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February 1, 2021
Via email

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Shareholder Proposal to 3M Company Regarding Public Benefit Corporation on Behalf of The John Bishop Montgomery Trust

Ladies and Gentlemen:

The John Bishop Montgomery Trust (the "Proponent") is the beneficial owner of common stock of 3M Company (the "Company") and has submitted a shareholder proposal (the "Proposal") to the Company. I have been asked by the Proponent to respond to the letter dated December 31, 2020 ("Company Letter") sent to the Securities and Exchange Commission (the "SEC") by Alan L. Dye ("Company Counsel"). In the Company Letter, the Company contends that the Proposal may be excluded from the Company's 2021 proxy statement. A copy of the Proposal is attached to this letter.

We respectfully submit that the Proposal must be included in the Company's 2021 proxy materials and that it is not excludable under Rule 14a-8. A copy of this letter is being emailed concurrently to Company Counsel.

SUMMARY

The Proposal requests that the Board of Directors take steps necessary to amend our certificate of incorporation and, if necessary, bylaws (including presenting such amendments to the shareholders for approval) to become a public benefit corporation (a "PBC") in light of its adoption of the Business Roundtable Statement of the Purpose of a Corporation (the "Statement").

The Company Letter asserts that the Proposal is excludable as addressing ordinary business under Rule 14a-8(i)(7). However, the Proposal advances an extraordinary transaction, namely, an amendment of the Company's constitutional documents that would fundamentally alter the arrangement of rights and interests of shareholders and directors in the Company. Even if the Proposal did not involve an extraordinary transaction, the underlying issues regarding PBCs and shareholder primacy represent a significant policy issue that transcends ordinary business: indeed, legislatures around the country and around the world have passed laws to create benefit corporations in the last decade, and legislation has been introduced in both houses of the U.S. Congress to make all large companies benefit corporations.[1] In addition to this legislative activity, the efficacy of shareholder primacy has been debated for years. All of this demonstrates that the Proposal addresses a significant policy issue that transcends the business of the Company and is thus not excludable as relating to ordinary business.

In addition, the Proposal does not "regulate" the Company's relationship with certain constituencies, as claimed the Company, because it does not specify how any particular business question should be resolved—indeed, if adopted, the Proposal would *expand* the discretion of directors with respect to business decisions, which is the polar opposite of regulation or micromanagement.

BACKGROUND

The request to exclude the Proposal under Rule 14a-8(i)(7) is based on a misunderstanding of the provisions of the Delaware General Corporation Law that authorize PBCs. Accordingly, we begin with an explanation of the purpose and mechanics of Subchapter XV of the DGCL, "Public Benefit Corporations."[2]

A. Conventional Corporate Law

Prior to 2013, directors of all Delaware stock corporations were required to prioritize shareholder interests. While there has been a fierce ongoing debate as to whether corporations should be managed for the benefit of only shareholders or for a broader group of stakeholders,[3] the concept of shareholder primacy has dominated Delaware corporate law. A series of decisions

[1] Several states, including Delaware, use the term "public benefit corporation" to refer to their model of benefit corporations.
[2] 8 Del. C. §361 et seq.
[3] Frederick Alexander, Benefit Corporation Law and Governance: Pursuing Profit with Purpose (2018) at 21-26.

by the Delaware courts cemented the place of shareholder primacy in the United States.[4]

The most important of these was the famous *Revlon* case decided by the Delaware Supreme Court in 1985.[5] Other Delaware authority has established that corporations exist primarily to generate shareholder value.[6] *eBay Domestic Holdings, Inc. v. Newmark*[7] is a more recent example of the Delaware focus on shareholder wealth maximization, even outside the sale context. The court embraced shareholder primacy, finding that it was a violation of the directors' fiduciary duties to make decisions primarily for the benefit of users of the corporation's platform:

> *Having chosen a for-profit corporate form, the craigslist directors are bound by the fiduciary duties and standards that accompany that form. Those standards include acting to promote the value of the corporation for the benefit of its stockholders. The "Inc." after the company name has to mean at least that. Thus, I cannot accept as valid . . . a corporate policy that specifically, clearly, and admittedly seeks not to maximize the economic value of a for-profit Delaware corporation for the benefit of its stockholders.*[8]

The former Chief Justice of the Delaware Supreme Court has explained that the law clearly favors shareholders, stating that, "a clear-eyed look at the law of corporations in Delaware reveals that, within the limits of their discretion, directors must make stockholder welfare their sole end, and that other interests may be taken into consideration only as a means of promoting stockholder welfare."[9]

B. Public Benefit Corporations

The doctrine of shareholder primacy has caused great consternation regarding the harm that it poses to stakeholders and the public.[10] In response, the benefit corporation option was

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[4] Joan MacLeod Heminway, *Corporate Purpose and Litigation Risk in Publicly Held U.S. Benefit Corporations*, 40 Seattle Univ. L. Rev. 611, 613 (2017) ("Delaware decisional law is arguably particularly unfriendly to for-profit corporate boards that fail to place shareholder financial wealth maximization first in every decision they make.")

[5] *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc*., 506 A.2d 173 (Del. 1986) (holding that when a corporation is to be sold in a cash-out merger, the directors' duty is to maximize the cash value to shareholders, regardless of the interests of other constituencies, because there is no long term for the shareholders).

[6] *See Katz v. Oak Indus. Inc*., 508 A.2d 873, 879 (Del. Ch. 1986) ("It is the obligation of directors to attempt, within the law, to maximize the long-run interests of the corporation's stockholders; that they may sometimes do so 'at the expense' of others [*e.g*., debtholders] . . . does not . . . constitute a breach of duty."); Leo E. Strine, Jr., *The Social Responsibility of Boards of Directors and Stockholders in Change of Control Transactions: Is There Any "There" There?*, 75 S. Cal. L. Rev. 1169, 1170 (2002) ("The predominant academic answer is that corporations exist primarily to generate stockholder wealth, and that the interests of other constituencies are incidental and subordinate to that primary concern.")

[7] 16 A.3d 1 (Del. Ch. 2010).

[8] *Id*. at 34-35 (referring to corporate justification for shareholder rights plan meant to forestall a change in control that might threaten platform users' interests).

[9] Leo Strine, *The Dangers of Denial: The Need for a Clear-Eyed Understanding of the Power and Accountability Structure Established by the Delaware General Corporation Law* 50 WAKE FOREST LAW REVIEW 761 (2015).

[10] *See generally*, Lynn Stout, THE SHAREHOLDER VALUE MYTH: HOW PUTTING SHAREHOLDERS FIRST HARMS INVESTORS,

created to provide a corporate form where directors could prioritize interests other than shareholders. Beginning in 2010, U.S. jurisdictions began to adopt benefit corporation provisions, which created a corporate form that required directors to consider other stakeholder interests; a statute has now been adopted in 39 U.S. jurisdictions, one Canadian province and three other countries.[11]

Delaware's version, the PBC, was adopted in 2013. It allows any stock corporation to be formed as a PBC and any stock corporation that is not a PBC to amend its certificate of incorporation to become one.[12] Any such amendment must identify one or more public benefits, which are defined as "a positive effect (or reduction of negative effects) on one or more categories of persons, entities, communities or interests (other than stockholders in their capacities as stockholders) including, but not limited to, effects of an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific or technological nature."[13]

PBC directors have modified obligations that do not prioritize shareholder interests over all others. Instead, as a PBC, a corporation is intended to operate in a "responsible and sustainable manner."[14] Specifically, the directors must balance three considerations: (1) the shareholders' financial interests, (2) the best interests of those materially affected by the corporation's conduct and (3) a specific public benefit identified in the corporation's certificate of incorporation.[15] Thus, a PBC does not only serve shareholders and those named in the public benefit provision—the balancing duty runs to anyone materially affected by the corporation. This balancing obligation distinguishes PBCs from conventional corporations: rather than focusing solely on economic return to shareholders, a PBC must balance the interests of stakeholders other than shareholders as ends in themselves. Its purpose and its obligations are thus broader than financial return to shareholders.

In order for a conventional Delaware corporation to become a PBC, the board of directors must approve an amendment to the certificate of incorporation and then present that amendment to its shareholders for a vote.[16] In other words, the change is considered so fundamental that shareholder approval is required.

Conversion to a PBC reconfigures the rights and duties of the board and shareholders. While the board maintains discretion under the business judgment rule, it is given responsibility to consider a broad range of stakeholder interests as ends in themselves, rather than only as means to satisfy shareholder interests. [17] Shareholders also gain new rights to bring lawsuits for

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CORPORATIONS AND THE PUBLIC (2012).

[11] These totals represent our own hand count based in part on the data available from *The Social Enterprise Tracker*, available at https://socentlawtracker.org/#/map.

[12] 8 Del. C. §362.

[13] Id.

[14] 8 Del. C. §362.

[15] 8 Del. C. §365.

[16] 8 Del. C. §242.

[17] 8 Del. C. §365(b). This means that the traditionally broad discretion with respect to decisions remain in the hands of the board and management, with no more shareholder interference than in a conventional corporation. As one author described this element

relief in the event the board breaches its duties regarding stakeholders or the corporation's public purpose.

C. The Proposal Would Implement a Fundamental Change

The list of core business matters and constituencies in the Company Letter that may be affected by the Proposal does not change a fundamental truth: for a conventional corporation like the Company, those matters and constituencies must be considered through the lens of serving shareholder interests. *The Proposal would eliminate this priority.* A leading Delaware law firm made exactly this point in a recent memorandum to another issuer: J.P. Morgan Chase & Co. had received a shareholder proposal asking the board to evaluate the issue of becoming a PBC. JP Morgan immediately implemented the proposal by obtaining a report (the ("Richards Report") stated:

> *Because the interests of customers, employees, suppliers, and the community in general are often key to the success of the corporation (and therefore are aligned with the interests of the corporation's stockholders), directors of conventional corporations may, consistent with their fiduciary duties, consider such stakeholder interests in making decisions. If the interests of the stockholders and the other constituencies conflict, however, the board's fiduciary duties require it to act in a manner that furthers the interests of the stockholders.*
>
> *In a public benefit corporation, on the other hand, directors are required to manage the corporation in a manner that balances the pecuniary interest of the stockholders, the best interests of those materially affected by the corporation's conduct, and the specific public benefit or benefits identified in its certificate of incorporation.*[18]

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of the statute:

> *[T]he business judgment rule is a doctrine developed by the courts, which prohibits interference with board decisions made by disinterested and fully informed directors acting in good faith. [Chapter XV] states that this rule applies to all balancing decisions made by PBC directors.*

Alexander, *supra* n. 3 at 93. In order to ensure that directors' discretion remains unimpeded for PBC's, the statute was amended in 2020 to clarify that ownership of corporate stock would not render a director "interested" and thus ineligible for the protections of the business judgment rule. Richards, Layton & Finger, *2020 Proposed Amendments to the General Corporation Law of the State of Delaware* ("the amendment clarifies that a director's ownership of or other interest in the stock of the public benefit corporation will not, of itself, create a conflict of interest on the part of the director with respect to any decision implicating the director's balancing requirements, except to the extent such ownership or other interest would create a conflict of interest if the corporation were a conventional corporation") available at https://www.rlf.com/2020-proposed-amendments-to-the-general-corporation-law-of-the-state-of-delaware/.

[18] Richards, Layton and Finger, *Report to the Board of Directors of J.P. Morgan Chase & Co. Regarding Public Benefit Corporations. Available at https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2021/harringtonjpmorgan011121-14a8-*

ANALYSIS

A. The Proposal Seeks an Extraordinary Transaction, Not Ordinary Business

Contrary to the Company's assertions, the Proposal does not relate to the Company's ordinary business, because it involves an extraordinary transaction: amending the certificate of incorporation to alter the rights and obligations of the board to account for stakeholder interests and creating new rights of shareholders for relief if the board neglects those interests. The Delaware legislature deemed this change to fiduciary duties so important that it could only be made by an amendment that required board action followed by shareholder approval.

Because of the fundamental nature of a change in fiduciary duties, the Delaware legislature requires a shareholder vote to implement PBC status. The change in governance contemplated by the Proposal is the opposite of ordinary—it is nothing short of extraordinary to change directors' fiduciary duties, as Subchapter XV reflects.

The fact that shareholders have a place in the process also demonstrates the propriety of a request from shareholders for the board to take action. The issue is not a matter reserved to the sole discretion of the board, but one that the Delaware legislature found appropriate for shareholder engagement as well. As a matter of state law, the issue is within the zone of interest of shareholders, and not a matter reserved to the discretion of the board or considered ordinary business.[19]

Staff positions on prior proposals are clear on this: for example, proposals requesting that a company reincorporate in a more investor friendly state—proposals that would similarly require board approval followed by a shareholder vote in order to change important rights--were found to be non-excludable under Rule 14a-8(i)(7) in *Lowes Companies Inc*. (March 19, 2009) and *American International Group* (March 16, 2009). The registrants argued that the proposal merely related to the determination and implementation of business strategies, and therefore to ordinary business operations. But the proponent argued that these were not mere business decisions but related to major determinations that would affect the rights and interests of shareholders. The Staff found that the proposals were not excludable under Rule 14a-8(i)(7). Certainly, a change to the very purpose of the Company from shareholder priority to shareholder priority among shareholders, workers, communities, and others is no less extraordinary than reincorporation to a more investor-friendly jurisdiction. As the Chief Justice of the Supreme Court of Delaware has said:

> *[T]he benefit corporation movement represents a refreshing and substantial step forward for those who believe that corporations—and all business entities—not only can, but should both do well by*

incoming.pdf

[19] In contrast, adoption of the Statement does not require the approval of either the shareholders or the board, and, in fact, most boards do not approve the their corporation's adoption of the Statement, *see* Lucian A. Bebchuk Roberto Tallarita, *The Illusory Promise of Stakeholder Governance* (98% of responding signatories did not obtain board approval of signing onto Statement) available at file:///C:/Users/FrederickAlexander/Downloads/SSRN-id3544978%20(5).pdf,

> *their investors, but also their workers and the societies in which they operate.*[20]

B. The Proposal Transcends Ordinary Business

In addition to addressing an extraordinary transaction and not relating to ordinary business, the Proposal transcends ordinary business because it addresses a significant policy issue, as the prior quote from Chief Justice Strine makes clear. The Company itself has recognized the issue by executing the Statement along with another 180 large corporations, which acknowledges the critical nature of the relationship between a corporation and its stakeholders. But while it recognized the issue, it also sidestepped it, like the commentators referred to in another passage from the Chief Justice:

> *Rather than fighting to change the corporate law statutes . . ., these good-hearted, but often faint-willed, commentators just urge the directors to "do the right thing."*[21]

That is exactly what the Company has done: pledged to do the right thing, but not changed the law that actually prevents them from following that pledge when it fails to redound to the benefit of shareholders. This distinction between the real change of a PBC amendment and the window dressing of the Statement raises a significant policy issue.

The reaction to the Statement's issuance (as well as the number of companies signing on) in August 2019 demonstrated the policy significance of addressing shareholder primacy. One dubious commentator noted that "For many of the BRT signatories, truly internalizing the meaning of their words would require rethinking their whole business."[22] Others noted the importance of the change, but also that it was meaningless without ending shareholder primacy:

> *Ensuring that our capitalist system is designed to create a shared and durable prosperity for all requires this culture shift. But it also requires corporations, and the investors who own them, to go beyond words and take action to upend the self-defeating doctrine of shareholder primacy.*[23]

Other commentators were worried not that the Statement did not go far enough, but rather that it went too far:

> *Asking corporate managers to focus more on improving society and less on making profits may sound like a good strategy. But it's a blueprint for ineffective and counterproductive public policy on*

[20] Leo Strine, *Forward,* in Alexander, *supra*, n. 3
[21] *Id.*
22 Andrew Winston, *Is the Business Roundtable Statement Just Empty Rhetoric?* HARVARD BUSINESS REVIEW (August 30, 2019).
23 Jay Coen-Gilbert, Andrew Kassoy and Bart Houlihan, *Don't Believe the Business Roundtable Until It's CEO's Actions Match Their Words,* FAST COMPANY (August 22, 2019).

> *the one hand, and blame-shifting and lack of accountability on the other. This is a truth Milton Friedman recognized nearly five decades ago — and one that all corporate stakeholders ignore today at their peril.*[24]

Another writer agreed, linking the issue to the same essay by Milton Friedman:

> *The issue of which constituency – or "stakeholder" – has the highest priority has long been a classic corporate governance conundrum. Still, the prevailing consensus, as espoused by Milton Friedman in his September 13, 1970 New York Times Magazine article, has been corporate executives work for their owners (i.e., shareholders) and have a responsibility to do what those owners desire, which is to make as much money as (legally) possible. That all changed on August 19, 2019.* [25]

While exploring the laudable aspects of commitments to corporate social responsibility, the author of these articles returned to Friedman's famous article, which stated that:

> *[T]he doctrine of 'social responsibility' taken seriously would extend the scope of the political mechanism to every human activity. It does not differ in philosophy from the most explicitly collectivist doctrine. It differs only by professing to believe that collectivist ends can be attained without collectivist means. That is why, in my book Capitalism and Freedom, I have called it a 'fundamentally subversive doctrine' in a free society, and have said that in such a society, 'there is one and only one social responsibility of business—to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud.*[26]

The outpouring of commentary around the Statement[27] raises two related but distinct significant policy issues: first, should corporations focus more on stakeholders interests and if so, is a legal change to reject shareholder primacy necessary or desirable? In a conventional corporation, stakeholders interests are subordinate to the interest of shareholders—the board of directors or management can consider stakeholder interests only to the degree that they serve shareholder interests. Many commentators on the Statement believe it is necessary but insufficient on its own because attaining a fair and durable prosperity will sometimes demand that companies put the interests of stakeholders over those of shareholders.

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24 Karl Smith *Corporations Can Shun Shareholders, But Not Profits*, BLOOMBERG OPINION (August 27, 2019).
25 Christopher Carosa *Did Business Roundtable Just Break A Fiduciary Oath?*, FiduciaryNews.com. August 27, 2019 available at http://fiduciarynews.com/2019/08/did-business-roundtable-just-break-a-fiduciary-oath/.
26 Milton Friedman, *The Social Responsibility of Business Is to Increase Its Profits* N.Y. TIMES, Sept. 13, 1970 (magazine).
27 One more recent event has unleashed a second rush of commentary around the shareholders v. stakeholders question: the 2020 recognition of the 50th anniversary of Friedman's essay. See, e.g., *Friedman 50 Years later,* PROMARKET (collecting 27 essays about Friedman's article and its legacy) (Stigler Center for the Study of the Economy and the State).

The clearest signal of the significance of the policy issue is legislative action to address the issue around the nation and the world. Legislatures have acted in 39 U.S. jurisdictions, the Canadian province of British Columbia, and the countries of Italy, Colombia, and Ecuador over the last decade to make this new form available. In addition, legislation was introduced in the last U.S. Congress in both houses that would have imposed benefit corporation duties on the directors of all billion dollar companies.[28] The issue even surfaced in the most recent U.S. presidential election, as one candidate decried "the era of shareholder capitalism.[29] In response, critics argued that favoring shareholders was the best recipe for a successful economy:

> *In reality, corporations do enormous social good precisely by seeking to generate returns for shareholders.*[30]

Shareholder primacy is clearly an issue of great policy significance being addressed in legislatures around the country and the world, and even in the latest race for the U.S. presidency. Moreover, the Company's decision not to address its legal strictures matters deeply. In a recent study, Schroders determined that publicly listed companies imposed social and environmental costs on the economy with a value of $2.2 trillion annually—more than 2.5% of global GDP and more than half of the profits those companies earned.[31] These costs have many sources, including pollution, water withdrawal, climate change and employee stress. The study shows exactly the areas where corporations are likely to ignore stakeholder interests, to the detriment of the global economy.

By participating in this common corporate practice of prioritizing the financial return to its shareholders above all stakeholder concerns, corporations harm those very shareholders, the vast majority of whom are diversified.[32] Such shareholders and beneficial owners suffer when companies follow the shareholder primacy model and impose costs on the economy that lower GDP, which reduces overall equity value.[33] Thus, while corporations may increase their isolated return to shareholders under the rule of shareholder primacy by ignoring the costs they externalize to stakeholders, their diversified shareholders will ultimately pay these costs. Such shareholders would benefit from corporate governance that enabled corporations to prioritize the stakeholders to whom the Statement refers.

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[28] Copies of the legislation are available here: https://www.congress.gov/bill/116th-congress/senate-bill/3215?q=%7B%22search%22%3A%5B%22accountable+capitalism+act%22%5D%7D&s=1&r=1 (Senate) and here: House: https://www.congress.gov/bill/116th-congress/house-bill/6056?q=%7B%22search%22%3A%5B%22accountable+capitalism+act%22%5D%7D&s=2&r=2 (House)

[29] *Biden says investors 'don't need me,' calls for end of 'era of shareholder capitalism'*, (CNBC) (July 9, 2020), available at https://www.cnbc.com/2020/07/09/biden-says-investors-dont-need-me-calls-for-end-of-era-of-shareholder-capitalism.html.

[30] Andy Pudzer, *Biden's Assault on 'Shareholder Capitalism*, (Wall Street Journal) (August 17, 2020), available at https://www.wsj.com/articles/bidens-assault-on-shareholder-capitalism-11597705153.

[31] https://www.schroders.com/en/sysglobalassets/digital/insights/2019/pdfs/sustainability/sustainex/sustainex-short.pdf

[32] Indeed, as of the January 2020 proxy statement, the top two holders of Company shares were mutual fund companies Vanguard and BlackRock, whose clients are generally indexed or otherwise broadly diversified investors.

[33] See, e.g., https://www.advisorperspectives.com/dshort/updates/2020/11/05/market-cap-to-gdp-an-updated-look-at-the-buffett-valuation-indicator (total market capitalization to GDP "is probably the best single measure of where valuations stand at any given moment") (quoting Warren Buffet).

Thus, the Proposal addresses a significant policy issue that is not excludable for purposes of Rule 14a-8(i)(7). Consistent with the foregoing analysis, questions around duties to stakeholders have not been excluded under 14a-8(i)(7) in recent staff decisions in Bank of America Corporation (February 12, 2020), Goldman Sachs Inc. (February 25, 2020), and Citigroup Inc. (February 25, 2020).

C. The Proposal Does Not Micromanage

Finally, the Proposal does not micromanage the Company but rather requests the board to initiate an extraordinary action that Delaware law establishes as a matter that requires the approval of the shareholders as well as the board of directors.

Far from constituting micromanagement—focusing on any single activity or operation—PBC status would overlay every decision, allowing the directors to authentically balance the interests of workers, customers, and others without dictating the outcome of any decision, so that all of the matters mentioned in the Company Letter would remain entirely in the hands of the board and management under the business judgment rule.[34] Indeed, if the Company went forward with the Proposal and became a PBC, directors would have *increased* discretion with respect matters that implicate stakeholder interests, and granting increased discretion is the precise opposite of micromanaging.

The Company Letter is based on a basic misapprehension of Delaware law, arguing as follows:

> *In addition, implementation of the Proposal would require the Company, in making fundamental decisions about its core business matters, to take into account and "balance" numerous factors and interests in any particular context. As discussed above, selection of the factors to take into account in making core business decisions is fundamentally the responsibility of management*.[35]

But as explained above, the decision whether to continue to stop prioritizing shareholders over stakeholders in all matters—the sole focus of the Proposal—is decidedly *not* "the responsibility of management." Without converting to a PBC, management would have to violate Delaware law in order to effect its underlying purpose. The question whether to apply such prioritization is, by law, a function of whether the Company remains a conventional corporation or converts into a PBC.

The Company's ordinary business argument asserts that the change in duties will affect decisions that are made in the ordinary course of business, and the No-Action Request lists areas of decision-making that such a change might affect. But the length of the list simply

[34] In cases where a higher standard of review applied because of board conflicts or entrenchment concerns, any limitation on board discretion would be the same as the limits that would otherwise apply to a conventional corporation. Alexander, *supra* n. 3, Chapter 8.
[35] Company Letter at 4.

demonstrates that the Proposal transcends ordinary business because it provides an overall policy shift that potentially touches every decision the board makes, without dictating any particular outcome.

As the Staff has said, "The purpose of the exception is 'to confine the resolution of ordinary business problems to the management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.'"[36]

Effecting the Proposal will leave problem-solving firmly in the hands of the board and management. Indeed, the enactment of the suggested amendments actually would enhance rather than limit the directors' discretion by allowing directors to add other considerations and priorities other than shareholder interests. This concept is written right into the statute: as discussed above, Section 365 fully preserves the discretion of the board with respect to business decisions but expands the purposes that can satisfy. The Proposal would thus give the Company's directors and executives greater leeway on every matter listed by the Company in its No-Action Request, rather than in any way "confining" such decisions. Such a request transcends the Company's ordinary business and is not excludable under Rule 14a-8(i)(7).

CONCLUSION

Based on the foregoing, we believe it is clear that the Company has provided no basis for the conclusion that the Proposal is excludable from the 2021 proxy statement pursuant to Rule 14a-8. As such, we respectfully request that the Staff inform the company that it is denying the no action letter request. If you have any questions, please contact me.

Sincerely,

Frederick Alexander

Frederick Alexander

cc: Alan L. Dye
John Montgomery

[36] Staff Legal Bulletin No. 14I (2017) (citing Release No. 34-40018(May 21, 1998).

PROPOSAL

[3M Company: Rule 14a-8 Proposal, November 25, 2020]
[This line and any line above it – *Not* for publication.]

ITEM 4* – Transition to Public Benefit Corporation

RESOLVED: 3M Company ('Company') shareholders request our Board of Directors take steps necessary to amend our certificate of incorporation and, if necessary, bylaws (including presenting such amendments to the shareholders for approval) to become a public benefit corporation (a "PBC") in light of its adoption of the Business Roundtable Statement of the Purpose of a Corporation (the "Statement").[1]

SUPPORTING STATEMENT: The Company signed the Statement, which proclaims "we share a fundamental commitment to all of our stakeholders. . . . We commit to deliver value to all of them, for the future success of our companies, our communities and our country."

However, the Company is a conventional Delaware corporation, so that directors' fiduciary duties emphasize the company and its shareholders, but not stakeholders (except to the extent they create value for shareholders over time). Accordingly, when the interests of shareholders and stakeholders such as workers or customers clash, the Company's legal duty excludes all but shareholders.

As one Delaware law firm reported to another signatory considering conversion, directors may consider stakeholder interests only if "*any decisions made with respect to such stakeholders are in the best interests of the corporation and its stockholders.*"[2] That contradicts the commitment made in the Statement.

In contrast, directors of a PBC must "balance" the interests of shareholders, stakeholders, and a specified benefit[3], giving legal status to the Statement's empty promise.

This matters. A recent study determined that listed companies create annual social and environmental costs of $2.2 trillion[4]. These costs have many sources, including pollution, climate change and employee stress.[5] A company required to balance stakeholder interests could prioritize lowering these costs, even if doing so sacrificed higher return

[1] https://s3.amazonaws.com/brt.org/BRT-StatementonthePurposeofaCorporationOctober2020.pdf.
[2] https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2020/harringtonwellsfargo021220-14a8.pdf
[3] 8 Del C, §365.
[4] https://www.schroders.com/en/sysglobalassets/digital/insights/2019/pdfs/sustainability/sustainex/sustainex-short.pdf.
[5] Id.

That matters to our shareholders, the majority of whom are beneficial owners with broadly diversified interests. As of the 2020 proxy statement, the Company's top three holders were Vanguard, State Street and BlackRock, which are generally indexed or otherwise broadly diversified.

Such shareholders and beneficial owners are unalterably harmed when companies follow Delaware's "shareholder primacy" model and impose costs on the economy that lower GDP, which reduces equity value.[6] While the Company may profit by ignoring costs it externalizes, diversified shareholders will ultimately pay these costs. As a PBC, our Company could prioritize reducing these costs.

Shareholders are entitled to vote on a change that would serve their interests and ensure the commitment made to stakeholders is authentic and lasting.

Please vote for: Transition to Public Benefit Corporation – Proposal [4*]

[This line and any below are *not* for publication]
Number 4* to be assigned by the Company

The graphic above is intended to be published with the rule 14a-8 proposal.
The graphic would be the same size as the largest management graphic (and accompanying bold or highlighted management text with a graphic) or any highlighted management executive summary used in conjunction with a management proposal or a rule 14a-8 shareholder proposal in the 2021 proxy.

The proponent is willing to discuss the in unison elimination of both shareholder graphic and management graphic in the proxy in regard to specific proposals.

Reference SEC Staff Legal Bulletin No. 14I (CF)
[16] Companies should not minimize or otherwise diminish the appearance of a shareholder's graphic. For example, if the company includes its own graphics in its proxy statement, it should give similar prominence to a shareholder's graphics. If a company's proxy statement appears in black and white, however, the shareholder proposal and accompanying graphics may also appear in black and white.

Notes: This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

> Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(i)(3) in the following circumstances:

[6] See, e.g., https://www.advisorperspectives.com/dshort/updates/2020/11/05/market-cap-to-gdp-an-updated-look-at-the-buffett-valuation-indicator (total market capitalization to GDP "is probably the best single measure of where valuations stand at any given moment") (quoting Warren Buffet).

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.

See also Sun Microsystems, Inc. (July 21, 2005)
The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email [olmsted7p (at) earthlink.net].