March 14, 2018

via e-mail: shareholderproposals@sec.gov

Via electronic mail

The Honorable Jay Clayton
Chairman
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Mr. William Hinman
Director, Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Dear Messrs. Clayton and Hinman,

We are writing as long-time legal practitioners in the Rule 14a-8 no-action letter process to express our concern about an apparent doctrinal shift in how the staff characterizes a proposal as engaging in micromanagement.

The recent decision in *EOG Resources, Inc.* (February 26, 2018) involved the exclusion of a form of shareholder proposal that has long been considered by the SEC staff to be acceptable and to not constitute micromanagement for purposes of Rule 14a-8(i)(7). We are concerned that this decision may signal a sharp deviation in the micromanagement doctrine, representing a significant change from prior staff letters, without providing clear guidance or justification.

Although we understand that Staff interpretations at the SEC do vary over time, they must adhere to the standards established and articulated by the Commission, specifically SEC Release No. 34-40018 (May 21, 1998) citing Exchange Act Release No. 12999 (Nov. 22, 1976). The apparent change in the staff approach to micromanagement reflected in the EOG letter appears inconsistent with these prior interpretations of micromanagement, which have been limited to excluding shareholders' efforts to manage the minutiae of the company's business rather than addressing large questions of business strategy associated with a significant policy issue.[1]

We also recognize that the EOG letter may be an anomaly. In that case, we are writing out of an excess of caution to ensure that you are aware of the importance we place on consistency in staff decision-making and, in particular, the importance of retaining staff's historic approach to

[1] Prior decisions this season regarding the net zero greenhouse gases proposal also appeared to be a radical departure, but could be seen as an anomaly associated with that particular innovative proposal model. See, for instance, *Apple, Inc.* (Jantz), (December 21, 2017) and *Verizon Communications, Inc.* (March 6, 2018). In contrast, the model of proposal found to micromanage in the EOG decision had been found in numerous prior staff decisions to NOT entail micromanagement.

micromanagement decisions.

For decades, shareholder proponents and corporate counsel have relied upon reasonably consistent decision-making in this area, allowing us to craft our proposals and our arguments to steer clear of micromanagement. It has been our understanding that this analysis has historically focused on the form of the request, as opposed to the nature of that request. In other words, a target-setting proposal would generally be appropriate, but a target-setting proposal that specified an unreasonable timeframe for completion, or detailed specific targets with set dates, would arguably constitute micromanagement as these additional details would invite shareholders to delve too deeply into complex matters that should be reserved for management.

Since climate change is a recognized significant policy issue, the only question relevant to micromanagement for this decision should have been the form of the request, i.e., whether shareholders are seeking involvement in minutiae. The proposal in *EOG Resources, Inc.*, asking the company to set targets for greenhouse gas reduction, did not seek to engage shareholders in minutiae, but rather sought the adoption of an effective business strategy scaled to the magnitude and urgency of recognized significant policy issues facing the company and society that many other large companies are pursuing. The proposal was designed to allow management to determine appropriate targets within an appropriate timeframe. As this precise proposal has been deemed to not constitute micromanagement many times before, we are left with the conclusion that the staff's approach to micromanagement has changed.

We urge you to reject any changes to the micromanagement doctrine, which has long been a functional and reasonably predictable element of decision-making by the Staff under Rule 14a-8(i)(7). We would be pleased to discuss this with you at your convenience.

Respectfully Submitted,

Danielle Fugere, President, As You Sow
Adam Kanzer, Managing Director of Corporate Engagement, Domini Impact Investments LLC
Sanford J. Lewis, Attorney and Director, Shareholder Rights Project
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