



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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DIVISION OF ECONOMIC JUSTICE
INVESTOR PROTECTION BUREAU

August 27, 2018

The Honorable Barry R. Ostrager
Supreme Court, New York County
60 Centre Street, Room 232
New York, NY 10007

Re: People of the State of New York, by Barbara D. Underwood, Attorney General of the State of New York, v. PricewaterhouseCoopers, LLP and Exxon Mobil Corporation, Index No. 451962/2016 (Motion Sequence No. 7)

Dear Justice Ostrager:

We write in response to Exxon Mobil Corporation's ("Exxon") letter filed earlier today concerning the United States Securities and Exchange Commission's ("SEC") notice indicating that SEC staff does not intend to recommend an enforcement action at this time. As Exxon knows, the SEC made clear in the notice Exxon references that it "must in no way be construed as indicating that the party has been exonerated or that no action may ultimately result from the staff's investigation."¹ The SEC has further made clear that Exxon and its management are "responsible for the accuracy and adequacy of their disclosures, notwithstanding any . . . action or absence of action" by the SEC.² This notice therefore has no bearing on the Office of the Attorney General's ("OAG") investigation or the present motion.

Additionally, we note that, on August 14, 2018, the United States District Court for the Northern District of Texas (Kinkeade, J.) issued the enclosed order in *Ramirez v. Exxon Mobil Corp.*, a class action litigation in which the facts alleged in the complaint are drawn in significant part from facts set forth in OAG's June 2017 motion to compel. In particular, the complaint alleges that Exxon used lower, internal figures for its proxy cost of GHG emissions in place of the higher figures it publicly described when evaluating investment decisions and business plans. Judge Kinkeade denied in relevant part Exxon's motion to dismiss the complaint, and held that the complaint adequately alleged violations of federal securities laws, including the elements of materiality and scienter. Among other things, Judge Kinkeade held the following:

¹ SEC ltr. to David R. Woodcock, Aug. 2, 2018, NYSCEF No. 421.

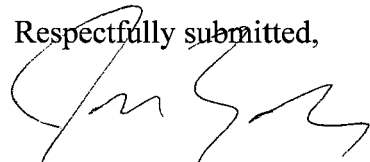
² SEC ltr. to Andrew P. Swiger, Apr. 10, 2017, NYSCEF No. 422.

- “Whether the two differing proxy cost values represent two different costs or the same cost with different values applied internally than publicly purported to be applied is a factual dispute and cannot be determined at this motion to dismiss stage.” (slip op. at 18)
- “Because ExxonMobil’s public statements allegedly indicate to investors only one proxy cost value was used across all business units in making investment decisions, ExxonMobil’s argument is not persuasive as investors may still have been materially misled. Thus, the Court finds [plaintiffs] sufficiently alleged ExxonMobil made material misstatements regarding ExxonMobil’s use of proxy costs in formulating business and investment plans.” (slip op. at 18-19)
- “Specific allegations” support “a strong inference of scienter” on the part of Exxon and certain executives. (slip op. at 31-32)
- Plaintiffs “allege particularized facts supporting a strong inference that ExxonMobil, through Defendant Tillerson, knowingly used a lower internal proxy cost than what ExxonMobil told the public and investors it used in making investment and business decisions.” (slip op. at 36-37)

Judge Kinkeade’s decision further confirms that Exxon’s merits-based arguments do not undermine the factual basis for OAG’s investigation.

Thank you for Your Honor’s consideration of this submission.

Respectfully submitted,



Jonathan C. Zweig

Enclosed: Memorandum Opinion and Order, *Ramirez v. Exxon Mobil Corp.*, No. 3:16-CV-3111-K, 2018 WL 3862083 (N.D. Tex. Aug. 14, 2018)

Carbon copy by electronic mail:

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