standards enumerated in paragraph 7 of the Act.

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than May 31, 2024.

A. Federal Reserve Bank of St. Louis (Holly A. Rieser, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org*:

1. *Thomas Ryan Franks, Thomas Walker Franks, Amanda Jo Holland, and Elizabeth Lane Pilcher, all of Harrisburg, Illinois*; to join Thomas William Franks, Marion, Illinois, to establish the Franks Family Control Group, a group acting in concert, to retain voting shares of Farmers State Holding Corp., Harrisburg, Illinois, and thereby indirectly retain voting shares of Farmers State Bank of Alto Pass, Ill., Alto Pass, Illinois. Thomas William Franks was previously permitted by the Federal Reserve System to acquire voting shares of Farmers State Holding Corp.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2024–10760 Filed 5–15–24; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than June 17, 2024.

A. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *CCB Bancorp, Inc.;* to become a bank holding company by acquiring Classic City Bank, both of Athens, Georgia.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2024–10763 Filed 5–15–24; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

[File No. 241 0004]

Exxon Mobil Corporation/Pioneer Natural Resources Company; Analysis of Agreement Containing Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair methods of competition. The attached Analysis of Proposed Consent Order to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before June 17, 2024.

ADDRESSES: Interested parties may file comments online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write: ''Exxon Mobil Corporation/Pioneer Natural Resources Company; File No. 241 0004'' on your comment and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H–144 (Annex X), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Albert Teng (202–326–3272), Bureau of Competition, Federal Trade Commission, 400 7th Street SW, Washington, DC 20024.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule § 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of 30 days. The following Analysis of Agreement Containing Consent Order to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC website at this web address: *https://www.ftc.gov/news-events/commission-actions.*

The public is invited to submit comments on this document. For the Commission to consider your comment, we must receive it on or before June 17, 2024. Write ''Exxon Mobil Corporation/Pioneer Natural Resources Company; File No. 241 0004'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Because of the agency's heightened security screening, postal mail addressed to the Commission will be delayed. We strongly encourage you to submit your comments online through the *https://www.regulations.gov* website. If you prefer to file your comment on paper, write ''Exxon Mobil Corporation/Pioneer Natural Resources Company; File No. 241 0004'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H–144 (Annex X), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website at *https://www.regulations.gov,* you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule § 4.10(a)(2), 16 CFR 4.10(a)(2)—including competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule § 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule § 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on *https://www.regulations.gov*—as legally required by FTC Rule § 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule § 4.9(c), and the General Counsel grants that request.

Visit the FTC Website at *https://www.ftc.gov* to read this document and the news release describing this matter. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments it receives on or before June 17, 2024. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy*.

Analysis of Agreement Containing Consent Order To Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted for public comment, subject to final approval, an Agreement Containing Consent Order (''Consent Agreement'') from Exxon Mobil Corporation (''Exxon''). Pursuant to an Agreement and Plan of Merger dated October 10, 2023 (''Merger Agreement''), Exxon and Pioneer Natural Resources Company (''Pioneer'') intend to combine their businesses through a merger (''the Proposed Acquisition''). The Proposed Acquisition will further enlarge Exxon—already the largest multinational supermajor oil company—and make Exxon by far the largest producer of crude oil in the Permian Basin, the United States' top oil-producing region. The purpose of the Consent Agreement is to remedy the anticompetitive effects that otherwise would result from the Proposed Acquisition.

Through public statements and private communications, Pioneer founder and former CEO Scott D. Sheffield has campaigned to organize anticompetitive coordinated output reductions between and among U.S. crude oil producers, and others, including the Organization of Petroleum Exporting Countries (''OPEC''), and a related cartel of other oil-producing countries known as OPEC+. Rather than seeking to compete against OPEC and OPEC+ through independent competitive decision-making, Mr. Sheffield's goal in recent years at Pioneer has been to align U.S. oil production with OPEC and OPEC+ country output agreements, thereby cementing the cartel's position and sharing in the spoils of its market power.

Under the terms of Exxon and Pioneer's Merger Agreement, Exxon is required to take all necessary actions to appoint Mr. Sheffield to Exxon's Board of Directors. Prior attempts to coordinate between Mr. Sheffield and firms representing a substantial share of the relevant market are highly informative as to the market's susceptibility to coordination. The appointment of Mr. Sheffield to Exxon's board as a result of the Proposed Acquisition will expand the scope of his reach to promote his anticompetitive messaging and therefore meaningfully increases the likelihood that these attempts at coordination will bear fruit. In particular, Mr. Sheffield's post-merger appointment to Exxon's board would give him a larger platform from which to advocate for greater industry-wide coordination as well as decision-making input on not only the largest producer in the Permian Basin, but also the largest multinational supermajor oil company. Under the terms of the proposed Decision and Order (''Order''), Exxon is prohibited from appointing Mr. Sheffield, current Pioneer employees, and certain other persons affiliated with Pioneer to its board, required to comply with section 8 of the Clayton Act, 15 U.S.C. 19, and required to attest on a regular basis that it is complying with the Order.

The Consent Agreement is thus designed to remedy allegations in the Commission's Complaint that the Proposed Acquisition, if consummated, would violate section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the FTC Act, as amended, 15 U.S.C. 45, by meaningfully increasing the risk of coordination in the relevant market. Absent a remedy, placing Mr. Sheffield on the Exxon board would harm the competitive process. The merger, if consummated, would also violate section 5 of the FTC Act by creating a board interlock among competitors. Mr. Sheffield currently serves on the board of The Williams Companies, Inc. (''Williams''), which operates a host of natural gas pipelines; natural gas gathering, processing, and treating assets; natural gas and natural gas liquids processing assets; crude oil transportation assets; and crude oil and natural gas production. Exxon and Williams are competitors of each other.

The proposed Order presents significant relief for these concerns and imposes effective and administrable relief. By restricting Mr. Sheffield and other Pioneer representatives from Exxon's board, the proposed Order makes clear that signaling coordinated price, output, or other competitive terms between market participants,

particularly in the oil and gas industry, may give rise to legal liability. This Consent Order remedies the harm from the agreement to place Mr. Sheffield on the Exxon board. The Commission will continue to investigate mergers and acquisitions activity in the oil and gas industry and its risks to competition, as well as problematic unilateral signaling and coordination and attempted coordination among market participants.

The Consent Agreement has been placed on the public record for 30 days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the comments received and decide whether it should withdraw, modify, or finalize the proposed Order.

II. The Merging Parties

Exxon is a public multi-national vertically integrated refiner and oil and gas producer, with revenues of over $340 billion and operations in the United States and worldwide. Exxon is headquartered in Spring, Texas, and operates refineries throughout the world that produce transportation fuels and petrochemicals.

Pioneer is a public independent oil and gas company headquartered in Irving, Texas with revenues of nearly $20 billion. Pioneer produces crude oil and associated natural gas in the Permian Basin.

III. The Agreement and Plan of Merger

On October 10, 2023, Exxon and Pioneer entered into the Merger Agreement, pursuant to which Exxon agreed to acquire Pioneer for an enterprise value of approximately $64.5 billion. The terms of the Merger Agreement state that Exxon ''shall take all necessary actions to cause Scott D. Sheffield . . . . to be appointed to the board of directors'' immediately following the consummation of the Proposed Acquisition. The Commission's Complaint alleges that this effect—Mr. Sheffield's appointment to the Exxon board—of the Proposed Acquisition, if consummated, would violate section 7 of the Clayton Act and section 5 of the FTC Act. Moreover, because Mr. Sheffield's appointment to Exxon's board would create a board interlock among competitors, the Proposed Acquisition, if consummated, would also violate section 5 of the FTC Act.

IV. Relevant Market

A relevant product market in which to assess the Proposed Acquisition's anticompetitive effects is the development, production, and sale of crude oil. Crude oil is the main input to produce gasoline, diesel fuel, heating oil, and jet fuel. Crude oil purchasers generally cannot switch to alternative commodities without facing substantial costs. Exxon and Pioneer are engaged in the development, production, and sale of crude oil. A relevant geographic market in which to analyze the Proposed Acquisition is global.

V. Effects of The Proposed Acquisition

The Commission's Complaint alleges that the Proposed Acquisition poses risks to competition by meaningfully increasing the risk of coordination among remaining firms in the relevant market. The 2023 Merger Guidelines identify three primary factors that indicate a merger may increase the risk of coordination, including the existence of prior actual or attempted attempts to coordinate in the market. If any of the three primary factors are met, the Agencies ''may conclude that post-merger market conditions are susceptible to coordinated interaction and that the merger materially increases the risk of coordination.''

Mr. Sheffield's history of attempting to coordinate with other oil industry participants suggests that the market is susceptible to anticompetitive coordination—a risk the Proposed Acquisition would only heighten. The Commission's Complaint lays out evidence, including from Mr. Sheffield's own public and private statements, of his campaign to organize anticompetitive coordinated output reductions between and among U.S. crude oil producers, and others, including OPEC and OPEC+. Much of this coordination has been with high-ranking OPEC representatives, thus indicating that firms with a substantial share of the relevant market have engaged in this conduct. By installing Mr. Sheffield on Exxon's Board, the Proposed Acquisition risks amplifying his public messaging and the effectiveness of his private contacts with OPEC, thereby meaningfully increasing the likelihood of coordination in the relevant market.

VI. The Proposed Order

The proposed Order imposes several terms to remedy these concerns. First, the proposed Order prohibits Exxon from appointing Scott Sheffield to Exxon's board—as required by the Merger Agreement—or to serve in an advisory capacity to Exxon's board or Exxon's management. Second, for a period of five years, Exxon is also prohibited from appointing Pioneer's current employees and certain other persons affiliated with Pioneer to its board.

Third, the proposed Order prohibits Exxon's directors and officers from serving as a director or officer of another corporation if that interlock would violate section 8 of the Clayton Act. The Order requires Exxon to comply with the provisions of section 8 of the Clayton Act.

Fourth, the proposed Order contains provisions to ensure the effectiveness of the relief, including obtaining information from Exxon's officers and directors that they are complying with the Order; requiring Exxon to submit a yearly compliance report containing sufficient information and documentation to enable the Commission to determine independently whether Exxon is in compliance with the Order; and requiring that Exxon maintain specific written communications. The proposed Order also requires Exxon to distribute the Order to each of its current and any new officers and directors.

The purpose of this analysis is to facilitate public comment on the Consent Agreement and proposed Order to aid the Commission in determining whether it should make the proposed Order final. This analysis is not an official interpretation of the proposed Order and does not modify its terms in any way.

By direction of the Commission, Commissioners Holyoak and Ferguson dissenting.

April J. Tabor,

Secretary.

Statement of Chair Lina M. Khan

A core principle that should underpin the Commission's antitrust analysis is examining and understanding commercial realities. Sometimes the evidence that is most probative of commercial realities is how market participants act. Staff's investigation here uncovered troubling evidence of Pioneer CEO Scott Sheffield's actions and communications, which make clear that he believed and acted as if he could persuade his rivals to join him in colluding to restrict output and raise prices. When market actors speak and act as if they can collude, we should not ignore this direct evidence or subordinate it to less direct indicators of market realities.

The dissent does not dispute that Mr. Sheffield has tried to facilitate a cartel, nor does it suggest he will stop doing so after being elevated to the Exxon Board of Directors. Instead, the dissent suggests that Mr. Sheffield is wasting

his time because he is unlikely to succeed.

We should be wary of dispensing with regulatory humility. Corporate executives are not always credible narrators. But when corporate executives' words or actions reveal, against their interests, a belief that they can collude, we should generally believe them.

Concurring Statement of Commissioner Rebecca Kelly Slaughter

Today's complaint and consent decree are an important step forward in merger investigations and enforcement. I'm very glad that we are able, through this consent decree, to prevent the substantial lessening of competition that would have occurred from one component of the merger: elevating Scott Sheffield to the board of directors of Exxon.

This complaint and consent decree reflect what I have long believed to be true: the management and business intentions of merging parties should matter to our assessment of the likely effects of a merger on competition. When a company agrees, as a condition of a merger, to elevate one of the industry's notorious public and private advocates of output coordination to its board, we can and should take that seriously as a competitive effect of the merger. This principle applies not just in oil and gas markets like the ones we assess today, but across the American economy.[1]

This is not to say that we should trust everything merging parties say in their effort to get a merger through the review process. The economic incentives of the merged firm continue to play a central role. If we find reason to believe that the merged firm, acting on those incentives, may substantially lessen competition, we should act. Corporate executives may profess that they plan to continue to compete as if those incentives don't exist. In that situation, enforcers must be highly skeptical. The parties have every reason to want to present a pro-competitive strategy to try to get their merger through. That is why we rely on ordinary course documents and business evidence to give us a clearer picture of how parties will behave. And when they openly embrace anticompetitive strategies, that is when we should take notice.

I agree with my dissenting colleagues that another appropriate response to the concerning statements around coordinated behavior uncovered in this investigation would be to separately scrutinize them as a potential antitrust violation. Today's complaint and consent decree should not be seen as mutually exclusive with such a conduct investigation. Conduct investigations—rightly—are not subject to the strict statutory deadlines of merger investigations, and for a variety of reasons tend to take much longer. The harms to competition identified in the complaint are specific to this merger, and therefore they are appropriate to address now, at the time of the merger.

Lastly, it's important to reiterate here that the FTC does not approve mergers under any circumstances. This consent decree, like any other consent decree, should not be seen as resolving all competitive concerns this merger may present.[2] Enforcers are always faced with tradeoffs to weigh in our decisions. This consent decree will have an important and meaningful impact on the market and competition. It is worth doing now, whether or not further intervention may be warranted.

Concurring Statement of Commissioner Alvaro M. Bedoya

The Sherman Act owes its existence to an oilman with a singular talent for collusion.[1] And we owe the Clayton Act, the grounds for this suit, to a broad consensus that the courts had enfeebled the Sherman Act by reading it in a manner far too favorable to industry.[2]

This merger would have put an oilman of John Rockefeller's persuasions on the board of a direct successor to Mr. Rockefeller's oil company—which also happens to be the single largest company in the American oil industry.[3] Our colleagues raise a finger to contend that ''the merger does not place Mr. Sheffield on the board.'' I fail to see how a written and executed ''AGREEMENT AND PLAN OF MERGER'' between the companies that stipulates that Exxon ''shall take all necessary actions to cause Scott D. Sheffield. . . to be appointed to [its] board of directors. . . immediately following the Effective Time'' of the merger somehow does not place Mr. Sheffield on that board as a result of the merger.[4]

Under section 7 of the Clayton Act, we are asked to determine whether we have reasonable grounds to believe that the effect of this merger ''*may be* to substantially lessen competition'' ''in any line of commerce or in any activity affecting commerce in any section of the country.'' [5] I respect my colleagues' opinion but fail to understand how we can answer that question with anything other than a ''yes.''

Joint Dissenting Statement of Commissioners Melissa Holyoak and Andrew N. Ferguson

The Commission has issued a Complaint and Order against Exxon Mobil Corporation (''Exxon'') on the

[1] Indeed, it may be particularly relevant in pharmaceuticals. The FTC has an entire division dedicated to investigation anticompetititive conduct in healthcare markets with a particularly strong enforcement track record in the pharmaceutical space. When pharmaceutical companies that have a history of anticompetitive conduct merge, I have long believed we should consider that history in our assessment of the likely competitive effects of the merger. *See, e.g.,* Dissenting Statement of Commissioner Rebecca Kelly Slaughter in the Matter of Bristol-Myers Squibb and Celgene (''We must carefully consider the facts in each specific merger to understand whether or how it may facilitate anticompetitive conduct, and therefore be more likely to result in a substantial lessening of competition.'') Dissenting Statement of Commissioner Rebecca Kelly Slaughter In the Matter of Bristol-Myers Squibb and Celgene, (Nov. 15, 2019), *http://www.ftc.gov/system/files/documents/public_statements/1554283/17_-_final_rks_bms-celgene_statement.pdf.* This view has been echoed in the academic literature. *See,* Carrier, Michael A. and Lindsay Cooley, Gwendolyn J., Prior Bad Acts and Merger Review (October 19, 2022). 111 Georgetown Law Journal Online 106 (2023), *http://ssrn.com/abstract=4252945.*

[2] This is especially true given that the merging parties often have outsized control over the timing and timeline of FTC investigations. To ensure that enforcers can adequately and thoroughly investigate potentially unlawful mergers, lawmakers should amend the HSR Act to extend statutory deadlines.

[1] *See* Gregory J. Werden, The Foundations Of Antitrust 3 (2020) (''. . . without John D. Rockefeller and the Standard Oil Co., the United States would not have had competition law until later, and this field of the law would not be called 'antitrust'''); *see* generally, *id.* at 3–16 (documenting Standard Oil's creation, growth, and eventual dominance in the American oil industry).

[2] *See, e.g.,* Earl W. Kintner, Ed., Legislative History Of The Federal Antitrust Laws and Related Statutes 989–997 (1978) (''Based upon 24 years of practical experience under the Sherman Act, Congress sought in the Clayton Act to remedy certain perceived weaknesses in the existing law and to expand its coverage. . . Shortly after the Supreme Court's announcement of its decision in the Standard Oil case in 1911, pressure to strengthen the Sherman Act revived and culminated initially in the introduction of [competing bills]. . . The facts surrounding the drafting and introduction of these proposals make clear that they constituted an integrated and coordinated legislative effort to strengthen and make more effective the existing antitrust law.'')

[3] Our History, ExxonMobil (Feb. 9, 2023), *https://corporate.exxonmobil.com/who-we-are/our-global-organization/our-history* (''Over the past 140 years ExxonMobil has evolved from a regional marketer of kerosene in the U.S. to one of the largest publicly traded petroleum and petrochemical enterprises in the world.''); *id.* (''1972—Jersey Standard officially changes its name to Exxon Corporation.'').

[4] *See* Pioneer Nat Res. Co., Exxon Mobil Corp., & SPQR, LLC, Agreement and Plan of Merger § 8.12(a), at 79 (Oct. 10, 2023). It should also be noted that Exxon's filing to the Securities and Exchange Commission includes Mr. Sheffield's appointment to the board in the long list of financial and other consideration to be provided by Exxon to Pioneer as part of the acquisition. *See* Exxon Mobil Corp., Amendment no. 1 to FORM S–4 Registration Statement 54 (Dec. 22, 2023.)

[5] *See* 15 U.S.C. 18 (emphasis added).

ground that the proposed acquisition of Pioneer Natural Resources Company (''Pioneer'') would violate section 7 of the Clayton Act.[1] The principal ground on which the Commission proceeds is that the merger may substantially lessen competition because of the prospect that Exxon's shareholders may elect Scott Sheffield—Pioneer's founder, former CEO, and current board member—to Exxon's board of directors. The Complaint alleges that Mr. Sheffield has made ''previous efforts to organize tacit (and potentially express) coordination of capital investment discipline and oil production levels.'' [2] Mr. Sheffield allegedly used both public statements threatening to punish companies that expand output and private conversations and messages with OPEC representatives where he implemented his ''long-running strategy to coordinate output reductions.'' [3] These accusations are extremely troubling and warrant close scrutiny under the antitrust laws. To its credit, Exxon intends to exclude Mr. Sheffield from serving on the board of directors—a wise decision consistent with sound policy given the severity of the allegations against him.

But Exxon's consent to the entry of this order and its decision to exclude Mr. Sheffield from its board does not answer the ultimate question the Commission must answer before issuing a complaint: Whether the Commission has reason to believe *this transaction* itself violates section 7. The Commission's Complaint does not provide us reason to believe that it does. The Complaint fails to articulate how the ''effect of [the] transaction may be substantially to lessen competition.'' [4] We fear instead that the Commission is leveraging its merger enforcement authority to extract a consent from Exxon rather than addressing the conduct of one misbehaving executive. We therefore respectfully dissent.

Antitrust enforcers have long recognized that a transaction which increases the risk of coordination also increases the risk of a substantial diminution of competition. Until recently, we considered three factors in assessing the risk of increased coordination: whether the transaction created ''(1) a significant increase in concentration, leading to a moderately or highly concentrated market''; whether the transaction involved ''(2) a market vulnerable to coordinated conduct''; and whether we had ''(3) a credible basis for concluding the transaction will enhance that vulnerability.'' [5] The recently adopted 2023 Guidelines propose three ''primary factors'' for assessing the increased risk of coordination—(1) the existence of a highly concentrated market, (2) prior actual or attempted attempts to coordinate, and (3) elimination of a maverick.[6] No court to date has endorsed these new factors. Even assuming they accurately summarize the state of the law, they are not satisfied here.

The Complaint is unclear on which of the three factors are present here, but it focuses most on ''actual or attempted attempts to coordinate.'' It alleges that ''Mr. Sheffield's history of attempting to coordinate with other oil industry participants suggests that the market here is susceptible to anticompetitive coordination.'' [7] We do not agree.

The 2023 Guidelines provide that ''attempts to coordinate'' are relevant to the risk-of-coordination inquiry where ''firms representing a substantial share in the relevant market appear to have previously engaged in express or tacit coordination . . . .'' [8] The Complaint alleges only that a combined OPEC and OPEC+ ''account for over 50% of global crude oil production.'' [9] Importantly, it does not allege the merging parties' market shares at all. As such, it fails to allege that either Exxon or Pioneer represents part of any ''substantial share'' of the market, and for good reason: the post-merger firm's share in the alleged market will not be substantial. The concentration in this market, and thus, the likelihood of successful coordination post-merger, are virtually unchanged by the proposed acquisition.[10]

The Complaint also focuses on the fact that the merger would give Mr. Sheffield ''a larger platform from which to advocate for greater industry-wide coordination as well as decision-making input.'' [11] Mr. Sheffield's alleged prior conduct certainly raises serious concern and warrants antitrust scrutiny. But the merger does not place Mr. Sheffield on the board.[12] That decision belongs to Exxon's shareholders. The Commission acts today based only on the risk that the shareholders might elect him to the board, and that his election might give him a ''larger platform'' to coordinate—if indeed this market is susceptible to coordination. We do not believe this alleged risk presents a section 7 problem. Further, we are especially concerned with the Complaint's focus on Sheffield's past conduct at Pioneer as an indicator of Exxon's future actions, without any discussion of whether Exxon has incentives to engage in the same behavior. Focusing on individuals' conduct divorced from a firm's incentives could have troubling ramifications for future enforcement actions.

The alleged conduct by Mr. Sheffield warrants scrutiny, but that does not mean we have reason to believe the transaction violates section 7. The Commission should not leverage its merger enforcement authority—or any authority—the way it does today. We respectfully dissent.

[FR Doc. 2024–10731 Filed 5–15–24; 8:45 am]

BILLING CODE 6750–01–P

[1] 15. U.S.C. 18.

[2] Compl. ¶ 22.

[3] Compl. ¶ 6.

[4] 15. U.S.C. 18.

[5] U.S. Dept. of Just. & Fed. Trade Comm'n, Horizontal Merger Guidelines § 7.1 (2010); *see Fed. Trade Comm'n* v. *RAG-Stiftung,* 436 F.Supp.3d 278, 313 (2020) (citing and quoting from section 7.1 of the 2010 Horizontal Merger Guidelines); *New York* v. *Deutsche Telekom AG,* 439 F. Supp. 3d 179, 234 (S.D.N.Y. 2020) (similar).

[6] 2023 Guidelines § 2.3.A, at 8–9. The Guidelines also propose six ''secondary factors,'' *id.* § 2.3.B, at 9–10, but the Complaint does not appear to rely on them.

[7] Compl. ¶ 19.

[8] 2023 Guidelines § 2.3.A, at 9.

[9] Compl. ¶ 21.

[10] To be clear, we do not contend that every individual oil producer is a meaningful constraint on coordination. The Commission's Complaint is silent, however, on the existence or sufficiency of any other firm to constrain the coordination the consent purports to prevent with this remedy. For us, this omission precludes reason to believe the proposed transaction may substantially lessen competition. *See Fed. Trade Comm'n* v. *PPG Indus., Inc.,* 798 F.2d 1500, 1503 (D.C. Cir 1986) (''[W]here rivals are few, firms will be able to coordinate their behavior, either by overt collusion or implicit understanding, in order to restrict output and achieve profits above competitive levels.''); *see also Fed. Trade Comm'n* v. *H.J. Heinz Co.,* 246 F.3d 708, 715 (2001).

[11] Compl. ¶ 44.

[12] The agreement instead requires Exxon to propose Mr. Sheffield for election to its board if he meets certain legal, regulatory, and corporate governance criteria.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–R–263]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the