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VIA EMAIL TO: Office of Chief Counsel - SEC <ShareholderProposals@sec.gov>
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Christopher Butner - Chevron <CButner@chevron.com>

February 22, 2021

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

Re: Response to Chevron Corporation's Two No-action Requests dated 1/15/2021
Proponents: Dr. Eric Rehm, on Special Meeting proposal
Diane Turner, on Independent Chair proposal

Dear Ladies and Gentlemen:

Newground Social Investment, SPC ("**Newground**"), is a registered investment adviser with its principal place of business in Seattle, Washington. Newground submitted to Chevron Corporation ("**Chevron**" or the "**Company**") on December 8, 2020 two shareholder proposals (together, the "**Proposals**"), one on behalf of Dr. Eric Rehm, and one on behalf of Diane Turner, each clients of Newground (together, the "**Proponents**").

In two, essentially identical, no-action requests dated January 15, 2021 Chevron, via outside counsel Gibson, Dunn and Crutcher, asks that Staff concur with its position that Exchange Act Rule 14a-8(e)(2) entitles the Company to omit the Proposals noted above from its 2021 annual meeting proxy materials. Chevron's reliance on Subsection (e)(2) as the basis for exclusion is misplaced, and for the reasons set forth below, we respectfully ask that Staff deny Chevron's requests.

This single response is offered in reply to both of the Company's no-action requests (hereafter referred to collectively in the singular); but should Staff prefer that we respond using separate letters, please so indicate and we will comply.

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1. All of Chevron's citations are either not relevant, or are actually supportive of the Proponents' position. Chevron fails to cite the most relevant prior determination.

(a) Chevron cites eleven determinations in its no-action request. Nine of the eleven citations are irrelevant because they relate to proposals received one or more days

after the deadline date set forth in the proxy statement,[1] whereas the Proposals were both received *on* the properly calculated deadline date as set by Chevron. However, in presenting these citations, Chevron advances a spurious assertion in its footnote 6:

> "... the Company's principal executive offices were closed when the Proposal was first transmitted to the Company and thus the Proposal was received when they reopened, making the Proposal untimely."

In this misleading analysis Chevron attempts to substitute fantasy for truth, when the fact is (as acknowledged elsewhere in the no-action) that the Proposals were received by the Company on December 8, 2020 – the calendar date of the deadline.

(b) The tenth of the eleven Chevron citations, ***Abbott Laboratories*** (avail. Feb. 12, 2020), is not germane because it is fundamentally dissimilar from the Proposals. The *Abbott Laboratories* determination: **(i)** references the delivery of a company deficiency notice, and these are substantially different in form, process, and requirement from a shareholder proposal submission; and **(ii)** the company's letter was not sent *on* a deadline, rather, it *triggered* a deadline, in the form of a 14-day clock for the proponent's subsequent response.

Staff rightly concluded in favor of the proponent in *Abbott Laboratories*, because to do otherwise could allow a company to send a deficiency notice up to 11:59 p.m. on a particular date, and thereby shave an entire day off the proponent's allocated time to respond. This would have created an undesirable circumstance wherein companies could engage in *time-of-day* vs *calendar date* gamesmanship to the detriment of shareholders.

(c) The eleventh of the eleven Chevron citations, ***Schering-Plough Corp***. (avail. Feb. 6, 2006), is the only one to fit the pattern and fact set of the current instance – though the Company does not recognize and misstates this reality. Rather than bolster Chevron's arguments, this citation instead provides very strong support for the Proponent's position.

Schering-Plough involved a proposal received on the established deadline date, but after the company's stated close of business. Chevron rightly observed that Staff determined in favor of the proponent in *Schering-Plough* by refusing to concur with the company's intent to omit. Yet, Chevron goes on to represent – incorrectly – that the determination is not analogous to the current instance because the proponent in *Schering-Plough* (the Company relates) had also submitted a paper copy of the proposal on the same day but *before* the company's close of business. However, had this actually been the case it would have obviated all Subsection (e)(2) discussion in regard to the received-later electronic version of the same submission; the reality was quite different from how Chevron presented this determination.

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[1] E.g., *ConocoPhillips Co.* (avail. Feb. 25, 2020); *CoreCivic, Inc.* (avail. Jan. 2, 2018); *Applied Materials, Inc.* (avail. Nov. 20, 2014); *Applied Materials, Inc.* (avail. Nov. 20, 2014) [cited twice]; *PepsiCo, Inc.* (avail. Jan. 3, 2014); *Equity LifeStyle Properties* (avail. Feb. 10, 2012); *Wal-Mart Stores, Inc. (Estadt)* (avail. Mar. 26, 2010); *City National Corp.* (avail. Jan. 17, 2008); *JPMorgan Chase & Co.* (avail. Feb. 8, 2005).

In its submission, Schering-Plough clearly articulates that it did not timely receive a hard-copy version – that it was also received after hours.[2] Further, the proponent in *Schering-Plough* did not provide any evidence regarding proof of delivery of a hard-copy version of the proposal. Thus, though not as represented by Chevron, *Schering-Plough* was decided on an entirely analogous set of circumstances to the present instance – namely, a proposal being received via both facsimile and email *on* the deadline date, but *after* the company's stated close of business – circumstances wherein Staff determined in favor of the proponent and disallowed exclusion of the proposal.

(d) The Chevron no-action overlooked or ignored ***Marathon Oil Corporation*** (avail. Jan. 12, 2004), a second determination with a fact set compellingly similar to the present instance – *i.e.*, a shareholder proposal received electronically on the appropriate due date but *after* the company's stated close of business.

In its no-action request, Marathon Oil wrote Staff that it intended to omit from its proxy statement a proposal of the General Board of Pension and Health Benefits of The United Methodist Church. The proposal in that instance was received on the due date, as were the Proposals Chevron now seeks to omit. Marathon Oil had published in its proxy statement a closing time of 5:00 p.m. The fax with the shareholder resolution arrived at 5:15 p.m. Marathon Oil made essentially the same argument as Chevron makes now, but Staff concluded that they "do not believe that Marathon Oil may omit the proposal from its proxy materials in reliance on Rule 14a-8(e)(2)."

The *Marathon Oil* determination has also been the subject of academic scrutiny, in which a scholar concluded that a *time-of-day* type restriction is not acceptable under the Rule:

> The Commission staff strictly enforces the 120-day deadline. The deadline applies even if the relevant date "falls on a Saturday, Sunday or federal holiday." Exclusion applies to a proposal submitted merely one day after the 120-day deadline. This includes proposals postmarked before expiration but received after the deadline. **At the same time, however, proposals qualify as timely to the extent submitted anytime on the final day of period.** In *Marathon Oil Corp.*, the Commission staff declined to permit exclusion of a proposal submitted thirteen minutes past a company's close of regular business operations.[3] [emphases added]

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[2] From the *Schering-Plough* letter to Staff: "This letter briefly responds to Mr. Chevedden's emails dated December 26, 2005 and January 19, 2006, which indicates that a hard copy of the Proposal was timely received by the Company. We did not receive a hard copy of the Proposal. We searched our records and located a facsimile of the Proposal which was received after business hours at 8:06 p.m. EST. See Exhibit A. We continue to believe that the Proposal is excludable under Rule 14a-8(e)(2) as untimely received."

[3] *The Untimely Problem of the Timely Submission of Shareholder Proposals* (May 23, 2017): **https://www.denverlawreview.org/dlr-online-article/2017/5/23/the-untimely-problem-of-the-timely-submission-of-shareholder.html**

In concluding this section, we present that *Marathon Oil* – omitted from Chevron's no-action request – and *Schering-Plough* are representative of a long, clear, and compelling history in which Staff has applied a consistent approach to the "close of business" (i.e., time-of-day) arguments put forth by companies; it has rejected them.

In both *Schering-Plough* and *Marathon Oil*, Staff disallowed exclusion of a proposal that arrived after a company's stated close of business, and in the present instance Staff should, likewise and consistent with past determinations, deny Chevron's request to omit these Proposals.

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2. Chevron's argument for exclusion is inconsistent with the policy purpose for which the Commission adopted Rule 14a-8(e)(2).

In this section we wish to distinguish between a *calendar date* deadline (as contemplated by and sanctioned under the Rule) and a *time-of-day* requirement (as imposed by certain companies but which is neither referenced in nor authorized by the Rule).

In contrast to how Chevron describes the shareholder proposal submission deadline, the Rule nowhere grants companies the right to impose "close of business" (i.e., *time-of-day*) requirements on shareholders, and it is not appropriate to allow companies to impose additional restrictions on delivery of a proposal beyond what the Rule requires – which is that a submission be delivered by a specific *calendar date*.

Chevron makes much of the fact that it had included in its proxy statement the phrase "close of business" as the deadline for receipt of proposals, arguing that the arrival of a proposal at any time after that hour would render it incurably late. However, utilizing the distinction drawn above, while the Proposals were deemed some two hours "late" according to the *time-of-day* theory advanced by the Company, they were in fact received some four hours *before* the *calendar date* deadline of midnight, as established by the Rule.

Viewed in this light, the Company's "close of business" argument is inconsistent with the policy intent which underlies the purpose for which the Commission adopted Subsection (e)(2). The phrase "close of business" could also be problematically vague.[4]

As set forth in the Rule itself, the purpose for establishing a date certain by which to receive proposals is to provide companies with "a reasonable time before the company begins to print and send its proxy materials." (Rule 14a-8(e)(2) and (e)(3).)[5]

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[4] The failure to specify a time by referencing only "close of business" may render the Chevron proxy statutorily vague. The company could change the close of business time under its bylaws such that what was one deadline at the time of the annual meeting could be an entirely different one by the final date for filing proposals. This lack of specificity creates uncertainty and a kind of jeopardy for proponents that could, taken to its logical conclusion, permit unacceptable forms of corporate gamesmanship.

[5] We disagree with Chevron's assertion in footnote 4 of its letter that the reasonableness of timing language in Subsection (e)(2) is not relevant here due to the Company's present intent to hold its annual

Chevron has demonstrated by its subsequent actions that the arrival of these Proposals on the deadline date fully met that purpose.

As a practical matter, any proposal received on the *calendar date* deadline – whether just prior to "close of business" or any time thereafter up until 11:59 p.m. – would commence being evaluated for the proxy statement on the next business day. Therefore, from neither a policy perspective nor in terms of practical implementation is there a meaningful distinction to be drawn in reference to the *time-of-day* receipt of any proposal – so long as it is received before or on the *calendar date* deadline (up until 11:59 p.m.), which in this instance the Proposals were.

Chevron fails to address this policy argument, which is not surprising as there is little that could be said to justify an exclusion of this sort. Chevron simply makes the conclusory assertion that "[t]he Company believes that requiring stockholder proposals be received by 6:00 p.m. ... is a reasonable requirement to impose on stockholders."[6] Chevron makes no policy case or other effort to argue what it deems reasonable about a 6:00 p.m. cutoff for electronic deliveries – deliveries that will be available for processing the next business morning alongside all other proposals received for inclusion in its proxy. (No-Action Request Letter dated January 15, 2021.)

Chevron does attempt to analogize its close-of-business deadline to the SEC's EDGAR filing deadline, but that attempt falls flat. The EDGAR system processes some 3,000 filings *per day* which are deemed filed, due-date compliant, and public immediately upon filing. That is not even remotely comparable to the 11 shareholder proposals Chevron reports having received this year.

It is also presumptuous for Chevron to assert reliance on the Subsection (f)(1) futility provision, as there is nothing in the regulatory language that suggests a company may place its own limits on a Rule that defines the parameters of a shareholder's right to submit a proposal. Nor, from a policy perspective, would that be appropriate.

Indeed, Rule 14a-8 is the sole formal mechanism by which shareholders communicate with the companies they own, and the annual meeting is the one chance a shareholder has to communicate a matter of concern to both the company and other shareholders with the object of polling shareholder interest on the matter. It is from that exercise that a company is able to gauge materiality.

The importance of Rule 14a-8 to shareholders as a "one-shot" chance of having their voices heard makes it imperative that the Commission not permit companies to manipulate a ministerial subsection of the Rule, Subsection (e)(2), which was intended to

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meeting within 30 days of May 27, 2021. To the contrary, the reasonableness of timing language *is* relevant as it identifies the purpose of including the deadline in the Rule, which is to permit the company sufficient time "to print and send its proxy materials."

[6] One test for reasonableness is to ask: what if a company were to set a *time-of-day* deadline of 2 p.m., noon, or even 9 a.m.? At some point it would become clear on its face that the time was unreasonable under the Rule. In the field of logic, if something can be shown to be false (i.e., 'unreasonable') at one point in a continuum, then the integrity of the practice at every point on the continuum is called into question.

ensure that companies have sufficient time to arrange for printing proxy materials. Electronic submissions[7] clearly fulfil that policy goal. Subsection (e)(2) should not be used as a "gotcha" provision to disenfranchise filers of electronic proposals that arrive on the established deadline, though later than an arbitrary time imposed by the company.

Therefore, absent demonstration of any harm or burden to the Company, and finding no basis or authority in the language of the Rule, Chevron's imposition of a "close of business" *time-of-day* restriction impermissibly ignores the policy need and intent for which Subsection (e)(2) was written.

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3. Chevron may not omit the Proposals from its proxy materials, because the Proposals were timely filed on December 8, 2020.

Rule 14a-8(e)(2) under the Securities Exchange Act of 1934 states that a shareholder "proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting." In its 2020 proxy statement, Chevron established December 8, 2020 as its deadline for receipt of shareholder proposals for the 2021 annual meeting.

By its own admission, Chevron received the Proposals on December 8, 2020. Chevron accepted the December 8 filing at the time, and one week later in the normal flow of proceedings issued deficiency notices to the Proponents in letters dated December 15, 2020. Newground cured each of the deficiencies in a submission dated and accepted by the Company on December 20, 2020. Subsequently, Chevron reached out to Newground to schedule a meeting to discuss the Proposals – which was held on February 9, 2021.

There was no indication in the deficiency letters, or in any other correspondence prior to the January 15, 2021 no-action request, that the Company considered the December 8, 2020 submissions to have arrived after the established deadline. By timely issuing a deficiency letter and accepting Newground's documentation in response, Chevron demonstrated that it did not experience any increased burden, expense, or inconvenience as a result of the Proposals arriving at the time they did on the established *calendar date* deadline.

Notwithstanding these facts, Chevron now asserts in its January 15, 2021 no-action request that the Proposals were "not received at the principal executive

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[7] Different factors may have been present in the days of paper-only, but such is not the case today. Electronic delivery – which is now the preferred or even mandated mode of delivery for court, business, and governmental purposes – fulfills all considerations and mandates regarding timeliness under the Rule.

In so observing, it is instructive to also note that the overwhelming majority of S&P 500 companies do not impose any form of *time-of-day* or "close of business" provision – either because they recognize it is not compliant with the Rule, or because it is a logistical and practical non-necessity.

offices within the timeframe required under Rule 14a-8(e)(2)." That statement is incorrect. Rule 14a-8(e)(2) is straightforward, and it identifies only a *calendar date* on which a proposal must be delivered in order to be deemed timely. The Proponents timely filed on the required date, and therefore met the standard as set forth in the Rule. As a result, Chevron cannot meet its Rule 14a-8(g) burden of demonstrating that it is entitled to exclude the Proposals.

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4. Chevron would not be burdened by including these Proposals in its 2021 proxy materials.

Chevron has included these two shareholder Proposals in its proxy statements for a number of years running, and each year the Company has put forth substantially the same statement in opposition to the proposals. Accordingly, it would not present an undue burden or expense for Chevron to continue to include these Proposals in the upcoming proxy, as the Company clearly enjoys "a reasonable time before [it] begins to print and send its proxy materials." (Rule 14a-8(e)(2) and (e)(3).)

While "burden" and "expense" are not among the Rule 14a-8 exclusions pursuant to which the Company would have the ability to omit the Proposals, one might consider those factors when evaluating the relative equities between the parties. For Chevron to include the Proposals in its proxy materials does not cause it any harm, as demonstrated by its having included the proposals during the past number of years.

In contrast, taking away the Chevron shareholders' only right to consider and vote on the Proposals would cause irreparable harm. Unlike the easily-remedied addition (or continuation) of a proposal into proxy materials, once a meeting has passed without the opportunity to present a proposal, so too has passed the sole opportunity during the year for a shareholder to have their voice heard and their concerns set forth for consideration.

Importantly, these Proposals have garnered sizable support in each prior year they were put to a vote – significantly above the Rule 14a-8 threshold needed at the time to qualify for resubmission the following year.[8] This is precisely the type of engagement the proxy proposal Rules were designed to elicit. The fact that the proposals have substantial support augurs in favor of keeping that discussion in front of management and the board, which helps them to assess materiality, and to identify the issues of concern to the Company's owners, stakeholders, the communities in which they operate, and the public at large.

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Proposal	2020	2019	2018
Special Meeting Threshold	34.3%	35.3%	33.9%
Independent Chair	26.9%	26.0%	24.0%

As the sole formal mechanism for shareholder communication, the ability to submit a shareholder proposal should not be proscribed without a legal, policy-based reason for doing so. Such a reason does not exist in this case.

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5. The Commission has emphasized that flexibility is key during the pandemic caused by COVID-19.

The Proponents have demonstrated that their Proposals were timely filed in a way that comports with Rule 14a-8(e)(2). That timely filing – together with Chevron's subsequent treatment of the Proposals as having been timely – augur in favor of Staff denying the Company's request to omit the Proposals from its proxy materials.

However, even were Chevron's imposition of a close-of-business deadline deemed consistent with Rule 14a-8(e)(2), which it is not, recent Commission emphasis on the need for flexibility in both mode and timing of filings would compel Staff to advise Chevron that it cannot omit the Proposals.

Most recently, a cross-Divisional Public Statement providing information about pandemic-related accommodations was updated just a few weeks ago on January 5, 2021.[9] Significant for purposes of filing shareholder proposals is the Division of Corporation Finance's recommendation to the Commission that filing and delivery deadlines be extended as necessary to deal with hardships caused by the pandemic.

Public companies are being given additional time to file reports, and are being granted the flexibility to change the dates and locations of their annual meetings. Importantly, companies are being granted the opportunity to "furnish proxy soliciting materials through the 'notice only' e-proxy delivery option." In addition, registrants are "encouraged... to provide shareholder proponents with the ability to present their proposals at the shareholder meeting through means other than an in-person appearance (such as by telephone)." Accommodations are also being made for investment companies that deliver their prospectuses late, as a result of COVID-19 delays.

The Commission and Staff have made it clear via the Public Statement and other pronouncements that the need for flexibility extends not only to the companies the SEC regulates, but also to the shareholders whose interests the Agency has been charged with protecting. "We strongly encourage all parties and intermediaries involved in the proxy voting process... to be flexible and work collaboratively with one another. ... We expect all market participants to cooperate with one another... to allow shareholders to exercise their voting rights under state law.[10]

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[9] An Update on the Commission's Targeted Regulatory Relief to Assist Market Participants Affected by COVID-19 and Ensure the Orderly Function of our Markets (June 26, 2020, as updated Jan. 5, 2021).

[10] Division of Corporation Finance Staff Guidance for Conducting Shareholder Meetings in Light of COVID-19 Concerns (April 7, 2020).

We understand and appreciate that the Commission will strive to permit flexibility and fairness in the interest of preserving rights and the integrity of all market participants. In this light, even if a *time-of-day* limitation were normally considered the 'law of the land', it is clear that viewed from the perspective of December 8, 2020 (the filing deadline), when still fully in the grip of the COVID pandemic and before the advent of vaccinations, a mere two-hour time delay – one which still resulted in delivery on the *calendar date* as properly established under Rule 14a-8(e)(2) – should be resolved in favor of the Proponents.

In Closing

We do not suggest that it is inappropriate to have a date certain for receipt of shareholder proposals, because companies need to be able to manage their filings calendar. However, in this instance consider that:

- The Proponents filed the Proposals on the *calendar date* mandated under Rule 14a-8(e)(2),
- There is no provision under the Rule which suggests a company may append additional *time-of-day* requirements that narrow the appropriately-calculated deadline date,
- The Company timely reviewed, processed, and accepted the Proposals through an appropriate deficiency notice process, wherein the Proponents cured all noticed defects; but the Company did not timely and properly initiate its Subsection (e)(2) claim through the deficiency notice process, and
- The Commission has counseled both issuers and proponents to exercise appropriate flexibility and to grant leeway during the time of COVID-19.

For the foregoing reasons, there is no justification for excluding the Proposals and no policy argument that could support such a result. Therefore, we respectfully request that Staff deny Chevron's two no-action requests in regard to these Proposals. Should questions arise we would be happy to discuss or clarify anything contained herein.

Sincerely,

Bruce Herbert

Bruce Herbert, AIF
Chief Executive and ACCREDITED INVESTMENT FIDUCIARY

cc: Beth-ann Roth, RK Invest Law
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