



DIVISION OF
CORPORATION FINANCE

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

January 11, 2018

Sean M. Donahue
Morgan, Lewis & Bockius LLP
sean.donahue@morganlewis.com

Re: AmerisourceBergen Corporation
Incoming letter dated October 30, 2017

Dear Mr. Donahue:

This letter is in response to your correspondence dated October 30, 2017, December 4, 2017 and December 14, 2017 concerning the shareholder proposal (the "Proposal") submitted to AmerisourceBergen Corporation (the "Company") by The Sisters of St. Francis of Philadelphia et al. (the "Proponents") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence from the Proponents dated November 24, 2017 and December 13, 2017. 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/corpfin/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: Tom McCaney
The Sisters of St. Francis of Philadelphia
tmccaney@osfphila.org

January 11, 2018

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: AmerisourceBergen Corporation
Incoming letter dated October 30, 2017

The Proposal urges the board to report to shareholders on the governance measures the Company has implemented since 2012 to more effectively monitor and manage financial and reputational risks related to the opioid crisis in the U.S., given the Company's distribution of opioid medications.

We are unable to concur in your view that the Company may exclude the Proposal under rule 14a-8(i)(7). We are unable to conclude, based on the information presented in your correspondence, including the discussion of the board's analysis on this matter, that this particular proposal is not sufficiently significant to the Company's business operations such that exclusion would be appropriate. In particular, we note the Company's role in the distribution of pharmaceutical products, including opioids, and that the information presented does not include quantitative or other analysis that may be helpful in determining whether this particular proposal is significant to the Company's business operations. We are also unable to conclude that the Proposal micromanages the Company to such a degree that exclusion of the Proposal would be appropriate. Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(i)(7).

We are unable to concur in your view that the Company may exclude the Proposal under rule 14a-8(i)(10). Based on the information you have presented, it does not appear that the Company's public disclosures compare favorably with the guidelines of the Proposal. Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(i)(10).

Sincerely,

Lisa Krestynick
Attorney-Adviser

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.

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December 14, 2017

VIA HAND DELIVERY AND EMAIL (shareholderproposals@sec.gov)

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

Re: *AmerisourceBergen Corporation*
Second Supplemental Letter for Stockholder Proposal of The Sisters of St. Francis
of Philadelphia, Trinity Health, Missionary Oblates OIP Investment Trust, and
JLens Investor Network, as co-filers
Rule 14a-8 of the Securities Exchange Act of 1934

Ladies and Gentlemen:

On behalf of our client, AmerisourceBergen Corporation, a Delaware corporation (the “Company”), we are writing this letter (the “Second Supplemental Letter”) to supplement the no-action request letter dated October 30, 2017 (the “Initial No-Action Request Letter”) and the supplemental letter dated December 4, 2017 (the “First Supplemental Letter”) that we submitted on behalf of the Company regarding a stockholder proposal (the “Proposal”) and the statement in support thereof (the “Supporting Statement”; the Supporting Statement and the Proposal are referred to collectively as the “Proposal”) that was submitted by The Sisters of St. Francis of Philadelphia, Trinity Health, Missionary Oblates OIP Investment Trust, and JLens Investor Network, as co-filers (the “Proponents”), for inclusion in the Company’s proxy statement and form of proxy for its 2018 Annual Meeting of Stockholders (collectively, the “2018 Proxy Materials”).

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We are submitting this Second Supplemental Letter on behalf of the Company to address certain aspects of the letter dated December 13, 2017 that the Proponents submitted to the staff of the Division of Corporation Finance of the Securities and Exchange Commission (the “SEC Staff”), a copy of which is attached hereto as Exhibit A (the “Proponents’ Second Response Letter”).

Pursuant to Staff Legal Bulletin No. 14D (November 7, 2008), this Second Supplemental Letter, including the exhibit, is being delivered by email to shareholderproposals@sec.gov. A copy of this Second Supplemental Letter, including the exhibit, is also being sent on this date to the Proponents. As counsel to the Company, we continue to request confirmation that the SEC Staff will not recommend enforcement action if the Company excludes the Proposal from the 2018 Proxy Materials for the reasons set forth in the Initial No-Action Request Letter, the First Supplemental Letter and this Second Supplemental Letter. This Second Supplemental Letter does not replace the Initial No-Action Request Letter and the First Supplemental Letter.

THE PROPONENTS’ SECOND RESPONSE LETTER

The Company believes that the Proposal is excludable from the 2018 Proxy Materials for the reasons discussed in the Initial No-Action Request Letter and the First Supplemental Letter. For the sake of brevity, these arguments are not repeated here. Instead, the Company wants to highlight a statement in the Proponents’ Second Response Letter that the Company believes is inaccurate and misleading.

The Proponents assert on page 4 of the Second Response Letter that:

The role distributors are expected to play arises out of their unique knowledge of the bigger picture: Only distributors know the total quantities of controlled substances going to particular customers and geographic areas, which positions them well to identify “suspicious orders” deviating from the normal pattern in terms of size and frequency.

The Company asserts that this statement is untrue. The Company, like all other pharmaceutical distributors, only has knowledge of the controlled substances that the Company itself has distributed. The Company has no knowledge of, and has no means of discovering, the aggregate amount of controlled substances ordered by particular customers and geographic areas, because hundreds of other companies distribute controlled substances and their customer and sales information is confidential. Information on “total quantities” of opioids distributed is only available to the Drug Enforcement Administration (“DEA”), which receives reports on sales of controlled substances from all pharmaceutical distributors, and certain state-level prescription

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drug monitoring programs. While the Company has a sophisticated diversion control program and seeks to minimize diversion in the supply chain by cancelling orders that it identifies as suspicious and reporting them to the DEA, the Company believes that it is patently false to state that the Company has unique knowledge of the “bigger picture.”

CONCLUSION

For the reasons set forth above and in the Initial No-Action Request Letter and the First Supplemental Letter, the Company believes that the Proposal may be excluded from the 2018 Proxy Materials under Rule 14a-8(i)(7) and Rule 14a-8(i)(10). The Company respectfully requests the SEC Staff’s concurrence in the Company’s view or, alternatively, that the Staff confirm that it will not recommend any enforcement action if the Company excludes the Proposal from the 2018 Proxy Materials.

The Company notes that it plans to file its definitive proxy statement for the 2018 Annual Meeting of Stockholders on January 19, 2018.

If we can be of any further assistance in this matter, please do not hesitate to call the undersigned at (202) 739-5658. If the SEC Staff is unable to concur with the Company’s conclusions without additional information or discussions, the Company respectfully requests the opportunity to confer with members of the Staff prior to the issuance of any written response to the Initial No-Action Request Letter, the First Supplemental Letter and this Second Supplemental Letter. In accordance with Staff Legal Bulletin No. 14F, Part F (Oct. 18, 2011), please send your response to the Initial No-Action Request Letter, the First Supplemental Letter and this Second Supplemental Letter by email to sean.donahue@morganlewis.com.

Very truly yours,



Sean M. Donahue

Enclosures

cc: Hyung J. Bak, AmerisourceBergen Corporation
Tom McCaney, The Sisters of St. Francis of Philadelphia
Catherine M. Rowan, Trinity Health
Rev. Seamus Finn, OMI, OIP Investment Trust
Rabbi Josh Ratner, JLens Investor Network

Morgan Lewis

EXHIBIT A

THE PROPONENTS'
SECOND RESPONSE LETTER

December 13, 2017

Via e-mail at shareholderproposals@sec.gov

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

Re: Request by AmerisourceBergen Corp. to omit proposal submitted by the Sisters of St. Francis and co-proponents

Ladies and Gentlemen,

In a letter to the Division dated October 30, 2017 (the "No-Action Request"), AmerisourceBergen Corp. ("ABC") stated that it intends to omit a shareholder proposal (the "Proposal") submitted by the Sisters of St. Francis and co-proponents (the "Proponents") from its proxy materials to be distributed to shareholders in connection with the Company's 2018 annual meeting of shareholders. The Proposal asks for disclosure regarding the governance measures ABC has adopted to more effectively manage and mitigate risks related to its distribution of opioid medications. ABC argued that it is entitled to exclude the Proposal in reliance on Rule 14a-8(i)(7), as relating to ABC's ordinary business operations; and Rule 14a-8(i)(10), on the ground that ABC has substantially implemented the Proposal.

The Proponents responded to the No-Action Request by letter dated November 24, 2017 (the "Proponents' Response"). ABC then submitted a supplemental letter dated December 4, 2017 (the "Supplemental Letter") in which it presented the views of its Governance Committee and Board regarding the application of the ordinary business exclusion to the Proposal and addressed certain arguments made in the Proponents' Response.

Ordinary Business--Supplemental Views of ABC's Governance Committee and Board

In the Supplemental Letter, ABC submits a description of the views of its Governance Committee and Board regarding the subject matter of the Proposal.

ABC is availing itself of the procedure outlined in Staff Legal Bulletin 14I,¹ in which the Staff asserted 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 the SLB, a "well-developed discussion" will assist the Staff in its review.

In a recent webcast,² Matt McNair, Senior Special Counsel, Office of Chief Counsel of the Division of Corporation Finance, provided his thoughts³ on the kinds of submissions contemplated by the SLB:

The most important thing is to make sure that the description of the board process and their findings is sufficiently detailed so that we can get a good sense as to whether those conclusions are well-informed and well-reasoned. . . . What we're doing is inviting the board's views on how the issue raised in the proposal specifically affects the company's business.

Mr. McNair described thorough discussions and analyses in connection with submissions of board views under SLB 14I. He suggested that a board may want to "discuss the financial impact" of a proposal or "tell us they've engaged with shareholders and what their interest level is" in a proposal's subject. Both of those examples involve analysis of substance: How does the proposal's topic affect the company's prospects? What did the company's shareholders say when asked about the subject?

Mr. McNair remarked on the webcast, "If a company believes board materials, board books, or something like that would be helpful and would like to provide them, they are certainly welcome to do that." In that case, proponents and the Staff could read for themselves the materials the board reviewed and make a judgment about whether the process was well-informed.

The Supplemental Letter falls far short of SLB 14I's standard. The cursory discussion in the Supplemental Letter does not contain analysis, nor could it be described as "well-developed." It sets forth a conclusion reached by the Governance Committee and Board regarding the applicability of the ordinary business exclusion

¹ Staff Legal Bulletin 14I (Nov. 1, 2017).

² See Transcript of Webcast Hosted by TheCorporateCounsel.net on Nov. 14, 2017, "Shareholder Proposals: Corp. Fin. Speaks," (available at https://www.thecorporatecounsel.net/Webcast/2017/11_14/transcript.htm#1).

³ The Proponents acknowledge that the views presented in the webcast were those of Mr. McNair personally and not official views of the Division or Commission.

without any explanation of the specific factors they weighed or description of their reasoning.

The Supplemental Letter does not include any substantive discussion about how the issue raised in the Proposal specifically affects ABC's business. The Board and Governance Committee's "consideration of the Company's business" is referenced, but left at that. What was it about ABC's business that led the Board to believe that an insufficient nexus exists between ABC and the opioid crisis, including the role of drug manufacturers and distributors in that crisis? Was the Board's analysis primarily backward-looking, focusing on liabilities, or forward-looking, emphasizing the ongoing role of opioids in ABC's business strategy? It is impossible to tell from the Supplemental Letter. The Supplemental Letter assures the Staff that the Governance Committee and Board asked "additional questions" directed to "members of Management," but there is no indication what those questions were or how management responded. In sum, no information is provided in the Supplemental Letter that would allow the Staff to determine whether the Board's analysis was well-informed.

The Proponents respectfully suggest that the Staff should not give weight to submissions like the Supplemental Letter that only describe a process and provide no substantive discussion or analysis. Such a submission gives no indication whether the Board's analysis was well-informed or well-reasoned. A bare legal conclusion like the one set forth in the Supplemental Letter has no informational value and therefore does not assist the Staff in its review.

Ordinary Business

ABC takes issue with the distinction the Proponents drew in the Proponents' Response between the ordinary retailers in determinations cited by ABC and ABC's own role as a distributor of controlled substances, including opioids. In the determinations on which ABC relies, the Staff found an insufficient nexus between retailers selling controversial products, like guns and tobacco, that had previously given rise to significant social policy issues.

ABC argues generally that it should not be treated any differently from retailers of controversial products in analyzing whether ABC has a sufficient nexus with the opioid crisis to defeat application of the ordinary business exclusion. ABC claims generally that retailers, like distributors, "must comply with contractual and legal obligations with respect to the distribution of affected products."
(Supplemental Letter, at 5)

In the case of prescription pharmaceuticals, the dispensing pharmacy, not the distributor, is most analogous to the retailer in the controversial products determinations. The pharmacy, like the retail store, is the point at which the

product passes to the end customer or patient. Pharmacies do, as ABC claims, have their own contractual and legal obligations associated with filling a prescription and dispensing medication. Those obligations, however, differ from distributors' responsibilities.

A pharmacist's obligation focuses on individual prescriptions: Pharmacists have what is referred to as a "corresponding obligation" not to fill a prescription that was not issued in the usual course of medical treatment for a legitimate medical purpose. According to the DEA's Pharmacists' Manual, "A pharmacist is required to exercise sound professional judgment when making a determination about the **legitimacy of a controlled substance prescription.**" (emphasis added)⁴

The role distributors are expected to play arises out of their unique knowledge of the bigger picture: Only distributors know the total quantities of controlled substances going to particular customers and geographic areas, which positions them well to identify "suspicious orders" deviating from the normal pattern in terms of size and frequency. DEA rules and, in some states, parallel state regulations,⁵ require distributors to report and halt suspicious orders. For that reason, distributors have been blamed for "turning a blind eye" to massive diversion in places like West Virginia with high rates of opioid addiction.⁶

The complexity of the opioid epidemic makes it difficult to apply reasoning from determinations involving a simpler supply chain and set of legal obligations. Many actors share the blame for the social, economic and public health calamity the opioid epidemic has become, from manufacturers that misrepresented the risks and benefits of opioids, to distributors that failed to report enormous shipments into small towns and counties in hard-hit areas, to those physicians who prescribed opioids outside the normal course of professional treatment and pharmacies that looked the other way when presented with large numbers of opioid prescriptions from "pill mills."

As discussed more fully in the Proponents' Response, public debate has focused on distributors as a "choke-point"⁷ due to their position in the supply chain and their opportunity to identify problematic patterns. Following the high-profile October 2017 "60 Minutes" segment on the role of distributors in the opioid crisis, legislation was introduced in the Senate to roll back a law that hampered the DEA's

⁴ https://www.deadiversion.usdoj.gov/pubs/manuals/pharm2/pharm_content.htm

⁵ See, e.g.,

http://www.nmag.gov/uploads/PressRelease/48737699ae174b30ac51a7eb286e661f/AG_Balderas_Files_Lawsuit_Against_Opioid_Manufacturers_and_Distributors.pdf.

⁶ E.g., <https://www.cbsnews.com/news/ex-dea-agent-opioid-crisis-fueled-by-drug-industry-and-congress/>.

⁷ <https://www.cbsnews.com/news/ex-dea-agent-opioid-crisis-fueled-by-drug-industry-and-congress/>.

enforcement efforts.⁸ Contrary to ABC's unsupported assertion in the Supplemental Letter, there is no reason to treat ABC differently from other distributors, all of which distributed (and continue to distribute) opioids. The gravity of the opioid epidemic, coupled with the criticism and debate centered on distributors, provide the required nexus to ABC's business. Accordingly, the Proponents respectfully urge that past determinations in which only manufacturers had a sufficient nexus to a controversial product should not be dispositive here.

* * *

For the reasons set forth above, ABC has not met its burden of showing that it is entitled to omit the Proposal in reliance on Rule 14a-8(i)(7). The Proponents thus respectfully request that ABC's request for relief be denied.

The Proponents appreciate the opportunity to be of assistance in this matter. If you have any questions or need additional information, please contact me at (610) 558-7764.

Sincerely,



Tom McCaney
Associate Director, CSR
Sisters of St. Francis of Philadelphia

cc: Sean M. Donahue
Morgan, Lewis & Bockius, LLP
Sean.donahue@morganlewis.com

⁸ <http://thehill.com/policy/healthcare/medical-devices-and-prescription-drug-policy/355623-senate-dem-introduces-bill-to>.

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December 4, 2017

VIA HAND DELIVERY AND EMAIL (shareholderproposals@sec.gov)

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

Re: *AmerisourceBergen Corporation*
Supplemental Letter for Stockholder Proposal of The Sisters of St. Francis of Philadelphia, Trinity Health, Missionary Oblates OIP Investment Trust, and JLens Investor Network, as co-filers
Rule 14a-8 of the Securities Exchange Act of 1934

Ladies and Gentlemen:

On behalf of our client, AmerisourceBergen Corporation, a Delaware corporation (the “Company”), we are writing this letter (this “Supplemental Letter”) to supplement the no-action request letter dated October 30, 2017 (the “Initial No-Action Request Letter”) that we submitted on behalf of the Company regarding a stockholder proposal (the “Proposal”) and the statement in support thereof (the “Supporting Statement”; the Supporting Statement and the Proposal are referred to collectively as the “Proposal”) that was submitted by The Sisters of St. Francis of Philadelphia, Trinity Health, Missionary Oblates OIP Investment Trust, and JLens Investor Network, as co-filers (the “Proponents”), for inclusion in the Company’s proxy statement and form of proxy for its 2018 Annual Meeting of Stockholders (collectively, the “2018 Proxy Materials”). We are submitting this Supplemental Letter in light of the issuance by the staff of the Division of Corporation Finance of the Securities and Exchange Commission (the “SEC Staff”) of Staff Legal Bulletin No. 14I on November 1, 2017 (“SLB 14I”), which discusses, among other things, Rule 14a-8(i)(7). In addition, this Supplemental Letter addresses certain aspects of the letter dated November 24, 2017 that the Proponents submitted to the SEC Staff, a copy of which is attached hereto as Exhibit A (the “Proponents’ Response Letter”).

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Pursuant to Staff Legal Bulletin No. 14D (November 7, 2008), this Supplemental Letter, including the exhibit, is being delivered by email to shareholderproposals@sec.gov. A copy of this Supplemental Letter, including the exhibit, is also being sent on this date to the Proponents. As counsel to the Company, we continue to request confirmation that the SEC Staff will not recommend enforcement action if the Company excludes the Proposal from the 2018 Proxy Materials for the reasons set forth in the Initial No-Action Request Letter and this Supplemental Letter. This Supplemental Letter does not replace the Initial No-Action Request Letter.

This Supplemental Letter discusses (i) the consideration of the Company's Governance and Nominating Committee (the "Governance Committee") of its Board of Directors (the "Board"), and the Company's full Board, of the guidance issued by the SEC Staff in SLB 14I regarding Rule 14a-8(i)(7) and (ii) certain aspects of the Proponents' Response Letter.

STAFF LEGAL BULLETIN NO. 14I

On November 1, 2017, the SEC Staff issued SLB 14I, which discusses, among other things, the Division of Corporation Finance's application of Rule 14a-8(i)(7). SLB 14I provides that, in a no-action request under Rule 14a-8(i)(7) where a significant policy issue is involved, the SEC Staff "would expect a company's no-action request to include a discussion that reflects the board's analysis of the particular policy issue raised and its significance." SLB 14I further provides that the "explanation would be most helpful if it detailed the specific processes employed by the board to ensure that its conclusions are well-informed and well-reasoned" and that such a "well-developed discussion of the board's analysis of these matters will greatly assist the staff with its review of no-action requests under Rule 14a-8(i)(7)." The SEC Staff has explained that a board's analysis will help the SEC Staff determine whether there is a sufficient nexus between the policy issue raised in the proposal and the company's business.

SLB 14I further provides that "[w]hether the significant policy exception applies depends, in part, on the connection between the significant policy issue and the company's business operations." In this regard "a proposal generally will not be excludable 'as long as a sufficient nexus exists between the nature of the proposal and the company.'" (See Staff Legal Bulletin No. 14E (Oct. 27, 2009).) As such, where there is not a sufficient nexus between a company's business and the nature of a proposal, the SEC Staff has found that the proposal is excludable pursuant to Rule 14a-8(i)(7).

On November 15, 2017, the Governance Committee held a regularly scheduled meeting during which it discussed, among other things, the Proposal's request for a report on governance measures that the Company has implemented since 2012 to more effectively monitor and manage financial and reputational risks related to the opioid crisis in the U.S. given the Company's distribution of opioid medications, and the significance of the policy issue raised in

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the Proposal to the Company and its shareholders in light of the new guidance in SLB 14I. The members of the Governance Committee, who had received a copy of the Proposal and authorized members of the management of the Company (“Management”) to seek the SEC Staff’s concurrence with the exclusion of the Proposal from the 2018 Proxy Materials, received the Initial No-Action Request Letter prior to the meeting. At the meeting, the Company’s Corporate Secretary (the “Secretary”) discussed the Proposal with the Governance Committee, including the fact that the Proposal expressed the concerns of the Proponents about the abuse of opioid medications. The Secretary also discussed with the Governance Committee the views of the SEC Staff related to the circumstances in which (a) the SEC Staff believes that a proposal relates to a significant policy issue and (b) the SEC Staff, notwithstanding its view that a proposal relates to a significant policy issue, concurs with the exclusion from a company’s proxy materials of the stockholder proposal under the ordinary business exclusion of Exchange Act Rule 14a-8(i)(7) because of the absence of a sufficient nexus between the policy issue raised in the proposal and the business of the company that received the proposal. The Secretary further discussed with the Governance Committee SLB 14I, as well as the SEC Staff’s public comments about SLB 14I. The Secretary informed the Governance Committee that SLB 14I provides that the SEC Staff “would expect” companies to include in their no-action request letters that are submitted after the issuance of SLB 14I, and that rely on Rule 14a-8(i)(7) as a basis for exclusion, a discussion that reflects the analysis of the board of directors of the particular policy issue raised in a proposal and its significance to the company, as well as information about the specific processes employed by the board to ensure that its conclusions are well-informed and well-reasoned.

After the Secretary’s presentation, the members of the Governance Committee discussed the Proposal and the significance of the policy issue raised in the Proposal to the Company and its shareholders as well as the Proponents’ concerns. In addition, members of Management addressed various questions posed by the Governance Committee. Upon completion of the discussion, the Governance Committee determined that, based on its understanding of the SEC Staff’s views and the Governance Committee’s consideration of the Company’s business, there is not a sufficient nexus between the Proposal’s focus on the abuse of opioid medications and the Company’s core operations as a distributor of pharmaceutical products to hospitals, pharmacies and other customers, and between the Company’s business of providing services and distributing pharmaceutical products, on the one hand, and opioid use, abuse and dependency, on the other. It further determined that, based on its understanding of the SEC Staff’s implementation of Rule 14a-8(i)(7) and the lack of a sufficient nexus between the nature of the Proposal and the Company’s business, the Company should be able to exclude the Proposal from the 2018 Proxy Materials. Lastly, the Governance Committee determined to recommend that the Board consider this issue as well so that the Board’s determinations could be described in any further correspondence that the Company may have with the SEC Staff relating to the Proposal,

Morgan Lewis

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notwithstanding the fact that the Initial No-Action Request Letter was submitted prior to the issuance of SLB 14I.

On November 16, 2017, at a regularly scheduled meeting of the Company's Board, the Board discussed, among other things, the Governance Committee's determinations and recommendation. The members of the Board had received a copy of the Proposal and the Initial No-Action Request Letter prior to the meeting.

At the Board meeting, the Governance Committee reported to the Board its discussions about the Proposal and the concerns of the Proponents about the abuse of opioid medications, the policy issue raised by the Proposal. At the request of the Chair of the Governance Committee, the Secretary discussed with the Board the views of the SEC Staff related to significant policy issues and the exclusion of proposals that relate, or may relate, to a significant policy issue based upon the absence of a sufficient nexus between the policy issue raised in a particular proposal and the business of the company that received the proposal. The Secretary also discussed with the Board SLB 14I. Finally, the Chair of the Governance Committee discussed the Governance Committee's recommendation that the Board authorize the Secretary to include in any additional correspondence with the SEC Staff the information suggested by SLB 14I.

The members of the Board discussed the Proposal and the significance of the policy issue raised in the Proposal to the Company and its shareholders in light of SLB 14I. The discussion about the Proposal was informed by the periodic discussions that the Board has had and continues to have with members of Management about the Company's business, including, among other aspects, the Board's oversight of the Company's management of risks that affect the Company, including risks related to the distribution of opioid medications. The discussion about the Proposal also included additional questions from members of the Board to members of Management. Based on the discussion, the Board determined that, based on its understanding of the SEC Staff's views and the Board's consideration of the Company's business, there is not a sufficient nexus between the Proposal's concern about the abuse of opioid medications and the Company's core operations as a distributor of pharmaceutical products to hospitals, pharmacies and other customers, and between the Company's business of providing services and distributing pharmaceutical products, on the one hand, and opioid use, abuse and dependency, on the other. Accordingly, based on its understanding of the SEC Staff's implementation of Rule 14a-8(i)(7) and the lack of a sufficient nexus between the policy issue raised by the Proposal and the Company's business, it further determined that it concurred with the Governance Committee's view that the Company should be able to exclude the Proposal from the 2018 Proxy Materials. The Board further authorized the inclusion in any further correspondence with the SEC Staff of the information requested by SLB 14I.

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THE PROPONENTS' RESPONSE LETTER

The Company believes that the Proposal is excludable from the 2018 Proxy Materials for the reasons discussed in the Initial No-Action Request Letter. For the sake of brevity, those reasons are not repeated here. The Company wants to highlight certain aspects of the Proponents' Response Letter with which it disagrees.

The Company believes that the Proponents' Response Letter makes a number of inaccurate statements. Among these are a few that are particularly concerning. In this regard, the Company disagrees with the arguments that the SEC Staff's views in Cardinal Health, Inc. (Aug. 4, 2017), McKesson Corp. (June 1, 2017), Rite Aid Corp. (Mar. 24, 2015) and Wal-Mart Stores, Inc. (Mar. 20, 2014) should not be regarded as precedential because, unlike the Company's role, the roles of Cardinal Health, Inc. and McKesson Corp. "in the social harms" at issue in those proposals were "passive" and the proponents in Rite Aid Corp. and Wal-Mart Stores, Inc. did not claim that "the retailers were anything other than a conduit between the manufacturers of harmful products and the buying public." The Company disagrees with those distinctions and continues to believe that the SEC Staff's views in those letters support its request in the Initial No-Action Request Letter. Each of those other companies was at risk of liability if it did not comply with contractual obligations or applicable laws with respect to the sale of the products involved in those letters. Retailers and distributors alike must comply with contractual and legal obligations with respect to the distribution of affected products. For example, the pharmacy department of a retailer must comply with regulations relating to the sale of pharmaceutical products and, hence, retailers have a role like that of the Company with respect to its sale of any regulated products.

In addition, the Proponents' Response Letter assumes that all distributors are the same and should be treated the same way. The Company believes that this assumption is inaccurate and results in an incorrect way to analyze nexus. In this regard, we note that Staff guidance is clear that "[w]hether the significant policy exception applies depends, in part, on the connection between the significant policy issue and the company's business operations,"¹ and not on the company's industry or the company's peers.

Finally, the Company disagrees with the assertion in the Proponents' Response Letter that "[l]apses in satisfying those obligations gives rise to liability, possible legislative backlash and public outcry, which supplies the necessary nexus between ABC and the significant social policy issue of the opioid abuse crisis." If the possibility, or even the existence, of lapses provided the necessary nexus, any proposal related to a product that is subject to sale restrictions would satisfy

¹ SLB 14I, *citing* Staff Legal Bulletin No. 14H (Oct. 22, 2015), *citing* Staff Legal Bulletin No. 14E (Oct. 27, 2009) (stating that a proposal generally will not be excludable "as long as a sufficient nexus exists between the nature of the proposal and the company").

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U.S. Securities and Exchange Commission
December 4, 2017
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the nexus requirement. This would not be consistent with the position that the SEC Staff has taken in the past.

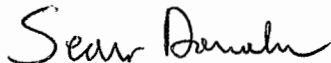
CONCLUSION

For the reasons set forth above and in the Initial No-Action Request Letter, the Company believes that the Proposal may be excluded from the 2018 Proxy Materials under Rule 14a-8(i)(7) and Rule 14a-8(i)(10). The Company respectfully requests the SEC Staff's concurrence in the Company's view or, alternatively, that the Staff confirm that it will not recommend any enforcement action if the Company excludes the Proposal from the 2018 Proxy Materials.

The Company notes that it plans to file its definitive proxy statement for the 2018 Annual Meeting of Stockholders on January 19, 2018.

If we can be of any further assistance in this matter, please do not hesitate to call the undersigned at (202) 739-5658. If the SEC Staff is unable to concur with the Company's conclusions without additional information or discussions, the Company respectfully requests the opportunity to confer with members of the Staff prior to the issuance of any written response to the Initial No-Action Request Letter and this Supplemental Letter. In accordance with Staff Legal Bulletin No. 14F, Part F (Oct. 18, 2011), please send your response to the Initial No-Action Request Letter and this Supplemental Letter by email to sean.donahue@morganlewis.com.

Very truly yours,



Sean M. Donahue

Enclosures

cc: Hyung J. Bak, AmerisourceBergen Corporation
Tom McCaney, The Sisters of St. Francis of Philadelphia
Catherine M. Rowan, Trinity Health
Rev. Seamus Finn, OMI, OIP Investment Trust
Rabbi Josh Ratner, JLens Investor Network

Morgan Lewis

EXHIBIT A

THE PROPONENTS'
RESPONSE LETTER

November 24, 2017

Via e-mail at shareholderproposals@sec.gov

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

Re: Request by AmerisourceBergen Corp. to omit proposal submitted by the Sisters of St. Francis and co-proponents

Ladies and Gentlemen,

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, the Sisters of St. Francis of Philadelphia, Trinity Health, Missionary Oblates OIP Investment Trust and JLens Investor Network (the "Proponents") submitted a shareholder proposal (the "Proposal") to AmerisourceBergen Corporation ("ABC" or the "Company"). The Proposal asks ABC's board to report to shareholders on governance measures ABC has implemented since 2012 to more effectively monitor and manage financial and reputational risks related to the opioid crisis in the U.S.

In a letter to the Division dated October 30, 2017 (the "No-Action Request"), ABC 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. ABC argues that it is entitled to exclude the Proposal in reliance on Rule 14a-8(i)(7), as relating to ABC's ordinary business operations; and Rule 14a-8(i)(10), on the ground that ABC has substantially implemented the Proposal. As discussed more fully below, ABC has not met its burden of proving its entitlement to rely on either exclusion; accordingly, the Proponents respectfully ask that the Company's request for relief be denied.

The Proposal

The Proposal states:

RESOLVED, that shareholders of AmerisourceBergen Corporation ("AmerisourceBergen") urge the Board of Directors (the "Board") to report to

shareholders by September 30, 2018 on the governance measures . AmerisourceBergen has implemented since 2012 to more effectively monitor and manage financial and reputational risks related to the opioid crisis in the U.S., given AmerisourceBergen's distribution of opioid medications, including whether AmerisourceBergen has assigned responsibility for such monitoring to the Board or one or more Board committees, revised senior executive compensation metrics or policies, adopted or changed mechanisms for obtaining input from stakeholders, or altered policies or processes regarding company political activities.

The report should be prepared at reasonable cost and should omit confidential and proprietary information.

Ordinary Business

ABC argues that it is entitled to omit the Proposal in reliance on Rule 14a-8(i)(7), which allows exclusion of proposals related to a company's ordinary business operations. Specifically, ABC urges that the Proposal's subject "relates to the distribution of particular products" and that the amount of detail sought by the Proposal would micro-manage the Company. The Proposal, however, addresses the significant social policy issue of the opioid abuse epidemic and a strong nexus exists between ABC and that crisis. As well, the Proposal seeks only high-level disclosure regarding governance changes, not technical or detailed disclosure regarding ABC's business. Accordingly, exclusion on ordinary business grounds would not be appropriate.

The Opioid Crisis, Including the Role Played by Drug Distributors, Is a Significant Social Policy Issue

The opioid epidemic is undoubtedly a "sustained" and "consistent topic of widespread public debate," the standard the Staff has applied in determining whether a proposal deals with a significant social policy issue.¹

According to the Center for Disease Control and Prevention ("CDC"), the number of opioid painkillers dispensed in the U.S. quadrupled from 1999 to 2010, despite no change in reported pain levels.² In 2015, opioid overdoses killed more than 33,000 Americans, and that number is expected to be up significantly when official data for 2016 are released.³ Opioid addiction alone has lowered U.S. average life expectancy by 2.5 months.⁴

¹ See Exchange Act Release No. 40018 (May 21, 1998); Comcast Corp. (Mar. 4, 2011); Verizon Communications Inc. (Feb. 13, 2012).

² <https://www.cdc.gov/drugoverdose/epidemic/index.html>.

³ Centers for Disease Control and Prevention data on 2015 deaths (<https://www.cdc.gov/drugoverdose/>); Lenny Bernstein, "Deaths from Drug Overdoses Soared in the First Nine Months of 2016," The Washington Post, Aug. 8, 2017

The sheer volume of national media coverage, expressions of public sentiment and legislative and regulatory initiatives spawned by the opioid epidemic precludes an exhaustive list. Some key examples are:

- President Trump declared the opioid epidemic a public health emergency in October 2017.⁵ He has empaneled a Presidential Commission on Combating Addiction and the Opioid Crisis to make recommendations on the federal response.⁶
- During the 2016 Presidential election campaign, addressing the opioid crisis ranked as the most important issue for voters in some areas.⁷ Candidates discussed the opioid epidemic on the campaign trail in both the primaries⁸ and general election.⁹
- Continuous coverage of the epidemic over the past several years in national publications, including The New York Times,¹⁰ The Washington Post,¹¹ The Wall Street Journal¹² and USA Today.¹³

(<https://www.washingtonpost.com/news/to-your-health/wp/2017/08/08/deaths-from-drug-overdoses-soared-in-the-first-nine-months-of-2016/>) (“Given available state data and anecdotal information, many experts are expecting a big increase in deaths in 2016, driven by the worsening crisis in overdoses from opioids, especially fentanyl and heroin”).

⁴ <http://www.chicagotribune.com/news/nationworld/ct-opioids-life-expectancy-20170920-story.html>

⁵ <http://www.cnn.com/2017/10/26/politics/donald-trump-opioid-epidemic/index.html>

⁶ <https://www.whitehouse.gov/the-press-office/2017/03/30/presidential-executive-order-establishing-presidents-commission>

⁷ <https://www.wsj.com/articles/drug-deaths-becoming-a-2016-presidential-election-issue-1446596075>

⁸ E.g., <https://www.wsj.com/articles/drug-deaths-becoming-a-2016-presidential-election-issue-1446596075>; <http://www.cnn.com/2016/02/06/politics/donald-trump-new-hampshire-drug-epidemic/index.html>

⁹ E.g., <https://web.archive.org/web/20170504001021/https://www.donaldjtrump.com/press-releases/donald-j.-trump-remarks-in-portsmouth-nh>

¹⁰ E.g., <https://www.nytimes.com/2017/01/06/us/opioid-crisis-epidemic.html>;

<https://www.nytimes.com/2017/10/26/us/opioid-crisis-public-health-emergency.html>;

<https://www.nytimes.com/2017/08/21/health/hospitals-opioid-epidemic-patients.html>;

<https://www.nytimes.com/2016/02/22/us/politics/governors-devise-bipartisan-effort-to-reduce-opioid-abuse.html>; <https://www.nytimes.com/2014/06/18/us/governors-unite-to-fight-heroin-in-new-england.html>; <https://www.nytimes.com/2015/01/13/us/after-stabilizing-overdose-deaths-rose-in-2013-.html>.

¹¹ E.g., https://www.washingtonpost.com/graphics/2017/investigations/dea-drug-industry-congress/?tid=a_inl&utm_term=.84592cf7ad5d;

https://www.washingtonpost.com/national/health-science/no-longer-mayberry-a-small-ohio-city-fights-an-epidemic-of-self-destruction/2016/12/29/a95076f2-9a01-11e6-b3c9-f662adaa0048_story.html?tid=sm_fb&utm_term=.91264e23e0fa;

https://www.washingtonpost.com/news/to-your-health/wp/2017/03/?utm_term=.c6d46b0eeefe.

¹² E.g., <http://www.wsj.com/graphics/toll-of-opioids/>; <https://www.wsj.com/articles/opioid-addiction-diagnoses-up-nearly-500-in-past-seven-years-study-shows-1498737603>;

- Seventy-three bills dealing with opioids have been introduced in the 115th Congress, including the Effective Opioid Enforcement Act, the DEA Opioid Enforcement Restoration Act, the Opioid Addiction Prevention Act and the Combating the Opioid Epidemic Act.¹⁴
- Concerns over the effect of cuts in Medicaid and resulting loss of access to opioid addiction treatment featured prominently in the debate over repeal of the Affordable Care Act.¹⁵
- Local budgets are being strained by the increase in opioid overdoses and hikes in the price of overdose reversal drug naloxone.¹⁶
- The opioid epidemic is taxing child welfare and foster care systems: Between 2013 and 2016, the number of children removed from their parents' care grew by 40%, driven mainly by opioid addiction.¹⁷ Several Ohio counties asked voters to approve ballot initiatives providing additional funding for family services in November 2017 due to opioid addiction.¹⁸
- Opioid use has been identified as a possible reason working-age men's participation in the labor force has been low.¹⁹
- The hospital costs associated with treating addicted newborns rose to \$1.5 billion in 2013, from \$732 million in 2009, according to a study in the Journal of Perinatology.²⁰ Stories like the one about James Schenk, born addicted to opioids, illustrate the difficulties of weaning these babies after birth.²¹

Although wholesale distributors like ABC do not manufacture or prescribe opioids, they play a key role in preventing diversion of prescription opioids to illegal

<https://www.wsj.com/articles/colleges-take-action-on-opioid-epidemic-1494158403?tesla=y;>
[https://www.wsj.com/articles/the-children-of-the-opioid-crisis-1481816178.](https://www.wsj.com/articles/the-children-of-the-opioid-crisis-1481816178)

¹³ [https://www.usatoday.com/story/news/politics/2017/10/23/fda-chief-supports-opioid-prescription-limits-regrets-agencys-prior-inaction/774007001/;](https://www.usatoday.com/story/news/politics/2017/10/23/fda-chief-supports-opioid-prescription-limits-regrets-agencys-prior-inaction/774007001/)

[https://www.usatoday.com/story/news/2017/11/08/its-far-more-than-overdoses-iv-opioid-users-diseases-overwhelm-hospitals/821693001/;](https://www.usatoday.com/story/news/2017/11/08/its-far-more-than-overdoses-iv-opioid-users-diseases-overwhelm-hospitals/821693001/)

[https://www.usatoday.com/story/news/nation/2016/09/25/drug-addiction-treatment-insurance-heroin/91079496/;](https://www.usatoday.com/story/news/nation/2016/09/25/drug-addiction-treatment-insurance-heroin/91079496/)

¹⁴ Data as of November 20, 2017 from Carol Nolan Drake, President and CEO, Carlow Consulting LLC (private correspondence dated November 20, 2017).

¹⁵ E.g., <http://www.latimes.com/politics/la-na-pol-obamacare-repeal-opioids-20170621-story.html>; <http://www.nejm.org/doi/full/10.1056/NEJMp1700834#t=article>

¹⁶ <https://www.cnbc.com/2017/01/04/as-opioid-epidemic-worsens-the-cost-of-waking-up-from-an-overdose-soars.html>; [https://www.washingtonpost.com/world/as-opioid-overdoses-exact-a-higher-price-communities-ponder-who-should-be-saved/2017/07/15/1ea91890-67f3-11e7-8eb5-cbcc2e7bfbf_story.html?utm_term=.adb4f9214ba6.](https://www.washingtonpost.com/world/as-opioid-overdoses-exact-a-higher-price-communities-ponder-who-should-be-saved/2017/07/15/1ea91890-67f3-11e7-8eb5-cbcc2e7bfbf_story.html?utm_term=.adb4f9214ba6)

¹⁷ <https://www.wsj.com/articles/the-children-of-the-opioid-crisis-1481816178>

¹⁸ <https://www.nytimes.com/aponline/2017/11/06/us/ap-us-opioid-crisis-children.html>

¹⁹ <https://nypost.com/2017/07/23/yellen-links-opioid-crisis-to-low-workforce-participation/>

²⁰ <https://www.nytimes.com/2016/12/12/health/rise-in-infant-drug-dependence-in-us-is-felt-most-in-rural-areas.html>

²¹ http://host.madison.com/wsj/news/local/health-med-fit/babies-dependent-on-opioids-wisconsin-sees-surge-in-infants-born/article_1da6faee-827d-5435-aada-23a1d5fc8024.html

use; that role has come under scrutiny as the opioid epidemic has grown. Controlling distribution of prescription opioids is important, even though just under half of overdoses involve traditional prescription opioid painkillers, because four out of five new heroin users misused prescription opioids before moving to heroin.²²

Federal and state rules require distributors to report suspicious orders of controlled substances. Rules implementing the Controlled Substances Act require wholesalers to “design and operate a system to [detect] suspicious orders of controlled substances,” including “orders of unusual size, orders deviating substantially from a normal pattern, and orders of unusual frequency,” and to report such orders to the Drug Enforcement Administration (“DEA”).²³ Distributors are also required, under some circumstances, to put a halt to suspicious orders. Noncompliance with DEA rules can result in losing one’s license to sell controlled substances.

An October 2017 “60 Minutes” segment focused on the failure of drug distributors to flag such orders. Former head of the DEA’s Office of Diversion Control Joe Rannazzisi described “seeing hundreds of bad orders that involved millions and millions of tablets” and realizing that distributors like ABC were the “choke point” because they knew the bigger picture of aggregate order volume.²⁴ The segment led Congressman Joe Marino, who had sponsored 2016 legislation that made it harder for the DEA to prosecute distributors, to withdraw from consideration to become U.S. Drug Czar.²⁵ Coverage of Marino’s withdrawal focused on the campaign contributions he had accepted from the pharmaceutical industry and predicted that his reelection campaign in 2018 would “inevitab[ly]” involve “contrast ads over opioids.”²⁶

The “60 Minutes” segment received widespread coverage in the print and broadcast media.²⁷ Following the broadcast, Sen. Claire McCaskill (D-MO) stated that she intended to introduce legislation to repeal the 2016 law, which she said “significantly affected the government’s ability to crack down on opioid distributors

²² American Society of Addiction Medicine, Opioid Addiction: 2016 Facts and Figures, at 2 (<https://www.asam.org/docs/default-source/advocacy/opioid-addiction-disease-facts-figures.pdf>).

²³ <https://www.justice.gov/opa/press-release/file/928481/download> (citing 21 C.F.R. § 1301.74(b), 21 U.S.C. § 823(b)(1))

²⁴ <https://www.cbsnews.com/news/ex-dea-agent-opioid-crisis-fueled-by-drug-industry-and-congress/>

²⁵ <http://money.cnn.com/2017/10/17/media/washington-post-60-minutes-tom-marino/index.html>

²⁶ <https://www.nytimes.com/2017/10/19/us/marino-opioids-pennsylvania-congress.html>

²⁷ E.g., <http://fortune.com/2017/10/16/rannazzisi-dea-drug-distributors-opioids/>; <http://www.businessinsider.com/60-minutes-drug-industry-worked-against-dea-fight-opioid-epidemic-investigation-2017-10>; <http://www.cnn.com/2017/10/16/politics/dea-drug-lobby-opioids/index.html> <http://thehill.com/homenews/news/355580-former-dea-agent-congress-drug-industry-hindered-opioid-crackdown>; <https://www.pbs.org/newshour/show/drug-distributors-reportedly-hobbled-law-enforcement-policing-flow-opioids>

that are failing to meet their obligations and endangering our communities.”²⁸ The House Energy and Commerce Committee held a hearing on October 25th featuring “the committee’s ongoing bipartisan investigation” into the flow of prescription opioids into West Virginia.²⁹

Distributors are facing legal liability for their lapses. As discussed more fully below, McKesson has settled claims that it violated DEA rules regarding reporting suspicious orders. Court records from a case brought by the hard-hit state of West Virginia, which ABC fought to keep under seal, show that ABC shipped 149,000 hydrocodone pills, or 12,400 tablets per month, to one pharmacy in Mingo County, West Virginia. ABC shipped 8,000 hydrocodone pills *in two days* to a West Virginia “drive-in” pharmacy.³⁰ (ABC paid \$16 million to settle the state’s claims that the Company failed to report suspicious orders.)³¹

Eric Eyre of the Charleston (WV) Gazette-Mail, who fought for release of the distribution records, won the 2017 Pulitzer Prize for Investigative Reporting for his reporting on the flow of opioids into West Virginia.³² The Pulitzer board called Eyre’s work “courageous reporting, performed in the face of powerful opposition.”³³ His reporting attracted attention and follow-up articles from numerous national outlets, including NPR,³⁴ Quartz,³⁵ US News,³⁶ Fortune³⁷ and CNN.³⁸

It also outraged officials like Sheriff Martin West of McDowell County, WV, which has the second-highest rate of opioid overdoses in the nation. After West read Eyre’s account of the role of wholesale distributors in flooding small West Virginia

²⁸ <http://www.cnn.com/2017/10/16/politics/dea-drug-lobby-opioids/index.html>

²⁹ <https://energycommerce.house.gov/news/press-release/walden-grills-dea-lack-cooperation-response-committee-investigation/>

³⁰ https://www.wvgazetteemail.com/placement/drug-firms-fueled-pill-mills-in-rural-wv/article_14c8e1a5-19b1-579d-9ed5-770f09589a22.html

³¹ <https://www.wsj.com/articles/lawyers-hope-to-do-to-opioid-makers-what-they-did-to-big-tobacco-1500830715>

³² <http://www.pulitzer.org/winners/eric-eyre>

³³ <https://www.usnews.com/news/best-states/west-virginia/articles/2017-04-10/gazette-mail-reporter-wins-pulitzer-for-drug-stories>

³⁴ <https://www.npr.org/2016/12/22/506550248/drug-firms-make-millions-by-sending-opioid-pills-to-w-va-report-says>

³⁵ <https://qz.com/866771/drug-wholesalers-shipped-9-million-opioid-painkillers-over-two-years-to-a-single-west-virginia-pharmacy/>

³⁶ <https://www.usnews.com/news/best-states/west-virginia/articles/2017-04-10/gazette-mail-reporter-wins-pulitzer-for-drug-stories>

³⁷ <http://fortune.com/2017/06/13/fortune-500-mckesson-opioid-epidemic/>

³⁸ <http://www.cnn.com/videos/tv/2016/12/20/report-show-companies-profit-from-flooding-state-with-drugs-lead-eyre-live.cnn>

towns with opioids, McDowell County sued the distributors; states, other counties and towns have done the same.³⁹

The recent vote at McKesson Corp. illustrates the relevance of wholesale distributors' opioid-related conduct to investors. At McKesson's July 26, 2017 annual meeting, holders of over 70% of shares voting opposed the company's advisory vote on executive compensation following an investor campaign focused on McKesson's opioid-related conduct and liabilities.⁴⁰

In sum, the opioid abuse crisis is one of the most urgent social problems facing the U.S., with major effects on health, prosperity and well-being. Significant attention and criticism have focused on wholesale drug distributors like ABC for ignoring red flags and thereby allowing enormous quantities of prescription opioids to be shipped to—and potentially diverted to illegal use in—areas affected by the epidemic. Accordingly, the subject of the Proposal—how ABC has changed its corporate governance to monitor and manage these risks—is a significant social policy issue.

The “Sale of Particular Products” Determinations Do Not Apply Because the Significant Social Policy Issue Involves the Company’s Own Conduct, Not Just the Impact of the Products It Sells

ABC rests its argument on previous determinations in which the Staff permitted companies that sold controversial products such as tobacco, firearms and drugs used for lethal injections to omit proposals asking the companies to evaluate the risks of selling those products or report on specific aspects of risk management. In those determinations, the Staff found that the companies had satisfied their burden of proving they were entitled to rely on the ordinary business exclusion because the proposals “concern[ed] the sale of a particular product.”

The proposals in those determinations are distinguishable from the Proposal in two ways, however.

³⁹ <http://fortune.com/2017/09/27/big-pharma-opioid-lawsuits/>;
<http://www.cleveland.com/metro/index.ssf/2017/10/cuyahoga-county-files-lawsuit.html>;
https://www.washingtonpost.com/investigations/drugmakers-and-distributors-face-barrage-of-lawsuits-over-opioid-epidemic/2017/07/04/3fc33c64-5794-11e7-b38e-35fd8e0c288f_story.html?utm_term=.5479777fd205.

⁴⁰ <http://www.foxbusiness.com/features/2017/07/26/mckesson-shareholders-reject-executive-compensation-packages.html>

First, the Staff may not have found that the proposals in *Cardinal Health Inc.*⁴¹ and *McKesson Corp.*⁴² dealt with a significant social policy issue, which would defeat application of the ordinary business exclusion.⁴³ Those proposals asked for reports on the controlled distribution systems used to prevent diversion of drugs used in executions. The proponents in *McKesson* characterized the relevant significant social policy issue as the “impermissible use of medicines to carry out execution by lethal injection” and described the controversy over botched and inhumane executions. (The proponents did not submit a response in *Cardinal*, presumably because their earlier response in *McKesson* applied equally to the very similar request by Cardinal.)

Public debate about lethal injections, while not insubstantial, is not as consistent or sustained as debate over some of the other topics the Staff has deemed significant social policy issues in recent years, such as net neutrality or human rights abuses in the supply chain. The Staff’s reasoning for allowing exclusion in *Cardinal* and *McKesson* supports an inference that it did not believe the issue of botched executions by lethal injection rose to the required level of “consistent” or “sustained” public debate, though other interpretations are possible.

As well, the companies’ roles in the social harms are passive in the determinations ABC cites, which is not the case here. Put another way, a sufficient nexus did not exist between the significant social policy issues and the companies receiving the proposals, as required by Staff Legal Bulletin 14E.⁴⁴

The context of the proposals at Cardinal and McKesson was that non-U.S. manufacturers of the drugs used for lethal injection had been prohibited from exporting the medications and U.S. manufacturers had amended their contracts with drug distributors to keep the drugs from being sold for executions.

In *CVS/Caremark*,⁴⁵ *Rite Aid Corp.*⁴⁶ and *Walgreens Boots Alliance*,⁴⁷ the proposals asked companies to evaluate the risks associated with selling tobacco

⁴¹ [Cardinal Health Inc.](#) (avail. Aug. 4, 2017).

⁴² [McKesson Corp.](#) (avail. June 1, 2014).

⁴³ In an analogous context, a company’s relationship with its suppliers—which is generally viewed as involving ordinary business operations—the existence of a significant social policy issue has been invoked to deny relief. [See](#) *Wal-Mart Stores, Inc.* (avail. Mar. 31, 2010) (declining to allow exclusion on ordinary business grounds of a proposal asking the company to stop selling poultry that was not killed humanely); *Wal-Mart Stores, Inc.* (avail. Jan. 29, 2010) (disagreeing with the company that it was entitled to omit in reliance on the ordinary business exclusion a proposal asking the company to require its suppliers to switch to more animal welfare-friendly slaughter methods, reasoning that the proposal focused on the significant social policy issue of humane animal treatment).

⁴⁴ Staff Legal Bulletin 14E, section B (Oct. 27, 2009) (<https://www.sec.gov/interps/legal/cfslb14e.htm>).

⁴⁵ [CVS/Caremark Corp.](#) (avail. Feb. 25, 2010).

products and the proponents relied on the fact that tobacco's lethality had been characterized as a significant social policy issue for proposals submitted to tobacco companies. Likewise, the proposals in *Rite Aid Corp.*⁴⁸ and *Wal-Mart Stores*⁴⁹ sought additional oversight of policies governing decisions to sell a product that endangers public health and well-being, has the potential to harm the company's reputation and would reasonably be considered by many as offensive to the values integral to the company's brand.

At no point did the proponents claim that the retailers were anything other than a conduit between the manufacturers of harmful products and the buying public. Any damage to the retailers' reputations would occur as a result of the controversial products and their societal impacts. Similarly, the proponent in *McKesson* viewed drug wholesale distributors as potential innocent victims of states trying to circumvent limitations and obtain drugs for lethal injections, but not as contributors to the social issue of botched executions.

Here, by contrast, the conduct of wholesale distributors like ABC cannot be disentangled from, and indeed has been accused of amplifying, the opioid abuse crisis. As with any complex public health problem, no single actor is solely responsible for the epidemic, and attention has focused on the roles of patients, physicians, insurers and manufacturers in encouraging inappropriate prescribing, preventing addicted persons from obtaining needed treatment and downplaying the risks of opioid use. But as discussed above, wholesale distributors like ABC have been faulted in many quarters, including Congressional hearings, reports by DEA whistleblowers and national media coverage, for failing to satisfy their obligations to detect and avert diversion of prescription opioids.

The important differences between wholesale distributors' role in the opioid abuse epidemic and an ordinary retailer selling a controversial product is highlighted by the terms of the agreement wholesale distributor McKesson recently entered into with the Drug Enforcement Administration to settle claims McKesson failed to flag suspicious orders of prescription opioids.⁵⁰ The Compliance Addendum to the Settlement Agreement⁵¹ controls, in very specific ways, how McKesson is to conduct its business for the next five years:

⁴⁶ *Rite Aid Corp.* (avail. Mar. 26, 2009).

⁴⁷ *Walgreens Boots Alliance Inc.* (avail. Nov. 7, 2016).

⁴⁸ *Rite Aid Corp.* (Mar. 24, 2015).

⁴⁹ *Wal-Mart Stores Inc.* (Mar. 20, 2014).

⁵⁰ <https://www.justice.gov/usao-nj/pr/mckesson-agrees-pay-record-150-million-settlement-failure-report-suspicious-orders>

⁵¹ The Compliance Addendum can be found at <https://www.justice.gov/opa/press-release/file/928481/download>

- designation of certain drugs as “Highly Diverted Controlled Substances”⁵²; the DEA is entitled to propose additions to or removals from this list⁵³
- improved analysis to set customer order thresholds for controlled substances and enhanced due diligence regarding customers⁵⁴
- implementation of specific corporate organizational structures to strengthen and ensure independence of the compliance function⁵⁵
- retention of an Independent Review Organization to perform compliance reviews and audits, including a detailed annual review of McKesson’s process for establishing customer order thresholds⁵⁶

It is unimaginable that an ordinary retailer would be subjected to the operational control imposed by the Compliance Addendum for selling even the most controversial product. Retailers process payments, display products and provide the space—real-world or online—for customers to view and select products. When controlled substances are involved, wholesale distributors’ obligations extend beyond those customary parameters. Lapses in satisfying those obligations gives rise to liability, possible legislative backlash and public outcry, which supplies the necessary nexus between ABC and the significant social policy issue of the opioid abuse crisis.

Allowing Exclusion of the Proposal Would be Inconsistent with the Policies Behind the Ordinary Business Exclusion

The Commission has articulated the two “central considerations” animating the ordinary business exclusion:

1. “Certain 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”; and
2. “the degree to which the proposal seeks to ‘micro-manage’ the 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.”⁵⁷

Neither of those considerations warrants omission of the Proposal.

Unlike many of the proposals in determinations cited by ABC, the Proposal does not seek to control which products ABC distributes, but instead asks for a single report to shareholders. We acknowledge that allowing shareholders to make day-to-day decisions about product selection would be impractical and undesirable.

⁵² Compliance Addendum, at 2-3.

⁵³ Compliance Addendum, at

⁵⁴ Compliance Addendum, at 3-4.

⁵⁵ Compliance Addendum, at 4-7.

⁵⁶ Compliance Addendum, at 12, 14-19.

⁵⁷ Exchange Act Release No. 40018 (May 21, 1998)

What's more, the Proposal does not even ask ABC to disclose specific information about its risk management practices, as the *Cardinal* and *McKesson* proposals did, but instead focuses on higher-level governance measures such as board oversight. None of these governance measures would affect management's ability to run ABC on a day-to-day basis.

ABC claims that the Proposal would micro-manage the Company, but some of the specific arguments it makes in support of that contention are more appropriately considered in connection with the nexus analysis discussed above. With respect to the other arguments, ABC urges that the Proposal would require disclosure of complex information that would be difficult for shareholders to understand.

But nothing in the language of the resolved clause or supporting statement supports ABC's claim that the Proposal is really asking for "granular information about the Company's risk management practices rather than the Board's role in overseeing risk" or details about ABC's "DEA reporting and compliance program."⁵⁸ Indeed, the kinds of governance measures discussed in the Proposal—board oversight of risk, compensation metrics, stakeholder engagement and political activity policies—are the subject of shareholder proposals on which shareholders frequently cast votes, and companies themselves often make significant amounts of disclosure on these governance arrangements. The Proposal does not even urge the adoption of any particular governance measure, but only asks for reporting on what ABC has already done. Accordingly, the Proposal cannot be said to micro-manage ABC.

Substantial Implementation

ABC contends it has substantially implemented the Proposal through its existing disclosures, but none of those disclosures specifically mentions opioids or even controlled substances more generally. ABC would like shareholders to infer, for example, when the proxy statement asserts that the Audit and Corporate Responsibility Committee of the Board "assesses the steps management has taken to control [significant risks or exposures (whether financial, operational or otherwise)," that opioid-related risks qualify as "significant" and are therefore included in the committee's purview. Similarly, ABC urges that the Compensation & Succession Planning Committee should be presumed to be considering risks related to opioids when it selects metrics that "align with stockholder interests and satisfy the Company's overall performance objectives and risk management and risk mitigation policies."

There is no reason for shareholders to make those assumptions, though. The purpose of the Proposal is to obtain information about governance measures that

⁵⁸ No-Action Request, at 15-16.

ABC affirmatively states are intended to help the Company more effectively manage opioid-related risks. Disclosures that refer to ABC's products, or to alignment of interests or any other general matter, do not provide the requested information. If indeed opioid-related risks are simply lumped in with other product-related risks, with no special governance mechanisms or considerations, then ABC could substantially implement the Proposal by saying so. Its current disclosures, however, fall far short.

* * *

For the reasons set forth above, ABC has not met its burden of showing that it is entitled to omit the Proposal in reliance on Rule 14a-8(i)(17) or Rule 14a-8(i)(10). The Proponents thus respectfully request that ABC's request for relief be denied.

The Proponents appreciate the opportunity to be of assistance in this matter. If you have any questions or need additional information, please contact me at (610) 558-7764.

Sincerely,

Tom McCaney
Associate Director, CSR
Sisters of St. Francis of Philadelphia

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October 30, 2017

VIA HAND DELIVERY AND EMAIL (shareholderproposals@sec.gov)

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

Re: *AmerisourceBergen Corporation
Stockholder Proposal of The Sisters of St. Francis of Philadelphia, Trinity Health,
Missionary Oblates OIP Investment Trust, and JLens Investor Network, as co-filers
Rule 14a-8 of the Securities Exchange Act of 1934*

Ladies and Gentlemen:

This letter is to inform you that our client, AmerisourceBergen Corporation, a Delaware corporation (“AmerisourceBergen” or the “Company”), intends to exclude from its proxy statement and form of proxy for its 2018 Annual Meeting of Stockholders (collectively, the “2018 Proxy Materials”) the stockholder proposal (the “Proposal”) and the statement in support thereof (the “Supporting Statement”) received from The Sisters of St. Francis of Philadelphia, Trinity Health, Missionary Oblates OIP Investment Trust, and JLens Investor Network, as co-filers (the “Proponents”).

Pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), we have:

- transmitted this letter by email to the staff (the “Staff”) of the Division of Corporation Finance of the Securities and Exchange Commission (the “Commission”) at shareholderproposals@sec.gov no later than eighty (80) calendar days before the Company intends to file its definitive 2018 Proxy Materials with the Commission, which is currently anticipated to be on or about January 19, 2018; and

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- concurrently sent copies of this letter, together with its attachments, to the Proponents at the email addresses they have provided as notice of the Company's intent to exclude the Proposal and the Supporting Statement from the 2018 Proxy Materials.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D") provide that stockholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to inform the Proponents that if the Proponents elect to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

THE PROPOSAL

The Proposal sets forth the following proposed resolution for the vote of the Company's stockholders at the Annual Meeting of Stockholders in 2018:

RESOLVED, that shareholders of AmerisourceBergen Corporation ("AmerisourceBergen") urge the Board of Directors (the "Board") to report to shareholders by September 30, 2018 on the governance measures AmerisourceBergen has implemented since 2012 to more effectively monitor and manage financial and reputational risks related to the opioid crisis in the U.S., given AmerisourceBergen's distribution of opioid medications, including whether AmerisourceBergen has assigned responsibility for such monitoring to the Board or one or more Board committees, revised senior executive compensation metrics or policies, adopted or changed mechanisms for obtaining input from stakeholders, or altered policies or processes regarding company political activities.

The report should be prepared at reasonable cost and should omit confidential and proprietary information.

Copies of the Proposal, the Supporting Statement, and the related correspondence between the Company and the Proponents are attached to this letter as Exhibit A.

BASES FOR EXCLUSION

The Company respectfully requests that the Staff concur in its view that the Proposal and the Supporting Statement may be excluded from the 2018 Proxy Materials pursuant to (i) Rule 14a-8(i)(7), because the Proposal involves matters that relate to the ordinary business operations of the Company; (ii) Rule 14a-8(i)(10), because the Company has already substantially

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implemented the Proposal; and (iii) Rule 14a-8(i)(7), because the Proposal seeks to “micromanage” the Company.

ANALYSIS

I. The Company May Exclude the Proposal Pursuant to Rule 14a-8(i)(7) Because the Proposal Involves Matters that Relate to Ordinary Business Operations of the Company.

Rule 14a-8(i)(7) permits a company to exclude a stockholder proposal from its proxy materials “[i]f the proposal deals with a matter relating to the company’s ordinary business operations.” The Commission explained that the “general underlying policy” of the ordinary business exclusion 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.” Exchange Act Release No. 34-40018 (May 21, 1998) (the “1998 Release”). The Commission identified two central considerations that underlie this policy. The first was that “[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.” The second consideration relates to “the degree to which the proposal seeks to ‘micro-manage’ the company by probing too deeply into matters of a complex nature upon which stockholders, as a group, would not be in a position to make an informed judgment.” *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)).

Regarding proposals requesting the dissemination of a report, the Commission stated that the Staff “will consider whether the subject matter of the special report ... involves a matter of ordinary business; where it does, the proposal will be excludable” under Rule 14a-8(i)(7). Exchange Act Release No. 34-20091 (Aug. 16, 1983). Similarly, the Staff has indicated that, where a proposal relates to an evaluation of risk, “rather than focusing on whether a proposal and supporting statement relate to the company engaging in an evaluation of risk, [the Staff] will instead focus on the subject matter to which the risk pertains or that gives rise to the risk.” Staff Legal Bulletin 14E (Oct. 27, 2009) (“SLB 14E”).

A. The Proposal’s Subject Matter Concerns the Distribution of Particular Products.

The Proposal may be excluded in reliance on Rule 14a-8(i)(7) because it relates to the distribution of particular products, which the Staff has recognized as an ordinary business matter. See Cardinal Health, Inc., (Aug. 4, 2017) (granting relief for a pharmaceutical distributor to exclude a proposal requesting that the company issue a report describing the controlled distribution systems it implements on behalf of manufacturers to prevent the

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diversion of restricted medicines to prisons for use in executions, and its process for monitoring and auditing these systems to check for and safeguard against failure, noting that the proposal related “to the sale or distribution of particular products to its customers”) and McKesson Corp. (Jun. 1, 2017) (same).

The Company provides pharmaceutical products, value-driving services and business solutions that improve access to care. It distributes a comprehensive offering of brand-name and generic pharmaceuticals, home healthcare supplies and equipment, over-the-counter healthcare products, plasma and other blood products, vaccines, and specialty pharmaceutical products used to treat complex diseases, such as cancer, diabetes, and multiple sclerosis. Moreover, the Company provides additional services to physicians who specialize in a variety of disease states, especially oncology, and to other healthcare providers, including hospitals and dialysis clinics. In addition, the Company conducts a variety of other businesses, including consulting, animal health and global specialty logistics.

The Proposal requests the Board of Directors (the “Board”) to report on “the governance measures AmerisourceBergen has implemented since 2012 to more effectively monitor and manage financial and reputational risks related to the opioid crisis in the U.S., given AmerisourceBergen’s ***distribution*** of opioid medications” (emphasis added). The Company believes the Proposal may be excluded under Rule 14a-8(i)(7) because it would be consistent with Staff precedent granting relief for proposals requesting reports by the board of directors of companies whose boards assess the financial, reputational, or other risks from selling or distributing particular products to their customers. In Walgreens Boots Alliance, Inc. (Nov. 7, 2016, recon. denied Nov. 22, 2016), the Staff concurred with the exclusion of a proposal requesting that the board issue a report “assessing the financial risk, including long-term legal and reputational risk, of continued sales of tobacco products in the company’s stores” because the proposal related to the company’s ordinary business operations. Like the proposal in Walgreens, which focused on the financial and reputational risks of tobacco products, the Proposal focuses on the “financial and reputational risks related to the opioid crisis.” Moreover, the Supporting Statement makes it clear that the focus here is on “effectively addressing opioid-related risks.” The Supporting Statement adds that it is unclear “from AmerisourceBergen’s Board committee charters or proxy statement whether a specific Board committee monitors opioid-related financial and reputational risks” and that “none of the Board committees [have] been assigned specific responsibility for overseeing potentially opioid-related compliance matters such as DEA reporting.” These concerns relate directly to the Company’s distribution of opioid products, which is an ordinary business matter.

The Staff has granted Rule 14a-8(i)(7) relief for additional proposals requesting reports relating to the sale or distribution of certain products based on its view that the subject matter of those reports related to ordinary business matters, consistent with its position expressed in SLB 14E

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that it will “look to the underlying subject matter of the report ... to determine whether the proposal relates to ordinary business.” See, e.g., Wells Fargo & Co. (Jan. 28, 2013, recon. denied Mar. 4, 2013) (granting relief for a proposal requesting that the board prepare a report discussing the adequacy of the company’s policies in addressing the social and financial impacts of direct deposit advance lending because the proposal related to the products and services offered for sale by the company); CVS Caremark Corp. (Feb. 25, 2010) (granting relief for a proposal requesting that the board issue a report on how the company was responding to rising public pressures to discourage sales of tobacco products because the proposal concerned the sale of a particular product); and Rite Aid Corp. (Mar. 26, 2009) (granting relief for a proposal requesting that the board issue a report to shareholders on how the company is responding to rising regulatory, competitive and public pressures to halt sales of tobacco products).

In CVS Caremark, the Staff noted that “CVS [was] not involved in manufacturing tobacco products.” Similarly, AmerisourceBergen does not manufacture the opioid products that it distributes. Just as tobacco was one of the many products CVS sold when the Staff granted relief, opioids are a subset of the thousands of products that the Company distributes to its customers, as described above. Considering and managing risks related to a particular product or type of product is part of the Company’s ordinary business operations because it does so with every product or type of product that it distributes to customers. The selection of products to be distributed to its customers is an integral part of the Company’s business. These decisions are fundamental to management’s ability to control the operations of the Company.

The Staff has granted Rule 14a-8(i)(7) relief for proposals relating to reports addressing the risks of offering, selling, or distributing particular products or services in slightly different contexts. In Amazon.com (Mar. 11, 2016), the proposal requested that Amazon issue a report addressing animal cruelty in the supply chain, including assessing “the reputational and financial risks associated with lack of a consistent prohibition on products involving animal cruelty.” The Staff granted relief because the proposal related “to the products and services offered for sale by the company.” See also Eli Lilly and Company (Feb. 10, 2017) (granting relief for a proposal requesting that the board issue a report including, among other things, an assessment of the legislative, regulatory, reputational and financial risks related to the rates of price increases of the company’s top ten selling branded prescription drugs).

B. Even if the Proposal Focuses on a Significant Social Policy Issue, There Is an Insufficient Nexus between the Issue and the Company’s Operations.

SLB 14E states that, “[i]n those cases in which a proposal’s underlying subject matter transcends the day-to-day business matters of the company and raises policy issues so significant that it would be appropriate for a shareholder vote, the proposal generally will not be excludable under Rule 14a-8(i)(7) as long as a sufficient nexus exists between the nature of

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the proposal and the company” (emphasis added). SLB 14E further states that, “[i]n determining whether the subject matter raises significant policy issues and has a sufficient nexus to the company ... we will apply the same standards that we apply to other types of proposals under Rule 14a-8(i)(7).” The Staff reaffirmed this position in note 32 of Staff Legal Bulletin 14H (Oct. 22, 2015), which cites SLB 14E and explains that “[w]hether the significant policy exception applies depends, in part, on the connection between the significant policy issue and the company’s business operations.”

Consistent with this position, the Staff has concluded that a proposal relating to a *manufacturer’s* sale of a particular product may not be excluded because of the nexus between the manufacturer’s operations and the proposal. However, the Staff has indicated repeatedly that no such nexus exists between a retailer’s or distributor’s operations and a proposal relating to the sale of a particular product by a retailer or distributor of products. Compare Philip Morris Companies, Inc. (Feb. 22, 1990) (denying relief for a proposal requesting a tobacco manufacturer to amend its charter to prohibit it from conducting any business in tobacco or tobacco products) and Sturm, Ruger & Co. (Mar. 5, 2001) (proposal asking the board of a gun manufacturer to provide a report on company policies and procedures focused on reducing gun violence in the U.S.) with Rite Aid Corporation (Mar. 24, 2015) (granting relief for a proposal requesting additional oversight by a retailer concerning the sale of certain products, in particular tobacco products) and Wal-Mart Stores, Inc. (Mar. 20, 2014) (granting relief for a proposal requesting additional oversight by a retailer concerning the sale of certain products, in particular firearms). The stockholder proposals in both Philip Morris and Sturm, Ruger & Co. related to the manufacture of products by the manufacturer of those products, whereas the Staff noted that both the Rite Aid and Wal-Mart proposals related to the “sale of particular products and services.” The lack of a sufficient nexus in Rite Aid and Wal-Mart is similar to the lack of a sufficient nexus in the Proposal, if the Staff were to consider the Proponents’ concern about the opioid crisis to be a significant policy issue. Thus, the Proposal should be evaluated in a manner consistent with the Staff’s evaluation of the proposals in Rite Aid and Wal-Mart. There, notwithstanding the proponents’ concerns about tobacco harm and gun violence, the Staff agreed with the exclusion of their proposals because those companies sold tobacco products and guns as well as many other products. Similarly, notwithstanding the Proponents’ concern about the opioid crisis, the Company believes that it may exclude the Proposal because it distributes opioid products as well as many other over-the-counter and non-opioid products to hospitals, pharmacies, and other customers.

The Staff has also applied the foregoing rationale to distributors such as the Company. In Cardinal Health and McKesson, cited above, the Staff granted relief for proposals requesting that each company issue a report describing the controlled distribution systems it implements on behalf of manufacturers to prevent the diversion of restricted medicines to prisons for use in

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executions, and its process for monitoring and auditing these systems to check for and safeguard against failure, noting that the proposal related “to the sale or distribution of particular products to its customers.”¹ Similarly, in Pfizer, Inc. (Mar. 1, 2016), the Staff granted relief for a proposal requesting that the company issue a report describing the steps the company has taken or will take to identify and remedy the flaws in its current distribution system for certain products to prevent their sale to prisons for the purpose of aiding executions, because the proposal related to “the sale or distribution of” Pfizer’s products.

In Walgreens, the Staff granted relief for a proposal requesting a report assessing the risks of continued sales of tobacco products in the company’s stores despite the lengthy discussion of the harm of tobacco in the supporting statement for the proposal. The Staff’s concurrence with excluding the proposal was consistent with its views in Rite Aid and Wal-Mart since Walgreens is also a seller and not a manufacturer of tobacco products. The Proponents’ concern over the opioid crisis is the focus of their discussion in the Supporting Statement. Since the Company does not manufacture the opioid products that it distributes, the Staff’s precedent in Walgreens, Rite Aid, and Wal-Mart supports the Company’s request for exclusion because there is not a sufficient nexus between the Proposal’s concern about the opioid crisis and the Company’s core operations as a *distributor* of pharmaceutical products.

In this regard, the Supporting Statement refers to AmerisourceBergen’s distributions to pharmacies, but those are just one set of customers to which the Company distributes pharmaceutical products or provides services. Other customers include healthcare providers, including acute care hospitals and health systems, medical clinics and long-term care and alternate site pharmacies. The Supporting Statement focuses on opioid use, abuse, and dependency and provides data from the Center for Disease Control and Prevention (the “CDC”) about the number of deaths in the U.S. from opioid use. Although the CDC’s website reports that “as many as one in four patients receiving long-term opioid therapy in a primary care setting struggles with opioid addiction,”² it also states that research has identified the following specific risk factors that make people particularly vulnerable to prescription opioid abuse and overdose: “[o]btaining overlapping prescriptions from multiple providers and pharmacies;” “[t]aking high daily dosages of prescription pain relievers;” “[h]aving mental illness or a history of alcohol or other substance abuse,” and “[l]iving in rural areas and having low income.”³ None of these risk factors relate to the Company’s business of providing services for and distributing pharmaceutical products to healthcare providers, including acute care hospitals and health systems, pharmacies, medical clinics, and other customers.

¹ As disclosed in the Company’s Form 10-K for the fiscal year ended September 30, 2016, Cardinal Health, Inc. and McKesson Corporation are the Company’s largest competitors.

² <https://www.cdc.gov/drugoverdose/opioids/prescribed.html#tabs-2-4>.

³ <https://www.cdc.gov/drugoverdose/opioids/prescribed.html#tabs-2-3>.

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According to the CDC's assessment, to prevent opioid overdose deaths, primary care clinicians and physicians must follow proper prescription practices: "[t]o reverse this epidemic, we need to improve the way we treat pain. We must prevent abuse, addiction, and overdose before they start."⁴ The CDC focused on issuing guidance for primary care clinicians who are prescribing opioids for chronic pain outside of active cancer treatment, palliative care, and end-of-life care.⁵ The CDC's recommendations focus on assisting physicians to determine when to initiate or continue opioids for chronic pain. The guidelines discuss several effective alternatives for treating chronic pain, suggesting that patients have been prescribed opioids despite the availability of other alternatives.⁶ The Company and its employees do not prescribe or manufacture the opioid products that the Company distributes, which are among the thousands of pharmaceutical products that it distributes. As such, even if the Staff views the opioid crisis as a significant policy issue, there is not a sufficient nexus between the Company's business of providing services and distributing pharmaceutical products on the one hand and opioid use, abuse and dependency on the other.

We note also that the Proposal does not focus on the Board's oversight role in risk management, which the Staff has identified as a significant policy issue in SLB 14E. Instead, the Proposal focuses on the opioid crisis, which, as discussed above, does not share a sufficient nexus with the Company's business of distributing pharmaceutical products and providing services to its customers. Three of the five paragraphs in the Supporting Statement exclusively address distribution of opioids and the opioid crisis. Although the second paragraph refers to the Company and its competitors as "prescription drug wholesalers," it does not mention any risks related to such activity or oversight by the Board. Similarly, the third paragraph mentions a settlement into which the Company has entered, but again fails to mention oversight by the Board. Accordingly, the Proposal focuses on the Company's distribution of opioid products rather than on Board oversight of risks relating to that ordinary business matter.

⁴ <https://www.cdc.gov/drugoverdose/opioids/prescribed.html#tabs-2-2>.

⁵ <https://www.cdc.gov/mmwr/volumes/65/rr/rr6501e1.htm>.

⁶ The guidelines state:

The contextual evidence review found that many nonpharmacologic therapies, including physical therapy, weight loss for knee osteoarthritis, psychological therapies such as [cognitive behavioral therapy], and certain interventional procedures can ameliorate chronic pain. There is high-quality evidence that exercise therapy (a prominent modality in physical therapy) for hip or knee osteoarthritis reduces pain and improves function immediately after treatment and that the improvements are sustained for at least 2–6 months. Previous guidelines have strongly recommended aerobic, aquatic, and/or resistance exercises for patients with osteoarthritis of the knee or hip. Exercise therapy also can help reduce pain and improve function in low back pain and can improve global well-being and physical function in fibromyalgia. Id. (Emphases added)

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This Proposal is similar to other proposals that sought to avoid exclusion under Rule 14a-8(i)(7) by merely mentioning, but not focusing on, a significant policy issue. For example, the proposal in Comcast Corporation (Mar. 2, 2017) sought a board report on the company's assessment of the political activity and lobbying resulting from its media outlet and its exposure to risk resulting therefrom. The proposal sought to characterize Comcast's spending of funds used to operate its media outlet as political spending and lobbying, which the Staff has recognized as significant policy issues. However, the crux of the proposal was on the company's operation of its media outlet, an ordinary business matter for Comcast. Similarly, the Proponents attempt to connect the issue of board oversight of risk management to their primary concern—the Company's ordinary business of distributing a particular type of product.⁷ Accordingly, the Company believes the Proposal does not raise the significant policy issue of Board oversight of the Company's management of risk and is therefore excludable.

II. The Company May Exclude the Proposal Pursuant to Rule 14a-8(i)(10) Because the Company has Already Substantially Implemented the Proposal.

Rule 14a-8(i)(10) provides that a company may exclude a stockholder proposal from its proxy materials “[i]f the company has already substantially implemented the proposal.” When first adopting this exclusion, the Commission explained that the Rule was “designed to avoid the possibility of shareholders having to consider matters which have already been favorably acted upon by the management...” Exchange Act Release No. 12,598, 9 SEC Dock. 1030, 1035 (1976). In analyzing requests for exclusion under Rule 14a-8(i)(10), the Staff does not require full implementation of the proposal, but instead considers whether the company's policies, practices and procedures “compare favorably” with the guidelines set forth in the proposal. See, e.g., Texaco, Inc. (Mar. 28, 1991). Staff precedent indicates that a proposal requesting a report is substantially implemented where the company can demonstrate that it has made the subject matter of the requested report available publicly, such as on its website. See, e.g., Mondelez International, Inc. (Mar. 7, 2014) (granting relief for a proposal requesting the board to report on the company's process for identifying and analyzing potential and actual human rights risks of its operations and supply chain, where the company made relevant information available on its website).

The Proposal requests a report to stockholders on the governance measures the Company has implemented since 2012 to more effectively monitor and manage financial and reputational risks related to the opioid crisis in the U.S. The resolved clause includes four examples of such measures: (1) assigning responsibility for monitoring the foregoing risks to the Board or any committee(s), (2) revising senior executive compensation metrics or policies, (3) adopting or

⁷ See also CBS Corporation (Mar. 2, 2017) (same).

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changing mechanisms for obtaining input from stakeholders, and (4) altering policies or processes regarding Company political activities.

With respect to the first example—measures relating to “assigning responsibility for monitoring the foregoing risks to the Board or any committee(s)”—the Company has taken many steps since even before 2012 to monitor and manage risks more effectively, including risks related to the distribution of all of its products, including, but not limited to, its opioid-related products. These measures enhance the understanding and quality of the oversight of the Company related to compliance with regulations, governmental actions, and the risks related to specific areas, including the distribution of opioid products. As disclosed in the 2017 Proxy Statement, “the Board executes its oversight responsibility for risk management directly and through its committees.”⁸

According to the Company’s proxy statement for its 2017 Annual Meeting of Stockholders (the “2017 Proxy Statement”), the Audit and Corporate Responsibility Committee “[i]nquires of management ... about significant risks or exposures (whether financial, operational, or otherwise) and assesses the steps management has taken to control such risks or exposures, including policies implemented for such purposes” (emphases added).⁹ Also, it “discusses specific risk areas throughout the year, including those that may arise in various business units and the measures taken by management to monitor and limit risk.”¹⁰ Indeed, the responsibilities disclosed in the Audit and Corporate Responsibility Committee’s charter, which, like the other committee charters, is posted on the Company’s website, include “obtain[ing] reports from management, including the Company’s Chief Compliance Officer and/or the Company’s counsel regarding the Company’s compliance with applicable legal requirements and the Company’s Code of Ethics and Business Conduct,” and “oversee[ing] the development and implementation by management of an enterprise risk management program that is designed to assist the Company with monitoring and mitigating business, operational, technological and information security risks, including emerging risks, related to the Company’s business.”¹¹ Management reports regularly to the Audit and Corporate Responsibility Committee, providing ethics, compliance and legal updates at committee meetings, along with periodic updates of any significant government investigations and other legal proceedings. As disclosed in the 2017 Proxy Statement, the Audit and Corporate Responsibility Committee “receives regular reports throughout the year on matters related to

⁸ AmerisourceBergen Corporation, Definitive Proxy Statement on Schedule 14A, filed Jan. 20, 2017, page 2.

⁹ Id. at 14.

¹⁰ Id. At 22.

¹¹ AmerisourceBergen Corporation, Audit and Corporate Responsibility Committee Charter, available at: <http://www.amerisourcebergen.com/investor/External.File?item=UGFyZW50SUQ9MzU5MTMwfENoaWxkSUQ9LTF8VHlwZT0z&t=1&cb=636150028061734451>.

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risk management.”¹²

Meanwhile, the charter of the Compensation & Succession Planning Committee (the “Compensation Committee”) requires the Compensation Committee to review the Company’s compensation, equity and cash incentive compensation programs and practices for management, including recoupment, “to ensure they align with stockholder interests and satisfy the Company’s overall performance objectives and risk management and risk mitigation policies,” which “includes determining that incentives do not encourage excessive risk-taking in business decisions.”¹³ The charter states also that the Compensation Committee must assess “at least annually risks related to the Company’s compensation programs affecting all employees.”¹⁴

As disclosed in the 2017 Proxy Statement, “[e]ach Board committee reports to the Board at every regular Board meeting on the topics discussed and actions taken at the most recent committee meeting. The Board discusses the risks and exposures, if any, involved in the matters or recommendations of the committees, as necessary.”¹⁵ In this regard, we note that on an annual basis, management reviews its enterprise risk management program with the Board. The implementation of this robust program results in the identification of risks related to the Company’s operations and activities intended to mitigate those risks. Furthermore, since 2012, management has periodically provided an update at regularly scheduled Board and committee meetings on, among other areas, legal and regulatory matters as well as core governance and compliance activities.

In addition, the Company’s Corporate Governance Principles (the “Principles”), which are available on the Company’s website and were last amended by the Board in November 2016 in connection with the Board’s annual review of those Principles, state that the Company’s business is conducted under the direction of the CEO “and the oversight of the Board.”¹⁶ Accordingly, the Board and its committees “actively engage in risk management and assessment for all aspects of [the Company’s] business.”¹⁷ Indeed, as noted in the Principles, the Board “reviews and discusses reports by management on ... immediate issues facing the Company,” and “in addition

¹² Definitive Proxy Statement, supra note 8, at 23.

¹³ AmerisourceBergen Corporation, Compensation and Succession Planning Committee Charter, available at: <http://www.amerisourcebergen.com/investor/External.File?item=UGFyZW50SUQ9MzU5MTMxfENoaWxkSUQ9LTF8VHlwZT0z&t=1&cb=636150027023433273>.

¹⁴ Id.

¹⁵ Definitive Proxy Statement, supra note 8, page 23.

¹⁶ AmerisourceBergen Corporation Corporate Governance Principles, available at: <http://www.amerisourcebergen.com/investor/External.File?item=UGFyZW50SUQ9MzU5MTI3fENoaWxkSUQ9LTF8VHlwZT0z&t=1&cb=636149997216252655>.

¹⁷ Definitive Proxy Statement, supra note 8, page 2.

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to its general oversight of management, the Board also performs a number of specific functions, including ... assessing major risks facing the Company and reviewing options for their mitigation.”¹⁸

Furthermore, the Governance and Nominating Committee’s (the “Governance Committee”) also oversees the Company’s management of risk by evaluating the Board’s governance, including the Principles. The Governance Committee’s charter states that its role is “to review the structure, composition and function of the Board and its committees.”¹⁹ Its responsibilities include “evaluating and advising the Board on the Company’s approach to corporate governance, including the adoption of [the] Principles subject to Board approval.”²⁰ The 2017 Proxy Statement lists among the Governance Committee’s duties and responsibilities “[r]eview[ing] and mak[ing] recommendations to the Board about corporate governance” and “[m]onitor[ing] the Company’s ... corporate governance practices.”²¹

The foregoing disclosures from the 2017 Proxy Statement, the Principles, and the committee charters, all of which are available publicly on the Company’s website, make it clear that the Board and its committees have responsibility for overseeing risks. Accordingly, the Company believes its public disclosures substantially implement the first example in the resolved clause. Furthermore, the Company does not believe that it is necessary or common to specifically reference risks related to particular categories of products in corporate governance documents, especially when a company sells many types of products across a variety of businesses.

With respect to the second example in the Proposal—revising senior executive compensation metrics or policies—we note the above discussion of the Compensation Committee’s responsibilities. In addition to reviewing compensation policies and metrics for management and *all* Company employees, the Compensation Committee and the Board evaluates the Compensation Committee’s charter regularly, as disclosed in the 2017 Proxy Statement.²² Since 2012, the Compensation Committee’s charter has been reviewed regularly and amended five times, most recently in November 2016, and it will be reviewed again in November 2017.

With respect to the third example—measures relating to “adopting or changing mechanisms for obtaining input from stakeholders”—the Company strives to maintain constructive, ongoing communications with all of its stockholders and welcomes and values their input, as well as the

¹⁸ Id.

¹⁹ AmerisourceBergen Corporation, Governance and Nominating Committee Charter, available at: <http://www.amerisourcebergen.com/investor/External.File?item=UGFyZW50SUQ9MzU5MTI4fENoaWxkSUQ9LTF8VHlwZT0z&t=1&cb=636150000393459184>.

²⁰ Id.

²¹ Definitive Proxy Statement, supra note 8, page 15.

²² Definitive Proxy Statement, supra note 8, page 31.

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input of other stakeholders. In this regard, the Principles state that the “Board is willing to consider the direct engagement of one or more directors with stockholders with respect to key areas of Board oversight and responsibilities” (emphasis added).²³ The Board evaluates and revises mechanisms for obtaining input from stakeholders by reviewing the Principles regularly, having amended them four times since 2012, most recently in November 2016, and it will review them again in November 2017.

With respect to the last example—altering policies or processes regarding Company political activities—the Company published its Policy Statement on Political Engagement on its website in February 2017 (the “Policy Statement”). The Policy Statement indicates that the Company made the Policy Statement publicly available to “increase transparency about our engagement in the political process.”²⁴ It states also that, “to improve access to information about our expenditures for political contributions and lobbying activities, we will disclose annually on our website the aggregate amount of these expenditures for the prior year.”²⁵ The Company’s transparency in making such information available publicly addresses the Proponents’ concern that “shareholders would benefit from a fuller understanding of governance mechanisms.”²⁶

Meanwhile, the Supporting Statement claims it is not clear from the Company’s committee charters or proxy statement whether a specific Board committee monitors opioid-related financial and reputational risks. Again, the 2017 Proxy Statement discloses that the Board and its committees “actively engage in risk management and assessment for all aspects of our business.”²⁷ Opioid products are among the thousands of products the Company distributes, and the Audit and Corporate Responsibility Committee inquires of management “about significant risks or exposures (whether financial, operational, or otherwise) and assesses the steps management has taken to control such risks or exposures.”²⁸ The Supporting Statement claims also that none of the Board committees have been assigned responsibility for overseeing opioid-related compliance matters. Yet, the Audit and Corporate Responsibility Committee charter identifies one of that committee’s responsibilities as “[o]btain[ing] reports from management, including the Company’s Chief Compliance Officer and/or the Company’s counsel regarding the Company’s compliance with applicable legal requirements and the Company’s Code of Ethics

²³ Corporate Governance Principles, supra note 14. See also Definitive Proxy Statement, supra note 8, at page 24 (informing stockholders that the Principles “describe the procedures through which stockholders may seek direct engagement with Board members”).

²⁴ AmerisourceBergen Corporation Policy Statement on Political Engagement, available at: http://media.corporate-ir.net/media_files/IROL/61/61181/ABC Policy Statement Engagement in Political Process 2 16 2017.pdf.

²⁵ Id.

²⁶ Id.

²⁷ Definitive Proxy Statement, supra note 8, page 2.

²⁸ Definitive Proxy Statement, supra note 8, page 14.

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and Business Conduct.”²⁹

The Company believes that the Proposal has already been substantially implemented because its existing disclosures compare favorably with the substance of the Proposal. The discussion above confirms that the Board reviews and evaluates its responsibilities and the Company’s governance documents regularly, as disclosed in the 2017 Proxy Statement,³⁰ amending several of them within the last year. In doing so, the Board and its committees consider various risks—financial, reputational, and otherwise—facing the Company and its business, determining what measures to change or adopt. The Company’s proxy disclosure, the Audit and Corporate Responsibility Committee’s and the Compensation Committee’s charters, and the Principles indicate that the Board and its different committees are responsible for monitoring and overseeing the management of all risks relating to the Company, including those arising from the Company’s business operations, such as the distribution of its products. The Compensation Committee evaluates compensation policies and metrics for senior management and all employees regularly, revising them when necessary or appropriate, per its charter. The Board has mechanisms for engaging with stockholders and other stakeholders that it evaluates regularly, as set forth in the Principles and as disclosed in the 2017 Proxy Statement. Lastly, the Company’s Policy Statement on Political Engagement describes the policies and processes regarding Company political activities. All of this information is available publicly to stockholders, as requested by the Proposal, through the Company’s website. Accordingly, the Company believes it has already substantially implemented the Proposal and that relief for exclusion of the Proposal under Rule 14a-8(i)(10) is thereby warranted.

III. The Company May Exclude the Proposal Pursuant to Rule 14a-8(i)(7) Because the Proposal Seeks to Micromanage the Company.

The Staff consistently has granted relief under Rule 14a-8(i)(7) for proposals that seek to “micromanage the 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.” See, e.g., The Wendy’s Company (Mar. 2, 2017) (granting relief for a proposal urging the board “to take all necessary steps to join the Fair Food Program as promptly as feasible for the purpose of protecting and enhancing consumer and investor confidence in the Wendy’s brand as it relates to the purchase of produce, and to prepare a report concerning the implementation of the proposal”).

If the Proponents seek more Board and committee governance actions and other governance information than that disclosed through the Company’s publicly-available committee charters,

²⁹ Audit and Corporate Responsibility Committee Charter, supra note 3.

³⁰ Definitive Proxy Statement, supra note 8, pages 1 and 21.

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the Principles, the Policy Statement on Political Engagement and the disclosure in the 2017 Proxy Statement (which the Company believes substantially implement the Proposal), then the Company believes that the Proposal would be seeking to micromanage the Company. A report with more detail than what the Company has provided through the disclosures discussed in Section II of this letter would constitute a level of complexity upon which stockholders, as a group, would not be in a position to make an informed judgment or voting decision.

The Proposal requests a report on governance measures implemented to more effectively monitor and manage financial and reputational risks related to the opioid crisis, including many Board-related measures, such as assigning monitoring responsibility to the Board or a Board committee. The Supporting Statement then states that, in the Proponents' view, "Board-level oversight and governance reforms can play an important role in effectively addressing opioid-related risks..." As an example of what such governance reforms should address, the Supporting Statement cites the need for Board committees to have "specific responsibility for overseeing potentially opioid-related compliance matters such as DEA reporting" (emphasis added). Given the Board's clear responsibilities to oversee risk management, including through its committees, as described in Section II above, it appears the Proponents are asking for granular information about the Company's risk management practices rather than the Board's role in overseeing risk. Overseeing compliance efforts, such as Drug Enforcement Administration ("DEA") reporting, and managing risks emanating therefrom are the types of day-to-day business operating decisions and responsibilities that the Commission indicated through the 1998 Release are too impractical and complex to be subject to direct stockholder oversight.

Furthermore, a report from the Board on governance measures relating to "compliance measures such as DEA reporting" would involve detailed and complex matters upon which stockholders, as a group, would not be in a position to make an informed judgment. Among other things, DEA regulations include various security and operating standards and regulations governing the sale, marketing, compounding, packaging, holding, distribution, and reporting related to controlled substances. Pharmaceuticals referred to colloquially as "opioids," like many other controlled substances, are categorized under Schedule II, meaning they can be prescribed legally but are regulated strictly due to their potential for abuse.

As disclosed in the Company's most recent Form 10-K, the Company is "required to hold valid DEA and state-level licenses, meet various security and operating standards and comply with the Controlled Substances Act and its implementing regulations governing the sale, marketing, packaging, compounding, holding and distribution of controlled substances."³¹

³¹ AmerisourceBergen Corporation, Form 10-K for the fiscal year ended September 30, 2016, page 10.

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For example, the Company's DEA reporting and compliance program, which is part of the Company's broader compliance and risk management program, involves significant reporting and oversight at every facility the Company operates. One of the more important aspects of DEA reporting for Schedule II drugs is tracking, recording, and reporting customer orders. Orders are typically transmitted through a DEA-approved Controlled Substance Order System ("CSOS"). Every CSOS order has to be vetted electronically via the DEA before it is authorized to be filled. The DEA verifies the authenticity of the DEA registration and the individual digital certificate for the person placing the order. In addition, each CSOS order filled is reported to the DEA daily. The Company also submits daily reporting to the DEA of all controlled substances sold, including opioid products, and reports all Schedule II transactions monthly.

In addition, the DEA imposes strict inventory requirements on Schedule II products, requiring a year-end inventory of Schedule II products and a biennial inventory of all controlled substances on hand in a facility. According to the DEA, each inventory must address (1) whether the inventory was taken at the beginning or close of business; (2) the names of controlled substances; (3) each finished form of the substances (i.e., 100 milligram tablet); (4) the number of dosage units of each finished form in the commercial container (i.e., 100 tablet bottle); (5) number of commercial containers of each finished form (i.e., four 100 tablet bottles); and (6) the disposition of the controlled substances.³²

The foregoing examples address only a part of the Company's DEA reporting efforts for Schedule II drugs, such as opioids. In addition to DEA reporting, the Company's broader compliance efforts include compliance with regulations from the U.S. Food and Drug Administration and various state authorities. Indeed, other federal regulations cover also the shipping of products; prohibitions on markings, labels, or any other method of identifying the contents of Schedule II packages or parcels customer returns; destruction of outdated, damaged, or non-saleable products (including processing DEA Form 41); verification of customer DEA and state licensing; record keeping procedures; responding to requests from the DEA or state regulatory authorities for information, including records, about controlled substances; hiring procedures; theft or loss of controlled substances; and product recalls.

A report to stockholders addressing the foregoing, along with the rest of the Company's compliance matters related to opioid products, would probe 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. As discussed in Section II above, the Audit and Corporate Responsibility Committee's charter states that the committee's responsibilities include "obtain[ing] reports

³² Drug Enforcement Administration, "Practitioner's Manual – Section IV – Recordkeeping Requirements (last accessed Oct. 27, 2017), available at: <https://www.deadiversion.usdoj.gov/pubs/manuals/pract/section4.htm>.

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from management, including the Company's Chief Compliance Officer and/or the Company's counsel regarding the Company's compliance with applicable legal requirements."³³ Boards typically exercise their oversight responsibilities by engaging with management, whose officers are the ones tasked with direct monitoring of risks as well as compliance and regulatory reporting efforts. If the Proposal requires information beyond what the Company has disclosed with respect to Board oversight of risk management, as discussed in Section II above, then the Company believes the Proposal seeks to micromanage the Company.

In SeaWorld Entertainment, Inc., (Mar. 30, 2017, recon. denied Apr. 17, 2017), the Staff granted relief for a proposal urging the board "to retire the current resident orcas to seaside sanctuaries and replace the captive-orca exhibits with innovative virtual and augmented reality or other types of non-animal experiences" because the proposal sought to micromanage the company. The company argued that management, in consultation with the board and other stakeholders, already had adopted a plan to phase out its orcas and the proposal sought to micromanage the company by substituting the business considerations taken into account in adopting that plan with the proponent's business considerations. Similarly, the Proponents seek information about how the Company's existing compliance and risk management program relates to opioids, which is a level of detail about the day-to-day activities related to the Company's distribution of a specific type of product that cannot, as a practical matter, be subject to shareholder oversight.

A report as to how the Company assesses the risks related to a specific class of product would require detailed and complex information that would implicate micromanagement by the Company's stockholders of the Company's complex day-to-day business operations in the manner the Commission sought to avoid by issuing the guidance in the 1998 Release. Here, stockholders are not being asked to vote on the Board's oversight of management's risk management; instead, they are being asked to vote on whether the Board should report on specific Company activities related to the financial and reputational risks of distributing opioids.

The Proponents' claim that the Company's existing governance documents and disclosures do not address the Board's responsibility over opioid-related risks suggests that the Proponents want detailed information about the Company's specific compliance activities. The complexity and the amount of detail involved in the Company's compliance efforts would result in the Proposal relating to the micromanagement of the Company. Therefore, consistent with the foregoing precedent, the Company believes it may exclude the Proposal and Supporting Statement from the 2018 Proxy Materials pursuant to Rule 14a-8(i)(7).

³³ Audit and Corporate Responsibility Committee Charter, supra note 3.

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CONCLUSION

Based upon the foregoing analyses, the Company believes that the Proposal and the Supporting Statement may be excluded from the 2018 Proxy Materials under Rules 14a-8(i)(7) and 14a-8(i)(10). Accordingly, the Company respectfully requests the Staff's concurrence with the Company's view or, alternatively, that the Staff confirm that it will not recommend any enforcement action if the Company excludes the Proposal and the Supporting Statement from the 2018 Proxy Materials.

If we can be of any further assistance in this matter, please do not hesitate to call the undersigned at (202) 739-5658. If the Staff is unable to concur with the Company's conclusions without additional information or discussions, the Company respectfully requests the opportunity to confer with members of the Staff prior to the issuance of any written response to this letter. In accordance with Staff Legal Bulletin No. 14F, Part F (Oct. 18, 2011), please send your response to this letter by email to sean.donahue@morganlewis.com.

Very truly yours,



Sean M. Donahue

Enclosures

cc: Hyung J. Bak, AmerisourceBergen Corporation
Tom McCaney, The Sisters of St. Francis of Philadelphia
Catherine M. Rowan, Trinity Health
Rev. Sèamus Finn, OMI, OIP Investment Trust
Rabbi Josh Ratner, JLens Investor Network

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EXHIBIT A

**PROPOSAL AND
RELATED CORRESPONDENCE**



THE SISTERS OF ST. FRANCIS OF PHILADELPHIA

September 13, 2017

Hyung J. Bak
Office of the Corporate Secretary
AmerisourceBergen Corporation
1300 Morris Drive
Chesterbrook, PA 19087

Dear Mr. Bak:

Peace and all good! The Sisters of St. Francis of Philadelphia are shareholders in AmerisourceBergen and regional neighbors. As responsible shareholders, we are concerned about all consequences of the opioid crisis gripping the nation, including the financial and reputational risks facing AmerisourceBergen as a distributor of opioid-based medicines.

The Sisters of St. Francis of Philadelphia are therefore submitting the enclosed shareholder proposal regarding the governance measures AmerisourceBergen has implemented in response to the opioid crisis. I submit it for inclusion in the proxy statement for consideration and action by the stockholders at the 2018 annual meeting in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934. A representative of the shareholders will attend the annual meeting to move the resolution as required by SEC rules. Please note that the contact person for this resolution/proposal will be: Tom McCaney, Associate Director, Corporate Social Responsibility. Contact information: 610-716-2766 or tmccaney@osfphila.org.

As verification that we are beneficial owners of common stock in AmerisourceBergen, I enclose a letter from Northern Trust Company, our portfolio custodian/Record holder, attesting to the fact. It is our intention to keep these shares in our portfolio at least until after the annual meeting.

Respectfully Yours,

Tom McCaney
Associate Director, Corporate Social Responsibility

Enclosures

RESOLVED, that shareholders of AmerisourceBergen Corporation (“AmerisourceBergen”) urge the Board of Directors (the “Board”) to report to shareholders by September 30, 2018 on the governance measures AmerisourceBergen has implemented since 2012 to more effectively monitor and manage financial and reputational risks related to the opioid crisis in the U.S., given AmerisourceBergen’s distribution of opioid medications, including whether AmerisourceBergen has assigned responsibility for such monitoring to the Board or one or more Board committees, revised senior executive compensation metrics or policies, adopted or changed mechanisms for obtaining input from stakeholders, or altered policies or processes regarding company political activities.

The report should be prepared at reasonable cost and should omit confidential and proprietary information.

SUPPORTING STATEMENT

Opioid abuse is undeniably a public health crisis: The Centers for Disease Control and Prevention reported that in 2015, opioid abuse caused more than 33,000 deaths in the U.S., or 91 people per day. The economic and social effects of the opioid crisis have been profound. Opioid use and dependency, according to a recent Goldman Sachs study, is a key factor in why many men of prime working age in the U.S. are unable or unwilling to find work.

AmerisourceBergen, along with Cardinal Health and McKesson, are the largest prescription drug wholesalers in the nation. They supplied more than half of all pain pills provided to West Virginia residents between 2007 and 2012, according to news reports.

AmerisourceBergen disclosed in its most recent 10-K that its business practices related to its distribution of opioids in West Virginia and other states are the subject of multiple government investigations. In its January 2017 10-Q, AmerisourceBergen reported a \$16 million settlement with the Attorney General of the state of West Virginia over claims the company acted negligently by distributing controlled substances to pharmacies that serve individuals who abuse controlled substances, and failed to report suspicious orders of uncontrolled substances in accordance with state regulations. The House Energy and Commerce Committee has requested information from AmerisourceBergen, McKesson and Cardinal, as well as the DEA, regarding distribution of opioids; a hearing is scheduled for October 23, 2017. (<https://energycommerce.house.gov/opioids/>)

In our view, Board-level oversight and governance reforms can play an important role in effectively addressing opioid-related risks and shareholders would benefit from a fuller understanding of governance mechanisms serving that function.

For example, it is not clear from AmerisourceBergen's Board committee charters or proxy statement whether a specific Board committee monitors opioid-related financial and reputational risks; for example, none of the Board committees has been assigned specific responsibility for overseeing potentially opioid-related compliance matters such as DEA reporting. As well, AmerisourceBergen's most recent proxy statement asserts that individual performance is among the factors considered in granting annual equity incentive awards to named executive officers, but does not indicate whether any opioid-related objectives, such as promoting ethical conduct, were part of that performance assessment.

We urge shareholders to vote for this proposal.



NORTHERN
TRUST

50 S. LaSalle Street
Chicago IL 60603

September 13, 2017

To Whom It May Concern:

This letter will confirm that the Sisters of St. Francis of Philadelphia hold **36** shares of **AMERISOURCEBERGEN CORP COM, CUSIP: 03073E105**. These shares have been held for more than one year and will be held continuously through the time of your next annual meeting.

The Northern Trust Company serves as custodian/record holder for the Sisters of St. Francis of Philadelphia; the above mentioned shares are registered in the nominee name of the Northern Trust Company.

This letter will further serve to verify that Sister Nora M. Nash and/or Thomas McCaney are representatives of the Sisters of St. Francis of Philadelphia and are authorized to act on their behalf.

Sincerely,

Lisa M. Martinez- Shaffer
Second Vice President



Catherine M. Rowan
Director, Socially Responsible Investments
766 Brady Avenue, Apt. 635
Bronx, NY 10462
Phone: (718) 822-0820
Fax: (718) 504-4787

E-Mail Address: rowan@bestweb.net

September 14, 2017
Hyung J. Bak, Secretary
AmerisourceBergen Corporation
1300 Morris Drive
Chesterbrook, PA 19087

Dear Mr. Bak,

Trinity Health is the beneficial owner of over \$2,000 worth of AmerisourceBergen Corporation. Trinity Health has held these shares continuously for over twelve months and will continue to do so at least until after the next annual meeting of shareholders. A letter of verification of ownership is enclosed.

Trinity Health looks for social, environmental and governance as well as financial accountability in its investments.

I am authorized to notify you of our intention to present the attached proposal for consideration and action by the stockholders at the next annual meeting. I submit this proposal for inclusion in the proxy statement, in accordance with Rule 14-a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934.

The enclosed proposal is the same one as being filed by the Sisters of St. Francis of Philadelphia, and the primary contact for the proposal is Mr. Tom McCaney tmccaney@osfphila.org. Trinity Health is co-filing with the Sisters of St. Francis of Philadelphia this same proposal.

Sincerely,

Catherine Rowan

enc

The Northern Trust Company
50 South La Salle Street
Chicago, Illinois 60603
312-630-6000



September, 14, 2017

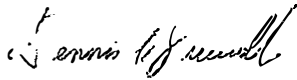
TO WHOM IT MAY CONCERN,

Please accept this letter as verification that as of September 14, 2017, Northern Trust as custodian held for the beneficial interest of Trinity Health 7,269 shares of AmerisourceBergen Corporation.

As of September 14, 2017, Trinity Health has held at least \$2,000 worth of AmerisourceBergen Corporation continuously for over one year. Trinity Health has informed us it intends to continue to hold the required number of shares through the date of the company's annual meeting in 2018.

This letter is to confirm that the aforementioned shares of stock are registered with Northern Trust, Participant Number 2669, at the Depository Trust Company.

Sincerely,


Dennis C. Zuccarelli

RESOLVED, that shareholders of AmerisourceBergen Corporation (“AmerisourceBergen”) urge the Board of Directors (the “Board”) to report to shareholders by September 30, 2018 on the governance measures AmerisourceBergen has implemented since 2012 to more effectively monitor and manage financial and reputational risks related to the opioid crisis in the U.S., given AmerisourceBergen’s distribution of opioid medications, including whether AmerisourceBergen has assigned responsibility for such monitoring to the Board or one or more Board committees, revised senior executive compensation metrics or policies, adopted or changed mechanisms for obtaining input from stakeholders, or altered policies or processes regarding company political activities.

The report should be prepared at reasonable cost and should omit confidential and proprietary information.

SUPPORTING STATEMENT

Opioid abuse is undeniably a public health crisis: The Centers for Disease Control and Prevention reported that in 2015, opioid abuse caused more than 33,000 deaths in the U.S., or 91 people per day. The economic and social effects of the opioid crisis have been profound. Opioid use and dependency, according to a recent Goldman Sachs study, is a key factor in why many men of prime working age in the U.S. are unable or unwilling to find work.

AmerisourceBergen, along with Cardinal Health and McKesson, are the largest prescription drug wholesalers in the nation. They supplied more than half of all pain pills provided to West Virginia residents between 2007 and 2012, according to news reports.

AmerisourceBergen disclosed in its most recent 10-K that its business practices related to its distribution of opioids in West Virginia and other states are the subject of multiple government investigations. In its January 2017 10-Q, AmerisourceBergen reported a \$16 million settlement with the Attorney General of the state of West Virginia over claims the company acted negligently by distributing controlled substances to pharmacies that serve individuals who abuse controlled substances, and failed to report suspicious orders of uncontrolled substances in accordance with state regulations. The House Energy and Commerce Committee has requested information from AmerisourceBergen, McKesson and Cardinal, as well as the DEA, regarding distribution of opioids; a hearing is scheduled for October 23, 2017. (<https://energycommerce.house.gov/opioids/>)

In our view, Board-level oversight and governance reforms can play an important role in effectively addressing opioid-related risks and shareholders would benefit from a fuller understanding of governance mechanisms serving that function.

For example, it is not clear from AmerisourceBergen’s Board committee charters or proxy statement whether a specific Board committee monitors opioid-related financial and reputational risks; for example, none of the Board committees has been assigned specific responsibility for overseeing potentially opioid-related compliance matters such as DEA reporting. As well, AmerisourceBergen’s most recent proxy statement asserts that individual performance is among the factors considered in granting annual equity incentive awards to named executive officers, but does not indicate whether any opioid-related objectives, such as promoting ethical conduct, were part of that performance assessment.

We urge shareholders to vote for this proposal.



September 20, 2017

Hyung J. Bak
Office of the Corporate Secretary
AmerisourceBergen Corporation
1300 Morris Drive
Chesterbrook, PA 19087

Email: hbak@amerisourcebergen.com

Dear Mr. Bak:

I am writing you on behalf of the Missionary Oblates OIP Investment Trust to co-file the stockholder resolution on Financial & Reputational Risks Related to the Opioid Crisis . In brief, the proposal states RESOLVED, that shareholders of AmerisourceBergen Corporation (“AmerisourceBergen”) urge the Board of Directors (the “Board”) to report to shareholders by September 30, 2018 on the governance measures AmerisourceBergen has implemented since 2012 to more effectively monitor and manage financial and reputational risks related to the opioid crisis in the U.S., given AmerisourceBergen’s distribution of opioid medications, including whether AmerisourceBergen has assigned responsibility for such monitoring to the Board or one or more Board committees, revised senior executive compensation metrics or policies, adopted or changed mechanisms for obtaining input from stakeholders, or altered policies or processes regarding company political activities.

I am hereby authorized to notify you of our intention to co-file this shareholder proposal with the Sisters of St. Francis of Philadelphia. I submit it for inclusion in the 2018 proxy statement for consideration and action by the shareholders at the 2018 annual meeting in accordance with Rule 14-a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934. We are the beneficial owner, as defined in Rule 13d-3 of the Securities Exchange Act of 1934, of 4,000 shares of AmerisourceBergen Corporation.

We have been a continuous shareholder for one year of \$2,000 in market value of AmerisourceBergen Corporation and will continue to hold at least \$2,000 of AmerisourceBergen Corporation through the next annual meeting. Verification of our ownership position is enclosed. A representative of the filers will attend the stockholders’ meeting to move the resolution as required by SEC rules.

We truly hope that the company will be willing to dialogue with the filers about this proposal. We consider Sisters of St. Francis of Philadelphia the lead filer of this resolution and as so is authorized to act on our behalf in all aspects of the resolution including negotiation and withdrawal. Please note that the contact person for this resolution/proposal will be Tom McCaney of the Sisters of St. Francis of Philadelphia who may be reached by phone at 610-558-7764 or at tmccaney@osfphila.org. As a co-filer, however, we respectfully request direct communication from the company and to be listed in the proxy.

Respectfully yours,

Rev. Sèamus Finn, OMI
Chief of Faith Consistent Investing
OIP Investment Trust
Missionary Oblates of Mary Immaculate



September 20, 2017

Hyung J. Bak
Office of the Corporate Secretary
AmerisourceBergen Corporation
1300 Morris Drive
Chesterbrook, PA 19087

Dear Mr. Bak:

JLens is a network of institutional and individual investors dedicated to investing through a Jewish values lens. JLens assists with shareholder engagement for The Jewish Advocacy Strategy, managed by Lens Investments LLC. As responsible shareholders, we are concerned about all consequences of the opioid crisis gripping the nation, including the financial and reputational risks facing AmerisourceBergen as a distributor of opioid-based medicines.

JLens submits the attached shareholder proposal ("Proposal") with the Sisters of St. Francis of Philadelphia regarding the governance measures AmerisourceBergen has implemented in response to the opioid crisis. We submit this proposal for inclusion in AmerisourceBergen's 2018 proxy statement in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934 (17 C.F.R. § 240.14a-8).

JLens is co-filing this shareholder proposal on behalf of the Hammerman Family Revocable Inter Vivos Trust. JLens has been designated to act as their representative in voting their proxies, engaging companies and filing or co-filing resolutions. Moreover, Julie Hammerman of the Hammerman Family Revocable Inter Vivos Trust is the founder and CEO of JLens. The Hammerman Family Revocable Inter Vivos Trust is the shareholder of 11 shares of AmerisourceBergen stock, and has authorized JLens to act on its behalf, including co-filing this shareholder proposal. A designation letter attesting to this authorization is attached, and proof of ownership is being sent separately from the custodian as proof of ownership of AmerisourceBergen stock. The Hammerman Family Revocable Inter Vivos Trust has held this stock continuously for one year prior to its submission of the Proposal and intends to continue ownership of the shares through the date of AmerisourceBergen's annual meeting. A representative of the shareholders will attend the annual meeting as required by SEC rules.

We note that this amount of stock is less than \$2000. However, this presents no obstacle to our co-filing this resolution because, in Release 34-20091 (August 16, 1983) the Commission itself explicitly stated that the holdings of co-proponents could be aggregated in order to meet the dollar threshold. It is thus apparent that the holdings of a co-proponent, such as JLens, may be aggregated with those of another co-proponent, such as the Sisters of St. Francis of Philadelphia. Since

the aggregate holdings of the two proponents exceeds the \$2000 minimum threshold of common stock of AmerisourceBergen, it is clear beyond cavil that JLens satisfies the requirements of Rule 14a-8(b)(1).

Please direct any communications to JLens Director of Advocacy, Rabbi Josh Ratner (rabbiratner@jlensnetwork.org) and the resolution's primary contact, Tom McCaney, Associate Director, Corporate Social Responsibility (tmccaney@osfphila.org).

We welcome the opportunity to discuss the subject of the enclosed proposal with company representatives.

Sincerely,

A handwritten signature in black ink, appearing to read "Julie Hammerman", with a long horizontal flourish extending to the right.

Julie Hammerman
Executive Director
JLens Investor Network

September 13, 2017

Hyung J. Bak
Office of the Corporate Secretary
AmerisourceBergen Corporation
1300 Morris Drive
Chesterbrook, PA 19087

Dear Mr. Bak:

Peace and all good! The Sisters of St. Francis of Philadelphia are shareholders in AmerisourceBergen and regional neighbors. As responsible shareholders, we are concerned about all consequences of the opioid crisis gripping the nation, including the financial and reputational risks facing AmerisourceBergen as a distributor of opioid-based medicines.

The Sisters of St. Francis of Philadelphia are therefore submitting the enclosed shareholder proposal regarding the governance measures AmerisourceBergen has implemented in response to the opioid crisis. I submit it for inclusion in the proxy statement for consideration and action by the stockholders at the 2018 annual meeting in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934. A representative of the shareholders will attend the annual meeting to move the resolution as required by SEC rules. Please note that the contact person for this resolution/proposal will be: Tom McCaney, Associate Director, Corporate Social Responsibility. Contact information: 610-716-2766 or tmccaney@osfphila.org.

As verification that we are beneficial owners of common stock in AmerisourceBergen, I enclose a letter from Northern Trust Company, our portfolio custodian/Record holder, attesting to the fact. It is our intention to keep these shares in our portfolio at least until after the annual meeting.

Respectfully Yours,

Tom McCaney
Associate Director, Corporate Social Responsibility

Enclosures

Office of Corporate Social Responsibility
609 South Convent Road, Aston, PA 19014-1207
610-558-7764 Fax: 610-558-5855 E-mail: tmccaney@osfphila.org www.osfphila.org

RESOLVED, that shareholders of AmerisourceBergen Corporation (“AmerisourceBergen”) urge the Board of Directors (the “Board”) to report to shareholders by September 30, 2018 on the governance measures AmerisourceBergen has implemented since 2012 to more effectively monitor and manage financial and reputational risks related to the opioid crisis in the U.S., given AmerisourceBergen’s distribution of opioid medications, including whether AmerisourceBergen has assigned responsibility for such monitoring to the Board or one or more Board committees, revised senior executive compensation metrics or policies, adopted or changed mechanisms for obtaining input from stakeholders, or altered policies or processes regarding company political activities.

The report should be prepared at reasonable cost and should omit confidential and proprietary information.

SUPPORTING STATEMENT

Opioid abuse is undeniably a public health crisis: The Centers for Disease Control and Prevention reported that in 2015, opioid abuse caused more than 33,000 deaths in the U.S., or 91 people per day. The economic and social effects of the opioid crisis have been profound. Opioid use and dependency, according to a recent Goldman Sachs study, is a key factor in why many men of prime working age in the U.S. are unable or unwilling to find work.

AmerisourceBergen, along with Cardinal Health and McKesson, are the largest prescription drug wholesalers in the nation. They supplied more than half of all pain pills provided to West Virginia residents between 2007 and 2012, according to news reports.

AmerisourceBergen disclosed in its most recent 10-K that its business practices related to its distribution of opioids in West Virginia and other states are the subject of multiple government investigations. In its January 2017 10-Q, AmerisourceBergen reported a \$16 million settlement with the Attorney General of the state of West Virginia over claims the company acted negligently by distributing controlled substances to pharmacies that serve individuals who abuse controlled substances, and failed to report suspicious orders of uncontrolled substances in accordance with state regulations. The House Energy and Commerce Committee has requested information from AmerisourceBergen, McKesson and Cardinal, as well as the DEA, regarding distribution of opioids; a hearing is scheduled for October 23, 2017. (<https://energycommerce.house.gov/opioids/>)

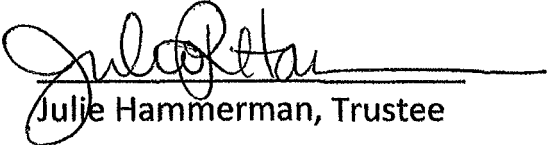
In our view, Board-level oversight and governance reforms can play an important role in effectively addressing opioid-related risks and shareholders would benefit from a fuller understanding of governance mechanisms serving that function.

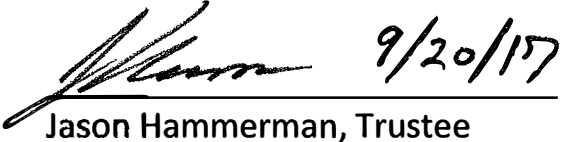
For example, it is not clear from AmerisourceBergen's Board committee charters or proxy statement whether a specific Board committee monitors opioid-related financial and reputational risks; for example, none of the Board committees has been assigned specific responsibility for overseeing potentially opioid-related compliance matters such as DEA reporting. As well, AmerisourceBergen's most recent proxy statement asserts that individual performance is among the factors considered in granting annual equity incentive awards to named executive officers, but does not indicate whether any opioid-related objectives, such as promoting ethical conduct, were part of that performance assessment.

We urge shareholders to vote for this proposal.

As of September 15, 2017, the Hammerman Family Revocable Inter Vivos Trust (“stockholder”) authorizes JLens to co-file a shareholder resolution on stockholder’s behalf with AmerisourceBergen Co to be included in AmerisourceBergen’s 2018 Proxy Statement in accordance with Rule 14a-8 of the Securities and Exchange Act of 1934. The stockholder gives JLens the authority to deal on the stockholder’s behalf with any and all aspects of the shareholder resolution.

Sincerely,

 9/20/17
Julie Hammerman, Trustee

 9/20/17
Jason Hammerman, Trustee