



State of Rhode Island and Providence Plantations
Office of the General Treasurer
State House – Room 102
Providence, Rhode Island 02903

Seth Magaziner
General Treasurer

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VIA e-mail: shareholderproposals@sec.gov

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

Re: Navient Corporation request to exclude a shareholder proposal by the Employees' Retirement System of Rhode Island Pooled Trust regarding the student loan crisis

Dear Sir/Madam:

This letter is submitted on behalf of the Employees' Retirement System of Rhode Island Pooled Trust, which is the beneficial owner of shares of common stock of Navient Corporation (hereinafter referred to as "Navient" or the "Company"), and which has submitted a shareholder proposal (hereinafter referred to as the "Proposal"), co-filed by the AFL-CIO Reserve Fund, to Navient.

By letter dated January 22, 2018, Navient requested that the staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") state that it will not recommend enforcement action if the Company excludes the Proposal from its 2018 proxy statement in reliance on Rule 14a-8(i)(7) and Rule 14a-8(i)(10).

We respectfully request that Staff decline to grant the relief requested by the Company, as the Company has not met its burden of proof in demonstrating that the Proposal relates to the Company's ordinary business operations or that the Proposal has been substantially implemented.

I. The Proposal:

The Proposal calls for the following:

RESOLVED, that the shareholders request the Board of Directors (the "Board") issue a report to investors (at reasonable cost, excluding proprietary information, and within a reasonable time) on the governance measures Navient has implemented to more effectively monitor and manage financial and reputational risks related to the student loan crisis in the United States, including whether Navient has assigned responsibility for such monitoring to the Board or one or more Board committees or has revised senior executive compensation metrics or policies.

II. The Company has not demonstrated that the Proposal relates to ordinary business

The Company contends that the underlying nature of the Proposal relates primarily to assessment of risk and the policies and procedures surrounding its day-to-day operations, that the proposal implicates compliance with the law, and that the request is an attempt to micro-manage the company by probing too deeply into matters that are too complex in nature for shareholders to understand. The Company fails to demonstrate these points and falls far short of its burden of demonstrating that the Proposal may be excluded from its proxy materials on the basis that it relates to ordinary business.

As the Company notes in its request, Staff Legal Bulletin 14E (Oct. 27, 2009) (“SLB 14E”) clarifies that when a proposal is regarding an evaluation of risk, the Staff will look to the *subject matter* to which that risk pertains in considering if the proposal can appropriately be considered ordinary business. Further, with proposals requesting a report, the Staff will look to the *subject of the requested report* in determining if the proposal falls under ordinary business. Exchange Act Release No. 20091 (Aug. 16, 1983). Here, the subject of the requested report, and the source of the risk of which the report seeks evaluation, is the growing social policy issue of the student loan crisis in the United States.

In arguing that the reasoning of SLB 14E favors exclusion, the Company cites a series of past Staff determinations on shareholder proposals seeking reviews and/or reports on various risks. Each cited instance is clearly and readily distinguishable from the Proposal at hand, however. The proposal in *Navient Corporation* (Feb. 13, 2017) requested a report on the Company’s servicing abilities, a question of product quality. *Amazon.com, Inc.* (Mar. 27, 2015) dealt with the choice of products offered by the retailer. *FedEx Corp.* (July 11, 2014) concerned ordinary management choices about how to promote the company. *Exxon Mobil Corp.* (March 6, 2012) dealt with the risks of a product the company chose to develop and sell. The report proposed in *Sempra Energy* (Jan. 12, 2012) sought information about legal risks associated with the places where the company chose to do business. The company’s choice of products to sell was the subject matter in *Walgreens Boots Alliance, Inc.* (Nov. 7, 2016).

While some of the proposals involved in these determinations may have been related to significant social policy issues, they ultimately centered around product quality and/or choice, promotional strategies, and legal compliance—traditional ordinary business topics. The Company’s characterization of the instant Proposal as seeking information about the Company’s monitoring and management of risk ignores this point. Rather, the Proposal seeks information on governance measures taken by the Board to address a significant social policy issue with an undeniable nexus to the Company’s core business, and whether that issue has been considered in any revision of its senior executive compensation.

A. The Proposal raises a significant social policy issue, transcending ordinary business

The Company makes several arguments in its attempt argue that the Proposal may be excluded on ordinary business grounds. First, the Company argues that the Staff has concurred with previous no-action requests concerning shareholder proposal related to student loans. The Company cites *Navient Corporation* (Feb. 13, 2017) (allowing exclusion of a proposal requesting report on the Company’s ability to service defaulted borrowers and those at risk of default, and adapt to changes in public policy, in the event of an economic downturn); *DeVry, Inc.* (Sept. 6, 2013) (allowing exclusion of a proposal for an annual report about loan repayment rates of former students); and *Fifth Third Bancorp* (Dec. 17, 2012) (allowing exclusion of a proposal for report on the issuer’s direct advance lending policies in addressing the social and financial impacts of predatory lending) to support their position.

The Proposal at hand is easily distinguishable from these previous shareholder proposals. The proposals at issue in each of these instances were focused on specific products and services offered by the issuers within a narrow subset of social concerns (respectively: ability to provide quality service to vulnerable borrowers in the event of a recession; quality of for-profit education product insofar as graduates’ ability to find work; and specific loans

and services that could be used in addressing predatory lending). As stated above, the Proposal is in regards to *governance measures* related to a widely recognized significant social policy issue, not a product or service offered by the Company.

Second, the Company attempts to distinguish shareholder proposals on the foreclosure crisis where the Staff did not concur with issuers' no-action requests. However, in *Wells Fargo* (March 11, 2013) and *Bank of America* (March 14, 2011), the underlying subject matter—the foreclosure crisis—was not concerning the banks' products or ability to provide services, but the significant social policy issue implicated by the proposals. The Company's assertion that the relatively small size of outstanding student loan debt compared to mortgage debt is irrelevant. The appropriate question is whether the issue of the student loan crisis has become a topic of widespread public debate that transcends day-to-day business matters and raises a significant social policy issue.

There is no doubt that the student loan crisis has grown to become a significant social policy issue. In fact, Navient CEO Jack Remondi described the difficulty that former students face in repaying their student loans as a crisis in an article that he authored titled "The Student Loan Crisis We Should Work Together to Solve."¹

Student loans and the impact of student debt on economic growth are constant subjects of media attention, with stories and editorials about every aspect of the issue becoming more and more common in recent years.² Student loan debt is a hot political issue that no federal candidate can afford to neglect, and is passionately debated issue in Congress and statehouses across the country, with local, state, and federal bodies examining the issue, seeking ways to alleviate the financial pressure faced by students and families.³ Over fifty bills on student loans

¹ Jack Remondi, *The Student Loan Crisis We Should Work Together to Solve*, MEDIUM, Oct. 20, 2017,

<https://medium.com/@JackRemondi/the-student-loan-crisis-we-should-work-together-to-solve-8629b800de89>.

² See, e.g., Robert Gebelhoff, *Projections for student loan defaults are terrifying. It's time to act.*, WASHINGTON POST, Jan. 22, 2018,

https://www.washingtonpost.com/blogs/post-partisan/wp/2018/01/22/projections-for-student-loan-defaults-are-terrifying-its-time-to-act/?utm_term=.17cb0c759803;

Michele Lerner, *Report: Student loan debt delays homeownership by seven years*,

WASHINGTON POST, Oct. 19, 2017, https://www.washingtonpost.com/news/where-we-live/wp/2017/10/19/report-student-loan-debt-delays-homeownership-by-seven-years/?utm_term=.024426e0a911;

Liz Weston, *How student loans can follow you to the grave*, LA

TIMES, Oct. 8, 2017, <http://www.latimes.com/business/la-fi-montalk-20171007-story.html>;

Danielle Douglas-Gabriel, *The number of people defaulting on federal student loans is climbing*, WASHINGTON POST, Sept. 28, 2017,

https://www.washingtonpost.com/?utm_term=.e81b1b2163d9;

Andrew Khouri, *High prices and student loans put housing out of reach*, readers say, LA TIMES, Aug. 4, 2017, <http://www.latimes.com/business/la-fi-student-20170804-story.html>;

Michelle Singletary, *College grads face next hurdle: Paying back student loans*, WASHINGTON POST, June 4, 2017,

https://www.washingtonpost.com/business/get-there/with-new-degrees-in-hand-college-grads-face-another-hurdle-paying-back-student-loans/2017/06/02/7831cc06-4550-11e7-bcde-624ad94170ab_story.html?utm_term=.b47fa9ff669a;

Editorial, *Student Debt's Grip on the Economy*, NY TIMES, May 20, 2017, <https://www.nytimes.com/2017/05/20/opinion/sunday/student-debts-economy-loans.html>;

Maxwell Strachan, *Nicki Minaj Is Starting An 'Official Charity' To Pay Off Student Loans*, HUFFINGTON POST, May 13, 2017, https://www.huffingtonpost.com/entry/nicki-minaj-charity-student-loans-tuition_us_591729d0e4b00f308cf592b2?utm_hp_ref=student-loans;

Rana Foroohar, *The US college debt bubble is becoming dangerous*, FINANCIAL TIMES, April 9, 2017, <https://www.ft.com/content/a272ee4c-1b83-11e7-bcac-6d03d067f81f>;

Derek Thompson, *The Scariest Student Loan Number*, THE ATLANTIC, Jul. 19, 2016, <https://www.theatlantic.com/business/archive/2016/07/the-scariest-student-loan-number/492023/>;

Jim Puzanghera, *Soaring student loan debt poses risk to nation's future economic growth*, LA TIMES, Sep. 5, 2015, <http://www.latimes.com/business/la-fi-student-debt-20150906-story.html>;

Gillian B. White, *The Mental and Physical Toll of Student Loans*, THE ATLANTIC, Feb. 2, 2015, <https://www.theatlantic.com/business/archive/2015/02/the-mental-and-physical-toll-of-student-loans/385032/>;

Gail Marks Jarvis, *Many college freshmen clueless about debt load*, DETROIT NEWS, Jan. 26, 2015, <http://www.detroitnews.com/story/business/personal-finance/2015/01/26/freshmen-clueless-college-debt/22332103/>.

³ See, e.g., Press release: Sen. Warren, Rep. Courtney Introduce Student Loan Refinancing Legislation with Vast Democratic Support in Senate and House (May 17, 2017) (https://www.warren.senate.gov/?p=press_release&id=1608);

Melanie Mason, *In a bid to ease student debt, California considers a role in helping refinance private loans*, LA TIMES, Apr. 18, 2017,

<http://www.latimes.com/politics/la-pol-sac-student-loan-refinance-proposal-20170418-story.html>;

Linda Bell, *Millennials Drowning in Student Loans Play Key Election Role*, FOX BUSINESS, Aug. 3, 2016, <http://www.foxbusiness.com/politics/2016/08/03/millennials-drowning-in-student-loans-play-key-election-role.html>;

Matt Carter, *Democrats' student loan fix just a starting point for further debate*, CREDIBLE, Feb. 17, 2016, <https://www.credible.com/news/student-loans/student-loan-fix-starting-point-for-debate/>;

Sam Brodey, *Giving borrowers a break on their student loans is good politics for Democrats—but is it a fair policy?*, MINNEAPOLIS POST, Feb.

have been introduced in Congress in this session alone according to one tracker.⁴ Think tanks have launched programs on and research into student loan debt.⁵ Academics have written volumes on the subject.⁶ Multiple organizations have been formed solely for the purpose of advocating for policies to address student debt in the United States.⁷

The amount of student loan debt is increasing in our economy and on an individual level. The New York Federal Reserve Bank estimates that 44 million student loan borrowers owed \$1.5 trillion at the end of 2017, an increase of over 30 percent in just five years that shows no signs of stopping.⁸ Student loan debt is the second-largest source of household debt. Only mortgage debt, which is decreasing as a percentage of household debt, is greater. More students are borrowing to pay for school than ever before, and individual students are taking on significantly more debt. The Consumer Financial Protection Bureau reports that nearly half of student loan borrowers leave school owing at least \$20,000 – which is double the share of borrowers who had that level of debt ten years ago.⁹ And for new graduates, the numbers are becoming increasingly stark: state-by-state, Bachelors recipients in 2016 had debt ranging from \$20,000 in Utah to \$36,350 in New Hampshire upon graduation, with the likelihood of new graduates holding debt ranging from only 43 percent in Utah to 77 percent in West Virginia.¹⁰

An increasing number of borrowers are struggling to repay their loans. The U.S. Department of Education estimates that an astonishing 8 million Americans are currently in default on more than \$178 billion in student loans.¹¹ The U.S. Department of Education reported in 2017 that the loan default rate for students who entered repayment between fiscal years 2013 and 2014—the most recent years for which federal Department of

16, 2016, <https://www.minnpost.com/dc-dispatches/2016/02/giving-borrowers-break-their-student-loans-good-politics-democrats-it-fair-pol>; Shahien Nasiripour, *These 10 State Lawmakers Are Pushing For Debt-Free College*, HUFFINGTON POST, Dec. 7, 2015, https://www.huffingtonpost.com/entry/state-lawmakers-debt-free-college_us_5665af7ce4b08e945ff010a4?utm_hp_ref=student-loans; Shahien Nasiripour, *Senate Democrats Slam Obama Education Chief's 'Absurd' Logic*, HUFFINGTON POST, Dec. 1, 2015, https://www.huffingtonpost.com/entry/senate-democrats-slam-obama-duncan-education_us_565db5e1e4b08e945fec8077?utm_hp_ref=student-loans; Betsy Mayotte, *Explore How Presidential Candidates Stand on Student Loan Debt*, US NEWS AND WORLD REPORT, Oct. 28, 2015, <https://www.usnews.com/education/blogs/student-loan-ranger/2015/10/28/explore-how-presidential-candidates-stand-on-student-loan-debt>.

⁴ https://www.nasfaa.org/legislative_tracker_loans_repayment

⁵ See, e.g., WILLIAM GALE, ET AL., TAX POLICY CENTER, STUDENT LOANS RISING: AN OVERVIEW OF CAUSES, CONSEQUENCES, AND POLICY OPTIONS (May 2014), available at <https://www.urban.org/sites/default/files/publication/22591/413123-Student-Loans-Rising.PDF>; NEW AMERICA, STUDENT LOANS (accessed Feb. 8, 2017), <https://www.newamerica.org/education-policy/policy-explainers/higher-ed-workforce/federal-student-aid/federal-student-loans/>; URBAN INSTITUTE, UNDERSTANDING COLLEGE AFFORDABILITY (accessed Feb. 8, 2018), <http://collegeaffordability.urban.org/after-college/student-debt/#/>;

⁶ See, e.g., SCOTT FULLWILER, ET AL., LEVY ECONOMICS INSTITUTE OF BARD COLLEGE, THE MACROECONOMIC EFFECTS OF STUDENT DEBT CANCELLATION, (Feb. 2018), available at <http://www.levyinstitute.org/publications/the-macroeconomic-effects-of-student-debt-cancellation>; Jonathon D. Glater, *Student Debt and the Siren Song of Systemic Risk*, 53 HARVARD JOURNAL ON LEGISLATION 99 (2016), available at http://harvardjol.com/wp-content/uploads/2016/02/HLL103_crop.pdf; Jonathan D. Glater, *Student Debt and Higher Education Risk*, 103 CALIFORNIA LAW REVIEW 1561 (2015), available at http://www.californialawreview.org/wp-content/uploads/2015/12/Glater_Student_Debt_Higher_Education_Risk.pdf; Preston Mueller, *The Non-Dischargeability of Private Student Loans: A Looming Financial Crisis?*, 32 EMORY BANKRUPTCY DEVELOPMENTS JOURNAL 229 (2015), available at <http://law.emory.edu/ebdj/content/volume-32/issue-1/comments/non-dischargeability-private-student-loans-looming-crisis.html>; William Elliott and IISung Nam, *Is Student Debt Jeopardizing the Short-Term Financial Health of U.S. Households?*, 95 FEDERAL RESERVE BANK OF ST. LOUIS REVIEW 405 (2013), available at <https://files.stlouisfed.org/files/htdocs/publications/review/13/09/Elliott.pdf>.

⁷ See, e.g., Colin A. Young, AG, *Chamber of Commerce form group to address student loan debt*, BOSTON GLOBE, May 19, 2016, <https://www.bostonglobe.com/metro/2016/05/19/chamber-commerce-form-group-address-student-loan-debt/tavKyEqbB4gzALRyLO4AXJ/story.html>; Higher Ed Not Debt, <https://higherednotdebt.org/about>; Student Debt Crisis, <http://studentdebtcrisis.org/about/>.

⁸ <https://www.federalreserve.gov/releases/g19/current/default.htm>

⁹ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-finds-percentage-borrowers-20k-student-debt-doubled-over-last-decade/>

¹⁰ THE INSTITUTE FOR COLLEGE ACCESS AND SUCCESS, STUDENT DEBT AND THE CLASS OF 2016 (Sept. 2017), available at https://ticas.org/sites/default/files/pub_files/classof2016.pdf.

¹¹ <https://studentaid.ed.gov/sa/about/data-center/student/portfolio>

Education data is available—has increased to 11.5 percent. In January 2018, The Brookings Institute released a report *The Looming Student Loan Default Crisis is Worse than We Thought*, which finds that an estimated 28 to 29 percent of all student borrowers ultimately default on their loans within 12 years of college entry.¹² Key findings include:

- Trends for the 1996 entry cohort show that cumulative default rates continue to rise between 12 and 20 years after initial entry. Applying these trends to the 2004 entry cohort suggests that nearly 40 percent may default on their student loans by 2023.
- For-profit borrowers default at twice the rate of public two-year borrowers.
- While average debt per student has risen over time, defaults are highest among those who borrow relatively small amounts.
- Debt and default among black college students is at crisis levels, with black BA graduates defaulting at five times the rate of white BA graduates

Race and gender disparities in student loan debt and its impacts have been well documented, raising serious questions about the role of student loans in widening race and gender wealth and achievement gaps.¹³ Similarly the role of student loan debt in once-again rising levels of senior poverty has become a subject of considerable debate.¹⁴

Other recent studies show that the student loan crisis is having a deep and widespread social policy impact on our economy and society. In June 2017, Consumer Reports published *Student Debt: Lives on Hold*, which discusses the increase in student loan demand and associated challenges faced by struggling borrowers.¹⁵ Experian's 2017 *State of Credit Survey*, which was published in January 2018, notes that while average credit scores are trending higher, the student loan story "keeps getting worse".¹⁶ In August 2017, the Pew Research Center, published an analysis of recently released data from the Federal Reserve Board's 2016 Survey of Household Economics and Decisionmaking. The analysis found that about four-in-ten adults under age 30 have student loan debt and that young college graduates with student loans are more likely than those without loans to have a second job and to report struggling financially.¹⁷

As the student loan crisis grows, the millions of distressed and defaulting borrowers create spillover effects on the U.S. economy. Widespread defaults on federally guaranteed or reinsured loans would pose a fiscal problem for the country, a major concern in and of itself. Even without mass defaults, however, student loans present a burden on the economy. When borrowers default, the cost of their outstanding obligation grows (e.g. through capitalized interest or late fees); there are often negative credit score implications; and they have less opportunity to save for retirement. In twenty states, default can result in the loss of a borrowers' professional

¹² <https://www.brookings.edu/research/the-looming-student-loan-default-crisis-is-worse-than-we-thought/>

¹³ AMERICAN ASSOCIATION OF UNIVERSITY WOMEN, WOMEN'S STUDENT DEBT CRISIS IN THE UNITED STATES (May 24, 2017), available at <https://www.aauw.org/research/deeper-in-debt/>; Kaitlin Mulhere, *There's a Massive Racial Gap in Student Loan Defaults, New Data Show*, NY TIMES, Oct. 17, 2017, <http://time.com/money/4986253/race-gap-student-loan-defaults-debt/>; Emily Deruy, *The Racial Disparity of the Student-Loan Crisis*, THE ATLANTIC, Oct. 24, 2016, <https://www.theatlantic.com/education/archive/2016/10/why-debt-balloons-after-graduation-for-black-students/505058/>; Gail Marks Jarvis, *Gender pay gap affects student loan debt load*, ST. LOUIS POST-DISPATCH, Nov. 4, 2012, http://www.stltoday.com/business/local/gender-pay-gap-affects-student-loan-debt-load/article_9ae9315d-6084-5fce-8d9b-4b1d5564a680.html;

¹⁴ Sheryl Nance-Nash, *65-plus crowd facing growing burden from student loan debt*, NEWSDAY, Sept. 10, 2017, <https://www.newsday.com/business/65-plus-crowd-facing-growing-burden-from-student-loan-debt-1.14124052>; Zach Carter, *The Student Debt Crisis Is Driving Elderly People Into Poverty*, HUFFINGTON POST, Dec. 20, 2016, https://www.huffingtonpost.com/entry/student-debt-elderly-poverty_us_58595c6be4b08debb78b2f2a?utm_hp_ref=student-loans; Becky Yerak, *Student Loan Debt Is No Longer Just A Gen Y Problem*, BUSINESS INSIDER, Jul. 11, 2012, <http://www.businessinsider.com/this-surprising-group-of-people-is-responsible-for-20-percent-of-student-loan-debt-2012-7>.

¹⁵ <https://www.consumerreports.org/student-loan-debt-crisis/lives-on-hold/>.

¹⁶ <https://www.experian.com/blogs/ask-experian/state-of-credit/>.

¹⁷ <http://www.pewresearch.org/fact-tank/2017/08/24/5-facts-about-student-loans/>.

and/or drivers license.¹⁸ For older American borrowers, a student loan default can also mean offset Social Security benefits.¹⁹

Further, student loan borrowers are forced to put off important financial milestones such as purchasing a home. A June 2016 survey conducted by the National Association of Realtors and American Student Assistance found that “Seventy-one percent of non-homeowners repaying their student loans on time believe their debt is stymieing their ability to purchase a home, and slightly over half of all borrowers say they expect to be delayed from buying by more than five years”.²⁰ Federal Reserve researchers found that student loan debt does play a significant role in the declining rate of home ownership by younger consumers.²¹

B. The role of student loan servicers in the student loan crisis is itself a significant social policy issue

The role of student loan servicers like Navient in the student loan crisis has itself become a significant social policy issue, which illustrates the fact that the student loan crisis is significantly related to the Company’s business. Student loan servicers act as the middleman between borrowers and lenders, collecting payments and administering repayment plans. Media attention has not been favorable to servicers in this regard.²² Policymakers have been paying attention to this trend and responding.²³

Regulatory interest in the role of servicers in the student loan crisis has been substantial in recent years and has led to enforcement actions by federal agencies as well as state attorneys general. In April 2017, the Consumer Financial Protection Bureau reported a trend of triple digit increases in complaints related to student loan servicing as compared to similar periods, with complaints increasing in nearly every state.²⁴ Liz Hill, who serves as press secretary for the U.S. Education Department has been quoted as describing the current student loan system as “a mess”, adding that “income driven repayment plans are confusing”.²⁵ Navient is currently facing lawsuits from the Consumer Finance Protection Bureau, Washington State, Illinois and Pennsylvania, alleging that it harmed student loan borrowers. The Company is also facing a class action lawsuit from investors alleging that it made false and/or misleading statements and engaged in deceptive practices to facilitate the origination of subprime student loans.

The Consumer Finance Protection Bureau (“CFPB”) filed a civil suit against Navient alleging the Company “systematically deterring numerous borrowers from obtaining access to some or all of the benefits and protections” of income-related and extended repayment plans. Further, the CFPB alleges “Navient has failed to perform its core duties in the servicing of student loans, violating Federal consumer financial laws, as well as the trust that borrowers placed in the company”. Navient’s motion to dismiss the CFPB lawsuit was denied by U.S. District Judge Robert D. Mariani in August 2017. In his decision, Judge Mariani wrote that the Company’s assertion that it complied with the Higher Education Act, Department of Education regulations, and its loan

¹⁸ See, Jessica Silver-Greenberg, Stacy Cowley, and Natalie Kitroeff, *When Unpaid Student Loan Bills Mean You Can No Longer Work*, NY TIMES, Nov. 18, 2017, <https://www.nytimes.com/2017/11/18/business/student-loans-licenses.html>.

¹⁹ See, Jillian Berman, *More borrowers are losing Social Security benefits over old student loans*, MARKETWATCH, Dec. 20, 2016, <https://www.marketwatch.com/story/more-borrowers-are-losing-social-security-benefits-over-old-student-loans-2016-12-20>.

²⁰ <https://www.nar.realtor/newsroom/71-percent-believe-student-debt-delays-homeownership>.

²¹ https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr820.pdf?la=en.

²² See, e.g., Ron Lieber, *A Student Loan Nightmare: The Teacher in the Wrong Payment Plan*, NY TIMES, Oct. 27, 2017, <https://www.nytimes.com/2017/10/27/your-money/paying-for-college/student-loan-payments.html>; Stacy Cowley and Jessica Silver-Greenberg, *As Paperwork Goes Missing, Private Student Loan Debts May Be Wiped Away*, NY TIMES, July 17, 2017, <https://www.nytimes.com/2017/07/17/business/dealbook/student-loan-debt-collection.html>; Catherine Curan, *The student debt crisis is worsening at the hands of loan servicers*, NY Post, Jan. 28, 2017, <https://nypost.com/2017/01/28/the-student-debt-crisis-is-worsening-at-the-hands-of-loan-servicers/>; Kevin Carey, *Student Debt in America: Lend With a Smile, Collect With a Fist*, NY TIMES, Nov. 27, 2015, <https://www.nytimes.com/2015/11/29/upshot/student-debt-in-america-lend-with-a-smile-collect-with-a-fist.html>.

²³ See, e.g., Danielle Douglas-Gabrial, *Elizabeth Warren presses the Education Department to rein in Navient*, Washington Post, May 12, 2016, <https://www.washingtonpost.com/news/grade-point/wp/2016/05/12/elizabeth-warren-presses-the-education-department-to-rein-in-navient/>;

²⁴ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-monthly-snapshot-spotlights-student-loan-complaints/>.

²⁵ <https://www.reuters.com/investigates/special-report/usa-studentloans/>.

servicing contract with the U.S. Department of Education didn't relieve the Company of its obligation to not commit unfair, deceptive, or abusive acts.

Various state attorneys general have also sued Navient for allegedly improper student loan servicing practices. In January 2017, Washington State Attorney General Bob Ferguson filed a lawsuit against Navient, alleging the Company improperly steers financially distressed students toward short-term forbearance and engages in misleading collection tactics. Further, the lawsuit alleges that Navient made subprime loans as part of "preferred lending" programs with schools to gain access to highly profitable federally-guaranteed loan volume and "prime" private student loan borrowers. Navient's motion to have this lawsuit dismissed was denied in August 2017.

Illinois Attorney General Lisa Madigan filed a lawsuit against Navient in January 2017, stating that her investigation found that the Company's predecessor Sallie Mae put student borrowers into expensive subprime loans that it knew were going to fail. Madigan alleges that these actions have led to student borrowers needlessly carrying billions of dollars in debt. In October 2017, Pennsylvania Attorney General Josh Shapiro filed a lawsuit against Navient over widespread abuses in their student loan origination and servicing businesses. The suit alleges that the Company committed unfair and deceptive acts by steering student borrowers into forbearance, which results in the accrual of additional interest that is added to the loans' principal that students were required to repay.

Most recently, in December 2017 a class action lawsuit was filed on behalf of purchasers of the securities of Navient from February 25, 2016 through October 4, 2017. The suit alleges that Navient made false and/or misleading statements and engaged in deceptive practices to facilitate the origination of subprime loans. The suit also alleges that Navient committed unfair and deceptive acts by steering student borrowers into payment plans that postponed bills, allowing interest to accumulate, rather than helping them enroll in income-driven repayment plans. As a result of these actions, it is alleged that Navient's public statements were materially false and misleading at all relevant times.

C. The Proposal does not attempt to micromanage the Company

In an apparent attempt to cast the Proposal as micromanaging the day-to-day business of the Company, Navient ignores the plain language of the Proposal's request that "the Board of Directors (the "Board") issue a report to investors (at reasonable cost, excluding proprietary information, and within a reasonable time) on the governance measures Navient has implemented to more effectively monitor and manage financial and reputational risks related to the student loan crisis in the United States, including whether Navient has assigned responsibility for such monitoring to the Board or one or more Board committees or has revised senior executive compensation metrics or policies."

In other words, the Proposal seeks greater transparency from Navient on its corporate governance and senior executive compensation policies. This Proposal does not aim to dictate specific business practices or decisions to the Company. No mandates are recommended or suggested. Further, it is difficult to understand how the request may "probe too deeply into matters of a complex nature". When provided with the requested information, shareholders would be in a better position to make an informed judgement on the governance measures Navient has implemented to more effectively monitor and manage financial and reputational risks related to the student loan crisis in the United States.

For these reasons, we respectfully request the Staff to conclude that the Company has not met its burden of proof to exclude the Proposal from its proxy materials under Rule 14a-8(i)(3).

III. The Company has not substantially implemented the Proposal

Navient claims that it has substantially implemented the Proposal, but the explanation offered in its request letter does not indicate that it has. As noted by the Company, shareholder proposals may be excluded under Rule 14a-8(i)(10) if the issuer has reasonably and substantially satisfied the essential objectives and guidelines of the proposal. To do so, the issuer's action must compare favorably to that requested in the proposal such that it renders moot the core concerns raised in the proposal.

The core of the Company's "substantially implemented" claim is that the Board of Directors has delegated responsibility for risk oversight to its Nominations and Governance Committee. However, the Proposal asks the Company for a report on governance measures the Company has implemented to more effectively monitor and manage reputational and financial risks related to the student loan crisis in the United States, **and whether it has revised senior executive compensation metrics or policies as part of those measures** (emphasis added). The Company does not claim to have implemented the senior executive compensation part of the Proposal's request. Senior executive compensation is a core concern of the Proposal, and the Company has not substantially satisfied this essential objective.

Moreover, the Company's proxy statement disclosure and the Board of Directors' recently adopted changes to the charter of the Nominations and Governance Committee do not satisfy the Proposal's request for a report on governance measures that the Company has undertaken in response to the student loan crisis. According to disclosure provided by the Company, the Board of Directors and its Nominations and Governance Committee has responsibility for overseeing business and operations as they impact risks, and to periodically review compliance and Company performance against risk measures contained in a "risk appetite framework." However, the proxy statement and the charter do not specifically address the student loan crisis or state whether the Company believes it is a risk to the Company. The student loan crisis is not even listed as one of the nine domains of Navient's risks.

Each no action letter cited by the Company can be distinguished from the Proposal at hand. *Kewanee Scientific Corp.* (May 31, 2017) allowed the exclusion of a proposal to make non-employee directors ineligible to participate in the company's healthcare program when the company had recently adopted a policy to do so in the following year. *Wal-Mart Stores, Inc.* (March 16, 2017) allowed exclusion of a proposal to amend governance guidelines to remove disqualified directors in accordance with applicable law when existing company bylaws and applicable law already implemented the essential objective of the proposal to the extent allowable by law, shareholders were able to discontinue and remove directors, and directors were elected annually. *Dominion Resources, Inc.* (Feb. 9, 2016) found the company's existing disclosure of emissions and the company's approach and efforts to reducing emissions substantially implemented a shareholder proposal for a report on measuring emissions, emission reduction goals, and mitigation efforts. A proposal to amend Board rules to have a single class of directors all of whom would be subject to annual election was found in *Ryder System, Inc.* (Feb. 11, 2015) to be substantially implemented by bylaw changes that declassified the Board. In each of these no action letters, the company took actions that addressed the underlying concern of the proposal and satisfied the essential objectives thereof. Here, the Company ignores the underlying concern of the Proposal (the growing student loan crisis) and its essential objectives (to provide shareholders with information on how the Company has adjusted governance measures, including executive compensation metrics, in response to the growing crisis). There is a fundamental difference between actions that address the concerns and essential objectives of a proposal and simply pointing to a generic delegation of risk management functions to a committee of the board of directors.

Shareholder proposals are not substantially implemented when a company provides only general information, does not address the core concern of the proposal, or fails to take an action that may be made necessary by the proposal. *Texas Instruments, Inc.* (Jan. 26, 2018) (proposal for report on company's gender pay gap policies and goals was not substantially implemented by general report on pay discrimination); *Brocade Communications Systems, Inc.* (Feb. 23, 2015) (proposal for incentive pay recoupment policy, including provisions for

misconduct and poor risk management, not substantially implemented by existing clawback policy with the “same objective”); *Dominion Resources* (Feb. 28, 2014) (proposal for report on lobbying contributions and expenditures not substantially implemented by report on company lobbying policies); *Dominion Resources* (Feb. 15, 2013) (proposal for review and report of greenhouse gas emissions reduction efforts not substantially implemented by publication of data showing a reduction in emissions because no review was done); *Lowe’s Companies, Inc.* (Mar. 21, 2006) (proposal for report on wood sourcing and policies not substantially implemented by disclosure of a category of information in annual report because proponent’s supporting statement sought information on company-wide practices and indicators relating to long-term sustainable sourcing goal).

The proposal and supporting statement make it abundantly clear that the core concern of the proposal is the student loan crisis, and the essential objective the disclosure of the Company’s governance measures to monitor and manage risks arising from this significant social policy issue, and whether this category of risk is taken into account in senior executive compensation. None of this is provided by the Company in its existing disclosures, let alone in a way that may compare favorably with the Proposal. As the Company has not substantially implemented the Proposal, we respectfully ask Staff to conclude that the Company has not met its burden of proof under Rule 14a-8(i)(10).

IV. The Company has not provided a meaningful Board analysis of the Proposal

In Staff Legal Bulletin No. 14I (November 1, 2017), the Staff wrote that “we would expect a company’s no-action request to include a discussion that reflects the board’s analysis of the particular policy issue raised and its significance. That explanation would be most helpful if it detailed the specific processes employed by the board to ensure that its conclusions are well-informed and well-reasoned. We believe that a well-developed discussion of the board’s analysis of these matters will greatly assist the staff with its review of no-action requests under Rule 14a-8(i)(7)”. The Company has not provided any analysis of the Proposal by the Board except to provide a conclusory statement ratifying the decision to seek no-action relief. Accordingly, the Board’s analysis of the Proposal should be disregarded by the Staff in its determination because the Board’s analysis is neither well-informed nor well-reasoned.

V. Conclusion

We respectfully request that the Staff does not concur with the Company in its belief that it is entitled to exclude the Proposal from its proxy materials. In the event that the Staff should intend to concur with the Company, we respectfully request the opportunity to speak with the Staff in advance of a final determination. Please contact our Deputy Treasurer for Policy, Kelly Rogers, by phone (401-222-5126) or email Kelly.Rogers@treasury.ri.gov, with any questions in connection with this matter, or if the Staff wishes any further information.

Sincerely,


Seth M. Magaziner
General Treasurer

cc: Mr. Mark L. Heleen, Navient Corporation
Mr. Kurt Slawson, Navient Corporation
Mr. Stephen P. Caso, Navient Corporation
Ms. Laura S. Unger, Chair, Nominations and Governance Committee, Navient Corporation
Mr. David R. Brown, Nixon Peabody, LLP
Ms. Heather Slavkin Corzo, AFL-CIO
Mr. Brandon Rees, AFL-CIO
Ms. Kelly Rogers, State of Rhode Island and Providence Plantations
Mr. Randall Rice, State of Rhode Island and Providence Plantations