



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

BARBARA D. UNDERWOOD
SOLICITOR GENERAL
DIVISION OF APPEALS & OPINIONS

January 24, 2020

Catherine O'Hagan Wolfe
Clerk of the Court
United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

Re: *Exxon Mobil Corporation v. Healey*, Docket No. 18-1170

Dear Ms. Wolfe,

Defendant-appellee New York Attorney General Letitia James herewith responds to plaintiff-appellant Exxon Mobil Corp.'s letter of January 13, 2020, which argues that recent events support its claim that its appeal is not moot, and that the appeal has merit. Exxon is mistaken on both points.

Exxon has appealed the dismissal of its complaint challenging an investigative subpoena issued to it by the New York Office of the Attorney General (NYOAG) in November 2015.¹ In prior submissions, NYOAG explained why this appeal was rendered moot as to NYOAG when NYOAG completed the investigation, withdrew the investigative subpoena, and concluded the trial in NYOAG's state-court fraud suit against Exxon. NYOAG has further explained why, in any event, the U.S. District Court for the Southern District of New York (Caproni, J.) correctly concluded that the facts alleged in Exxon's operative complaint and proposed second amended complaint showed a legitimate cause for the investigation.

Exxon's latest submission argues that notwithstanding the now-final judgment in its favor in NYOAG's state-court fraud action, this appeal is not moot

¹ Exxon also appeals the dismissal of its challenge to a civil investigative demand from the Massachusetts Attorney General.

because NYOAG has issued a press release describing NYOAG's continuing commitment to combatting securities fraud, including fraud concerning how companies are accounting for the future effects on their business of climate change and climate-change regulations: an issue of significant concern to investors². Exxon also argues that the judgment in its favor in NYOAG's state-court fraud suit shows that its challenge to NYOAG's investigation has merit. Exxon's arguments against mootness are wrong, as are its characterizations of the state-court rulings regarding NYOAG's investigation. The controversy identified in Exxon's complaint has been conclusively resolved, as explained in NYOAG's pending motion to dismiss the appeal. The press release does not revive the investigative subpoena or investigation that are the sole targets of Exxon's request for relief. Exxon's appeal thus remains moot.

As for the merits, contrary to Exxon's suggestion, Justice Ostrager of the New York Supreme Court found Exxon's claims of persecution to be unsupported. While presiding over NYOAG's proceedings to enforce the November 2015 subpoena, Justice Ostrager determined that NYOAG was "entitled to documents relevant to" the subpoena and set a deadline for Exxon's production. (Joint Appendix 1555, 1576, 1579.) In NYOAG's fraud suit, Justice Ostrager dismissed Exxon's "affirmative defenses relating to an alleged conflict of interest and official misconduct allegedly committed by the Office of the Attorney General,"³ and Exxon's "defense of selective enforcement"⁴. Justice Ostrager noted that Exxon had not shown any "improper conduct by officials with the state," and that these affirmative defenses were "irrelevant to the merits of [NYOAG's securities fraud] case."⁵

NYOAG disagrees with Justice Ostrager's ruling that the evidence in its fraud suit showed no violation by Exxon of the Martin Act (codified at N.Y. General Business Law article 23-A) and N.Y. Executive Law § 63(12). To prevail on a Martin Act claim, the Attorney General must show the misrepresentation or omission of facts

² See, e.g., Andrew Ross Sorkin, *BlackRock C.E.O. Larry Fink: Climate Crisis Will Reshape Finance*, N.Y. Times (Jan. 14, 2020), available at <https://www.nytimes.com/2020/01/14/business/dealbook/larry-fink-blackrock-climate-change.html>

³ Order of June 12, 2019, *People of the State of N.Y. v. Exxon Mobil Corp.*, Index No. 452044/2018 (Sup. Ct. N.Y. Cty.), NYCEF Doc. No. 237, available at <https://iapps.courts.state.ny.us/fbem/DocumentDisplayServlet?documentId=gZ46u3TEsuTKxJCR7gXr0g==&system=prod>

⁴ Order of July 17, 2019, *Exxon Mobil* NYCEF Doc. No. 298, available at <https://iapps.courts.state.ny.us/fbem/DocumentDisplayServlet?documentId=hljIMN3JiI/d8p8RL8berw==&system=prod>

⁵ June 14, 2019 Hrg Tr. at 39, 43, *Exxon Mobil* NYCEF Doc. No. 240, available at <https://iapps.courts.state.ny.us/fbem/DocumentDisplayServlet?documentId=dLiH/DvespyjOVXM PLUS U8QtQ==&system=prod>

that a reasonable shareholder would be substantially likely to find important when making an investment decision; conduct that violates the Martin Act violates § 63(12) if it is persistent or repeated. *See, e.g., State of New York v. Rachmani Corp.*, 71 N.Y.2d 718, 721 n.1, 726 (1988). Justice Ostrager incorrectly treated decisions to buy or sell stocks as the only investment decisions to which a misrepresented fact could be material, and he erroneously discounted statements that did not apparently cause reasonable investors to act differently with respect to near-term buy-sell decisions. *See* Decision After Trial at 32 n.9, 38–41, *Exxon Mobil* NYCEF Doc. No. 567;⁶ *Rachmani Corp.*, 71 N.Y.2d at 726 (materiality sweeps broader than buy-sell decisions); *People v. Credit Suisse Sec. (USA) LLC*, 31 N.Y.3d 622, 632 (2018) (reliance is not an element of a Martin Act claim). These errors of law prevented Justice Ostrager from recognizing that NYOAG’s proof of false, material statements by Exxon included witness testimony from Wells Fargo energy-sector analyst Roger Read (*see* Addendum 2-4) and from Michael Garland—an employee of the New York City Comptroller’s Office whose team “vot[es] the proxies of the public equity portfolio companies held by the five New York City pension funds and engag[es] with [the] portfolio companies to advocate to address a range of environmental and social and corporate governance risks that [the team] think[s] are key to protecting and creating long-term share owner value” (*see* Addendum 6).

Notwithstanding Justice Ostrager’s errors of law, NYOAG has exercised its prosecutorial discretion and has decided not to appeal. That too underscores the mootness of Exxon’s current appeal and the hollowness of Exxon’s claims of persecution.

Respectfully submitted,

/s/ Anisha S. Dasgupta

Anisha S. Dasgupta
Deputy Solicitor General

cc (by ECF):

all counsel of record

⁶ Available at <https://iapps.courts.state.ny.us/fbem/DocumentDisplayServlet?documentId=N/2DxDaU8Gqsq9lN5w0A==&system=prod>

Addendum

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF NEW YORK

3 _____
4 PEOPLE OF THE STATE OF NEW YORK) INDEX NO. 452044/2018
5 by LETITIA JAMES, Attorney)
6 General of the State of)
7 New York,)
8)
9 Plaintiff,)
10)
11 vs.)
12)
13 EXXON MOBIL CORPORATION,)
14)
15 Defendant.)

16 ORAL VIDEOTAPED DEPOSITION

17 MR. ROGER D. READ

18 October 7, 2019

19 ORAL VIDEOTAPED DEPOSITION OF MR. ROGER D. READ,
20 produced as a witness at the instance of the
21 Defendant and duly sworn, was taken in the
22 above-styled and numbered cause on October 7, 2019,
23 from 10:07 a.m. to 3:14 p.m., before Michelle
24 Hartman, Certified Shorthand Reporter in and for the
25 State of Texas, reported by computerized stenotype
machine at the offices of Haynes & Boone, LLP, 1221
McKinney Street, Suite 2100, Houston, Texas 77010,
pursuant to the Texas Rules of Civil Procedure and
the provisions stated on the record or attached
hereto.

Page 86	<p>1 per share to come up with a target price, correct?</p> <p>2 MR. WALLACE: Objection.</p> <p>3 THE WITNESS: Yes.</p> <p>4 Q. (BY MR. TOAL) And then if you go down</p> <p>5 to it looks like the second-to-last heading under</p> <p>6 "Valuation range," still on that first page --</p> <p>7 A. Uh-huh.</p> <p>8 Q. -- you see that it has, "Valuation</p> <p>9 range," down there?</p> <p>10 A. Right.</p> <p>11 Q. And it says, "Our valuation range is</p> <p>12 based on a 20 times" -- I'm sorry, "Our valuation</p> <p>13 range is based on 20 times or 2018 earning per share</p> <p>14 forecast for \$4.76."</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And so in this case, that 20 times, is</p> <p>18 that the PE multiple that you used and applied to</p> <p>19 forward earnings forecasts?</p> <p>20 MR. WALLACE: Objection: Form.</p> <p>21 THE WITNESS: That's correct.</p> <p>22 Q. (BY MR. TOAL) And then on the second</p> <p>23 page you have a section entitled "GHG and Stranded</p> <p>24 Investment Risks."</p> <p>25 Do you see that?</p>	Page 88	<p>1 MR. WALLACE: Objection to form.</p> <p>2 MR. GLICKMAN: If you recall or if you</p> <p>3 even know.</p> <p>4 THE WITNESS: Not exclusively.</p> <p>5 Q. (BY MR. TOAL) All right. So in this</p> <p>6 section you say, "To guard against future expenses</p> <p>7 related to GHG regulations, a direct carbon tax, or</p> <p>8 carbon trading schemes, ExxonMobil places a proxy</p> <p>9 cost of carbon on all of its future developments."</p> <p>10 Do you see that language?</p> <p>11 A. Yes.</p> <p>12 Q. And after this meeting, did that</p> <p>13 reflect your understanding of how ExxonMobil used its</p> <p>14 proxy cost of carbon?</p> <p>15 A. As a component of their valuation, yes.</p> <p>16 Q. And had ExxonMobil, to your knowledge,</p> <p>17 disclosed information on its use of proxy cost of</p> <p>18 carbon before this meeting on May 26, 2016?</p> <p>19 MR. GLICKMAN: Just so that we're</p> <p>20 clear, disclosed publically?</p> <p>21 Q. (BY MR. TOAL) Publically.</p> <p>22 A. Sorry, ask the question again. I just</p> <p>23 wanted to make sure I understand.</p> <p>24 Q. The question is: To your</p> <p>25 understanding, had ExxonMobil described prior to this</p>
Page 87	<p>1 A. Yes.</p> <p>2 Q. And what do you understand "stranded</p> <p>3 investment risks" to be?</p> <p>4 A. In our definition, "stranded investment</p> <p>5 risks" would be a resource that you know about, in</p> <p>6 this case oil and gas, that will not be recovered and</p> <p>7 therefore essentially has no value to the company.</p> <p>8 Q. Your prior research reports on</p> <p>9 ExxonMobil, had you ever included a section entitled</p> <p>10 "GHGs and Stranded Investigation Risks"?</p> <p>11 MR. WALLACE: Objection.</p> <p>12 THE WITNESS: Not to my recollection.</p> <p>13 Q. (BY MR. TOAL) And what prompted you to</p> <p>14 include this section in this report?</p> <p>15 A. We were receiving increased interest,</p> <p>16 concern, questions from investors about these topics.</p> <p>17 Q. And you mentioned before that you had</p> <p>18 gotten questions from investors in something I think</p> <p>19 you described as ESG; is that correct?</p> <p>20 A. Yes.</p> <p>21 Q. And what does "ESG" stand for?</p> <p>22 A. Environmental, social, and governance.</p> <p>23 Q. And when you referred to the increased</p> <p>24 questions you had received, were those questions</p> <p>25 coming from investors with an ESG focus?</p>	Page 89	<p>1 May 2016 meeting information about how it used its</p> <p>2 proxy cost of carbon?</p> <p>3 A. In the other documents we have looked</p> <p>4 at, yes.</p> <p>5 Q. Okay. So were you already familiar</p> <p>6 with the information that ExxonMobil was describing</p> <p>7 at this May 26, 2016 meeting about its use of a proxy</p> <p>8 cost of carbon?</p> <p>9 A. Yes, in broad terms.</p> <p>10 Q. Now, during this meeting on May 26,</p> <p>11 2016, did ExxonMobil precisely describe the mechanism</p> <p>12 it used to take its proxy cost of carbon into account</p> <p>13 on future developments?</p> <p>14 MR. GLICKMAN: Objection to the</p> <p>15 characterization of the term "precisely."</p> <p>16 You can answer the question as best as</p> <p>17 you understand it.</p> <p>18 THE WITNESS: It was a fairly</p> <p>19 high-level discussion with these reference points.</p> <p>20 We did not go into a project-by-project analysis of</p> <p>21 how they applied proxy carbon costs.</p> <p>22 Q. (BY MR. TOAL) And did you ask</p> <p>23 ExxonMobil for a more detailed explanation of how it</p> <p>24 used its proxy cost of carbon in analyzing future</p> <p>25 developments?</p>

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1 Q. And do you know what happened to this
 2 SEC investigation?
 3 A. I don't recall a specific resolution of
 4 it.
 5 MR. GLICKMAN: Just answer the
 6 question. I don't want you to speculate.
 7 THE WITNESS: No.
 8 Q. (BY MR. TOAL) Okay. Let me see if I
 9 can refresh your recollection.
 10 Do you have a -- do you have a
 11 recollection that the SEC closed its investigation
 12 without recommending any enforcement action?
 13 MR. WALLACE: Objection to the form.
 14 THE WITNESS: I do not.
 15 Q. (BY MR. TOAL) And is it true that you
 16 kept your rating on ExxonMobil's stock in outperform?
 17 MR. WALLACE: Objection.
 18 THE WITNESS: Yes.
 19 Q. (BY MR. TOAL) Now, in that research
 20 report, you reference the New York Attorney General
 21 investigation, correct?
 22 A. Yes.
 23 Q. And is that the first time you recall
 24 making any reference to the New York Attorney General
 25 investigation in any of your reports or flash

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1 comments?
 2 A. Yes.
 3 Q. And then you have -- in the fourth --
 4 fourth heading, you have a section entitled "CO2 and
 5 emissions risks," correct?
 6 A. Yes.
 7 Q. And you, again, discuss the May 26,
 8 2016 meeting, correct?
 9 A. Yes.
 10 Q. And were you reporting any information
 11 in this report beyond what you had previously
 12 reported about CO2 and emissions risks in the
 13 May 30th, 2016 report?
 14 MR. GLICKMAN: Just hold up a second.
 15 Well, can -- can you -- can you tweak
 16 that question?
 17 You're asking: Were you reporting any
 18 information in that report? I think the report
 19 speaks for itself.
 20 MR. TOAL: I will rephrase.
 21 Q. (BY MR. TOAL) Had you -- between the
 22 time of the May 30th, 2016 report and this report,
 23 had you become aware of any new information about
 24 ExxonMobil's use of a proxy cost?
 25 A. No.

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1 MR. TOAL: All right. Why don't we go
 2 off the record.
 3 THE VIDEOGRAPHER: The time is 12:33.
 4 Off the record.
 5 (Recess taken)
 6 THE VIDEOGRAPHER: The time is 12:45.
 7 Back on the record.
 8 Q. (BY MR. TOAL) And, Mr. Read, referring
 9 you back to the language we read before, "We rank the
 10 likelihood of a negative outcome from a reported SEC
 11 investigation into ExxonMobil's accounting/climate
 12 practice as very slight," were you talking about the
 13 likelihood of a negative outcome for ExxonMobil?
 14 A. Yes.
 15 Q. And at the bottom of the section on
 16 "CO2 and emissions risks," after describing your
 17 May 26th, 2016 meeting, you say, "Thus, we believe
 18 ExxonMobil is ahead of the curve on pricing and
 19 climate risks."
 20 Do you see that language?
 21 A. Yes.
 22 Q. And why did you believe that ExxonMobil
 23 was ahead of the curve in pricing climate risks?
 24 A. We had talked to some other companies
 25 in the industry and found to have a less

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1 comprehensive approach to estimating future proxy
 2 carbon pricing as an example.
 3 Q. And did you have an understanding that
 4 ExxonMobil was evaluating the impact of potential
 5 climate regulations on both its demand projections
 6 for oil and natural gas and on the expenses of
 7 potential future projects?
 8 A. I don't recall the specifics of whether
 9 we were focused just on demand or just internally,
 10 but definitely internally.
 11 Q. And is it important for you as an
 12 analyst to know whether a company is taking into
 13 account potential climate regulations on both a
 14 demand and the expense side?
 15 A. On the expense side, yes.
 16 Q. And why on the expense side?
 17 A. Because that's controllable.
 18 Q. And on the expense side, relating to
 19 potential future projects, is it important for you to
 20 know whether a company is taking into account the
 21 risks of climate regulation?
 22 A. Yes.
 23 Q. And what do you do to try and
 24 understand whether other companies are accounting for
 25 the risks of climate regulations on their expenses?

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1 and with that objection, can you explain again: What
 2 was the significance of the fact that ExxonMobil was
 3 ahead of the curve on pricing and climate risks?
 4 MR. TOAL: Same objection.
 5 MR. GLICKMAN: In addition, object to
 6 the term "significance."
 7 Go ahead.
 8 THE WITNESS: Okay. We believed that
 9 Exxon, taking this into account, better positioned it
 10 relative to its peers.
 11 Q. (BY MR. WALLACE) And that was something
 12 that investors would be interested in knowing?
 13 MR. TOAL: Object to the form.
 14 THE WITNESS: Within the overall total
 15 valuation framework, yes.
 16 Q. (BY MR. WALLACE) You had a series of
 17 questions from Mr. Toal about proprietary information
 18 and whether the company shared it with you and
 19 internal cash flows and the like, and I believe you
 20 testified that you were not familiar with the
 21 company's internal cash flows and internal
 22 proprietary information; is that correct?
 23 MR. GLICKMAN: Objection to --
 24 objection to the characterization in the testimony.
 25 If you want to rephrase the question --

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1 MR. TOAL: And object to the form.
 2 Q. (BY MR. WALLACE) The question was that
 3 you -- Mr. Toal asked you a number of questions about
 4 proprietary information, internal cash flows and
 5 other internal information at the company, and you
 6 said that you were only aware of the publically
 7 available information that the company provided --
 8 strike all that.
 9 Do you have access to the company's
 10 internal, proprietary information?
 11 A. No.
 12 Q. Do you have an understanding of whether
 13 the company's internal, proprietary information is
 14 consistent with its public disclosures?
 15 MR. TOAL: Object to the form of the
 16 question.
 17 Which public disclosures are you
 18 talking about?
 19 MR. GLICKMAN: Well, object: Calling
 20 for rank speculation, since he's already testified
 21 that he doesn't know about internal, proprietary
 22 information.
 23 Q. (BY MR. WALLACE) Can you answer the
 24 question?
 25 MR. TOAL: And I object to the form.

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1 THE WITNESS: No, I can't answer that
 2 question.
 3 Q. (BY MR. WALLACE) And why can't you
 4 answer the question?
 5 A. You're asking me something that is
 6 amorphous and unknowable versus something that's
 7 concrete in front of me. I can't comment about
 8 something I don't know anything about.
 9 Q. Do you recall a question earlier from
 10 Mr. Toal about whether you're familiar with the
 11 internal rate of return for ExxonMobil's investment
 12 decisions?
 13 A. I recall the questions.
 14 Q. Do you remember what your response was?
 15 A. I mean, is it a quiz? We can --
 16 Q. It's not a quiz. Let me -- and so let
 17 me reask the question then.
 18 Are you familiar with the internal
 19 rate of return for ExxonMobil?
 20 A. No.
 21 Q. Are you familiar with any broad,
 22 threshold levels of rate of return for the company
 23 through its public disclosures?
 24 A. Internal, I'm trying to understand
 25 where you're coming from. Sorry.

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1 (Discussion off the record)
 2 MR. WALLACE: I think that's all we
 3 have.
 4 MR. GLICKMAN: Thank you very much.
 5 MR. TOAL: Just a few more questions,
 6 Mr. Read.
 7 FURTHER EXAMINATION
 8 Q. (BY MR. TOAL) If I could direct your
 9 attention to page 13, which is your initiation
 10 coverage report from June 20th, 2013.
 11 A. Yes.
 12 Q. Okay. And do you recall the Attorney
 13 General -- Attorney General's Office directed you to
 14 the key investment risks that appear on page five of
 15 this document?
 16 A. Yes.
 17 Q. Okay. And are these -- would these key
 18 investment risks be applicable to other integrated
 19 oil and gas companies other than ExxonMobil?
 20 MR. GLICKMAN: Objection.
 21 Can you -- can you just clarify within
 22 the same timeframe as this report was issued?
 23 MR. TOAL: Yes.
 24 Q. (BY MR. TOAL) And subject to that
 25 limitation: Within the same timeframe as this report

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1
2 SUPREME COURT OF THE STATE OF NEW YORK
3 COUNTY OF NEW YORK: CIVIL TERM PART 61
4 ----- X
5 PEOPLE OF THE STATE OF NEW YORK,
6 BY LETITIA JAMES,
7 Attorney General of the State of New York,
8 Plaintiff,
9 INDEX NUMBER:
10 - against - 452044/18
11 EXXON MOBIL CORPORATION,
12 Defendant.
13 ----- X
14 60 Centre Street
15 New York, New York
16 October 23, 2019

17 BEFORE:
18 HONORABLE BARRY OSTRAGER, Justice

19 APPEARANCES:
20 STATE OF NEW YORK
21 Office of the Attorney General
22 Attorneys for the Plaintiffs
23 28 Liberty Street
24 New York, New York 10005
25 BY: KEVIN WALLACE, ESQ., Of Counsel
KIM A. BERGER, ESQ., Of Counsel
JONATHAN C. ZWEIG, ESQ., Of Counsel
MARY KAY DUNNING, ESQ., Of Counsel

APPEARANCES CONTINUED:

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1
2 THE COURT: All right, before we begin, I have a
3 question for each side.
4 First, Mr. Wallace, I know this is hotly contested.
5 But would you agree that if Exxon utilized proxy costs
6 inclusively for purposes of projecting the demand for its
7 products and used GHG calculations exclusively for the
8 purpose of determining projecting future expenses, that
9 there would be no Martin Act violation?
10 MR. WALLACE: So, excuse me, I think we disagree
11 based on the nature of disclosures.
12 So I think where we part company with Exxon, which
13 is what was told to the investors as opposed to what was
14 done.
15 I think we have agreement between the parties on
16 the fact that there were two systems, and that they had --
17 what they defined as proxy costs for accessing demands and
18 what they find as a GHG cost for accessing their internal
19 commissions, the commissions on their operations.
20 And I think the that the sort of crux of debate is
21 what was included in the disclosures and what the investors
22 understood about how whether they had one system, whether
23 they had two systems. So there's no dispute on the grounds
24 about the existence of the two systems.
25 The dispute is in how that was portrayed to the

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1
2 PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
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4 1285 Avenue of the Americas
5 New York, New York 10019
6 BY: THEODORE V. WELLS, JR., ESQ.,
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20
21
22
23 MONICA HORVATH
24 BONNIE PICCIRILLO
25 SENIOR COURT REPORTERS

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1 investors.
2 THE COURT: All right, that leads into my question
3 for Mr. Wells.
4 Again, I know this is hotly contested, but would
5 you agree that if the disclosures that Exxon made confused
6 investors with respect to the utilization of these two
7 different costs, then there would be a Martin Act violation?
8 MR. WELLS: No, your Honor.
9 First, I would state that under the law that
10 there's a difference between somebody being confused and a
11 statement being misleading. I think you have to look at it
12 in context. I think the concepts are different.
13 I also believe that regardless of the issue of
14 confusion, that with respect to materiality, there still
15 would be no materiality. Even if you assume that
16 confusion -- I don't think confusion is the test. I think
17 misleading would have to be the test. I still believe under
18 materiality, the materiality element there would be no
19 Martin Act violation at all.
20 THE COURT: All right, call your first witness.
21 MS. BERGER: Your Honor, the people Natasha Lamb.
22 N A T A S H A L A M B,
23 called as a witness in behalf of the People, having been
24 first duly sworn by the Clerk of the Court, took the
25 witness stand and testified as follows:

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1 to Managing the Risks, the December 2013 meeting, the
 2 February 2014 telephone calls, the December 2014 meeting, did
 3 anybody from Exxon at any point tell you that they were only
 4 using the proxy cost of carbon for their demand analysis?
 5 A No.
 6 Q Did anybody from Exxon ever tell you that they had a
 7 whole separate set of costs that they -- GHGs' costs to consider
 8 the financial impact for their own investments and their own
 9 operations?
 10 A No.
 11 MS. BERGER: Nothing further.
 12 THE COURT: You may step down. Next witness,
 13 please.
 14 MR. WALLACE: People call Michael Garland, your
 15 Honor.
 16 MICHAEL GARLAND,
 17 called as a witness in behalf of the People,
 18 having been first duly sworn by the Clerk of the Court,
 19 took the witness stand and testified as follows:
 20 THE CLERK: For the record, please state your name
 21 and address?
 22 THE WITNESS: Michael Garland. Home address is 24
 23 Wellington Court, Brooklyn, New York.
 24 (Continued on next page)
 25

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1 DIRECT EXAMINATION
 2 BY MR. WALLACE:
 3 Q Mr. Garland, could you please state your current place
 4 of employment?
 5 A I'm sorry?
 6 Q Could you please state your current place of
 7 employment?
 8 A The Office of the New York City Comptroller.
 9 Q And what is your current position with the Office of
 10 the New York City Comptroller?
 11 A I'm the Assistant Comptroller for Corporate Governance
 12 and Responsible Investment.
 13 Q And how long have you held that position?
 14 A A little over nine years.
 15 Q And what is the function of the Corporate Governance
 16 and Responsible Investment Group in the Comptroller's Office?
 17 A Our team is responsible for voting the proxies of the
 18 public equity portfolio companies held by the five New York City
 19 pension funds and engaging with our portfolio companies to
 20 advocate to address a range of environmental and social and
 21 corporate governance risks that we think are key to protecting
 22 and creating long-term share owner value.
 23 Q Okay.
 24 Let me break that down a little bit.
 25 You said there are five pension funds of New York City.

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1 What are those?
 2 A The City of New York has five independent pension funds
 3 which are the purposes to invest in order to provide retirement
 4 security for the City's retirees.
 5 The five systems are the New York City -- the Teacher's
 6 Retirement of the City of New York, for the teachers, retired
 7 teachers, the New York City Fire Pension Fund for the firemen,
 8 the New York City Police Pension Fund for the police, the
 9 Board of Education Retirement System, which is for the
 10 non-pedagogical employees of the school system.
 11 And then a general fund for all other employees like
 12 myself, which is the New York City Employees' Retirement System.
 13 Collectively, the five funds today have over
 14 \$200 billion in assets under management and are the fourth
 15 largest public pension system in the United States.
 16 Q Okay.
 17 And you mentioned that your work is related to long
 18 term shareholder value.
 19 What do you mean by that?
 20 A So, the New York City Retirement Systems have a very
 21 long-term type horizon.
 22 We are investing today in order to provide -- to fund
 23 the retirement benefits of somebody who may be hired today, work
 24 for thirty years, retire and then live for thirty or forty years
 25 beyond.

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1 So, we are really focused on ensuring and maximizing
 2 the value of our portfolio for decades into the future.
 3 Q And you said that you engaged the companies on
 4 environmental, social and government risks", how does that
 5 engagement relate to this goal of long-term value preservation?
 6 A Well, we want to ensure that our companies -- we often
 7 advocate for responsible business practices and disclosures, and
 8 are very focused on aligning the incentives of management with
 9 the long-term interests of the company and its shareholders.
 10 Q Okay.
 11 So why engage with the companies as opposed to simply
 12 buy or sell shares in a stock if you are not happy with their
 13 performance?
 14 A Well, it's a reflection of our investment strategy.
 15 As I mentioned, as an actuarially point, we have a very
 16 long-term horizon just given that we are funding benefits for
 17 the long term.
 18 It is also a reflection of our investment strategy.
 19 So, over 80 percent of our investments in US public
 20 equities are invested using an index strategy.
 21 So, it's very difficult if we have concerns about the
 22 quality of a board of directors of management of a company's
 23 environmental practices, executive compensation practices or
 24 employment practices; it's difficult for us to do what's called
 25 the "Wall Street walk" and just walk away and sell our shares.