



DIVISION OF  
CORPORATION FINANCE

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

February 7, 2018

A. Robert D. Bailey  
Allergan plc  
robert.bailey@allergan.com

Re: Allergan plc  
Incoming letter dated December 27, 2017

Dear Mr. Bailey:

This letter is in response to your correspondence dated December 27, 2017 and January 31, 2018 concerning the shareholder proposal (the "Proposal") submitted to Allergan plc (the "Company") by the AFL-CIO Reserve Fund (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence from the Proponent dated January 22, 2018. Copies of all of the correspondence on which this response is based will be made available on our website at <http://www.sec.gov/divisions/corpfina/cf-noaction/14a-8.shtml>. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Matt S. McNair  
Senior Special Counsel

Enclosure

cc: Brandon J. Rees  
American Federation of Labor and Congress of Industrial Organizations  
brees@aflcio.org

February 7, 2018

**Response of the Office of Chief Counsel**  
**Division of Corporation Finance**

Re: Allergan plc  
Incoming letter dated December 27, 2017

The Proposal asks the board to respond to rising public pressure to limit offshore tax avoidance strategies by adopting and disclosing to shareholders a set of principles to guide the Company's tax practices.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(7), as relating to the Company's ordinary business operations. In this regard, we note that the Proposal relates to decisions concerning the Company's tax expenses. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on rule 14a-8(i)(7).

Sincerely,

M. Hughes Bates  
Special Counsel

**DIVISION OF CORPORATION FINANCE**  
**INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS**

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the company in support of its intention to exclude the proposal from the company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes and rules administered by the Commission, including arguments as to whether or not activities proposed to be taken would violate the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversarial procedure.

It is important to note that the staff's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly, a discretionary determination not to recommend or take Commission enforcement action does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the company's management omit the proposal from the company's proxy materials.



January 31, 2018

Via Overnight Delivery  
Via Email to [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)

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

Re: Securities Exchange Act of 1934, as amended (the "**Exchange Act**")  
Omission of Shareholder Proposal Submitted by the AFL-CIO Reserve Fund

Ladies and Gentlemen:

Allergan plc ("**Allergan**" or the "**Company**") is submitting this letter (the "**Supplemental Letter**") to supplement the no action request letter (the "**Initial No Action Request Letter**") submitted to the staff of the Division of Corporation Finance (the "**Staff**") on December 27, 2017 regarding a shareholder proposal (the "**Shareholder Proposal**") from the AFL-CIO Reserve Fund (the "**Proponent**") for inclusion in the Company's proxy statement and form of proxy (the "**2018 Proxy Materials**") for its 2018 Annual General Meeting of Shareholders (the "**2018 Annual Meeting**"). Allergan is submitting this Supplemental Letter to address certain aspects of the letter dated January 22, 2018 that the Proponent submitted to the Staff, a copy of which is attached hereto as Exhibit A (the "**Proponent's Response Letter**;" the Proponent's Response Letter and the Shareholder Proposal are referred to collectively as the "**Shareholder Proposal**").

Allergan intends to omit the Shareholder Proposal from its 2018 Proxy Materials pursuant to Rule 14a-8(i)(7) of the Exchange Act. Allergan continues to respectfully request the concurrence of the Staff that no enforcement action will be recommended if the Company omits the Shareholder Proposal from the 2018 Proxy Materials. This Supplemental Letter does not replace the Initial No Action Request Letter.

### **BASIS FOR EXCLUSION**

The Company believes that the Shareholder Proposal may properly be excluded from the 2018 Proxy Materials under Rule 14a-8(i)(7) because the Shareholder Proposal deals with a matter relating to the Company's ordinary business operations, as described in greater detail in this Supplemental Letter and in the Initial No Action Request Letter.

### **ANALYSIS**

#### **I. The Shareholder Proposal would infringe on the Company's day-to-day business operations.**

As explained in Exchange Act Release No. 40018 (May 21, 1998) (the "**1998 Release**"), a proposal may be excluded because it relates to a company's day-to-day business operations unless the proposal raises significant policy issues that would "transcend the day-to-day business matters."

***A. The Shareholder Proposal dictates operational rules rather than providing policy guidelines.***

While the Proponent asserts that the Shareholder Proposal merely requires the Company's Board of Directors (the "***Board***") to adopt "general, aspirational goals for Allergan," the Proposal would in practice require the Board to dictate operational tax requirements to management, thereby impairing management's ability to run the Company on a day-to-day basis, as the Shareholder Proposal expressly requires management to take certain actions regarding, and adds extra-statutory restrictions to, the Company's tax planning and strategies.

For example, one "principle" contained in the Proposal would require the Company to "ensure that Allergan seeks to pay tax where value is created," which would require the Board to make determinations as to value creation and to tell management how and where to pay taxes above and beyond the requirements of the applicable laws of the jurisdictions where the Company is subject to tax. Because the location of the Company's tax payments is in part a function of where the Company locates manufacturing operations and intellectual property, and where it promotes sales, the Shareholder Proposal would infringe on management's ability to operate the Company. The Proponent agrees with the Company that shareholders "would not be well-suited to weigh in on specific tax practices," (Proponent's Response Letter at 2), but dictating how and where the company pays tax—above and beyond what is required by law—would have the practical effect of a shareholder weighing in on specific tax practices. The Proponent also asserts that principles from other shareholder proposals, which "began with a verb" and described "a specific reform the companies could advocate," were intended to infringe on management's ability to run a company on a day to day basis; the Shareholder Proposal does just this as it requires the Company to make specific reforms with regards to its tax planning. See Proponent's Response Letter at 3.

As described above, the Company implements its tax structure to comply with applicable laws, and as indicated in prior Staff no action letters, the management of a company's business in order to comply with laws is a matter of ordinary business. See *e.g.*, Verizon Communications Inc. (avail. Feb. 22, 2007) (proposal requesting report on the technological, legal and ethical policy issues surrounding disclosure of customer information to government agencies without a warrant was excludable as ordinary business); Johnson & Johnson (avail. Feb. 22, 2010) (proposal requesting that the company take specific actions to comply with employment eligibility verification requirements was excludable as ordinary business).

***B. Day-to-day operations and shareholder value, not tax planning, drive the Company's decision-making.***

The Company's management considers many factors in making business decisions, such as managing the Company's intellectual property, deciding where to promote its products, determining where to build manufacturing operations, engaging in strategic acquisitions and raising capital through the public and private markets, all with the aim of maximizing shareholder value. The Company's tax planning is implemented as part of the Company's overall business strategy on these types of operational matters. Tax is but one of the many factors that management considers in making such business decisions and running the Company, and management analyzes the tax implications of its operations and transactions to ensure that its tax practice is aligned with the tax laws of the jurisdictions where it is subject to tax.

Although the Shareholder Proposal purports to address a social policy issue, in effect its proposed tax principles would be tantamount to telling the Company where to site its assets—for example, its manufacturing plants—thereby elevating the Company's tax planning function to a more driving role than it would otherwise assume. This would constrain management's ability to operate and manage the Company on a day-to-day basis. Because the Board has determined that the Company's tax structure is squarely within the ordinary duties and obligations of management, the Shareholder Proposal is precisely the type of matter that the exclusion set forth in Rule 14a-8(i)(7) was designed to address, implicates the considerations described in the 1998 Release, and should be excluded because it relates to the Company's ordinary business operations.

## **II. The Shareholder Proposal does not implicate a social policy that transcends the Company's ordinary business.**

Staff Legal Bulletin No. 14I (Nov. 1, 2017) ("**SLB 14I**") provided further guidance as to what constitutes a significant policy consideration and explained that the applicability of the significant policy exception "depends, in part, on the connection between the significant policy issue and the company's business operations." In accordance with this Staff guidance, the Board considered the social impact of the Shareholder Proposal and concluded that the Shareholder Proposal does not raise a significant social policy issue that transcends the Company's day-to-day operations.

### ***A. The Board is best placed to understand and determine what constitutes a "social policy issue" for the Company's shareholders and for the Company.***

As explained in SLB 14I, a company's "board acting in this [fiduciary] capacity and with the knowledge of the company's business and the implications for a particular proposal on that company's business is well situated to analyze, determine and explain whether a particular issue is sufficiently significant because the matter transcends ordinary business and would be appropriate for a shareholder vote." In accordance with such Staff guidance, the Company's Board considers social policy issues, and their significance, in light of shareholder engagement, management input and its own discussion. The Company and the Board engage regularly with shareholders to understand environmental, social and governmental policy issues and concerns and, where it deems appropriate, acts on such issues. For example, in 2017, in light of shareholder engagement, management and Board input and the consideration of policy on the Company as a whole, the Company announced, and the Board endorsed, the Company's "Social Contract" on drug pricing based on a determination that social policy issues around drug availability and pricing did transcend ordinary business given the nexus of that particular issue with the Company's business.

During the past two years, members of both the Board and senior management have conducted shareholder engagement, meeting with shareholders representing approximately 37% and 25% of the Company's ordinary shares during 2016 and 2017, respectively. The Board has extensively considered the feedback it has received from its shareholders as part of this engagement. Tax policy and reform – including the amount and location of where the Company pays tax – were not raised by a single shareholder during these engagement processes.

Thus, in its thorough discussion of the Shareholder Proposal, the Board has concluded that the Shareholder Proposal does not have a significant nexus to the Company's business such

that it raises a significant social policy issue for the Company and its shareholders; rather, the Shareholder Proposal instead represents the social policy views of one shareholder, which should not dictate the Company's approach to tax planning.

***B. Governments determine tax policy through legislation.***

Tax policy is made by governments through tax laws, the interpretation of such laws and the regulations adopted by tax authorities. The Shareholder Proposal asks the Board to set principles on paying tax "where value is created." However, tax laws in the United States, and elsewhere, have rules regarding transfer pricing and the taxation of intracompany payments that are intended to appropriately tax companies based on how those laws define where value is created. For example, the United States Congress recently enacted tax reform through the Tax Cuts and Jobs Act, which among other things, adopted a territorial system of international taxation. As a result of the Tax Cuts and Jobs Act, Congress implemented specific rules intended to directly link a company's tax liability to value creation – income attributable to intangible assets is subject to a minimum tax.

Thus, although tax does not constitute a social policy for the Company in the view of the Board, to the extent it is seen as a policy matter for some companies, governments—not shareholders—provide the rules for such companies to follow, and have created a framework to define where value is created and how value should be taxed. Accordingly, the Company pays taxes in compliance with these laws and the social policies implemented thereto. Requiring the Board to adopt extra-statutory principles defining where value is created would result in the adoption of arbitrary rules and policies related to tax, beyond those already determined by tax authorities, and would thus interfere with the Company's business.

**III. The Board appropriately considered the Shareholder Proposal in light of Staff guidance**

The Proponent asserts that the Board did not take the requisite steps to determine that the Shareholder Proposal does not implicate a significant social policy. However, there are no specific rules or requirements governing the process a board must take when deliberating whether a proposal implicates a significant social policy, and so the Proponent's assertion that the Board's conclusions "should be given no weight" (Proponents Response Letter at 5) is not warranted. The Board conducted a thorough deliberation of the Shareholder Proposal and considered both shareholder feedback received during the last two years of shareholder engagement as well as the impact of tax strategy and planning within the Company's operations in concluding that the Shareholder Proposal does not implicate social policy issues that transcend the Company's ordinary business.

**CONCLUSION**

Based upon the foregoing analysis and the analysis set forth in the Initial No Action Request Letter, the Company respectfully requests that the Staff concur that it will take no action if the Company excludes the Shareholder Proposal from its 2018 Proxy Materials in reliance on 14a-8(i)(7).

If the Staff has any questions with respect to the foregoing, please do not hesitate to contact me at (862) 261-8830 or by email at Robert.Bailey@allergan.com.

Please send any email correspondence to Kira M. Schwartz, Assistant Secretary, at kira.schwartz@allergan.com.

Very truly yours,

A handwritten signature in black ink, appearing to read 'A. Robert D. Bailey'.

A. Robert D. Bailey, Esq.  
Chief Legal Officer and  
Corporate Secretary

cc: AFL-CIO Reserve Fund  
Jeffrey D. Karpf, Esq.  
*Cleary Gottlieb Steen & Hamilton LLP*  
Helena K. Grannis, Esq.  
*Cleary Gottlieb Steen & Hamilton LLP*



*See Attached.*



# AFL-CIO

AMERICA'S UNIONS

**American Federation  
of Labor and  
Congress of Industrial  
Organizations**

815 16th St., NW  
Washington, DC 20006

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January 22, 2018

Via electronic mail: [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)

Office of Chief Counsel  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

***Re: Request by Allergan plc Request to Exclude a Shareholder Proposal  
Submitted by the AFL-CIO Reserve Fund***

Dear Sir or Madam:

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, the AFL-CIO Reserve Fund (the "Fund") submitted a shareholder proposal (the "Proposal") to Allergan plc ("Allergan" or the "Company"). The Proposal asks Allergan's Board of Directors to respond to rising pressure to limit offshore tax avoidance by adopting a set of principles (the "Principles") to guide Allergan's tax practices, including certain items.

In a letter to the staff of the Division of Corporate Finance (the "Staff") dated December 27, 2017 (the "No-Action Request"), Allergan stated that it intends to omit the Proposal from its proxy materials to be distributed to shareholders in connection with the Company's 2018 annual meeting of shareholders. Allergan argues that it is entitled to exclude the Proposal in reliance on Rule 14a-8(i)(7), on the ground that the Proposal deals with Allergan's ordinary business operations. As discussed more fully below, Allergan has not met its burden of proving its entitlement to exclude the Proposal in reliance on ordinary business grounds and the Fund respectfully requests that Allergan's request for relief be denied.

**The Proposal**

The Proposal states:

"RESOLVED that shareholders of Allergan plc ("Allergan") ask the Board of Directors to respond to rising public pressure to limit offshore tax avoidance strategies by adopting and disclosing to shareholders a set of principles to guide Allergan's tax practices. For purposes of this Proposal, "offshore tax avoidance

strategies” are transactions or arrangements that exploit differential tax treatment of financial instruments, asset transfers or entities by taxing jurisdictions to reduce a company’s effective tax rate.

The principles should state that Allergan’s board will:

- Consider the impact of Allergan’s global tax strategies on local economies and government services that benefit Allergan;
- Ensure that Allergan seeks to pay tax where value is created;
- Periodically assess the reputational consequences, including views of customers, shareholders and employees, of engaging in practices deemed to be “tax avoidance” by such stakeholders; and
- Annually review Allergan’s tax strategies and assess the alignment between the use of such strategies and Allergan’s stated values or goals regarding sustainability.”

### **Ordinary Business**

Rule 14a-8(i)(7) permits a company to omit a proposal that “deals with a matter relating to the company’s ordinary business operations. Allergan makes several arguments regarding the applicability of the ordinary business exclusion to the Proposal, none of which is compelling.

#### *The Proposal Would Not Interfere with the Board’s Delegation to Management to Select and Implement Tax Strategies*

Allergan contends that adopting the Proposal would infringe on management’s ability to manage the Company’s tax strategies on a day-to-day basis. Allergan emphasizes the complexity of its tax planning and practices and stresses the fact that the Board has delegated the tasks of “creating, implementing and overseeing the Company’s tax planning and practices to management.” (No-Action Request, at 3) “[T]he determination and implementation of the Company’s tax plans and practices is a highly technical and complex matter,” Allergan urges, “requiring the expertise of management and subject matter experts...” (No-Action Request, at 3)

Allergan’s argument might have merit if the Proposal sought to insert shareholders into “the determination and implementation of the Company’s tax plans and practices.” The Fund concedes that shareholders would not be well-suited to weigh in on specific tax practices, like formulating transfer pricing policies, selecting outside tax advisors or making tax filings.

But the Proposal is not addressed to specific tax plans or practices. Rather, it asks the Board to provide broad guidance to management in the form of the Principles. Allergan argues that its Board believes that “it is critical for management to retain the flexibility to implement tax plans and practices that are tailored to the Company’s current circumstances and not tied to a one-size-fits-all set of principles.” (No-Action Request, at 3) Shareholders, however, may have different

views on the desirability of adopting the Principles to guide management’s decision making, which they can communicate to the Board by voting on the Proposal.

Determinations on two different proposals dealing with health care principles illustrate the difference between a proposal that infringes on management’s ability to run the company on a day-to-day basis and one that supplies more general guidance. In the 2008 proxy season, shareholders submitted proposals asking boards to “adopt principles for comprehensive health care reform” and identifying five principles that should be included. The principles in these proposals (the “2008 proposals”) were aspirational; they were phrased in terms like “Health care should be universal.” The Staff declined to agree with companies that they could omit these proposals in reliance on the ordinary business exclusion.<sup>1</sup>

In contrast, a more detailed proposal dealing with health care principles was submitted to companies in the 2014 proxy season. The 2014 proposals, like the 2008 proposals, asked companies to adopt a set of principles related to health care reform. Unlike the 2008 proposals, though, the “principles” enumerated in the 2014 proposals were not aspirational; each one began with a verb and was a specific reform the companies could advocate. For example, the principles included “Repeal state-level laws that prevent insurance companies from competing across state lines” and “Reform federal tax laws to allow individuals to receive a standard deduction for health insurance costs or receive tax credits.”<sup>2</sup>

The Staff agreed that the 2014 proposals were excludable because they sought to involve the companies in lobbying on matters related to their operations and dealt with employee benefits. The Staff pointed out that “although the proposal asks the company to adopt principles of health care reform, it advocates specific legislative initiatives, including the repeal of specific laws and government mandates and the enactment of specific tax deductions or tax credits that appear to relate to Lilly’s business operations.”<sup>3</sup> The Staff thus recognized that even though the 2014 proposals were styled as pressing for health care principles, the proposals’ granularity made them excludable.

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<sup>1</sup> See, e.g., Xcel Energy Inc. (Feb. 15, 2008); United Technologies Corp. (Jan. 31, 2008); see also “Corporation Finance in 2008: A Year of Progress,” Speech by John W. White, Director, Division of Corporation Finance, Securities and Exchange Commission, to the American Bar Association, Section of Business Law, Committee on Federal Regulation of Securities, Aug. 11, 2008 (available at <https://www.sec.gov/news/speech/2008/spch081108jww.htm>) (“Unlike prior proposals, [the 2008 proposals] did not ask the companies to change their own healthcare coverage, or ask them to directly lobby anyone in support of healthcare change. No further action was contemplated by the proposal other than the adoption of principles. . . In analyzing these no-action requests, the staff used the framework it always does — including applying the Commission’s guidance that I just recited on how to interpret the ordinary business exclusion (and the sufficiently significant social policy overlay). In seven cases, the staff was unable to concur in the companies’ views.”)

<sup>2</sup> Johnson & Johnson and Company (Feb. 18, 2014); Eli Lilly and Company (Feb. 18, 2014); CVS Caremark Corporation (Feb. 19, 2014)

<sup>3</sup> See Johnson & Johnson, supra note 2; Eli Lilly, supra note 2.

The Proposal much more closely resembles the 2008 proposals, with their high-level principles, than the prescriptive 2014 proposals. The Proposal sets forth general, aspirational goals for Allergan—it recommends that the Board formulate Principles stating that the Company should “[c]onsider the impact” of global tax strategies, “[e]nsure that Allergan seeks to pay tax where value is created,” “assess the reputational consequences” of tax avoidance and analyze “alignment between the use of [tax] strategies and Allergan’s stated values or goals regarding sustainability.” These goals, like the aspirational principles in the 2008 proposals, give the Board flexibility in formulating the Principles; the Board, for its part, can give management substantial discretion in how the principles are implemented.

If the Proposal had followed the approach used by the 2014 proposals, it would have advocated that Allergan support particular measures to limit offshore tax avoidance. It would have suggested principles that sounded something like “Support legislation extending time limits for assessing tax due for non-deliberate offshore tax non-compliance”<sup>4</sup> or “Oppose move to a ‘territorial’ tax system in the U.S.”<sup>5</sup> The 2014 proposals’ approach, applied to Allergan’s own tax practices, would have translated into mandates such as “Prohibit short-term loans between subsidiaries of the Company.”<sup>6</sup> The Proposal does not urge the adoption of such specific Principles.

The same distinction applies to the 2011 proposals seeking disclosure on tax-related risks, which Allergan cites. (See No-Action Response, at 4) The 2011 proposals did not focus, as the Proposal does, on the broader social issues related to offshore tax avoidance, nor did they request high-level board guidance in the form of principles. The 2011 proposals sought disclosure regarding the “risks created by the actions [the company] takes to avoid or minimize US federal, state and local corporate income taxes and provide a report to shareholders on the assessment.”<sup>7</sup> The supporting statements described consequences in the form of audits, tax disputes and stock price volatility, but no negative societal impacts from corporate tax avoidance. The 2011 proposals thus specifically addressed aspects of companies’ operations and choices regarding taxes, much like the 2014 health care proposals, and did not touch on the broader social policy issues.

In sum, the Proposal would not interfere with the ability of Allergan’s management to do its day-to-day work of managing the Company’s tax strategies. Instead, it asks the Board to provide guidance to management, in the form of general principles, consistent with a broad delegation of authority. If the Proposal is implemented, Allergan’s tax planning and practices will continue to be managed by “subject matter experts” (No-Action Request, at 3) and not shareholders.

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<sup>4</sup> See <http://blogs.mazars.com/letstalktax/2017/11/government-ups-the-ante-on-anti-avoidance/>

<sup>5</sup> See <https://www.cbpp.org/research/federal-tax/territorial-tax-is-a-zero-rate-on-us-multinationals-foreign-profits-threatens>

<sup>6</sup> See <https://www.economist.com/blogs/schumpeter/2012/09/corporate-tax-avoidance>

<sup>7</sup> E.g., Pfizer Inc. (Feb. 16, 2011).

*Limiting the Societal Impact of Offshore Tax Avoidance is a Significant Social Policy Issue with a Sufficient Nexus to Allergan's Business*

Allergan claims that the Proposal does not deal with a significant social policy issue transcending ordinary business. Allergan provides in the No-Action Request a brief description of its Board's conclusions to that effect, offered pursuant to Staff Legal Bulletin 14I ("SLB 14I").<sup>8</sup> The conclusions reached by Allergan's Board should be given no weight because the Board addressed the wrong questions, failed to consider the appropriate factors and provided no reasoning.

In SLB 14I, the Staff opined that a company's board "is well situated to analyze, determine and explain whether a particular issue is sufficiently significant because the matter transcends ordinary business and would be appropriate for a shareholder vote"; accordingly, a company's no-action request can include "a discussion that reflects the board's analysis of the particular policy issue raised and its significance [to the company]." According to SLB 14I, a "well-developed discussion" will assist the Staff in its review.

The No-Action Request first describes a Board conclusion that has no bearing on the excludability of the Proposal. Allergan asserts, "Following [the described] analysis and consideration, the Board concluded that the determination and implementation of the Company's tax plans and practices is appropriately delegated to and managed by senior executives."<sup>9</sup> By mentioning quarterly board updates on tax matters, the discussion on this point implies that it would be inappropriate for the Board to be any more involved, i.e., provide guidance to management via the Principles. Whether, and on what terms, the Board's delegation to management is "appropriate" has no bearing on Allergan's request for relief. The appropriateness of the Board's level of involvement in tax-related matters is one of the factors shareholders would likely consider in voting on the Proposal; Allergan is free to include the Board's thoughts on that question in its Statement in Opposition to the Proposal.

The Allergan Board's second conclusion hits a bit closer to the mark, stating that "the Board determined that the matters detailed in the [Proposal], including the Company's offshore tax strategies, exclusively relate to the Company's operations and do not further transcend the Company's ordinary business by implicating a broader significant policy issue . . . ."<sup>10</sup> The Board did not, however, apply the standard developed through the Commission's releases and Staff's determinations, which require that the issue be the subject of "sustained" and "consistent . . . widespread debate" to be considered a significant social policy issue.<sup>11</sup> The No-Action Request's description of the Board's process reflects no consideration of the kinds of factors,

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<sup>8</sup> Staff Legal Bulletin 14I, "Shareholder Proposals" (Nov. 1, 2017) (<https://www.sec.gov/interps/legal/cfslb14i.htm>)

<sup>9</sup> No-Action Request, at 4.

<sup>10</sup> No-Action Request, at 4.

<sup>11</sup> See Exchange Act Release No. 40018 (May 21, 1998); Comcast Corp. (Mar. 4, 2011); Verizon Communications Inc. (Feb. 13, 2012).

such as media coverage, public opinion or legislative/regulatory initiatives, used to inform analysis under that standard.

Allergan's Board may have been expressing a view on a more limited point: Even if offshore tax avoidance is a significant social policy issue generally, the requisite nexus does not exist between that issue and Allergan. However, the No-Action Request does not include any substantive discussion about how concern over the impact of offshore tax avoidance strategies specifically affects, or does not affect, Allergan's business. Instead, a laundry list of irrelevant factors is provided:

The Board determined that the Company's tax practices are implemented in order to comply with applicable law to pay taxes properly due as a function of the operation of its global business; used as part of the Company's broader financial planning, taking into account available deductions, incentives and other provisions of tax laws adopted in the various national, state, local and foreign jurisdictions to which the Company is subject; and are most appropriately characterized as a cost/expense of operating the Company globally.

Did the Board consider the impact of tax avoidance strategies on Allergan's financial results? Did the Board take into account the debate—not only in the U.S. but also globally—about the impact of corporate tax avoidance on revenues and the provision of public services? Did the Board receive information on initiatives under way to curb offshore tax avoidance strategies and the impact those initiatives could have on Allergan? None of these factors relevant to the connection between Allergan and the issue of offshore tax avoidance was apparently considered by the Board. Accordingly, the description of Allergan's Board's process is not useful in determining whether the Proposal deals with a significant social policy issue or whether that issue has the required nexus to Allergan.

*The Proposal Deals with a Significant Social Policy Issue Having a Substantial Nexus with Allergan*

Global corporations' offshore tax avoidance, including its impact on society, has been the subject of consistent and sustained societal debate, qualifying it as a significant social policy issue. The issue has taken on greater urgency and spurred more intense debate since 2011, when the Staff last considered proposals concerning tax strategies.

Each year, offshore tax avoidance strategies enable U.S.-based multinational corporations to pay \$90 billion less in federal income taxes.<sup>12</sup> Press attention often focuses on profitable companies that paid little or no U.S. federal income tax.<sup>13</sup>

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<sup>12</sup> Center for Tax Justice, "Offshore Shell Games: 2014," at 1 (<http://ctj.org/pdf/offshoreshell2014.pdf>)

<sup>13</sup> <https://www.usatoday.com/story/money/markets/2016/03/07/27-giant-profitable-companies-paid-no-taxes/81399094/>; <https://www.cnn.com/2014/08/13/20-big-profitable-us-companies-paid-no-taxes.html>;

In April 2016, the first reports of investigations into offshore tax avoidance based on the Panama Papers, a leaked trove of 11.5 million documents from a Panama law firm, were published. A collaborative effort involving more than 300 reporters working through the International Consortium of Investigative Journalists, the Panama Papers investigations implicated world leaders, banks and global corporations; led to over 150 responses (investigations, audits and inquiries); and catalyzed legislative and regulatory reforms.<sup>14</sup> Articles based on the Panama Papers appeared in major media outlets like The New York Times,<sup>15</sup> CNN,<sup>16</sup> Forbes,<sup>17</sup> Financial Times<sup>18</sup> and ABC News.<sup>19</sup> The Panama Papers reporting team won the Pulitzer Prize for Explanatory Reporting and many other awards.<sup>20</sup>

A similar release in 2017, dubbed the Paradise Papers, of documents from a Bermuda law firm and offshore corporate registries revealed more about tax avoidance by large companies. Coverage of the information disclosed in the Paradise Papers was also extensive.<sup>21</sup> Companies highlighted include Apple, Nike,<sup>22</sup> Google and Facebook.<sup>23</sup> Allergan was also mentioned, as discussed below.

The societal impact of offshore tax avoidance has been an important part of the debate. A report by Oxfam quantified the tax revenue loss to developing countries at \$100 billion per year.<sup>24</sup> For example, articles published in connection with the Panama Papers detailed the ways offshore tax strategies were used by companies in extractive industries to “siphon” money out of African countries to the U.S. and U.K., depriving African nations of tax revenues they could use for services such as education and health care.<sup>25</sup>

Offshore tax avoidance has also been linked with increasing income inequality.<sup>26</sup> Large corporations and wealthy individuals have the resources to engage in offshore tax avoidance,

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<https://www.fastcompany.com/3044873/15-companies-that-paid-zero-income-tax-last-year-despite-23-billion-in-profits>; <https://www.nytimes.com/2017/03/09/business/economy/corporate-tax-report.html>;  
<https://www.reuters.com/article/us-usa-tax-corporate-1/thirty-companies-paid-no-u-s-income-tax-2008-2010-report-idUSTRE7A261C20111103>.

<sup>14</sup> <https://panamapapers.icij.org/blog/20161201-impact-graphic.html>

<sup>15</sup> [https://www.nytimes.com/2016/06/06/us/panama-papers.html?\\_r=0](https://www.nytimes.com/2016/06/06/us/panama-papers.html?_r=0)

<sup>16</sup> <https://www.cnn.com/2016/04/04/world/panama-papers-explainer/index.html>

<sup>17</sup> <https://www.forbes.com/sites/kellyphillipsrb/2016/04/04/what-are-the-panama-papers/#446762ea2c3c>

<sup>18</sup> <https://www.ft.com/panama-papers-leak>

<sup>19</sup> <http://abcnews.go.com/topics/news/taxes/panama-papers.htm>

<sup>20</sup> <https://panamapapers.icij.org/awards.html>

<sup>21</sup> E.g., <http://www.bbc.com/news/uk-41886608>; <http://www.businesstimes.com.sg/government-economy/eu-and-other-nations-grappling-with-how-to-counter-offshore-tax-avoidance>; <https://www.ft.com/content/38e99534-c48e-11e7-a1d2-6786f39ef675>; [https://news.vice.com/en\\_us/article/ywn5dj/paradise-papers-reveal-how-apple-is-a-grandmaster-of-tax-avoidance](https://news.vice.com/en_us/article/ywn5dj/paradise-papers-reveal-how-apple-is-a-grandmaster-of-tax-avoidance).

<sup>22</sup> <http://www.newsweek.com/us-companies-dodge-70-billion-year-offshore-tax-havens-712411>

<sup>23</sup> <http://www.dw.com/en/paradise-papers-apple-shifted-billions-offshore-to-avoid-tax/a-41270469>

<sup>24</sup> [https://www.oxfamamerica.org/static/media/files/Broken\\_at\\_the\\_Top\\_4.14.2016.pdf](https://www.oxfamamerica.org/static/media/files/Broken_at_the_Top_4.14.2016.pdf)

<sup>25</sup> <https://panamapapers.icij.org/blog/20160727-africa-partners-reaction.html>

<sup>26</sup> [https://www.oxfamamerica.org/static/media/files/Broken\\_at\\_the\\_Top\\_4.14.2016.pdf](https://www.oxfamamerica.org/static/media/files/Broken_at_the_Top_4.14.2016.pdf)



while ordinary people and small businesses do not.<sup>27</sup> Over time, then, offshore tax avoidance amplifies inequality.

Legislative measures have been introduced in the U.S. and elsewhere to reduce tax avoidance. The Stop Tax Haven Abuse Act would increase corporate transparency on tax matters, crack down on transfer pricing abuses and limit abusive practices like inversions and earnings stripping.<sup>28</sup> Congressional hearings have been held on offshore tax avoidance. In 2013, the Senate Permanent Subcommittee on Investigations held a hearing on Apple's use of offshore tax havens to avoid tax.<sup>29</sup> A year later, the Senate Finance Committee held a hearing on corporate tax avoidance, with a focus on inversions.<sup>30</sup>

Offshore tax avoidance came up in the U.S. debate over tax reform in 2017. Advocates of a lower top corporate tax rate urged that it would reduce the incentive to move profits offshore. As well, there was a vigorous debate over the introduction of a territorial taxation system, which will eliminate U.S. taxation of amounts earned offshore, with opponents arguing that it would reward tax avoiders and deplete federal coffers.<sup>31</sup>

Outside the U.S., the Organization for Economic Cooperation and Development (OECD) and Group of 20 (G20) nations developed 15 measures, delivered in 2015, to combat "base erosion and profit shifting" (BEPS), multinational corporations' use of legal arrangements that shift profits to low- or no-tax jurisdictions. The goal of the BEPS project in formulating multilateral rules was "ensuring that [multinational enterprises] report profits where economic activities are carried out and value is created."<sup>32</sup>

The 15 actions, which are model rules, best practices and recommendations, address many gaps and problematic areas, including transfer pricing, hybrid mismatches (differing treatments of an instrument between jurisdictions) and disclosure.<sup>33</sup> Over 100 countries and jurisdictions are implementing the BEPS measures under the "inclusive framework."<sup>34</sup> According to Deloitte, BEPS and similar initiatives are part of a "global tax reset" and tax "has become a significant strategic business issue."<sup>35</sup>

The issue has a strong nexus with Allergan, as well. Allergan was acquired by Ireland-domiciled Actavis plc in 2014; Actavis had redomiciled to Ireland only one year earlier by buying an Irish

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<sup>27</sup> <http://www.newsweek.com/us-companies-dodge-70-billion-year-offshore-tax-havens-712411>

<sup>28</sup> [https://thefactcoalition.org/fact-sheet-stop-tax-haven-abuse-act-of-2017?utm\\_medium=policy-analysis/fact-sheets](https://thefactcoalition.org/fact-sheet-stop-tax-haven-abuse-act-of-2017?utm_medium=policy-analysis/fact-sheets)

<sup>29</sup> <http://www.nytimes.com/2013/05/21/business/apple-avoided-billions-in-taxes-congressional-panel-says.html>

<sup>30</sup> <http://nsba.biz/senate-finance-hearing-on-corporate-tax-avoidance/>

<sup>31</sup> See <https://www.marketwatch.com/story/trump-ryan-tax-plan-will-encourage-more-corporate-offshore-tax-avoidance-2017-10-24>; <http://prospect.org/article/republicans-want-make-corporate-tax-avoidance-even-easier>

<sup>32</sup> <https://www.oecd.org/ctp/policy-brief-beps-2015.pdf>

<sup>33</sup> <https://www.oecd.org/tax/beps/beps-actions.htm>

<sup>34</sup> <https://www.oecd.org/tax/beps/>

<sup>35</sup> <https://www2.deloitte.com/global/en/pages/tax/topics/base-erosion-profit-shifting.html>

firm, in a transaction known as an inversion; these transactions have been characterized as “[p]erhaps the worst form of tax avoidance.”<sup>36</sup> In 2016, new U.S. Treasury rules caused the termination of a merger between Allergan and Pfizer which would have resulted in Pfizer adopting Allergan’s Ireland domicile via an inversion.<sup>37</sup> The Paradise Papers contained documents evidencing Allergan’s use of offshore companies to hold its Botox patents, which allowed it to shift profits generated by license payments to those companies and pay less or no tax.<sup>38</sup>

*The Subject of the Proposal is Not Too Complex for Shareholders to Understand*

Allergan claims that the subject of the Proposal is one “on which shareholders, as a group, are not in a position to make informed judgments.” (No-Action Request, at 3) That might be true if the Proposal delved into technical tax-related matters. The general guidance the Principles advocated in the Proposal would provide to management is similar to the policies boards adopt on a variety of subjects. Shareholders are capable of determining whether it would serve Allergan’s interests to, for instance, seek to pay tax where value is created. That judgment does not require technical knowledge and turns on shareholders’ views about how best to create sustainable long-term value.

Board-adopted policies implemented by management are not unusual. Many boards have adopted human rights policies, which set forth broad principles dealing with such matters as forced labor, freedom of association and child labor.<sup>39</sup> The Staff has declined to grant relief on ordinary business grounds on proposals addressing human rights policies, including where a proposal requests a specific policy amendment.<sup>40</sup>

Political spending policies are another type of high-level guidance many boards provide to shape the behavior of company employees who carry out this function.<sup>41</sup> Proposals advocating that boards adopt political spending policies or oversee political activity are generally not excludable in reliance on the ordinary business exclusion.<sup>42</sup>

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<sup>36</sup> [https://www.oxfamamerica.org/static/media/files/Broken\\_at\\_the\\_Top\\_4.14.2016.pdf](https://www.oxfamamerica.org/static/media/files/Broken_at_the_Top_4.14.2016.pdf)

<sup>37</sup> <https://www.reuters.com/article/us-allergan-m-a-pfizer/obamas-inversion-curbs-kill-pfizers-160-billion-allergan-deal-idUSKCN0X21NV>

<sup>38</sup> <https://www.nytimes.com/2017/11/06/world/apple-taxes-jersey.html>

<sup>39</sup> E.g., <http://www.coca-colacompany.com/content/dam/journey/us/en/private/fileassets/pdf/2014/11/human-rights-policy-pdf-english.pdf>; <https://www.nestle-cwa.com/en/csv/what-is-csv/nestl%C3%A9-corporate-business-principles>; <https://www.fcx.com/sustainability/human-rights/policy-commitment>

<sup>40</sup> E.g., Abbott Laboratories (Feb. 28, 2008) (asking that board amend human rights policy to include access to medicines); American International Group Inc. (Mar. 14, 2008) (requesting that the board adopt a comprehensive policy regarding AIG’s respect for and commitment to the human right to water).

<sup>41</sup> E.g., <http://investor.windstream.com/investors/corporate-governance-document.cfm?documentid=10192>; <https://www.gulfpower.com/pdfs/our-company/SouthernCompany-Political-Spending-Policies-and-Practices.pdf>; <http://www.pgecorp.com/corp/about-us/corporate-governance/corporation-policies/political-engagement.page>

<sup>42</sup> E.g., Halliburton Company (Mar. 11, 2009); The Home Depot, Inc. (Mar. 25, 2011)

Human rights and political spending policies have been the subject of numerous shareholder proposals. Forty-two proposals on human rights policies were submitted in the 2016 and 2017 proxy seasons.<sup>43</sup> From 2014 through 2017, between 57 and 92 proposals asking for disclosure of corporate political activity, including policies governing that activity, came to a vote.<sup>44</sup> As a result, most institutional investors' proxy voting guidelines, as well as the guidelines used by proxy advisors, include provisions related to voting on these kinds of proposals.<sup>45</sup>

Like tax strategies, both human rights and corporate political activity are complex, technical topics. For that reason, policies favored by institutional investors tend not to control specific details of implementation, but instead set forth broader principles or factors to be considered in decision making. Shareholders are well able to determine whether a particular company's board should adopt a policy on an issue and what principles would most effectively achieve the desired objectives.

In sum, the Proposal would not preclude Allergan's Board from delegating tax-related matters to management and thus would not interfere with the day-to-day operations of the Company. The conclusions reached by Allergan's Board and submitted as part of the No-Action Request do not change the analysis because one of them answered an irrelevant question and the other reflected application of the wrong standard and failed to consider relevant factors. Corporate tax avoidance and its broader societal impact are topics of consistent and sustained public debate, making the subject of the Proposal a significant social policy issue. Finally, the Proposal's subject is not so complex that shareholders would be unable to understand it; shareholders regularly vote on proposals asking for the adoption of Board-level policies governing technical activities implemented by management and are capable of making an informed judgment about whether a proposed Board policy would be value enhancing for a company. For these reasons, Allergan has failed to satisfy its burden of showing that it is entitled to omit the Proposal in reliance on the ordinary business exclusion, and its request for relief should be denied.

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<sup>43</sup> As You Sow & Sustainable Investments Institute, "Proxy Preview: 2017," at 50 (<http://www.proxypreview.org/download-proxy-preview-2017/>); As You Sow & Sustainable Investments Institute, "Proxy Preview: 2016," at 41 (<http://www.proxypreview.org/proxy-preview-2016/>)

<sup>44</sup> <https://corpgov.law.harvard.edu/2016/08/18/political-contributions-and-lobbying-proposals/>;  
<https://corpgov.law.harvard.edu/2017/10/26/environmental-and-social-proposals-in-the-2017-proxy-season/>

<sup>45</sup> E.g., <https://www.issgovernance.com/file/policy/latest/americas/US-Voting-Guidelines.pdf>, at 62-63; State of Connecticut Retirement Plans & Trust Funds, "Domestic Proxy Voting Policies," at 36-37, 45 (<http://www.ott.ct.gov/PDFs/domvotingpoliciesnovember.PDF>)

U.S. Securities and Exchange Commission  
January 22, 2018  
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The Fund appreciates the opportunity to be of assistance in this matter. If you have any questions or need additional information, please contact me at (202) 637-5152 or [brees@aflcio.org](mailto:brees@aflcio.org).

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Rees', with a stylized flourish at the end.

Brandon J. Rees  
Deputy Director, Corporations and Capital Markets

cc: A. Robert D. Bailey, Esq.  
Chief Legal Officer and Corporate Secretary  
Allergan plc

BJR/sdw  
opeiu #2, afl-cio



# AFL-CIO

AMERICA'S UNIONS

**American Federation  
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Congress of Industrial  
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January 22, 2018

Via electronic mail: [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)

Office of Chief Counsel  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

***Re: Request by Allergan plc Request to Exclude a Shareholder Proposal  
Submitted by the AFL-CIO Reserve Fund***

Dear Sir or Madam:

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, the AFL-CIO Reserve Fund (the "Fund") submitted a shareholder proposal (the "Proposal") to Allergan plc ("Allergan" or the "Company"). The Proposal asks Allergan's Board of Directors to respond to rising pressure to limit offshore tax avoidance by adopting a set of principles (the "Principles") to guide Allergan's tax practices, including certain items.

In a letter to the staff of the Division of Corporate Finance (the "Staff") dated December 27, 2017 (the "No-Action Request"), Allergan stated that it intends to omit the Proposal from its proxy materials to be distributed to shareholders in connection with the Company's 2018 annual meeting of shareholders. Allergan argues that it is entitled to exclude the Proposal in reliance on Rule 14a-8(i)(7), on the ground that the Proposal deals with Allergan's ordinary business operations. As discussed more fully below, Allergan has not met its burden of proving its entitlement to exclude the Proposal in reliance on ordinary business grounds and the Fund respectfully requests that Allergan's request for relief be denied.

**The Proposal**

The Proposal states:

"RESOLVED that shareholders of Allergan plc ("Allergan") ask the Board of Directors to respond to rising public pressure to limit offshore tax avoidance strategies by adopting and disclosing to shareholders a set of principles to guide Allergan's tax practices. For purposes of this Proposal, "offshore tax avoidance

strategies” are transactions or arrangements that exploit differential tax treatment of financial instruments, asset transfers or entities by taxing jurisdictions to reduce a company’s effective tax rate.

The principles should state that Allergan’s board will:

- Consider the impact of Allergan’s global tax strategies on local economies and government services that benefit Allergan;
- Ensure that Allergan seeks to pay tax where value is created;
- Periodically assess the reputational consequences, including views of customers, shareholders and employees, of engaging in practices deemed to be “tax avoidance” by such stakeholders; and
- Annually review Allergan’s tax strategies and assess the alignment between the use of such strategies and Allergan’s stated values or goals regarding sustainability.”

### **Ordinary Business**

Rule 14a-8(i)(7) permits a company to omit a proposal that “deals with a matter relating to the company’s ordinary business operations. Allergan makes several arguments regarding the applicability of the ordinary business exclusion to the Proposal, none of which is compelling.

#### *The Proposal Would Not Interfere with the Board’s Delegation to Management to Select and Implement Tax Strategies*

Allergan contends that adopting the Proposal would infringe on management’s ability to manage the Company’s tax strategies on a day-to-day basis. Allergan emphasizes the complexity of its tax planning and practices and stresses the fact that the Board has delegated the tasks of “creating, implementing and overseeing the Company’s tax planning and practices to management.” (No-Action Request, at 3) “[T]he determination and implementation of the Company’s tax plans and practices is a highly technical and complex matter,” Allergan urges, “requiring the expertise of management and subject matter experts...” (No-Action Request, at 3)

Allergan’s argument might have merit if the Proposal sought to insert shareholders into “the determination and implementation of the Company’s tax plans and practices.” The Fund concedes that shareholders would not be well-suited to weigh in on specific tax practices, like formulating transfer pricing policies, selecting outside tax advisors or making tax filings.

But the Proposal is not addressed to specific tax plans or practices. Rather, it asks the Board to provide broad guidance to management in the form of the Principles. Allergan argues that its Board believes that “it is critical for management to retain the flexibility to implement tax plans and practices that are tailored to the Company’s current circumstances and not tied to a one-size-fits-all set of principles.” (No-Action Request, at 3) Shareholders, however, may have different

views on the desirability of adopting the Principles to guide management’s decision making, which they can communicate to the Board by voting on the Proposal.

Determinations on two different proposals dealing with health care principles illustrate the difference between a proposal that infringes on management’s ability to run the company on a day-to-day basis and one that supplies more general guidance. In the 2008 proxy season, shareholders submitted proposals asking boards to “adopt principles for comprehensive health care reform” and identifying five principles that should be included. The principles in these proposals (the “2008 proposals”) were aspirational; they were phrased in terms like “Health care should be universal.” The Staff declined to agree with companies that they could omit these proposals in reliance on the ordinary business exclusion.<sup>1</sup>

In contrast, a more detailed proposal dealing with health care principles was submitted to companies in the 2014 proxy season. The 2014 proposals, like the 2008 proposals, asked companies to adopt a set of principles related to health care reform. Unlike the 2008 proposals, though, the “principles” enumerated in the 2014 proposals were not aspirational; each one began with a verb and was a specific reform the companies could advocate. For example, the principles included “Repeal state-level laws that prevent insurance companies from competing across state lines” and “Reform federal tax laws to allow individuals to receive a standard deduction for health insurance costs or receive tax credits.”<sup>2</sup>

The Staff agreed that the 2014 proposals were excludable because they sought to involve the companies in lobbying on matters related to their operations and dealt with employee benefits. The Staff pointed out that “although the proposal asks the company to adopt principles of health care reform, it advocates specific legislative initiatives, including the repeal of specific laws and government mandates and the enactment of specific tax deductions or tax credits that appear to relate to Lilly’s business operations.”<sup>3</sup> The Staff thus recognized that even though the 2014 proposals were styled as pressing for health care principles, the proposals’ granularity made them excludable.

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<sup>1</sup> See, e.g., Xcel Energy Inc. (Feb. 15, 2008); United Technologies Corp. (Jan. 31, 2008); see also “Corporation Finance in 2008: A Year of Progress,” Speech by John W. White, Director, Division of Corporation Finance, Securities and Exchange Commission, to the American Bar Association, Section of Business Law, Committee on Federal Regulation of Securities, Aug. 11, 2008 (available at <https://www.sec.gov/news/speech/2008/spch081108jww.htm>) (“Unlike prior proposals, [the 2008 proposals] did not ask the companies to change their own healthcare coverage, or ask them to directly lobby anyone in support of healthcare change. No further action was contemplated by the proposal other than the adoption of principles. . . In analyzing these no-action requests, the staff used the framework it always does — including applying the Commission’s guidance that I just recited on how to interpret the ordinary business exclusion (and the sufficiently significant social policy overlay). In seven cases, the staff was unable to concur in the companies’ views.”)

<sup>2</sup> Johnson & Johnson and Company (Feb. 18, 2014); Eli Lilly and Company (Feb. 18, 2014); CVS Caremark Corporation (Feb. 19, 2014)

<sup>3</sup> See Johnson & Johnson, supra note 2; Eli Lilly, supra note 2.

The Proposal much more closely resembles the 2008 proposals, with their high-level principles, than the prescriptive 2014 proposals. The Proposal sets forth general, aspirational goals for Allergan—it recommends that the Board formulate Principles stating that the Company should “[c]onsider the impact” of global tax strategies, “[e]nsure that Allergan seeks to pay tax where value is created,” “assess the reputational consequences” of tax avoidance and analyze “alignment between the use of [tax] strategies and Allergan’s stated values or goals regarding sustainability.” These goals, like the aspirational principles in the 2008 proposals, give the Board flexibility in formulating the Principles; the Board, for its part, can give management substantial discretion in how the principles are implemented.

If the Proposal had followed the approach used by the 2014 proposals, it would have advocated that Allergan support particular measures to limit offshore tax avoidance. It would have suggested principles that sounded something like “Support legislation extending time limits for assessing tax due for non-deliberate offshore tax non-compliance”<sup>4</sup> or “Oppose move to a ‘territorial’ tax system in the U.S.”<sup>5</sup> The 2014 proposals’ approach, applied to Allergan’s own tax practices, would have translated into mandates such as “Prohibit short-term loans between subsidiaries of the Company.”<sup>6</sup> The Proposal does not urge the adoption of such specific Principles.

The same distinction applies to the 2011 proposals seeking disclosure on tax-related risks, which Allergan cites. (See No-Action Response, at 4) The 2011 proposals did not focus, as the Proposal does, on the broader social issues related to offshore tax avoidance, nor did they request high-level board guidance in the form of principles. The 2011 proposals sought disclosure regarding the “risks created by the actions [the company] takes to avoid or minimize US federal, state and local corporate income taxes and provide a report to shareholders on the assessment.”<sup>7</sup> The supporting statements described consequences in the form of audits, tax disputes and stock price volatility, but no negative societal impacts from corporate tax avoidance. The 2011 proposals thus specifically addressed aspects of companies’ operations and choices regarding taxes, much like the 2014 health care proposals, and did not touch on the broader social policy issues.

In sum, the Proposal would not interfere with the ability of Allergan’s management to do its day-to-day work of managing the Company’s tax strategies. Instead, it asks the Board to provide guidance to management, in the form of general principles, consistent with a broad delegation of authority. If the Proposal is implemented, Allergan’s tax planning and practices will continue to be managed by “subject matter experts” (No-Action Request, at 3) and not shareholders.

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<sup>4</sup> See <http://blogs.mazars.com/letstalktax/2017/11/government-ups-the-ante-on-anti-avoidance/>

<sup>5</sup> See <https://www.cbpp.org/research/federal-tax/territorial-tax-is-a-zero-rate-on-us-multinationals-foreign-profits-threatens>

<sup>6</sup> See <https://www.economist.com/blogs/schumpeter/2012/09/corporate-tax-avoidance>

<sup>7</sup> E.g., Pfizer Inc. (Feb. 16, 2011).



*Limiting the Societal Impact of Offshore Tax Avoidance is a Significant Social Policy Issue with a Sufficient Nexus to Allergan's Business*

Allergan claims that the Proposal does not deal with a significant social policy issue transcending ordinary business. Allergan provides in the No-Action Request a brief description of its Board's conclusions to that effect, offered pursuant to Staff Legal Bulletin 14I ("SLB 14I").<sup>8</sup> The conclusions reached by Allergan's Board should be given no weight because the Board addressed the wrong questions, failed to consider the appropriate factors and provided no reasoning.

In SLB 14I, the Staff opined that a company's board "is well situated to analyze, determine and explain whether a particular issue is sufficiently significant because the matter transcends ordinary business and would be appropriate for a shareholder vote"; accordingly, a company's no-action request can include "a discussion that reflects the board's analysis of the particular policy issue raised and its significance [to the company]." According to SLB 14I, a "well-developed discussion" will assist the Staff in its review.

The No-Action Request first describes a Board conclusion that has no bearing on the excludability of the Proposal. Allergan asserts, "Following [the described] analysis and consideration, the Board concluded that the determination and implementation of the Company's tax plans and practices is appropriately delegated to and managed by senior executives."<sup>9</sup> By mentioning quarterly board updates on tax matters, the discussion on this point implies that it would be inappropriate for the Board to be any more involved, i.e., provide guidance to management via the Principles. Whether, and on what terms, the Board's delegation to management is "appropriate" has no bearing on Allergan's request for relief. The appropriateness of the Board's level of involvement in tax-related matters is one of the factors shareholders would likely consider in voting on the Proposal; Allergan is free to include the Board's thoughts on that question in its Statement in Opposition to the Proposal.

The Allergan Board's second conclusion hits a bit closer to the mark, stating that "the Board determined that the matters detailed in the [Proposal], including the Company's offshore tax strategies, exclusively relate to the Company's operations and do not further transcend the Company's ordinary business by implicating a broader significant policy issue . . . ."<sup>10</sup> The Board did not, however, apply the standard developed through the Commission's releases and Staff's determinations, which require that the issue be the subject of "sustained" and "consistent . . . widespread debate" to be considered a significant social policy issue.<sup>11</sup> The No-Action Request's description of the Board's process reflects no consideration of the kinds of factors,

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<sup>8</sup> Staff Legal Bulletin 14I, "Shareholder Proposals" (Nov. 1, 2017) (<https://www.sec.gov/interps/legal/cfslb14i.htm>)

<sup>9</sup> No-Action Request, at 4.

<sup>10</sup> No-Action Request, at 4.

<sup>11</sup> See Exchange Act Release No. 40018 (May 21, 1998); Comcast Corp. (Mar. 4, 2011); Verizon Communications Inc. (Feb. 13, 2012).

such as media coverage, public opinion or legislative/regulatory initiatives, used to inform analysis under that standard.

Allergan's Board may have been expressing a view on a more limited point: Even if offshore tax avoidance is a significant social policy issue generally, the requisite nexus does not exist between that issue and Allergan. However, the No-Action Request does not include any substantive discussion about how concern over the impact of offshore tax avoidance strategies specifically affects, or does not affect, Allergan's business. Instead, a laundry list of irrelevant factors is provided:

The Board determined that the Company's tax practices are implemented in order to comply with applicable law to pay taxes properly due as a function of the operation of its global business; used as part of the Company's broader financial planning, taking into account available deductions, incentives and other provisions of tax laws adopted in the various national, state, local and foreign jurisdictions to which the Company is subject; and are most appropriately characterized as a cost/expense of operating the Company globally.

Did the Board consider the impact of tax avoidance strategies on Allergan's financial results? Did the Board take into account the debate—not only in the U.S. but also globally—about the impact of corporate tax avoidance on revenues and the provision of public services? Did the Board receive information on initiatives under way to curb offshore tax avoidance strategies and the impact those initiatives could have on Allergan? None of these factors relevant to the connection between Allergan and the issue of offshore tax avoidance was apparently considered by the Board. Accordingly, the description of Allergan's Board's process is not useful in determining whether the Proposal deals with a significant social policy issue or whether that issue has the required nexus to Allergan.

*The Proposal Deals with a Significant Social Policy Issue Having a Substantial Nexus with Allergan*

Global corporations' offshore tax avoidance, including its impact on society, has been the subject of consistent and sustained societal debate, qualifying it as a significant social policy issue. The issue has taken on greater urgency and spurred more intense debate since 2011, when the Staff last considered proposals concerning tax strategies.

Each year, offshore tax avoidance strategies enable U.S.-based multinational corporations to pay \$90 billion less in federal income taxes.<sup>12</sup> Press attention often focuses on profitable companies that paid little or no U.S. federal income tax.<sup>13</sup>

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<sup>12</sup> Center for Tax Justice, "Offshore Shell Games: 2014," at 1 (<http://ctj.org/pdf/offshoreshell2014.pdf>)

<sup>13</sup> <https://www.usatoday.com/story/money/markets/2016/03/07/27-giant-profitable-companies-paid-no-taxes/81399094/>; <https://www.cnn.com/2014/08/13/20-big-profitable-us-companies-paid-no-taxes.html>;

In April 2016, the first reports of investigations into offshore tax avoidance based on the Panama Papers, a leaked trove of 11.5 million documents from a Panama law firm, were published. A collaborative effort involving more than 300 reporters working through the International Consortium of Investigative Journalists, the Panama Papers investigations implicated world leaders, banks and global corporations; led to over 150 responses (investigations, audits and inquiries); and catalyzed legislative and regulatory reforms.<sup>14</sup> Articles based on the Panama Papers appeared in major media outlets like The New York Times,<sup>15</sup> CNN,<sup>16</sup> Forbes,<sup>17</sup> Financial Times<sup>18</sup> and ABC News.<sup>19</sup> The Panama Papers reporting team won the Pulitzer Prize for Explanatory Reporting and many other awards.<sup>20</sup>

A similar release in 2017, dubbed the Paradise Papers, of documents from a Bermuda law firm and offshore corporate registries revealed more about tax avoidance by large companies. Coverage of the information disclosed in the Paradise Papers was also extensive.<sup>21</sup> Companies highlighted include Apple, Nike,<sup>22</sup> Google and Facebook.<sup>23</sup> Allergan was also mentioned, as discussed below.

The societal impact of offshore tax avoidance has been an important part of the debate. A report by Oxfam quantified the tax revenue loss to developing countries at \$100 billion per year.<sup>24</sup> For example, articles published in connection with the Panama Papers detailed the ways offshore tax strategies were used by companies in extractive industries to “siphon” money out of African countries to the U.S. and U.K., depriving African nations of tax revenues they could use for services such as education and health care.<sup>25</sup>

Offshore tax avoidance has also been linked with increasing income inequality.<sup>26</sup> Large corporations and wealthy individuals have the resources to engage in offshore tax avoidance,

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<https://www.fastcompany.com/3044873/15-companies-that-paid-zero-income-tax-last-year-despite-23-billion-in-profits>; <https://www.nytimes.com/2017/03/09/business/economy/corporate-tax-report.html>;  
<https://www.reuters.com/article/us-usa-tax-corporate-1/thirty-companies-paid-no-u-s-income-tax-2008-2010-report-idUSTRE7A261C20111103>.

<sup>14</sup> <https://panamapapers.icij.org/blog/20161201-impact-graphic.html>

<sup>15</sup> [https://www.nytimes.com/2016/06/06/us/panama-papers.html?\\_r=0](https://www.nytimes.com/2016/06/06/us/panama-papers.html?_r=0)

<sup>16</sup> <https://www.cnn.com/2016/04/04/world/panama-papers-explainer/index.html>

<sup>17</sup> <https://www.forbes.com/sites/kellyphillipsrb/2016/04/04/what-are-the-panama-papers/#446762ea2c3c>

<sup>18</sup> <https://www.ft.com/panama-papers-leak>

<sup>19</sup> <http://abcnews.go.com/topics/news/taxes/panama-papers.htm>

<sup>20</sup> <https://panamapapers.icij.org/awards.html>

<sup>21</sup> E.g., <http://www.bbc.com/news/uk-41886608>; <http://www.businesstimes.com.sg/government-economy/eu-and-other-nations-grappling-with-how-to-counter-offshore-tax-avoidance>; <https://www.ft.com/content/38e99534-c48e-11e7-a1d2-6786f39ef675>; [https://news.vice.com/en\\_us/article/ywn5dj/paradise-papers-reveal-how-apple-is-a-grandmaster-of-tax-avoidance](https://news.vice.com/en_us/article/ywn5dj/paradise-papers-reveal-how-apple-is-a-grandmaster-of-tax-avoidance).

<sup>22</sup> <http://www.newsweek.com/us-companies-dodge-70-billion-year-offshore-tax-havens-712411>

<sup>23</sup> <http://www.dw.com/en/paradise-papers-apple-shifted-billions-offshore-to-avoid-tax/a-41270469>

<sup>24</sup> [https://www.oxfamamerica.org/static/media/files/Broken\\_at\\_the\\_Top\\_4.14.2016.pdf](https://www.oxfamamerica.org/static/media/files/Broken_at_the_Top_4.14.2016.pdf)

<sup>25</sup> <https://panamapapers.icij.org/blog/20160727-africa-partners-reaction.html>

<sup>26</sup> [https://www.oxfamamerica.org/static/media/files/Broken\\_at\\_the\\_Top\\_4.14.2016.pdf](https://www.oxfamamerica.org/static/media/files/Broken_at_the_Top_4.14.2016.pdf)

while ordinary people and small businesses do not.<sup>27</sup> Over time, then, offshore tax avoidance amplifies inequality.

Legislative measures have been introduced in the U.S. and elsewhere to reduce tax avoidance. The Stop Tax Haven Abuse Act would increase corporate transparency on tax matters, crack down on transfer pricing abuses and limit abusive practices like inversions and earnings stripping.<sup>28</sup> Congressional hearings have been held on offshore tax avoidance. In 2013, the Senate Permanent Subcommittee on Investigations held a hearing on Apple's use of offshore tax havens to avoid tax.<sup>29</sup> A year later, the Senate Finance Committee held a hearing on corporate tax avoidance, with a focus on inversions.<sup>30</sup>

Offshore tax avoidance came up in the U.S. debate over tax reform in 2017. Advocates of a lower top corporate tax rate urged that it would reduce the incentive to move profits offshore. As well, there was a vigorous debate over the introduction of a territorial taxation system, which will eliminate U.S. taxation of amounts earned offshore, with opponents arguing that it would reward tax avoiders and deplete federal coffers.<sup>31</sup>

Outside the U.S., the Organization for Economic Cooperation and Development (OECD) and Group of 20 (G20) nations developed 15 measures, delivered in 2015, to combat "base erosion and profit shifting" (BEPS), multinational corporations' use of legal arrangements that shift profits to low- or no-tax jurisdictions. The goal of the BEPS project in formulating multilateral rules was "ensuring that [multinational enterprises] report profits where economic activities are carried out and value is created."<sup>32</sup>

The 15 actions, which are model rules, best practices and recommendations, address many gaps and problematic areas, including transfer pricing, hybrid mismatches (differing treatments of an instrument between jurisdictions) and disclosure.<sup>33</sup> Over 100 countries and jurisdictions are implementing the BEPS measures under the "inclusive framework."<sup>34</sup> According to Deloitte, BEPS and similar initiatives are part of a "global tax reset" and tax "has become a significant strategic business issue."<sup>35</sup>

The issue has a strong nexus with Allergan, as well. Allergan was acquired by Ireland-domiciled Actavis plc in 2014; Actavis had redomiciled to Ireland only one year earlier by buying an Irish

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<sup>27</sup> <http://www.newsweek.com/us-companies-dodge-70-billion-year-offshore-tax-havens-712411>

<sup>28</sup> [https://thefactcoalition.org/fact-sheet-stop-tax-haven-abuse-act-of-2017?utm\\_medium=policy-analysis/fact-sheets](https://thefactcoalition.org/fact-sheet-stop-tax-haven-abuse-act-of-2017?utm_medium=policy-analysis/fact-sheets)

<sup>29</sup> <http://www.nytimes.com/2013/05/21/business/apple-avoided-billions-in-taxes-congressional-panel-says.html>

<sup>30</sup> <http://nsba.biz/senate-finance-hearing-on-corporate-tax-avoidance/>

<sup>31</sup> See <https://www.marketwatch.com/story/trump-ryan-tax-plan-will-encourage-more-corporate-offshore-tax-avoidance-2017-10-24>; <http://prospect.org/article/republicans-want-make-corporate-tax-avoidance-even-easier>

<sup>32</sup> <https://www.oecd.org/ctp/policy-brief-beps-2015.pdf>

<sup>33</sup> <https://www.oecd.org/tax/beps/beps-actions.htm>

<sup>34</sup> <https://www.oecd.org/tax/beps/>

<sup>35</sup> <https://www2.deloitte.com/global/en/pages/tax/topics/base-erosion-profit-shifting.html>

firm, in a transaction known as an inversion; these transactions have been characterized as “[p]erhaps the worst form of tax avoidance.”<sup>36</sup> In 2016, new U.S. Treasury rules caused the termination of a merger between Allergan and Pfizer which would have resulted in Pfizer adopting Allergan’s Ireland domicile via an inversion.<sup>37</sup> The Paradise Papers contained documents evidencing Allergan’s use of offshore companies to hold its Botox patents, which allowed it to shift profits generated by license payments to those companies and pay less or no tax.<sup>38</sup>

*The Subject of the Proposal is Not Too Complex for Shareholders to Understand*

Allergan claims that the subject of the Proposal is one “on which shareholders, as a group, are not in a position to make informed judgments.” (No-Action Request, at 3) That might be true if the Proposal delved into technical tax-related matters. The general guidance the Principles advocated in the Proposal would provide to management is similar to the policies boards adopt on a variety of subjects. Shareholders are capable of determining whether it would serve Allergan’s interests to, for instance, seek to pay tax where value is created. That judgment does not require technical knowledge and turns on shareholders’ views about how best to create sustainable long-term value.

Board-adopted policies implemented by management are not unusual. Many boards have adopted human rights policies, which set forth broad principles dealing with such matters as forced labor, freedom of association and child labor.<sup>39</sup> The Staff has declined to grant relief on ordinary business grounds on proposals addressing human rights policies, including where a proposal requests a specific policy amendment.<sup>40</sup>

Political spending policies are another type of high-level guidance many boards provide to shape the behavior of company employees who carry out this function.<sup>41</sup> Proposals advocating that boards adopt political spending policies or oversee political activity are generally not excludable in reliance on the ordinary business exclusion.<sup>42</sup>

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<sup>36</sup> [https://www.oxfamamerica.org/static/media/files/Broken\\_at\\_the\\_Top\\_4.14.2016.pdf](https://www.oxfamamerica.org/static/media/files/Broken_at_the_Top_4.14.2016.pdf)

<sup>37</sup> <https://www.reuters.com/article/us-allergan-m-a-pfizer/obamas-inversion-curbs-kill-pfizers-160-billion-allergan-deal-idUSKCN0X21NV>

<sup>38</sup> <https://www.nytimes.com/2017/11/06/world/apple-taxes-jersey.html>

<sup>39</sup> E.g., <http://www.coca-colacompany.com/content/dam/journey/us/en/private/fileassets/pdf/2014/11/human-rights-policy-pdf-english.pdf>; <https://www.nestle-cwa.com/en/csv/what-is-csv/nestl%C3%A9-corporate-business-principles>; <https://www.fcx.com/sustainability/human-rights/policy-commitment>

<sup>40</sup> E.g., Abbott Laboratories (Feb. 28, 2008) (asking that board amend human rights policy to include access to medicines); American International Group Inc. (Mar. 14, 2008) (requesting that the board adopt a comprehensive policy regarding AIG’s respect for and commitment to the human right to water).

<sup>41</sup> E.g., <http://investor.windstream.com/investors/corporate-governance-document.cfm?documentid=10192>; <https://www.gulfpower.com/pdfs/our-company/SouthernCompany-Political-Spending-Policies-and-Practices.pdf>; <http://www.pgecorp.com/corp/about-us/corporate-governance/corporation-policies/political-engagement.page>

<sup>42</sup> E.g., Halliburton Company (Mar. 11, 2009); The Home Depot, Inc. (Mar. 25, 2011)

Human rights and political spending policies have been the subject of numerous shareholder proposals. Forty-two proposals on human rights policies were submitted in the 2016 and 2017 proxy seasons.<sup>43</sup> From 2014 through 2017, between 57 and 92 proposals asking for disclosure of corporate political activity, including policies governing that activity, came to a vote.<sup>44</sup> As a result, most institutional investors' proxy voting guidelines, as well as the guidelines used by proxy advisors, include provisions related to voting on these kinds of proposals.<sup>45</sup>

Like tax strategies, both human rights and corporate political activity are complex, technical topics. For that reason, policies favored by institutional investors tend not to control specific details of implementation, but instead set forth broader principles or factors to be considered in decision making. Shareholders are well able to determine whether a particular company's board should adopt a policy on an issue and what principles would most effectively achieve the desired objectives.

In sum, the Proposal would not preclude Allergan's Board from delegating tax-related matters to management and thus would not interfere with the day-to-day operations of the Company. The conclusions reached by Allergan's Board and submitted as part of the No-Action Request do not change the analysis because one of them answered an irrelevant question and the other reflected application of the wrong standard and failed to consider relevant factors. Corporate tax avoidance and its broader societal impact are topics of consistent and sustained public debate, making the subject of the Proposal a significant social policy issue. Finally, the Proposal's subject is not so complex that shareholders would be unable to understand it; shareholders regularly vote on proposals asking for the adoption of Board-level policies governing technical activities implemented by management and are capable of making an informed judgment about whether a proposed Board policy would be value enhancing for a company. For these reasons, Allergan has failed to satisfy its burden of showing that it is entitled to omit the Proposal in reliance on the ordinary business exclusion, and its request for relief should be denied.

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<sup>43</sup> As You Sow & Sustainable Investments Institute, "Proxy Preview: 2017," at 50 (<http://www.proxypreview.org/download-proxy-preview-2017/>); As You Sow & Sustainable Investments Institute, "Proxy Preview: 2016," at 41 (<http://www.proxypreview.org/proxy-preview-2016/>)

<sup>44</sup> <https://corpgov.law.harvard.edu/2016/08/18/political-contributions-and-lobbying-proposals/>;  
<https://corpgov.law.harvard.edu/2017/10/26/environmental-and-social-proposals-in-the-2017-proxy-season/>

<sup>45</sup> E.g., <https://www.issgovernance.com/file/policy/latest/americas/US-Voting-Guidelines.pdf>, at 62-63; State of Connecticut Retirement Plans & Trust Funds, "Domestic Proxy Voting Policies," at 36-37, 45 (<http://www.ott.ct.gov/PDFs/domvotingpoliciesnovember.PDF>)

U.S. Securities and Exchange Commission  
January 22, 2018  
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The Fund appreciates the opportunity to be of assistance in this matter. If you have any questions or need additional information, please contact me at (202) 637-5152 or [brees@aflcio.org](mailto:brees@aflcio.org).

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Rees', written in a cursive style.

Brandon J. Rees  
Deputy Director, Corporations and Capital Markets

cc: A. Robert D. Bailey, Esq.  
Chief Legal Officer and Corporate Secretary  
Allergan plc

BJR/sdw  
opeiu #2, afl-cio



December 27, 2017

Via Overnight Delivery  
Via Email to [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)

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

Re: Securities Exchange Act of 1934, as amended (the "**Exchange Act**")  
Omission of Shareholder Proposal Submitted by the AFL-CIO Reserve Fund

Ladies and Gentlemen:

Allergan plc ("**Allergan**" or the "**Company**") has received a shareholder proposal (the "**Shareholder Proposal**") from the AFL-CIO Reserve Fund (the "**Proponent**") for inclusion in the Company's proxy statement and form of proxy (the "**2018 Proxy Materials**") for its 2018 Annual General Meeting of Shareholders (the "**2018 Annual Meeting**"). Allergan intends to omit the Shareholder Proposal from its 2018 Proxy Materials pursuant to Rule 14a-8(i)(7) of the Exchange Act. Allergan respectfully requests the concurrence of the staff of the Division of Corporation Finance (the "**Staff**") that no enforcement action will be recommended if the Company omits the Shareholder Proposal from the 2018 Proxy Materials.

In accordance with Rule 14a-8(j) of the Exchange Act, the Company has:

- enclosed herewith six copies of this letter and its attachments; and
- concurrently sent a copy of this correspondence to the Proponent.

By copy of this letter, Allergan notifies the Proponent of the Company's intention to omit the Shareholder Proposal from the 2018 Proxy Materials. Allergan agrees to promptly forward to the Proponent any Staff response to Allergan's no-action request that the Staff transmits to Allergan. Rule 14a-8(k) of the Exchange Act and Question E of Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("**SLB 14D**") provide that proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Staff. Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Staff with respect to the Shareholder Proposal, a copy of that correspondence should concurrently be furnished to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) of the Exchange Act and Question E of SLB 14D.

This letter is being submitted electronically pursuant to Question C of SLB 14D. Allergan is e-mailing this letter, including the Shareholder Proposal and supporting statement, as well as related correspondence from the Proponent, attached as Exhibit A, to the Staff at [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov).

**Allergan plc**  
Clonsaugh Business and Technology Park Coolock, Dublin  
D17 E400, Ireland

T 862 261 7000  
[www.allergan.com](http://www.allergan.com)



## THE PROPOSAL

A copy of the Shareholder Proposal, dated November 17, 2017, and supporting statement is attached to this letter as Exhibit A. For the convenience of the Staff, the text of the resolution contained in the Shareholder Proposal is set forth immediately below:

“RESOLVED that shareholders of Allergan plc (“Allergan”) ask the Board of Directors to respond to rising public pressure to limit offshore tax avoidance strategies by adopting and disclosing to shareholders a set of principles to guide Allergan’s tax practices. For purposes of this Proposal, “offshore tax avoidance strategies” are transactions or arrangements that exploit differential tax treatment of financial instruments, asset transfers or entities by taxing jurisdictions to reduce a company’s effective tax rate.

The principles should state that Allergan’s board will:

- Consider the impact of Allergan’s global tax strategies on local economies and government services that benefit Allergan;
- Ensure that Allergan seeks to pay tax where value is created;
- Periodically assess the reputational consequences, including views of customers, shareholders and employees, of engaging in practices deemed to be “tax avoidance” by such stakeholders; and
- Annually review Allergan’s tax strategies and assess the alignment between the use of such strategies and Allergan’s stated values or goals regarding sustainability.”

## BASIS FOR EXCLUSION

The Company believes that the Shareholder Proposal may properly be excluded from the 2018 Proxy Materials under Rule 14a-8(i)(7) because the Shareholder Proposal deals with a matter relating to the Company’s ordinary business operations.

## ANALYSIS

**The Shareholder Proposal may be excluded under Rule 14a-8(i)(7) because the Shareholder Proposal deals with a matter relating to the Company’s ordinary business operations.**

*A. The Shareholder Proposal infringes on management’s day-to-day business operations*

In Exchange Act Release No. 40018 (May 21, 1998) (the “**1998 Release**”), the Securities and Exchange Commission (the “**Commission**”) explained that the ordinary business exclusion permits companies to exclude certain proposals because “[c]ertain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.” *Id.* Further, the Commission explained that a proposal may be excluded if it attempts to “micro-manage” a company by “probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)). On November 1, 2017, the Staff published Staff Legal Bulletin No. 141 (Nov. 1, 2017) (“**SLB 141**”) and reiterated that the “purpose of the exception is ‘to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide

how to solve such problems at an annual shareholders meeting.'" *Id.* (citing the 1998 Release).

The Shareholder Proposal, which requests the Company's board of directors (the "**Board**") to adopt and disclose tax strategies and principles, would impact and impede management's ability to operate and manage the Company on a day-to-day basis. As a result, the Shareholder Proposal implicates the considerations described in the 1998 Release and should be excluded because it relates to the Company's ordinary business operations.

As a global corporation with subsidiaries in a substantial number of domestic and foreign jurisdictions, the Company is subject to various tax regimes that involve a multitude of complex rules, regulations and tax authorities, and the Company's tax planning and practices are accordingly affected by various forms of tax incentives from multiple jurisdictions worldwide. As a result, the determination and implementation of the Company's tax plans and practices is a highly technical and complex matter requiring the expertise of management and subject matter experts, and on which shareholders, as a group, are not in a position to make informed judgments.

Moreover, the Company's tax plans and practices cannot be understood solely on a stand-alone basis, because those plans and practices are affected by numerous business decisions that are ordinary matters core to the Company's day-to-day operations, including financial planning, funding decisions, business operations, financial reporting and legal compliance.

Because of the inherently complex nature of tax regimes and rules, taken in combination with the Company's many domestic and foreign subsidiaries, and because of the interplay between the Company's tax practices and its other financial and business functions, the Board has determined that it is critical for management to retain the flexibility to implement tax plans and practices that are tailored to the Company's current circumstances and not tied to a one-size-fits-all set of principles (such as those described in the Shareholder Proposal). The Board also believes tax planning and practices must be overseen and managed by people with the requisite knowledge of both the applicable tax rules and regulations and the Company's operations to ensure the Company makes properly informed decisions. Accordingly, the Board delegates the complex and technical tasks of creating, implementing and overseeing the Company's tax planning and practices to management, which includes highly skilled tax professionals. While the Board and the audit committee of the Board (the "**Audit Committee**") oversee the Company's general and financial risks, respectively, pursuant to their respective charters, those charters do not expressly charge the Board or the Audit Committee with responsibilities related to tax planning and practices. Rather, tax management is the day-to-day responsibility of senior executives, and the Board and the Audit Committee are updated by management on the Company's business operations, including tax planning and practices, every quarter in order to carry out their risk oversight roles.

Accordingly, by requesting that the Board adopt and disclose "a set of principles to guide Allergan's tax practices," the Proponent is seeking shareholder oversight of an aspect of the Company's business that is most appropriately handled by the Company's management, which would result in the micro-management and oversimplification of the Company's tax planning and practices, thereby interfering with the Company's ordinary business operations of tax planning and practices to the detriment of the Company's shareholders. It is precisely the type of matter that the exclusion set forth in Rule 14a-8(i)(7) was designed to address.

*B. The Shareholder Proposal does not transcend the Company's ordinary business.*

As explained in the 1998 Release, a proposal may be excluded because it relates to a company's day-to-day business operations unless the proposal raises significant policy issues that would "transcend the day-to-day business matters." SLB 141 provided further guidance as to what constitutes a significant policy consideration and explained that the applicability of the significant policy exception "depends, in part, on the connection between the significant policy issue and the company's business operations." The Staff further noted that a company's board of directors "is well situated to analyze, determine and explain whether a particular issue is sufficiently significant because the matter transcends ordinary business and would be appropriate for a shareholder vote." *Id.*

The Staff also noted that a company's no-action request relating to a company's intention to exclude a proposal under Rule 14a-8(i)(7) should describe the board's analysis of "the particular policy issue raised and its significance" and the "processes employed by the board to ensure that its conclusions are well-informed and well-reasoned." *Id.* Consistent with the Staff's guidance, the below discussion reflects the Board's analysis of the Shareholder Proposal and its process in conducting such analysis.

In analyzing the Shareholder Proposal, the Board reviewed the Company's current tax plans and practices, the significance of tax practices to the Company and its shareholders, the role of management in determining, revising and implementing tax plans and practices, the Company's governance guidelines, including a review of applicable Board and committee charters, and the role of the Board in overseeing tax planning and practices. The Board considered the fact that management is regularly and actively involved in the consideration, assessment and re-assessment of the Company's tax planning and practices while the Board is updated quarterly on such tax planning and practices in order to fulfill its risk and business oversight roles. Following this analysis and consideration, the Board concluded that the determination and implementation of the Company's tax plans and practices is appropriately delegated to and managed by senior executives.

The Board also specifically considered the matters contained in the Shareholder Proposal and their implications for the Company's business and policies. The Board determined that the Company's tax practices are implemented in order to comply with applicable law to pay taxes properly due as a function of the operation of its global business; used as part of the Company's broader financial planning, taking into account available deductions, incentives and other provisions of tax laws adopted in the various national, state, local and foreign jurisdictions to which the Company is subject; and are most appropriately characterized as a cost/expense of operating the Company globally. Accordingly, after such consideration, the Board determined that the matters detailed in the Shareholder Proposal, including the Company's offshore tax strategies, exclusively relate to the Company's operations and do not further transcend the Company's ordinary business by implicating a broader significant policy issue, and as a result neither call for further Board review nor are appropriate for a shareholder vote.

### *C. Prior no action relief*

The Staff has consistently concurred that proposals relating to tax planning and compliance may be excluded under Rule 14a-8(i)(7). For example, the Staff agreed with a similar no action request to exclude a shareholder proposal asking Pfizer's board of directors to annually assess "the risks created by the actions Pfizer takes to avoid or minimize US federal, state and local corporate income taxes" based on the business operation exclusion. Pfizer (avail. Feb. 16, 2011). *See also*, The Home Depot (avail. Mar. 2, 2011) (same); Lazard (avail. Feb. 16, 2011) (same); Amazon, Inc. (avail. March 21, 2011) (same).

In addition, the Staff concurred that proposals attempting to govern internal operating policies and legal compliance may be excluded. See *e.g.*, Verizon Communications Inc. (avail. Feb. 22, 2007) (proposal requesting report on the technological, legal and ethical policy issues surrounding disclosure of customer information to government agencies without a warrant was excludable); Johnson & Johnson (avail. Feb. 22, 2010) (proposal requesting that the company take specific actions to comply with employment eligibility verification requirements); FedEx Corp. (avail. July 14, 2009) (proposal requesting the preparation of a report discussing the company's compliance with state and federal laws governing the proper classification of employees and independent contractors).

### CONCLUSION

Based upon the foregoing analysis, the Company respectfully requests that the Staff concur that it will take no action if the Company excludes the Shareholder Proposal from its 2018 Proxy Materials in reliance on 14a-8(i)(7).

If the Staff has any questions with respect to the foregoing, please do not hesitate to contact me at (862) 261-8830 or by email at Robert.Bailey@allergan.com.

Please send any email correspondence to Kira M. Schwartz, Assistant Secretary, at kira.schwartz@allergan.com.

Very truly yours,



A. Robert D. Bailey, Esq.  
Chief Legal Officer and  
Corporate Secretary

cc: AFL-CIO Reserve Fund  
Jeffrey D. Karpf, Esq.  
*Cleary Gottlieb Steen & Hamilton LLP*  
Helena K. Grannis, Esq.  
*Cleary Gottlieb Steen & Hamilton LLP*

EXHIBIT A

*See Attached.*



# AFL-CIO

AMERICA'S UNIONS

**American Federation  
of Labor and  
Congress of Industrial  
Organizations**

815 16th St., NW  
Washington, DC 20006  
202-637-5000  
www.aflcio.org

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Robert Martinez  
Gabrielle Carteris

November 17, 2017

Allergan plc  
Attn: Company Secretary  
Clonshaugh Business and Technology Park  
Coolock, Dublin, D17 E400  
Ireland

Dear Company Secretary:

On behalf of the AFL-CIO Reserve Fund (the "Fund"), I write to give notice that pursuant to the 2017 proxy statement of Allergan plc (the "Company"), the Fund intends to present the attached proposal (the "Proposal") at the 2018 annual meeting of shareholders (the "Annual Meeting"). The Fund requests that the Company include the Proposal in the Company's proxy statement for the Annual Meeting.

The Fund is the beneficial owner of 201 shares of voting Common Stock (the "Shares") of the Company. The Fund has held at least \$2,000 in market value of the Shares for over one year, and the Fund intends to hold at least \$2,000 in market value of the Shares through the date of the Annual Meeting. A letter from the Fund's custodian bank documenting the Fund's ownership of the Shares is enclosed.

The Proposal is attached. I represent that the Fund or its agent intends to appear in person or by proxy at the Annual Meeting to present the Proposal. I declare that the Fund has no "material interest" other than that believed to be shared by stockholders of the Company generally. Please direct all questions or correspondence regarding the Proposal to Brandon Rees at 202-637-5152 or [brees@aflcio.org](mailto:brees@aflcio.org).

Sincerely,

Heather Slavkin Corzo, Director  
Office of Investment

Attachments

HSC/sdw  
opeiu #2, afl-cio

## RESPONSIBLE TAX PRINCIPLES

RESOLVED that shareholders of Allergan plc (“Allergan”) ask the Board of Directors to respond to rising public pressure to limit offshore tax avoidance strategies by adopting and disclosing to shareholders a set of principles to guide Allergan’s tax practices. For purposes of this Proposal, “offshore tax avoidance strategies” are transactions or arrangements that exploit differential tax treatment of financial instruments, asset transfers or entities by taxing jurisdictions to reduce a company’s effective tax rate.

The principles should state that Allergan’s board will:

- Consider the impact of Allergan’s global tax strategies on local economies and government services that benefit Allergan;
- Ensure that Allergan seeks to pay tax where value is created;
- Periodically assess the reputational consequences, including views of customers, shareholders and employees, of engaging in practices deemed to be “tax avoidance” by such stakeholders; and
- Annually review Allergan’s tax strategies and assess the alignment between the use of such strategies and Allergan’s stated values or goals regarding sustainability.

## SUPPORTING STATEMENT

Corporations have paid a dwindling share of U.S. federal taxes over the last 65 years, from 32% in 1952 to only 10.6% in 2015. (<https://www.theatlantic.com/business/archive/2016/04/corporate-tax-avoidance/478293/>) Some multinational corporations minimize tax liability by shifting profits to subsidiaries domiciled in lower-tax jurisdictions through asset sales, loans and similar arrangements. Economist Gabriel Zucman estimates the U.S. government loses almost \$70 billion annually in tax revenue when corporations shift profits to tax havens. ([https://www.nytimes.com/interactive/2017/11/10/opinion/gabriel-zucman-paradise-papers-tax-evasion.html?\\_r=0](https://www.nytimes.com/interactive/2017/11/10/opinion/gabriel-zucman-paradise-papers-tax-evasion.html?_r=0))

Governments are responding. The Stop Tax Haven Abuse Act, introduced in the House in 2017, would eliminate certain strategies and impose additional reporting requirements. (<https://www.congress.gov/bill/115th-congress/house-bill/1932>) Members of the Organization for Economic Cooperation and Development and the G20 nations have agreed on a comprehensive package of measures to combat multinational tax avoidance. (See <https://www.oecd.org/ctp/beps-explanatory-statement-2015.pdf>)

Tax avoidance poses substantial financial and reputational risks for Allergan. Allergan is domiciled in Ireland, a low-tax jurisdiction, following a 2015 acquisition by Actavis plc. In 2016, Allergan and Pfizer abandoned a planned merger after U.S. regulators adopted rules that would have kept the deal from qualifying as an inversion, markedly reducing the tax benefits that were a significant driver of the deal. (<https://www.ft.com/content/69f01f50-fbbc-11e5-8f41-df5bda8beb40>) Despite Ireland’s low corporate tax rate, a recent report based on documents from the “Paradise Papers” described Allergan shifting profits to tax haven Bermuda for over a

decade, a tax shelter known as the “Double Irish.” (<https://www.icij.org/investigations/paradise-papers/apples-secret-offshore-island-hop-revealed-by-paradise-papers-leak-icij/>)

More generally, tax avoidance by corporations significantly affects public finances, which in turn can jeopardize key government services. Public opinion on offshore tax avoidance is decidedly negative. A June 2017 Hart poll found that “end[ing] tax breaks for corporations that stash their profits offshore” was the most important of 16 tax reform goals. (<https://americansfortaxfairness.org/wp-content/uploads/ATF-Poll-TOPLINES.pdf>)

The proposed Principles will help ensure that Allergan’s board is fully informed regarding the impacts of offshore tax avoidance strategies and considers them when exercising its oversight responsibilities. We urge shareholders to vote for this Proposal.



30 N. LaSalle Street  
Chicago, IL 60602  
Phone: 312-822-3220  
Fax: 312-267-8775



312/822-3220

Lawrence M. Kaplan  
Vice President  
[lkaplan@aboc.com](mailto:lkaplan@aboc.com)

November 17, 2017

Allergan plc  
Attn: Company Secretary  
Clonshaugh Business and Technology Park  
Coolock, Dublin, D17 E400  
Ireland

Dear Company Secretary:

AmalgaTrust, a division of Amalgamated Bank of Chicago, is the record holder of 201 shares of Common Stock (the "Shares") of Allergan plc beneficially owned by the AFL-CIO Reserve Fund as of November 17, 2017. The AFL-CIO Reserve Fund has continuously held at least \$2,000 in market value of the Shares for over one year as of November 17, 2017. The Shares are held by AmalgaTrust at the Depository Trust Company in our participant account No. 2567.

If you have any questions concerning this matter, please do not hesitate to contact me at (312) 822-3220.

Sincerely,

A handwritten signature in cursive script that reads "Lawrence M. Kaplan".

Lawrence M. Kaplan  
Vice President

cc: Heather Slavkin Corzo  
Director, AFL-CIO Office of Investment