical intricacies of emissions reductions, the selection of products and services the company offers, and other matters understood by management and the board.

73. The 2024 Proposal seeks to replace ExxonMobil management's substantial expertise and well-considered business judgment with Defendants' preferred approach for reducing GHG emissions at an accelerated pace in artificial isolation. In doing so, the 2024 Proposal seeks to directly interfere with management's business judgment and micromanage ExxonMobil's core business—the energy and petrochemical products and services that ExxonMobil offers.

74. In doing so, the 2024 Proposal seeks to usurp the role of management and the board to impose Defendants' personal policy preferences through a shareholder proposal process that was not designed or intended for such use.

75. ExxonMobil plays a vital role in meeting the world's need for reliable and affordable energy and petrochemical products. To succeed in these highly competitive industries,

ExxonMobil must carefully consider the investments it makes to explore and develop a variety of energy and product solutions.

76. ExxonMobil is a leader in innovation to supply the energy and products people need to live healthy, prosperous lives in the modern world. As such, it has already designed a comprehensive approach centered on detailed emission-reduction roadmaps to enable its ambition for deep reductions (in fact, net-zero) to its Scope 1 and 2 GHG emissions for its operated assets by 2050 with advancements in technology and clear and consistent government policies that support needed investments and development of market-driven mechanics. ExxonMobil also has set aggressive medium-term plans to reduce Scope 1 and Scope 2 GHG emissions as part of its ordinary business operations.

77. The majority of ExxonMobil's Scope 3 emissions associated with ExxonMobil's products result from the combustion of certain of those products (oil and natural gas) by ExxonMobil's customers and end-users. Decisions about what mix of products to offer to consumers are quintessential examples of complex judgments delegated to management and the board. Relying on the expertise of its management, ExxonMobil sets the appropriate business strategy and product mix that it believes will meet the needs of its customers and at the same time help reduce GHG emissions and advance a thoughtful energy transition.

78. To determine what business practices and corporate strategies ExxonMobil should employ to reduce GHG emissions across its business, ExxonMobil's management must evaluate various GHG measures and projections regarding ExxonMobil's current and future operations; anticipated economic, technological, and geopolitical developments; anticipated changes in national policy stringency and evolution; and projected changes in global energy requirements.

79. As part of this evaluation, ExxonMobil's management must factor in ExxonMobil's highly complex, global operations that encompass multiple business lines including: the exploration and production of crude oil and natural gas; the manufacture of petroleum and petrochemical products; the transportation and sale of crude oil, natural gas, petroleum, and petrochemical products; and the development of a low carbon solutions business.

80. ExxonMobil's management must also make difficult assessments regarding the company's substantial investments in researching and developing multiple technologies, some of which are at the forefront of early innovation and whose ultimate benefits may not be known for many years.

81. Set against the complicated evaluation that ExxonMobil's management performs, the 2024 Proposal seeks to probe deeply into complex business matters and override management's judgment concerning key operational decisions, production levels, product mix, and the transition to lower-emission technologies.

82. The 2024 Proposal seeks to have shareholders make very complex decisions regarding the energy and petrochemical product mix that ExxonMobil offers and how best to set, measure, and implement emissions reduction targets in ExxonMobil's business.

83. Follow This calls the GHG emissions proposal a "Goldilocks Trojan Horse"²¹ because once shareholders adopt it, the company "will conclude that there is no room for further investments in exploring for more oil and gas."²²

²¹ *For Investors*, FOLLOW THIS, <https://www.follow-this.org/for-investors/> (last visited Jan. 20, 2024).

²² *Id.*

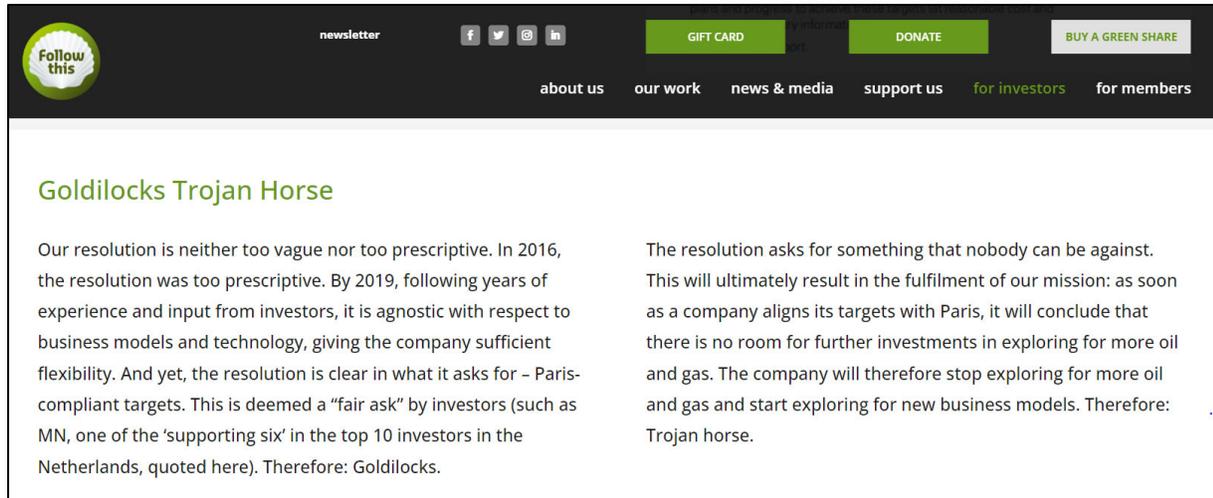


Figure 1 – Screenshot of Follow This’s “For Investors” information page

84. If ExxonMobil were required to implement a Scope 3 reduction target as described in the 2024 Proposal, then under current technology and policy it would be forced to reduce or eliminate production and sell fewer of certain products. To replace that lost income, ExxonMobil thus would need to attempt to sell different products which lower or eliminate Scope 3 emissions.

85. This is exactly what Defendants hope to achieve with the 2024 Proposal—an overhaul of ExxonMobil’s business model, including the volume of oil and natural gas that ExxonMobil produces, its product mix, and the investments ExxonMobil makes in lower-emission technology and the exploration and development of oil and natural gas resources.

86. In a recent interview, the Follow This founder said he wanted to take the current profits from fossil fuels and fully change energy companies’ business models by investing them into what he calls “the business models of the future.”²³

87. This ambition to micromanage ExxonMobil’s business decisions regarding emissions reduction targets and product offerings is also reflected in Follow This’s Amended

²³ Noah Brenner, *In Conversation With: Mark van Baal, Founder of Follow This*, ENERGY INTELLIGENCE (June 14, 2023), <http://tinyurl.com/ydsbc5x8>.

Articles of Association. Article 2.2 states that Follow This wants to change publicly traded energy companies so that they are “dedicated to the delivery of energy products and services that contribute to sustainable development.”²⁴ Article 2.3 defines “sustainable development” as “energy products and services from non-fossil sources.”²⁵

88. Arjuna has similar goals. Despite its managing partner having been found to be “manifestly biased” against ExxonMobil by a court, Arjuna still expects to have a say in ExxonMobil’s operations and decision-making process when it comes to GHG emissions. Defendants seek to change ExxonMobil’s business model and products with no regard to the financial impact it would have on the company and its shareholders.

89. Decisions about how and when to accelerate GHG emissions reductions are complex matters that management should determine using their sound business judgment and expertise in the energy industry. Defendants’ view that they can quickly force public companies out of the oil and gas industry is simplistic and against the interests of the vast majority of ExxonMobil shareholders. Other private companies and state-owned oil companies would quickly satisfy the volumes that ExxonMobil stopped producing, thus negating any impact on global sales or demand and likely worsening overall emissions. Ultimately, none of this would benefit ExxonMobil’s shareholders.

90. The 2024 Proposal’s request to accelerate Scope 3 emissions reductions highlights why it relates to ExxonMobil’s ordinary business. Estimating Scope 3 GHG emissions requires understanding the full range of indirect emissions from sources not owned or controlled by the

²⁴ *Amendment to the Articles of Association of Follow This, FOLLOW THIS 2* (updated June 20, 2022), <http://tinyurl.com/5apf9d9n>.

²⁵ *Id.* at 3.

company but rather by people or businesses using the company's products.²⁶ In addition, Scope 3 measurements often result in double counting because the same emissions are treated as Scope 3 for the factory making the product and Scope 1 for the company using that same product.

91. Setting goals for Scope 3 GHG emissions is a matter of significant business judgment because it requires the company to make assumptions about other people's activities, which can make Scope 3 goals challenging to set.

92. Scope 3 is also an insufficient metric to fully assess an individual company's progress in helping reduce emissions while producing essential goods. The only reasonable way to fully assess a company's progress is to understand the amount of GHG it emits relative to the products it produces and the alternatives to those products. This full life cycle carbon intensity approach provides a way to compare companies and product alternatives regardless of a company's relative size or what products it produces. Scope 3 measurements do not allow for such insights and therefore could drive a company to discontinue operations or divest.

93. A company that reduces its production of energy products will see its Scope 3 emissions decrease, but the global and aggregate production of energy products does not stop unless society's needs also decrease by an equal amount. As a result, if other companies, including state-owned oil companies like those in Russia, Iran, and elsewhere, fill the production void to meet the existing demand, they may do so in ways that are less efficient with higher emissions. Moreover, society's needs may go unfulfilled, potentially leading to supply disruptions with

²⁶ The difficulty of this is apparent in the many different categories used to measure GHG emissions: Category 1-Purchased Goods and Services, Category 2-Emissions From Capital Goods, Category 3-Emissions From Fuel and Energy, Category 4-Upstream Transportation and Distribution, Category 5-Waste Generated in Operations, Category 6-Business Commuting, Category 7-Employee Community, Category 8-Upstream Leased Assets, Category 9-Downstream Transportation and Distribution, Category 10-Processing of Sold Products, Category 11-Use of Sold Products, Category 12-End of Life Treatment of Sold Products, Category 13-Downstream Leased Assets, Category 14-Franchises, and Category 15-Investments.

resulting spikes in price and the shifting of jobs and shareholder profits to other companies and nations. Scope 3 targets and measurements are not designed to consider these important nuances and as a result will reward an individual company's behavior that shows a reduction in that company's GHG emission levels even when society's GHG emissions remain constant or increase.

94. In addition, Scope 3 does not account for critical technologies such as removals achieved by carbon capture and storage and negative emission technologies (such as direct air capture) and their potential impact in reducing GHG emissions at scale, which are considered essential to achieve a net-zero outcome for society. Because these technologies are not considered by Scope 3, if a company were to rely only on Scope 3 to measure progress, those calculations might adversely affect the company's willingness to invest in such critical technologies.

95. Through the 2024 Proposal, Defendants seek to micromanage and interfere with ExxonMobil's consideration of these important factors. ExxonMobil's management is most capable of considering all these factors and many more when making business decisions about measuring GHG emissions and setting any goal for reductions on these measurements.

96. These decisions directly impact an energy company's ordinary business operations and under Rule 14a-8(i)(7) are rightfully left to the company's management, precisely because management has a robust understanding of the internal workings of the company and its business.

97. By seeking to directly micromanage ExxonMobil's ordinary business operations, the 2024 Proposal seeks to cause ExxonMobil to set targets that would fundamentally change its business model and abandon its core revenue sources to satisfy Defendants' agenda. This oversteps not just the proxy rules but also the role of shareholders under corporate law, which is the original basis of Rule 14a-8(i)(7).

98. Given the implications that such judgments and tactics have on ExxonMobil's ordinary business operations, the 2024 Proposal may be excluded under Rule 14a-8(i)(7).

B. ExxonMobil may exclude the 2024 Proposal under Rule 14a-8(i)(12).

99. A company may exclude a shareholder's proposal under Rule 14a-8(i)(12) when it "addresses substantially the same subject matter as a proposal, or proposals, previously included in the company's proxy materials within the preceding five calendar years if the most recent vote occurred within the preceding three calendar years and the most recent vote was . . . [l]ess than 15 percent of the votes cast if previously voted on twice." 17 C.F.R. § 240.14a-8(i)(12).

100. ExxonMobil is entitled to omit the 2024 Proposal from its proxy statement under Rule 14a-8(i)(12) because it addresses substantially the same subject matter as the 2022 Proposal and the 2023 Proposal, and the most recent vote, in 2023, was less than 15 percent of the votes cast.

101. In its 2022 Proxy Statement (Item 6), ExxonMobil included the 2022 Proposal, which had been submitted by Follow This to ExxonMobil at its headquarters in Irving, Texas:

RESOLVED: Shareholders request the Company to set and publish medium- and long-term targets to reduce the greenhouse gas (GHG) of the Company's operations and energy products (Scope 1, 2, and 3) consistent with the goal of the Paris Climate Agreement: to limit global warming to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C.

102. ExxonMobil shareholders rejected the 2022 Proposal. Only 27.1% of voting shareholders voted for it, while the remaining 72.9% of voting shareholders voted against it.

103. A year later, in its 2023 Proxy Statement (Item 9), ExxonMobil included the 2023 Proposal, which had been submitted by Follow This—and Arjuna as a co-filer—to ExxonMobil at its headquarters in Irving, Texas, and addressed substantially the same subject matter as the 2022 Proposal:

RESOLVED: Shareholders request the Company to set a medium-term reduction target covering the greenhouse gas (GHG) emissions of the use of its energy products (Scope 3) consistent with the goal of the Paris Climate Agreement: to limit global warming to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C.

104. Follow This’s proposal garnered even less support during the 2023 proxy season. A mere 10.5% of votes cast supported the 2023 Proposal, and the remaining 89.5% rejected it.

105. Defendants now seek—for the *third time*—to put forward a proposal that addresses substantially the same subject matter as the 2022 Proposal and the 2023 Proposal, which were overwhelmingly rejected by shareholders. The 2024 Proposal is:

RESOLVED: Shareholders support the Company, by an advisory vote, to go beyond current plans, further accelerating the pace of emission reductions in the medium-term for its greenhouse gas (GHG) emissions across Scope 1, 2, and 3, and to summarize new plans, targets, and timetables.

106. The 2024 Proposal is a textbook example of a “resubmission” that can be excluded under Rule 14a-8(i)(12). The fundamental goal of both the 2022 Proposal and the 2023 Proposal was to have ExxonMobil set certain GHG emission-reduction targets. This is precisely what the 2024 Proposal seeks to do.

107. It is irrelevant that the wording is slightly different and the granular details of the three proposals vary slightly. Each addresses substantially the same subject matter and seeks the same end result. And each proposal aims to cause ExxonMobil to set certain GHG emissions targets that would fundamentally alter ExxonMobil’s fossil fuel business.

108. Under Rule 14a-8(i)(12)(ii), because the shareholders have voted on and rejected this proposal twice before, ExxonMobil is entitled to omit this third attempt if the most recent vote was “[l]ess than 15 percent of the votes cast.” And as stated above, the most recent vote (*i.e.*, the 2023 Proposal) received only 10.5% of votes cast in favor, well below the required amount.

109. In sum, ExxonMobil may omit the 2024 Proposal under Rule 14a-8(i)(12) because it addresses substantially the same subject matter as the proposals in 2022 and 2023 that were rejected by shareholders, and the most recent prior proposal received less than the required 15% of votes cast.

CLAIM FOR RELIEF

110. The preceding paragraphs are re-alleged and incorporated by reference as if fully set forth herein.

111. In accordance with 28 U.S.C. § 2201, an actual controversy exists among ExxonMobil, Arjuna, and Follow This.

112. ExxonMobil is entitled to a declaration that it may properly exclude the 2024 Proposal from its proxy statement under Rule 14a-8(i)(7) and (i)(12) and not present it for a shareholder vote at ExxonMobil's 2024 annual shareholder meeting.

REQUEST FOR SPEEDY HEARING

113. In accordance with Federal Rule of Civil Procedure 57, ExxonMobil requests a speedy hearing.

114. ExxonMobil's annual shareholder meeting is scheduled for May 29, 2024.

115. ExxonMobil must finalize its proxy statement no later than March 20, 2024 so that it can be printed and sent to its shareholders and filed with the SEC 40 calendar days before the annual shareholder meeting.

116. Accordingly, ExxonMobil must know by March 19, 2024 whether it may exclude the 2024 Proposal from its proxy statement.

PRAYER FOR RELIEF

WHEREFORE, ExxonMobil respectfully requests that judgment be entered in its favor and against Arjuna and Follow This by:

- a. Declaring that ExxonMobil may properly exclude the 2024 Proposal from its proxy statement under Rule 14a-8(i)(7) and (i)(12) and not present it for a shareholder vote at ExxonMobil's 2024 annual shareholder meeting;
- b. Awarding ExxonMobil its costs, attorneys' fees, and expenses; and
- c. Entering such other and further relief as the Court may deem just and proper.

Dated: January 21, 2024

Respectfully submitted,

Gregg J. Costa
Texas State Bar No. 24028160
David Woodcock
Texas State Bar No. 24028140
GIBSON, DUNN & CRUTCHER
2001 Ross Avenue, Suite 2100
Dallas, TX 75201-2923
Telephone: +1.214.698.3211
Facsimile: +1.214.571.2914
E-mail: gcosta@gibsondunn.com
E-mail: dwoodcock@gibsondunn.com

/s/ Mark W. Rasmussen
Mark W. Rasmussen
Texas State Bar No. 24086291
Jonathan D. Guynn
Texas State Bar No. 24120232
JONES DAY
2727 North Harwood Street
Dallas, TX 75201-1515
Telephone: +1.214.220.3939
Facsimile: +1.214.969.5100
E-mail: mrasmussen@jonesday.com
E-mail: jguynn@jonesday.com

Noel J. Francisco (*pro hac vice* forthcoming)
D.C. Bar No. 464752
Brett A. Shumate (*pro hac vice* forthcoming)
D.C. Bar No. 974673
Megan Lacy Owen
D.C. Bar No. 1007688
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
Telephone: +1.202.879.3939
Facsimile: +1.602.626.1700
E-mail: njfrancisco@jonesday.com
E-mail: bshumate@jonesday.com
E-mail: mlacyowen@jonesday.com

ATTORNEYS FOR PLAINTIFF

EXHIBIT C



Exxon Mobil Corporation
22777 Springwoods Village Parkway
Spring, Texas 77389
exxonmobil.com

Davis Polk

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, NY 10017
davispolk.com

September 15, 2025

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

Attn: Tiffany Posil, Chief of the Office of Mergers and Acquisitions
David Plattner, Special Counsel, Office of Mergers and Acquisitions

RE: No-Action Request regarding Rules 14a-4(d)(2) and 14a-4(d)(3) in connection with the Proposed Retail Voting Program

Dear Ms. Posil and Mr. Plattner:

In connection with the proposed retail shareholder voting program (the "**Retail Voting Program**") described below and in other program-related materials provided to the Staff of the Division of Corporation Finance (the "**Staff**") for their review, Exxon Mobil Corporation, a New Jersey corporation (the "**Company**" or "**ExxonMobil**"), seeks confirmation that the Staff will not recommend any enforcement action by the U.S. Securities and Exchange Commission (the "**Commission**") against ExxonMobil with respect to the Retail Voting Program as it relates to compliance with Rules 14a-4(d)(2) and 14a-4(d)(3) of Regulation 14A promulgated under the Securities Exchange Act of 1934.

I. Background

ExxonMobil's retail investors, many of whom are retired and depend on ExxonMobil's dividends to support their livelihoods, have voiced significant frustration over the annual time commitment required to vote at our meetings of shareholders. Each year, retail investors face a large number of proposals to vote on. This burden is not just a matter of hours spent; it also disproportionately impacts retail investors who lack access to professionals dedicated to voting. This limits their participation in shareholder democracy.

The consequences are tangible: the Company's records indicate that at its most recent annual meeting, nearly 40% of our outstanding shares were held by retail investors, yet only a quarter of these retail shares were voted. Despite these low voting numbers, the Company's engagements reveal that retail investors are deeply invested in ExxonMobil's future and are eager for a more accessible way to participate in the Company's voting process. In reviewing these issues, ExxonMobil has long received feedback from its retail investors that they would welcome the ability to give a standing voting instruction whereby, on an ongoing basis, their votes would be cast as recommended by the Company's Board of Directors (the "**Board**"). This is consistent with current voting patterns among ExxonMobil's retail investors. Over the last five years, approximately 90% of retail investors that voted at ExxonMobil meetings supported all of the Board's recommendations. Such a retail voting program would give retail investors a "**Board**



Exxon Mobil Corporation
22777 Springwoods Village Parkway
Spring, Texas 77389
exxonmobil.com

Davis Polk

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, NY 10017
davispolk.com

Recommended Policy” choice and would complement other voting policy choices that currently exist in the market that are not primarily targeted to retail investors.

In order to (1) promote voting by retail investors, (2) provide a Board Recommended Policy choice, and (3) remove time and other burdens borne by retail investors in the proxy voting process, the Company intends to implement a voluntary, no-cost program that would allow ExxonMobil shareholders to authorize the voting of their shares through a contractual arrangement between each participating shareholder and the Company. The program would give those shareholders the ability to authorize a standing voting instruction that requires ExxonMobil to vote their shares based on the recommendation of the Company’s Board at each meeting of shareholders.¹

II. Design of the Retail Voting Program

The Retail Voting Program would be available to all retail investors,² including any registered owner or beneficial owner (via their bank, broker or plan administrator) of ExxonMobil’s shares at no cost, and each investor would be offered the same opportunity to enroll in the Retail Voting Program. The Company intends to communicate directly with registered owners, and indirectly with non-objecting beneficial owners (“**NOBOs**”) and objecting beneficial holders (“**OBOs**”) via their banks and brokers and those entities’ agents.

Opt-In Process

Participating shareholders have two choices for the kinds of matters to which their standing voting instruction would apply: (1) all matters; or (2) all matters except contested director elections³ or any acquisition, merger or divestiture transaction that, under applicable state law or stock exchange rules, requires approval of ExxonMobil’s shareholders. These two choices provide shareholders with the ability to tailor their voting decisions.

Opt-Out Process, Reminders and Vote Overrides

Participating shareholders may opt out of the program to cancel their standing voting instruction at any time and at no cost. Because votes for which the Company has received a standing voting instruction will be cast on the same day that the Company files a definitive proxy statement for an upcoming meeting, cancellation of the standing voting instruction will only

¹ At this time, the Company is only seeking no-action relief with respect to voting by retail shareholders at duly called annual general or special shareholder meetings and not with respect to any corporate actions that are taken by shareholder written consent.

² For the avoidance of doubt, the Retail Voting Program would not be available to investment advisers registered under the Investment Advisers Act of 1940 exercising voting authority with respect to client securities, unless the Commission otherwise determines.

³ A “contested director election” means an election of directors in which the number of nominees for election to the Company’s Board in that election exceeds the number of directors to be elected.



Exxon Mobil Corporation
22777 Springwoods Village Parkway
Spring, Texas 77389
exxonmobil.com

Davis Polk

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, NY 10017
davispolk.com

apply to future meetings. Future meetings for this purpose means meetings for which the Company has not yet filed a definitive proxy statement.

Participating shareholders will receive annual reminders of their enrollment in the program and their standing voting instruction. This reminder will include explicit language informing the participating shareholder of their ability to opt out and thereby cancel their standing voting instruction with respect to future meetings.

Participating shareholders who selected to have their shares voted on "all matters" will receive an additional reminder prior to any meeting involving a contested director election or an acquisition, merger or divestiture transaction that, under applicable state law or stock exchange rules, requires approval of ExxonMobil's shareholders. This enables that group of participating shareholders to have another opportunity to decide to opt out of the program or override the standing voting instruction prior to that meeting.

While participating shareholders can only opt out of the standing voting instruction for future meetings, they can always override the votes cast by the Company through the standing voting instruction by voting using the proxy materials they received for that meeting. Vote overrides will apply to upcoming meetings for which the Company has filed a definitive proxy statement. In every reminder communication, participating shareholders will be informed that at any time, even after the Company has filed a definitive proxy statement, they can override the standing voting instruction and cast their own votes with respect to any proposal at an upcoming meeting using the proxy materials they receive that year (identical to any other shareholder voting at that meeting).

Voting Mechanics

The actual voting of shares pursuant to the standing voting instruction and any other administrative actions related thereto would be facilitated by ExxonMobil's vote processing agent, including communications between and among ExxonMobil, banks and brokers, shareholders and the backend portal through which shareholders may choose to opt in or out of the Retail Voting Program. Information contained within the vote processing agent's system, such as information related to OBOs, stays within the agent's system and will never be disclosed to ExxonMobil as part of the Retail Voting Program.

Shareholders participating in the Retail Voting Program would have their voting positions submitted after the Company files the definitive proxy statement with the Commission, but prior to the distribution of the definitive proxy statement to shareholders. As noted above, a participating shareholder can always override the vote authorized by the standing voting instruction by voting using the proxy materials they received for that meeting. As a result, enrollment in the program is a safeguard for those who want to ensure that their vote is actually cast in alignment with the Board's recommendations in an efficient manner, but it does not interfere with their rights and ability to vote at shareholder meetings. The standing voting instruction is designed to facilitate the shareholder's choice to establish a streamlined and automated process, and the same shareholder can easily override that process by instead voting at an upcoming meeting using the proxy materials they receive that year (identical to any other shareholder voting at that meeting). In this respect, the Retail Voting Program does not



Exxon Mobil Corporation
22777 Springwoods Village Parkway
Spring, Texas 77389
exxonmobil.com

Davis Polk

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, NY 10017
davispolk.com

limit or restrict shareholders from voting at any time using the proxy materials they received for the meeting.

In addition to program-related communications and reminders provided to participating shareholders, ExxonMobil intends to disclose the Retail Voting Program in its proxy statement for each upcoming shareholder meeting, including the ability of participating shareholders to opt out of the program for future meetings or to override their standing voting instruction with respect to the specified proposals at an upcoming meeting at any time prior to the vote at that meeting. As noted above, banks, brokers and plan administrators will communicate with NOBO and OBO shareholders about the Retail Voting Program via their agents for shareholder communication services.

III. Public Disclosure of the Retail Voting Program

At the initiation of the Retail Voting Program, the Company intends to file with the Commission the relevant materials describing the Retail Voting Program under cover of Schedule 14A pursuant to Rule 14a-12 and will subsequently file any material changes to these materials in the same manner.⁴

Furthermore, the Company will make full disclosure on its website and in its proxy statement of the Retail Voting Program. And shareholders will, in connection with each shareholder meeting, receive all proxy materials and will have the ability to opt out and cancel or override their standing voting instruction at any time, as described in detail above.

IV. State Law

The Company notes that the granting by a shareholder of a standing voting instruction pursuant to the Retail Voting Program is permitted under New Jersey law, which is the state corporate law applicable to the Company. The Company has also reviewed Delaware law with respect to the same question. New Jersey and Delaware state corporate law each permit the giving of a standing voting instruction that does not expire so long as the instruction provides for such extended duration. See NJ Rev Stat § 14A:5-19 ("No proxy shall be valid for more than 11 months, unless a longer time is expressly provided therein"); 8 *Del. C.* § 212(b) (proxies valid for up to three years, "unless the proxy provides for a longer period").

⁴ The Company is not seeking no-action relief in this letter regarding whether the Retail Voting Program involves the "solicitation" of proxies, as defined in Rule 14a-1(l). In any event, to the extent communications related to the Retail Voting Program are considered "solicitations," the provision of such communications to beneficial owners of the Company's securities by banks, brokers and other nominees would be subject to Rule 14a-2(a)(1).



Exxon Mobil Corporation
22777 Springwoods Village Parkway
Spring, Texas 77389
exxonmobil.com

Davis Polk

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, NY 10017
davispolk.com

V. Compliance with Rules 14a-4(d)(2) and 14a-4(d)(3)

Under Rule 14a-4(d)(2), “no proxy shall confer authority [...] [t]o vote at any annual meeting other than the next annual meeting (or any adjournment thereof) to be held after the date on which the proxy statement and form of proxy are first sent or given to security holders.” Under a similar provision, Rule 14a-4(d)(3) provides that “no proxy shall confer authority [...] [t]o vote with respect to more than one meeting (and any adjournment thereof).” 17 CFR 240.14a-4. The Company respectfully submits that the proposed Retail Voting Program should not be viewed as conflicting with Rules 14a-4(d)(2) or 14a-4(d)(3), given the reminders and easy opt-out and override abilities built into the program and the choices made by shareholders.

As noted above, shareholders that have opted in to the program will receive an annual reminder in the proxy off-season of their opt-in status and selection, which will remind them of their ability to opt out and cancel their standing voting instruction with respect to subsequent meetings. Participating shareholders will have the easy, no-cost ability and choice to leave in place the standing voting instruction, or to opt out and cancel the standing voting instruction. More importantly in this context, even participating shareholders that choose not to opt out are exercising a choice by leaving the standing voting instruction in place. Furthermore, at the time of receiving their proxy materials, participating shareholders again have the easy, no-cost ability and choice to leave the standing voting instruction in place, or to opt out and cancel or override the standing voting instruction.

Accordingly, the choice made (in response to the annual reminder or the proxy materials) is in our view a reaffirmation or renewal of the standing voting instruction, which enables compliance with Rules 14a-4(d)(2) and 14a-4(d)(3).

The Company respectfully submits that this position is consistent with the intent behind Rules 14a-4(d)(2) and 14a-4(d)(3). The Commission’s commentary in connection with the adoption of Rule 14a-4(d)(2), for instance, notes that the purpose of Rule 14a-4(d)(2) was to avoid the premature solicitation of proxies.⁵ The commentary in connection with the adoption of Rule 14a-4(d)(3) noted that the intent was to codify existing Commission interpretations of the proxy rules regarding proxies.⁶

The Company believes that the Retail Voting Program is not inconsistent with this intent for the following reasons. First, subsequently adopted Rule 14a-12 explicitly permits the solicitation of proxies before a proxy statement is furnished to security holders, so long as the relevant materials are filed with the Commission pursuant to Rule 14a-12 and the proxy

⁵ See Federal Register, Vol. 12, No. 222, November 5, 1948, 6679 (“In order to prevent the premature solicitation of proxies at a time when material information has not yet become available, the amended rule provides that no proxy shall confer authority to vote at any annual meeting other than the next annual meeting (or any adjournment thereof) which is to be held after the date on which the solicitation is made”).

⁶ See Federal Register, Vol. 51, No. 224, November 20, 1986, 42049 (“As proposed, the Commission has added paragraph (d)(3) to Rule 14a-4 to codify current interpretations that a proxy may not confer authority to vote at more than one meeting or consent solicitation”).



Exxon Mobil Corporation
22777 Springwoods Village Parkway
Spring, Texas 77389
exxonmobil.com



Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, NY 10017
davispolk.com

statement is distributed once available. Second, the Retail Voting Program does not “lock in” the proxy or the vote, but rather provides the ability for participating shareholders to opt out of the program at any time for future meetings, and to override the standing voting instruction by voting at the upcoming meeting using the proxy materials they received for that meeting.

Although the Company believes that the Retail Voting Program complies with Rules 14a-4(d)(2) and 14a-4(d)(3) (and the proxy rules generally), the Company is nonetheless seeking confirmation that the Staff will not recommend any enforcement action by the Commission under Rules 14a-4(d)(2) and 14a-4(d)(3) with respect to the Company’s implementation of the Retail Voting Program.

Should you have any questions regarding this request or require additional information, please do not hesitate to contact us at (212) 450-4539. We appreciate your attention to this matter.

Respectfully yours,

David A. Kern
Exxon Mobil Corporation

Louis Goldberg
Davis Polk

Ning Chiu
Davis Polk

EXHIBIT D

[Home](#) / [Rules and Regulations](#) / [No Action, Interpretive and Exemptive Letters](#) / [Division of Corporation Finance No-Action, Interpretive and Exemptive Letters](#) / Exxon Mobil Corporation

Exxon Mobil Corporation

Response of the Office of Mergers and Acquisitions Division of Corporation Finance

September 15, 2025

Via Email

David A. Kern
Exxon Mobil Corporation
david.a.kern@exxonmobil.com

Louis Goldberg
Davis Polk & Wardwell LLP
louis.goldberg@davispolk.com

Ning Chiu
Davis Polk & Wardwell LLP
ning.chiu@davispolk.com

Re: Exxon Mobil Corporation's Proposed Retail Voting Program Incoming letter dated September 15, 2025

Dear Mr. Kern, Mr. Goldberg, and Ms. Chiu:

We are responding to your letter dated September 15, 2025, addressed to Tiffany Posil and David Plattner. To avoid having to recite or summarize the facts set forth in your letter, we attach a copy of your letter. Unless otherwise noted, capitalized terms in this response letter have the same meaning as in your letter.

Based on the facts and representations presented in your letter, the Division of Corporation Finance will not recommend enforcement action to the Commission under Exchange Act Rule 14a-4(d)(2) or Rule 14a-4(d)(3) if Exxon Mobil Corporation implements the Retail Voting Program as described in your incoming letter.

In particular, we note the following representations:

- the Retail Voting Program would be available to all retail investors, including any registered owner or beneficial owner (via their bank, broker or plan administrator) of ExxonMobil's shares at no cost, and each would be offered the same opportunity to enroll in the program;
- the Retail Voting Program would not be available to investment advisers registered under the Investment Advisers Act of 1940 exercising voting authority with respect to client securities;
- retail shareholders that have opted in to the Retail Voting Program will receive an annual reminder, during the time period when the Company is not soliciting votes for its annual shareholder meeting, of their opt-in status and selection, and will be reminded of their ability to opt out and cancel their standing voting instruction with respect to subsequent meetings;
- participating retail shareholders will have the ability and choice to opt out and cancel the standing voting instruction at no cost, as well as the ability to override the instruction with respect to any particular proposal or proposals at no cost;
- participating retail shareholders will continue to receive all proxy materials filed for upcoming shareholder meetings and the Retail Voting Program will not limit or restrict shareholders from voting at any time using the proxy materials they received for each meeting; and
- the Company will make full disclosure on its website and in its proxy statements of the Retail Voting Program.

This position is based on the representations made to the Division in your letter. Any different facts or conditions may require the Division to reach a different conclusion. Further, this response does not express any legal conclusion on the questions presented or any views on any other questions that your request may raise, including compliance with other provisions of the federal proxy rules or the federal securities laws.

Sincerely,

/s/ Tiffany Posil

Tiffany Posil
Chief, Office of Mergers and Acquisitions
Division of Corporation Finance

Last Reviewed or Updated: Sept. 15, 2025

RESOURCES

- [Final Incoming Letter](#)

EXHIBIT E

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

SCHEDULE 14A
**Proxy Statement Pursuant to Section 14(a) of the
Securities Exchange Act of 1934**

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material under § 240.14a-12

EXXON MOBIL CORPORATION

(Name of Registrant as Specified In Its Charter)

NOT APPLICABLE

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check all boxes that apply):

- No fee required
 - Fee paid previously with preliminary materials
 - Fee computed on table in exhibit required by Item 25(b) per Exchange Act Rules 14a-6(i)(1) and 0-11.
-
-

The following contains the email invitation to a new ExxonMobil Retail Voting Program which allows ExxonMobil shareholders to opt in to vote their shares in line with the Board's recommendation. Subsequent pages capture the details of the printed letters, website instructions and the confirmation page.

Beneficial Email

Set your standing voting instructions for ExxonMobil

 **Hextone** <Invite@RSVP.investordelivery.com> Unsubscribe
to me

Hextone 

Account Number *****1234

ExxonMobil investor message:

ExxonMobil

A new, easy way to vote

When you invested in ExxonMobil, you took ownership in a historic company. Today, we are inviting you to [opt in to a new Retail Voting Program](#) to vote your ExxonMobil shares in line with our Board's recommendations.

It's another way to ensure your voice is heard.

[Opt In Now](#) →

What you can expect

- Save time, align your vote with the Board's recommendations at each shareholder meeting
- Change your vote anytime—override a vote or opt out for future meetings

Thank you for being a valued ExxonMobil shareholder.

Investor Relations
Exxon Mobil Corporation
Retail.Shareholder@exxonmobil.com

[Opt In Now](#) →

The ExxonMobil Retail Voting Program described herein is neither endorsed nor solicited by your broker and its agents.

Stay connected



Job #: K12345

©2025 Hextone
P.O. Box 1310, Brentwood, NY 11717
CUSIP is a registered trademark of the American Bankers Association.
All other registered marks belong to their respective owners.

[Email Settings](#) | [Terms and Conditions](#) | [Privacy Statement](#)

Registered Email

Set your standing voting instructions for ExxonMobil



Exxon Mobil Corporation <Invite@RSVP.investordelivery.com> Unsubscribe
to me

ExxonMobil

Account Number *****1234

A new, easy way to vote

When you invested in ExxonMobil, you took ownership in a historic company. Today, we are inviting you to [opt in to a new Retail Voting Program](#) to vote your ExxonMobil shares in line with our Board's recommendations.

It's another way to ensure your voice is heard.

[Opt In Now →](#)

What you can expect

- Save time, align your vote with the Board's recommendations at each shareholder meeting
- Change your vote anytime—override a vote or opt out for future meetings

[Opt In Now →](#)

Thank you for being a valued ExxonMobil shareholder.

Investor Relations
Exxon Mobil Corporation
Retail.Shareholder@exxonmobil.com

Stay Connected



Job #: N12345

©2025 Exxon Mobil Corporation.
All Rights Reserved.

ExxonMobil is a trademark of ExxonMobil or its subsidiaries in the United States and elsewhere. All other trademarks are those of their respective owners.

Any data collected will be processed according to ExxonMobil's privacy policy.

[Privacy Statement](#)

Beneficial Letter



Hextone
P.O. Box 1310
Brentwood, NY 11717

Irena Smith
15 Main Street
Anytown, NY 11423-1325



Opt in now

Scan the code with
your phone to enroll,
or visit the link below.

[https://
qa.tinybfs.com/t/
aJLMhy](https://qa.tinybfs.com/t/aJLMhy)

ExxonMobil

ExxonMobil investor message:
Account Number *****1234

A new, easy way to vote

When you invested in ExxonMobil, you took ownership in a historic company. Today, we are inviting you to opt in to a new Retail Voting Program to vote your ExxonMobil shares in line with our Board's recommendations.

It's another way to ensure your voice is heard.

What you can expect when you enroll:

- Save time, align your vote with the Board's recommendations at each shareholder meeting
- Change your vote anytime—override a vote or opt out for future meetings

To activate this no-cost service, simply scan the QR code at the top of this letter with your smartphone camera or go to the website provided.

Thank you for being a valued ExxonMobil shareholder.

Investor Relations | Exxon Mobil Corporation | Retail.Shareholder@exxonmobil.com

The ExxonMobil Retail Voting Program described herein is neither endorsed nor solicited by your broker and its agents.

PXXXXX

Registered Letter

ExxonMobil

Exxon Mobil Corporation
22777 Springwoods Village Parkway
Spring, TX 77389

Irena Smith
15 Main Street
Anytown, NY 11423-1325



Opt in now

Scan the code with
your phone to enroll,
or visit the link below.

[https://
qa.tinybfs.com/t/
aJLMhy](https://qa.tinybfs.com/t/aJLMhy)

Account Number *****1234

A new, easy way to vote

When you invested in ExxonMobil, you took ownership in a historic company. Today, we are inviting you to opt in to a new Retail Voting Program to vote your ExxonMobil shares in line with our Board's recommendations.

It's another way to ensure your voice is heard.

What you can expect when you enroll:

- Save time, align your vote with the Board's recommendations at each shareholder meeting
- Change your vote anytime—override a vote or opt out for future meetings

To activate this no-cost service, simply scan the QR code at the top of this letter with your smartphone camera or go to the website provided.

Thank you for being a valued ExxonMobil shareholder.

Investor Relations | Exxon Mobil Corporation | Retail.Shareholder@exxonmobil.com

PXXXXX

Instruction Web Site

ExxonMobil

Submit your standing voting instruction

As a valued ExxonMobil shareholder, this is another way to ensure your voice is heard at every meeting.

Select your standing voting instruction [Learn more](#)

Selection 1 - All matters

If you select this policy, your shares will be voted on each proposal in accordance with the recommendations made by the company's Board of Directors.

Selection 2 - All matters except Certain Specified Matters

If you select this policy, your shares will be voted on each proposal in accordance with the recommendations made by the company's Board of Directors, except on (1) any contested director election and (2) any acquisition, merger or divestiture transaction that, under applicable state law or stock exchange rules, requires approval of ExxonMobil's shareholders.

Terms of the voting consent agreement ^u

By making a selection, you are agreeing to provide a standing instruction to ExxonMobil for any eligible shares directly held in your name or held in "street name" but beneficially owned by you to be voted at all future shareholders' meetings consistent with the recommendations of ExxonMobil's Board of Directors as to each type of proposal indicated by you in "Selection 1 - All Matters" or "Selection 2 - All Matters Except Certain Specified Matters". This standing instruction will remain effective and in place for every shareholder meeting until you cancel the instruction, and will be communicated to your bank, broker or plan administrator (if your shares are held through them).

Submit →

Learn more

^ How does the voting service work?

- As part of the service, after ExxonMobil files its proxy statement, your shares will be voted according to the Board of Directors' recommendations.
- You can change your vote on any proposal related to any meeting by following the voting instruction included with your proxy materials.

∨ What communications can I expect from ExxonMobil as part of this service?

∨ Who can participate in this free service?

∨ What can I expect after enrolling?

∨ Can I opt out of the service later?

[Back to "Select your standing voting instruction"](#)

ExxonMobil Exxon Mobil  

[Privacy center](#) • [Privacy policy](#) • [Terms and conditions](#) • [Resources](#)
© Copyright 2025 Exxon Mobil Corporation. All Rights Reserved.

Confirmation Page

ExxonMobil

Thank you! Your preference is saved.

You may now close this window.

[Back to selection →](#)

Website Service Description

ExxonMobil

How it Works

- As part of the service, after ExxonMobil files its proxy statement, your shares will be voted automatically according to the Board of Directors' recommendations.
- You can change your vote on any proposal related to any meeting by following the voting instruction included with your proxy materials.

As part of the service, ExxonMobil will:

- Update you annually on your enrollment status.
- Provide instructions on how to opt out or update your voting preferences.
- Share a list of prior proposals the Board recommended.

Who can participate in this free service?

All shareholders, including beneficial owners, registered shareholders, and participants in company-sponsored equity or retirement plans.

The service doesn't limit your voting choices—you can always vote differently on any proposal. If you opt in but later vote directly on a specific proposal, your vote will override the automatic Board recommendation. As always, you'll receive proxy materials before each meeting, outlining all the proposals and the Board's recommendations.

What you can expect:

Once you enroll, your shares will be automatically voted according to the Board's recommendations—no further action is needed on your part. However, you can change your vote on any proposal at any time by voting directly; your most recent vote will always take precedence. You will continue to receive proxy materials before each meeting, which will outline all proposals and the Board's recommendations.

Opting Out

You can opt out of the service at any time and at no cost, which will stop your votes from being cast automatically. If you decide to opt out after ExxonMobil has filed a definitive proxy statement for an upcoming meeting, then your opt-out will apply to all future meetings after that one. For the current meeting, you can still change your vote by following the instructions in your proxy materials.

Additional Information and Where to Find It

ExxonMobil intends to file with the U.S. Securities and Exchange Commission (the “SEC”) a definitive proxy statement on Schedule 14A (the “Definitive Proxy Statement”) and a proxy card with respect to its solicitation of proxies for future annual meetings and any special meetings as well. The Definitive Proxy Statement for any annual or special meeting will contain important information about the matters to be voted on at that specific meeting.

SHAREHOLDERS OF EXXONMOBIL ARE URGED TO READ THESE MATERIALS (INCLUDING ANY AMENDMENTS OR SUPPLEMENTS THERETO) AND ANY OTHER RELEVANT DOCUMENTS THAT EXXONMOBIL WILL FILE WITH THE SEC WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT EXXONMOBIL AND THE MATTERS TO BE VOTED ON AT THAT SPECIFIC MEETING.

Shareholders will be able to obtain free copies of these annual or special meeting documents, and other documents filed with the SEC by ExxonMobil, through the website maintained by the SEC at www.sec.gov. In addition, shareholders will be able to obtain free copies of these documents from ExxonMobil by contacting ExxonMobil’s Investor Relations by e-mail at shareholderrelations@exxonmobil.com, or by going to ExxonMobil’s Events and Presentations page on its website at <https://investor.exxonmobil.com/news-events/annual-shareholder-meeting>.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
BOCA RATON POLICE and FIRE
FIGHTERS' RETIREMENT SYSTEM
(b) County of Residence of First Listed Plaintiff
(c) Attorneys (Firm Name, Address, and Telephone Number)
Eric T. Kanefsky and Theodore J. Hawkins
CALCAGNI & KANEFSKY, LLP
1085 Raymond Boulevard, 18th Floor, Newark, New Jersey 07102
(862) 397-1796

DEFENDANTS
EXXON MOBIL CORPORATION
County of Residence of First Listed Defendant Harris County
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, INTELLECTUAL PROPERTY RIGHTS, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Real Estate, Personal Injury, etc.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. § 78n; 28 U.S.C. § 1332
Brief description of cause: Verified Shareholder complaint for violation of the Federal Securities Laws and New Jersey State Laws

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ Per proof CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):
JUDGE Judge Zahid N. Quraishi & Judge Tonianne J. Bongiovanni DOCKET NUMBER 3:25-cv-16633-ZNQ-TJB

DATE 12/1/2025 SIGNATURE OF ATTORNEY OF RECORD /s/ Theodore J. Hawkins

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket. **PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related cases, if any. If there are related cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.